

Subject: Employee Family and Medical Leave Act (FMLA) and Extended Leave of Absence Policy

Supersedes: All previous policies and procedures related to employee family medical leaves and related discretionary extended leaves of absence

Effective: November 11, 2014

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Approved by:

I. Purpose

The School District of the City of Detroit (“District” or “DPS”) recognizes the need to balance employee medical and family leave requirements for the health and wellbeing of employees and their families with the educational and operational needs of the District. The purpose of this policy is to establish and communicate terms and conditions for taking leaves of absence under the Family and Medical Leave Act (“FMLA”), as well as, taking extended leaves not covered by the FMLA, that are granted at the District’s discretion.

II. Scope

This policy is applicable to all District employee leaves for family and medical reasons in accordance with the FMLA, as well as, extended leaves of absence.

III. Definitions

Child – A biological child, adopted child, foster child, stepchild, legal ward, or a child of a person standing in place of a parent (*in loco parentis*), who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act.

Parent - A biological parent or an individual who stands or stood in place of a parent to the employee when the employee was a child. The term does not include parents “in law.”

Spouse – A husband or wife for purposes of marriage as defined by Michigan law.

Qualified Exigency – Qualified exigencies may include: (a) attending military events related to being called to active duty (including family support, assistance, or informational programs); (b) arranging for alternative child or adult care, to provide such care on an emergency basis, to enroll the child, or attend school meetings for a child of a covered service member, or to arrange for placement of the adult in an extended care facility; (c) making financial or legal arrangements or to serve as personal representative to obtain military service benefits (limited to times when covered

service member is on active duty or within 90 days of the termination of that active duty; (d) attending counseling by someone other than a health care provider of the employee if the counseling arises from the service member's active duty; (e) spending time with a covered service member who is on a short-term, temporary, rest and recuperation leave during a period of deployment; (f) attending deployment functions and ceremonies which occur within 90 days of the termination of deployment or to arrange for funeral services; or (g) additional activities where the employee and employer agree are related to the active military service, qualify as an exigency and the timing and length of the leave.

Serious Health Condition – An illness, injury, impairment, physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the essential functions of his or her job or prevents the employee's qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirements may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider, or one visit and a regimen of continuing treatment, or incapacity due to pregnancy (including pre-natal care), or incapacity due to a chronic condition, or treatment for substance abuse. Other medical conditions may meet the definition of continuing treatment.

If the employee is not sure whether a condition qualifies for FMLA leave, the employee may apply for FMLA leave and, after review of appropriate medical documentation, the District will advise the employee of whether his or her leave qualifies under the District's FMLA leave policy.

Serious Illness or Injury – Any condition arising "in the line of duty" on active duty which makes the service member medically unfit to perform the duties of the member's office, grade, rank, or rating. In the case of a veteran, a "serious illness or injury" is defined as any illness or injury incurred by a covered service member at any time during a period when the person was a covered service member. To qualify, the covered service member must be: (1) on the temporary disability retired, list; or (b) undergoing medical treatment, recuperation, or therapy for the serious illness or injury; or (c) assigned to a military medical treatment facility as an outpatient or otherwise be receiving outpatient care at a unit established for members of the Armed Forces.

Eligible District Employee - A District employee is eligible to take an unpaid leave of absence under the FMLA if they have been:

1. **employed with the District at least 12 months prior to the commencement of the leave** (the 12 months need not be consecutive in most cases and in some circumstances time spent for military leave may qualify for this requirement); **and**
2. **worked a minimum of 1,250 hours during the 12 month period prior to the commencement of the leave** (only time actually worked, not time on leave, counts toward this 1,250 hour requirement except in some limited circumstances for time spent during active military service), and
3. The employee must be employed at a worksite at which 50 or more employees are employed within 75 miles (~~all District employees fulfill this requirement~~).

If an employee does not meet all three of these requirements, the employee is not eligible to be considered for leave under the FMLA. However, the employee may qualify for other types of leave under other District leave policies or pursuant to an applicable collective bargaining agreement.

Covered Service Member – A covered service member is:

1. a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
2. a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible District employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

Note: Definitions of “serious illness or injury” for service members and veterans are distinct from “serious health condition”.

Extended Leave of Absence – Granted at the District’s discretion, an extended leave of absence or “extended leave” is additional unpaid leave, not covered under the FMLA, for eligible District employees for the same family and medical reasons as described for leave under the FMLA. Extended leave can be taken only after the 12 weeks of leave provided by the FMLA have been used.

IV. Policy

It is the policy of Detroit Public Schools (the “District”) to provide employee leaves of absence for family and medical reasons in accordance with state and federal law, including, the Family and Medical Leave Act and to provide opportunities for extended non-FMLA leaves to employees as needed for specific medical or family reasons described herein.

A. Family Medical Leave

Any eligible District employee may take an unpaid leave of absence for specific family and medical reasons, as described herein, for a period not to exceed 12 weeks for the following reasons:

1. For incapacity due to pregnancy, prenatal medical care or childbirth in order to provide care for a child during the 12 month period after the birth of that child;
2. In order to provide care for the employee’s child after birth, or after placement for adoption or foster care with the employee;
3. To provide care for a child, spouse or parent with a serious health condition;
4. For a serious health condition which prevents them from performing the employee’s job.

Military Families

Eligible District employees whose spouse, son or daughter or parent is on covered active duty or call to covered active duty status, a “covered service member”, may use their 12 week leave to address certain qualifying exigencies. An extended period, up to 26 weeks may be available for eligible District employees to care for covered service members for a serious injury or illness under a special leave entitlement for military caregivers.

Benefits and Protections under FMLA

During FMLA leave, the District will maintain the employee's health coverage under applicable group health plan on the same terms as if the employee continued to work. Use of FMLA leave will not result in the loss of any employment benefit accrued prior to the start of an employee's leave. Under the FMLA, the employer is not required to return the employee to the actual position held prior to his or her leave.

B. Extended Leave of Absence

Upon exhaustion of available leave covered by the FMLA, an eligible District employee may be allowed to take an extended leave of absence as needed for medical or family reasons. The District retains the right to grant or deny a request for extended leave in accordance with its procedures, applicable law or applicable collective bargaining agreement. The determination to grant an extended leave is made within the District's discretion on a case by case basis.

Benefits and Protections During Extended Leave of Absence

During an extended leave of absence, the District will not provide benefits or healthcare coverage after the FMLA leave period and any additional paid leave have expired, although the employee may be able to continue his or her healthcare coverage through COBRA. Unless otherwise required by an applicable collective bargaining agreement, an employee will not be guaranteed return to the position the employee held prior to his or her extended leave.

V. Compliance

Employees who knowingly misrepresent facts in order to be granted FMLA or extended leave may be subject to discipline, up to and including termination. Except under extraordinary circumstances or other reasons protected by law, an employee who fails to return to work after the expiration of the FMLA or extended leave period will be considered a voluntary resignation.

VI. Procedures

The District shall establish and adopt procedures, attached herein, and additional procedures, incorporated herein by reference, as necessary, to implement and ensure effective compliance with this Policy and in accordance with applicable federal and state law. As such, this policy and these procedures may be amended, as necessary, from time to time.

Attachments: Family and Medical Leave Act (FMLA) and Extended Leave of Absence Procedures

Cross References: All applicable collective bargaining agreements

Legal References: 28 U.S.C. § 2601, *et seq.*; 29 C.F.R. § 825.100, *et seq.*

Other References: All applicable District policies

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**FAMILY AND MEDICAL LEAVE ACT (FMLA) AND
EXTENDED LEAVE OF ABSENCE PROCEDURES¹**

I. CATEGORIES OF FMLA LEAVE AND AVAILABLE LEAVE

A. Leave for Family Reasons

An eligible District employee may take leave for family reasons for the birth of a child and to care for an employee's newborn child after birth, or the placement of a child with the employee through adoption or foster care. Family Leave must be completed within 12 months of the birth or placement of the child.

B. Leave for Medical Reasons

An eligible District employee may take leave for medical reasons for a serious health condition that is considered qualifying under the FMLA. The District requires all employees to complete a Certification of Health Care Provider Form for the serious health condition. Medical leave may be granted based on:

1. An employee's serious health condition that prevents the employee from performing the functions of his or her job.
2. The care of the employee's parent, spouse or child with a serious health condition (the District will require reasonable documentation and/or a statement of family relationship to verify legitimacy).

An eligible District employee may take up to 12 weeks of leave under the FMLA during a 12-month period for leave for family and medical reasons. The District uses a "rolling calendar" which measures an employee's leave entitlement from the first date the employee uses FMLA leave. For example, if an employee first takes leave on November 1, 2014, the employee will have 12 weeks of leave available between November 1, 2014 and October 31, 2015. The employee will not have FMLA leave available until after November 1, 2015.

C. Leave for Qualified Exigencies (for Military Families)

An eligible District employee may take leave to address qualifying exigencies if their spouse, son, daughter or parent is being called to active duty from the National Guard, the Reserves, or military retirement, or a covered active duty member of the Armed Forces who is deployed to a foreign country. An employee may take up to 12 weeks of leave for qualifying exigencies.

D. Special Leave for Employee Caregiver for Family Service Member (Military Caregiver Leave)

An eligible District employee may take Military Caregiver Leave if the employee is the spouse, son, daughter, parent of a member of the Armed Forces (including a member of the National Guard or Reserves), where leave is necessary to allow the employee to care for a covered service member who is undergoing inpatient or outpatient medical treatment, recuperation, therapy, or is otherwise on the Temporary Disability Retired List, because of a serious illness or injury incurred during active duty.

¹ The DPS Division of Human Resources- Office of Employee Health Services ("DPS EHS") should be consulted for additional procedures and more information.

Eligible District employees who are family members of veterans are also covered when the veteran is undergoing medical treatment, recuperation, or therapy as a result of a condition that occurred during active duty if that active duty was within the last five years from the date the leave request is set to commence.

An eligible District employee is entitled to a combined total of 26 weeks of leave in one 12-month period. For the purposes of this leave entitlement only, the employee's leave entitlement will be measured from the first day of leave, regardless of leave that has been taken for other purposes in the previous 12 months. However, any non-Military Caregiver Leave taken during the 12-month window for this leave entitlement will also count against the 26 week allotment. An employee will not be entitled to additional leave under this entitlement in subsequent years unless the employee needs leave in the future to care for another service member or the original service member has a subsequent injury.

E. Intermittent or Reduced Schedule Leave

If medically necessary for the employee's own serious health condition or to care for a family member, an employee may take FMLA leave intermittently or on a reduced schedule. An employee may also take FMLA leave for "qualified exigencies" on an intermittent or reduced leave schedule basis. Whenever possible, the employee must schedule intermittent leave or reduced schedule leave that will create the least disruption to the District's operations. In addition, under certain circumstances and to the extent permitted by applicable law or collective bargaining agreement, the District may temporarily transfer the employee to another position or shift (with equal pay and benefits) while the employee is on intermittent leave.

Unless the District agrees or an applicable collective bargaining agreement provides otherwise, an employee may not take intermittent or reduced schedule leave for family leave due to the birth and/or related care of a child or for the placement of a child with the employee through adoption or foster care.

II. EMPLOYEE RESPONSIBILITIES AND PROCESS FOR TAKING FMLA LEAVE

A. Employee Must Provide Notice of Need and Request for FMLA Leave

If an employee believes that he or she is entitled to take leave for family or medical reasons under the FMLA, the employee must do the following to provide notice and request leave:

- 1. Foreseeable Absence** – If an employee's absence is foreseeable, the employee must provide the District at least 30 days' advance notice before the leave begins. For example, if the employee plans to take FMLA leave because of an expected birth, placement for adoption or foster care, or because of a planned medical treatment that qualifies for leave under the FMLA, the employee must submit a request for leave at least 30 days before the leave is to begin. If the 30 days' notice is not practicable, then the employee must provide advance notice as soon as possible. The employee should notify DPS EHS and the employee's supervisor and complete the regular leave request forms as soon as the employee becomes aware of the need to take FMLA leave. If the dates of the leave change, the employee must advise the District of the change as soon as practicable. If an employee is seeking leave because of doctor's appointments or planned treatment, the employee may be required to attempt to schedule the treatment so as not to unduly disrupt District operations.
- 2. Unforeseeable Absence** – If the employee's absence is unforeseeable, the employee must provide the necessary notice described above as soon as practicable upon learning of the

need for leave. The employee may also be required to provide certain information, such as a medical certification, to determine whether the employee has a qualifying reason for FMLA leave. The employee will be provided additional information regarding his or her FMLA rights at the time of the request. In all cases, the employee is expected to follow and comply with the District's normal call-in procedures as defined by District policy and/or an applicable collective bargaining agreement. **Note: Calling in "sick" will not be sufficient to trigger FMLA benefits or protections.**

FAILURE TO PROVIDE THE NECESSARY NOTICE OF THE NEED FOR FMLA LEAVE WITHIN THE TIME REQUIRED MAY RESULT IN FMLA LEAVE BEING DELAYED OR DENIED ALTOGETHER.

B. Certification Establishing Need for FMLA Leave

When an employee requests FMLA leave, he or she will be given a Notice of Eligibility and Employee Rights and Responsibilities letting the employee know whether he or she is eligible for FMLA leave and, if so, what he or she must do in order to be granted FMLA leave. At that time, the employee may also be required to provide certain information, such as medical certification, documentation supporting the placement of a child for adoption or foster care, or the existence of a family relationship. This certification must be provided to the District within 15 days after it is requested and must be fully completed. An employee will be provided the appropriate certification form(s) when the employee applies for leave.

FAILURE TO PROVIDE THE NECESSARY DOCUMENTATION SUPPORTING THE NEED FOR LEAVE WITHIN THE TIME REQUIRED MAY RESULT IN FMLA LEAVE BEING DELAYED OR DENIED ALTOGETHER.

The District may, without the employee's consent, contact the employee's doctor to make sure that the certification the employee provided is authentic. In addition, the District may ask the employee for permission to contact the employee's physician for clarification of information on the certification. An employee is not required to grant that consent. However, if the employee does not provide consent, the District will base its decision on the information contained in the certification, which may result in the denial of leave if the information is not clear. If the certification is not complete, the employee will be advised of any provision that needs completion and will be given 7 days to return a completed certification.

AN EMPLOYEE HAS THE RESPONSIBILITY FOR PROVIDING A COMPLETE CERTIFICATION.

The District may require, at its own expense, a second medical opinion from a health care provider designated by the District, but not employed on a regular basis by the District. In the event of a dispute concerning the second certification, the District may require, at its own expense, a third opinion from a health care provider. The employee and the District will agree on the selection of the third health care provider whose opinion is binding on both parties.

The District may require an employee to obtain subsequent re-certification for reasons such as the passage of time since the original certification or a change in circumstances, such as a change in the pattern of time off or the need for leave in excess of the time anticipated in the original certification.

The employee's approval for FMLA leave will expire after one year, regardless of how much leave time has actually been taken, and the employee will need to apply for a new FMLA leave if he or she believes continued leave is needed.

C. Response to FMLA Leave Request

After the District receives all required documentation, the employee will be notified as to whether his or her leave is granted or denied under the FMLA. If the employee disagrees with the determination, the employee must contact the DPS EHS. If the matter is not resolved to the employee's satisfaction, he or she may appeal the matter to the Chief Human Resources Officer.

D. Concurrent Leaves – Paid and FMLA Leaves

FMLA leave is unpaid leave. While on FMLA leave, an employee will be required to use his or her accumulated sick leave, vacation time, and personal leave time unless otherwise stated in an applicable collective bargaining agreement. Similarly, worker's compensation leave and leaves of absence pursuant to short-term or long-term disability, as well as any other leave of absence, will run concurrently with FMLA leave provided that the reason for the leave constitutes a "serious health condition" or other circumstance giving rise to FMLA leave. An employee may be required to provide additional information in accordance with the District's normal paid leave policies when paid leave runs concurrently with FMLA leave.

E. Activity During Leave

While an employee is on FMLA leave or any other medical leave, the employee is not allowed to work anywhere else, whether for another employer or self-employment. The employee also cannot travel out of southeastern Michigan while on an approved FMLA leave unless the employee notifies the DPS EHS prior to the travel with supporting documentation from the employee's doctor approving the travel, including the timeframe of the travel.

III. ADDITIONAL BENEFITS AND PROTECTIONS OF FMLA LEAVE

A. Maintenance of Health Benefits

During the FMLA leave, the District will maintain an employee's health benefits at the same level as if the employee had continued working. The District will continue to pay its portion of the cost of the employee's health care premiums during the period the employee is on qualified FMLA leave. The employee will be required to pay the active employee's portion of the insurance premiums on a monthly basis, if applicable. If the employee's health care premium is more than 15 days late, the District will notify the employee in writing. The employee's health care insurance coverage will be cancelled if the premium payment is more than 30 days late. Thereafter, the employee may have the opportunity to continue health insurance at his or her own cost under COBRA, if applicable. An employee's responsibility for the payment of his or her portion of plan premiums will be explained to the employee at the time leave is granted.

If an employee fails to return to work after the FMLA leave expires for a reason other than the continuance, recurrence, or onset of a serious health condition, or for other circumstances outside the employee's control, the employee may be required to pay back the premiums the District paid on the employee's behalf to maintain the employee's health benefits during the FMLA leave.

B. Accrual of Other Benefits

During FMLA leave, an employee will continue to earn sick and vacation leave and be paid for holidays or funeral leave which may fall during the leave period to the extent provided in the District's paid time off

policies or the applicable collective bargaining agreement, if any. However, unless required by an applicable collective bargaining agreement, an employee will not accumulate paid sick or vacation leave or be paid for holidays or funeral leave which may fall during the leave period.

C. Reinstatement

The FMLA provides that upon return from FMLA leave, an employee will be returned to his or her former position or to a position equivalent in pay, benefits, and other terms and conditions of employment. Unless otherwise required by an applicable collective bargaining agreement, the decision regarding where to reinstate the employee will be at the discretion of the District. However, nothing in the FMLA gives an employee greater rights to continued employment than the employee would have had if he or she had not taken FMLA leave.

D. Both Spouses Working for DPS

A husband and wife who are both employed by the District may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for the birth or care of a child or for the placement of a child through adoption or foster care. Similarly, a husband and wife who are both employed by DPS may be limited to a combined total of 26 weeks of leave during the applicable 12-month period to care for a covered service member with a serious injury or illness.

Notwithstanding the 12 and 26 week allotments for FMLA leave, an employee may not take more leave than is necessary for the qualifying condition giving rise to the need for the leave.

IV. REQUIREMENTS AND PROCESS FOR TAKING EXTENDED LEAVES OF ABSENCE

Under certain circumstances, an employee may need to extend his or her time off for family or medical reasons beyond the 12 weeks provided by the FMLA. In such cases, the employee must apply for an extended leave of absence using the following process:

A. Employee Must Submit Request

The employee must submit a written request to the DPS EHS 10 days prior to the date the extended leave is requested to begin. Under limited extraordinary circumstances, this notice period may be reduced or waived at the District's discretion in accordance with applicable law or pursuant to an applicable collective bargaining agreement.

B. Determination Made by Leave Review Committee

The granting of extended leave in addition to the 12-week maximum provided by the FMLA will be determined by the District's Leave Review Committee on a case-by-case basis. The District retains the right to grant or deny a request for extended leave at its discretion in accordance with applicable law or pursuant to an applicable collective bargaining agreement.

C. Extended Leave Not Governed by the FMLA

If an employee is approved for an extended leave of absence, the employee's extended leave will not be governed by the FMLA. The District will not provide benefits or healthcare coverage after the FMLA leave period and any additional paid leave have expired, although the employee may be able to continue his or

her healthcare coverage through COBRA. Unless otherwise required by an applicable collective bargaining agreement, an employee will not be guaranteed return to the position the employee held prior to his or her leave.

D. Recertification Required Under Certain Circumstances

Recertification for leave generally will not be necessary to obtain extended leave unless the circumstances giving rise to the original FMLA qualifying leave have changed significantly or the District receives information that raises doubt regarding the validity of the illness or injury.

V. RETURN TO WORK

- A.** Prior to returning from FMLA leave for his or her own serious health condition or returning from an extended leave for medical reasons, an employee must provide to DPS EHS a doctor's statement documenting that the condition for which the employee took leave has improved sufficiently such that the employee is medically able to return to work (i.e., "fitness-for-duty"). The employee will be given information regarding this requirement at the time his or her leave is granted. If the employee has been on a paid or extended leave, additional information may be required by the applicable collective bargaining agreement.
- B.** While a fitness-for-duty certification will generally not be required for intermittent leaves, if job safety concerns exist, the District may require such a certification.
- C.** An employee may return to work from an FMLA or extended leave prior to the original date requested for the leave to end. To do so, the employee must provide written notification of intent to return to work a minimum of two (2) working days prior to returning and must provide evidence of fitness for duty, if applicable.

VI. MISCELLANEOUS

- A.** Employees who knowingly misrepresent facts in order to be granted FMLA or extended leave may be subject to discipline, up to and including termination.
- B.** The FMLA and Extended Leave procedures will be administered consistent with applicable law and terms of any applicable collective bargaining agreement. Since leaves provided in the labor agreements are usually more generous than the 12-week FMLA limit, the time provided by labor agreements is simultaneously counted as FMLA leave; FMLA leave cannot be added to other leaves to extend the employee's absence.
- C.** Absent extraordinary circumstances or other reasons protected by law, an employee who fails to return to work on the first business day after the expiration of the FMLA or extended leave period will be considered a voluntary resignation.