

## FAMILY AND MEDICAL LEAVE OF ABSENCE

In accordance with Federal and State law, the District will provide family and medical leave for eligible staff members. The District's Family and Medical Leave Act Policy is intended to conform to and comply with the requirements of the Federal Family and Medical Leave Act (FMLA) and the Wisconsin Family and Medical Leave Act (WFMLA).

Family and medical leave taken may be covered by Federal law, State law, or both. For FMLA leaves governed by both Federal and State law, the more generous provision will determine the length of leave entitlement and the employee's eligibility. However, when leaves are governed by Federal or State law, but not both, the applicable law will control under this policy. In this regard, certain leaves may be covered by both Federal and State law for only a portion of the leave. To the extent permitted by law, leave under the FMLA, leave under the WFMLA and leave granted under the District's other policies will run concurrently.

**Legal References:** Federal Family and Medical Leave Act – 29 U.S.C. 2601, et. seq.  
Federal Family and Medical Leave Act Regulations – 29 C.F.R. Part 825  
Wisconsin Family and Medical Leave Act – Wis. Stats. 103.10  
Wisconsin Family and Medical Leave Act Regulations – Wis. Admin.  
Code DWD 225  
National Defense Authorization Act of 2010 – H.R. 2647

**Adoption Date:** September 24, 2012

## FAMILY AND MEDICAL LEAVE OF ABSENCE

### GUIDELINES

The District is dedicated to providing eligible employees with unpaid leave periods as required under Federal and Wisconsin law. In general, family and medical leave is available to eligible employees for the birth or placement for adoption or foster care of a child, or for the serious health condition of an employee or an employee's covered family member. Employees may also be eligible for leave to care for an ill or injured service member, or to address certain situations relating to a covered service member's active duty or call to active duty.

Under the federal law, employees are eligible for up to twelve (12) work weeks of unpaid leave for the reasons set forth in this Policy. The classification of an absence from work as Family and /or Medical Leave qualified leave will be determined by the District based on the information received from the employee or from other sources, without regard to the employee's request. In instances associated with caring for an injured qualifying military member as outlined below, employees may be eligible for a total of twenty-six (26) weeks of leave (which includes the twelve (12) weeks allowed for other FMLA qualifying leaves) in a single twelve (12) month period. These entitlements under federal law will run concurrently with any Wisconsin FMLA leave available to an employee, to the extent permitted by law.

Wisconsin law allows for up to six (6) weeks of unpaid leave on the birth or placement of a child for adoption, up to two (2) weeks for the serious health condition of the employee and up to two (2) weeks for the serious health condition of the employee's child, spouse, domestic partner or parent (or the parent of your spouse or domestic partner). Employees will be allowed Federal and/or Wisconsin leave based on their eligibility.

Further, where permitted by law, Wisconsin and/or Federal Family and Medical Leave available to an employee shall run concurrently with any other leave available through the District, i.e., worker's compensation leave and other state leave entitlements. Employees will only be granted the leave for which they are eligible. Leave entitlements under this Policy will be administered on a calendar-year basis.

Family and Medical Leave is intended to afford an employee the opportunity to be absent from work to care for the employee's serious health condition or for a qualifying family member for reasons recognized under the law. In the event an employee uses the period of leave to work for another employer or engage in other work/activities during the excused period not otherwise permitted by the law, the employee may be subject to discipline, up to and including discharge from employment. False leave requests will subject employees to discipline as well.

Taking leave under this Policy will not be used against an employee in any employment decision, including in the determination of pay raises or discipline. However, no greater right to employment or benefits will result to an employee than if no FMLA leave had been taken.

**I. Eligibility Requirements for Family and Medical Leave**

The District provides unpaid leave from employment at eligible worksites as required under the Federal and Wisconsin Family and Medical Leave laws.

To be eligible for Federal family and/or medical leave the law requires employees to have been employed by the District for twelve (12) months or more in the past seven (7) years and have worked at least 1,250 hours in the twelve (12) months preceding the commencement of the requested leave. All full-time instructional staff members who work the equivalent of a full year are deemed to meet the 1,250 hour requirement.

To be eligible for Wisconsin family and/or medical leave the law requires employees to have been paid by the District for at least 1,000 hours of work in the twelve (12) months preceding the beginning of leave and also have been employed for at least fifty-two (52) consecutive weeks. The District will determine an employee's eligibility for, and availability of, FMLA leave based upon the twelve (12) months immediately preceding the commencement of the requested leave.

There may be instances in which the District provides leave to employees who are not employed at a covered worksite. The District may do so voluntarily as a benefit to those employees. The District reserves the right, in its sole discretion, to discontinue at any time providing leave to those employees who are not eligible employees under the federal law. Providing such leave does not constitute an agreement by the District that it will subject itself to the jurisdiction of federal courts or administrative agencies with regard to such leave.

**II. Required Staff Member Notice**

Employees must notify the District of their intention to take a planned or foreseeable leave at least ten (10) calendar days before any proposed period of leave is to begin. The District reserves the right to deny or delay the start of any requested leave until appropriate notice is given. In the event of an unplanned or unforeseeable need for leave, notice of the need for leave must be provided to the District no later than three (3) business days after the leave begins. If the employee does not timely notify the District of the need for leave, the leave request may be delayed or denied. The leave available to employees shall not exceed that permitted under federal and applicable state law.

**III. Qualifying Reasons for Leave and Amount of Leave Available**

Employees are generally entitled to a total of twelve (12) work weeks of unpaid leave during a calendar year, regardless of the number of events giving rise to the leave entitlement, for any one or combination of the following reasons:

- **Birth or Placement of a Child**

An employee may take unpaid leave on the birth or placement for adoption or foster care (if eligible for leave under the federal law) of a son or daughter. While continuous leave may be taken up to one (1) year following the birth or placement, leave may begin no earlier than sixteen (16) weeks before the birth or placement, subject to any limitations on intermittent leave. Leave must be taken all at once, except as otherwise required by state law or this Policy.

- **Medical Leave**

Eligible employees may use available unpaid medical leave for their own serious health condition or to care for a child, spouse, or parent with a serious health condition. Wisconsin FMLA also allows an eligible employee up to two (2) weeks of leave to care for his/her domestic partner and the parent of a domestic partner. A "serious health condition" will generally occur when: (1) the individual receives inpatient care at a hospital, hospice or nursing home; or (2) experiences a period during which an eligible individual is incapable of work or certain activities of daily living and receives outpatient care which requires a schedule of continuing treatment by a health care provider. To meet the definition of a serious health condition, the condition must generally exist for more than three (3) calendar days, unless the condition is chronic and/or long term, and which requires at least two (2) visits to a health care provider within a thirty (30) day period after commencement or one (1) visit to a health care provider which results in a regimen of continuing treatment.

If an employee suffers a work-related injury/illness that qualifies as a serious health condition, federal leave provided under this Policy will be considered as taken concurrently with the worker's compensation leave. If an employee suffers a work-related illness or injury, FMLA leave available under Wisconsin law will not run concurrently with the worker's compensation leave. If the injury/illness is determined not to be work related, however, the FMLA leave available under the employee's Wisconsin leave entitlement will run concurrently with the period of absence.

- **Leave for Qualifying Exigencies**

Under federal law, eligible employees may take leave for certain qualifying situations when a son, daughter, parent or spouse who is a member of a reserve or regular component of the Armed Forces is deployed to a foreign country. Family members of certain retired members of the Regular Armed Forces and retired Reserve who are ordered to active duty may also be eligible for this type of leave entitlement.

Qualifying exigencies may be taken for the following reasons:

- Leave to address any issue arising from being called to active duty less than seven (7) days before the deployment date;
- Leave to attend military events and related activities involving an eligible individual;
- Leave to arrange for child care and school activities;

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- Leave to make or update financial or legal documents;
- Leave to attend certain counseling sessions;
- Leave for rest and recuperation with the covered service member while on leave (limited to five (5) work days per instance);
- Leave for post-deployment activities; or
- Leave for other events arising from service if the District agrees that the event qualifies as an exigency.

The District may require verification of the service member's status and impending leave.

- **Illness or Injury of Service Members (Military Caregiver Leave)**

An employee who is a spouse, child, parent or "next of kin" of a member of the Armed Forces of the United States ("covered service member") may be entitled to leave to provide care for such covered service member who has incurred a serious illness or injury in the line of duty while on active duty. An eligible family member may also take leave to care for a covered service member whose pre-existing serious illness or injury was aggravated in the line of duty while on active duty. The illness or injury must make the service member medically unfit to perform the duties of their office, grade, or rank, not other employment.

Military Caregiver Leave is also available to eligible family members of veterans who are undergoing medical treatment, recuperation, or therapy, for a serious injury or illness, provided that the veteran was a member of the Armed Forces, National Guard or Reserve at some time during the five (5) year period before the medical treatment, recuperation, or therapy that requires the leave.

This is a one-time period of leave. This type of leave, combined with other FMLA qualifying leave, may not exceed twenty-six (26) weeks in a single twelve (12) month period.

Leave taken under this Policy will count toward the leave to which an employee may be entitled under both the federal and applicable state law.

#### IV. Intermittent and Reduced Schedule Leave

- When requesting intermittent or reduced schedule leave for planned medical treatment, the employee must work with his/her direct supervisor and make a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the department. An employee shall advise his/her direct supervisor, upon request, of the reasons why the intermittent or reduced schedule leave is needed and of the schedule (or anticipated schedule) of treatment/absence. The employee and the direct supervisor shall attempt to work out a schedule which meets the needs of the District without unduly disrupting the department's operations and satisfies the medically necessary accommodation provided by the employee's treating health care provider.

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If leave is taken intermittently or on a reduced schedule for the medical care or treatment, the District may transfer the employee temporarily to an alternative position for which he/she is qualified. In the alternative position, the employee will receive the same pay and benefits he/she was entitled to in the original position. When an employee is allowed to take leave in less than one (1) week increments, he/she will receive reduced compensation consistent with the hours actually worked, unless paid leave is used for the otherwise unpaid time, in accordance with the requirements of the paid leave policy.

Intermittent or reduced schedule leave is available on the birth or placement of a child for adoption or foster care. This leave opportunity is only available during the sixteen (16) week period before the scheduled due date and after the actual birth or placement. Intermittent or reduced schedule leave is not available outside the period described under this paragraph.

Employees seeking intermittent or reduced schedule leave may be required to provide proof of the need for leave from time to time, when requested by the District. The District will not accept "annual certifications" in the absence of a request for leave.

### **V. Substitution of Paid Leave**

Employees may use, or may be required to use (to the extent permitted by law), accrued paid leave during a period of unpaid FMLA leave. This paid leave includes vacation time. Paid leave is only available for substitution for unpaid periods of leave if the employee has accrued a current right to the benefit. To accrue a right to a benefit, the employee must meet all eligibility requirements needed to receive the benefit, as defined under the terms of the benefit policy, and have a present right to the benefit. Contingent or discretionary benefits or paid leave is not accrued leave for purposes of substitution. Paid time used will not be available later for use by the employee. Extensions of leave will not be permitted except as required by law.

### **VI. Medical Certification**

Employees who wish to take a medical leave of absence for a serious health condition, whether for his/her own or that of an eligible family member, must provide the District with a Health Care Provider Certification completed by the treating health care provider. Certification will also be required for leave to care for an ill or injured service member. This document must be returned to the Personnel Services Department within fifteen (15) calendar days after the District requests the information. Failure to provide this documentation on a timely basis may result in the delay or denial of leave. The District may grant an extension of time to return the Health Care Provider Certification, if the extension is requested before the Certification's original due date.

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In the event the Certification is incomplete or contains insufficient information with which to evaluate a leave request, the District may request a Clarification of the Certification from the health care provider. Any requested Clarification must be completed and returned to the District within seven (7) calendar days after the request, unless the District agrees to an extended response date. If the documentation is still incomplete, the District may contact the health care provider to obtain the required information.

After receiving the Health Care Provider Certification, the District may require that the employee see a health care provider of the District's choice in order to verify the information provided. The District will pay the cost of this second opinion examination. If the results of the second examination differ from the original certification, the District may require a third examination, again at its expense, by a mutually agreed upon health care provider. Both the District and the employee are obligated to cooperate in selecting a suitable health care provider. The results of this third examination will be final and binding on the employee and the District in determining whether a serious health condition exists.

When an employee takes leave because of his or her serious health condition, or that of an eligible family member, the District may require the employee to submit additional certifications periodically during the leave. The District may request recertifications of the Health Care Provider Certification, where permitted by law, every thirty (30) calendar days (or if longer, the stated duration of the leave) or more often if: (1) the facts and circumstances do not appear to support the original Certification; or (2) the District has information which casts doubt on the employee's stated reason for leave. In such a case, a recertification of the serious health condition may be requested at an earlier point in time. The District will provide notice to the employee of any recertifications which may be required. The failure to provide a recertification may result in the delay or denial of leave.

### **VII. Benefits During Family and Medical Leave**

During an approved family or medical leave, the District will make available to the employee, the same insurance benefits which are available to employees who are not on leave. It is the employee's responsibility to continue to contribute his/her portion of any employee-paid premium during leave. If the employee is paid during the leave period, the premium will be deducted from pay. If the leave is unpaid, the employee is responsible for arranging with the Personnel Services Department payment of the employee's share of the premium during the period of unpaid leave. The failure to make timely premium payments may result in the loss of benefits.

If an employee fails to return from FMLA leave and is terminated from employment, the District will deduct any unpaid premium amounts due at such time from the employee's final paycheck, where permitted by law. If an employee chooses not to return to employment from an FMLA leave, the employee will be required to reimburse the District for any premiums it paid on the employee's behalf during the period of leave.

Employees on FMLA will not lose any accrued seniority or benefits due to taking FMLA leave; however, additional seniority and benefits will not accrue during the period of unpaid leave.

During the FMLA leave period, the District will continue to pay the other benefits available for the employee which is normally paid for by the District during active employment. Benefits for which employee payment is required during active employment may be continued by the employee paying all required premiums as requested by the Personnel Services Department. Failure to make timely payment will result in the immediate discontinuation of the benefit for the employee and all covered individuals.

**VIII. Returning From Family and Medical Leave**

Employees returning from Family or Medical Leave should, where possible, give the District at least two (2) weeks, but not less than two (2) work days, written notice of their intent to return to work. Any employee who returns from Family or Medical Leave within twelve (12) weeks, or the lesser amount of leave that was available to that employee, will be reinstated to the same or an equivalent position with equivalent benefits, pay and other terms and conditions of employment. However, the District cannot guarantee reinstatement to employees whose leave extends beyond the FMLA protected leave period, except to the extent necessary to comply with applicable state or federal laws and District policy. An employee will not have any greater right to employment than he/she would have had if FMLA leave had not been taken.

If an employee is on leave for more than three (3) work days because of his/her own serious health condition, the employee must provide a return-to-work certificate to the District before returning to work. The return-to-work certificate must be completed by the treating health care provider. It includes the treating health care provider's opinion regarding the ability of the employee to perform his/her job duties and must identify any work restrictions. If an employee fails to provide a return-to-work certificate by the end of any medical leave, the employee may not be eligible for reinstatement. Please contact the Personnel Services Department for a Return-to-Work Certification form.

**IX. Failure to Meet Policy Requirements**

If an employee does not meet the requirements of this Policy for Family and Medical Leave, the request for leave may be delayed or denied. Any period of absence not covered by this Policy will be administered under the District's Attendance Policy.

**X. Confidentiality**

All medical information relating to leave, whether written or verbal, shall be kept confidential to the maximum extent possible. All medical documents including, but not limited to, medical certifications and return-to-work statements are maintained in confidential, secure files separate from personnel files.

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The Appleton Area School District fully complies with the provisions of the FMLA. Accordingly, any employee who has questions regarding this policy is encouraged to contact the Personnel Services Department. Further information on your rights and remedies under the FMLA can be located on our FMLA poster (which can be found at your building site) or online on the Department of Labor's website at <http://www.dol.gov/dol/topic/benefits-leave/fmla.htm>.

Additional information about the WFMLA may be found at the following website: [http://www.dwd.state.wi.us/ER/family\\_and\\_medical\\_leave/default.htm](http://www.dwd.state.wi.us/ER/family_and_medical_leave/default.htm).

**Legal References:** Federal Family and Medical Leave Act – 29 U.S.C. 2601, et. seq.  
Federal Family and Medical Leave Act Regulations – 29 C.F.R. Part 825  
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