

FOSTER-GLOCESTER REGIONAL SCHOOL DISTRICT FAMILY MEDICAL LEAVE ACT AND PARENTAL FAMILY MEDICAL LEAVE ACT

Forward

The Foster-Glocester Regional School District will comply with the Family and Medical Leave Act and Rhode Island Parental and Family Medical Leave Act implementing Regulations as revised effective October 28, 2009. The District posts the mandatory FMLA Notice and upon hire provides all new employees with notices required by the U.S Department of Labor (DOL) on Employee Rights and Responsibilities under the Family Medical Leave Act.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights by law.

If you have any questions, concerns or disputes with this policy, you must contact the Business Manager in writing.

General Provisions

Under this policy, the District will grant up to 12 weeks (under FMLA) or 13 weeks (under PFMLA) (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid, or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

Eligibility

To qualify to take family medical leave under this policy, the employee must meet all of the following conditions:

1. The employee must have worked for the district for 12 months or 52 weeks. The time worked does not have to be consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
2. The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave should not be counted in the 1,250 hours eligibility test for an employee under FMLA.

3. The employee must work in a worksite where 50 or more employees are employed by the district within 75 miles of that office. The distance to be calculated by using available transportation by the most direct route.

Type of Leave Covered

To qualify as FMLA/PFMLA under this policy, the employee must be taking leave for one of the following reasons listed below:

1. The birth of a child in order to care for that infant;
2. The placement of a child for adoption or foster care and to care for the newly placed child;
3. To care for a spouse, child or parent with a serious health condition (described below)
4. The serious health condition (described below) of the employee;

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

The policy covers illness of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such as visits must take place twice a year.

Employees with questions about what illnesses are covered under this FMLA policy are encouraged to contact the Business Manager.

If an employee takes paid sick leave for a condition that progress into a serious health condition and the employee requests unpaid leave as provided under this policy, the district may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

5. Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter, or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: 1) Short-notice deployment, 2) Military events and activities; 3) Child care and school activities; 4) financial and legal arrangements; 5)

counseling; 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of leave.

“Covered active duty” means:

- a) In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
- b) In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision in law referred to in section 101(a)(13)(B) of title 10, United States Code.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child of other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee’s 12/13 week maximum of FMLA leave in a 12-month period.

- 6. Military caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran.

An employee whose son, daughter, parent, or next of kin is a covered service member may take up to 26 weeks in a single 12-month period to take care of leave to care for that service member.

Next of kin is defined as the closest blood relative to the injured or recovering service member.

The term “covered service member” means:

- a) A 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
- b) A veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

The term “serious injury or illness” means:

- a) In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed

Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

- b) In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

Amount of Leave

An eligible employee can take up to 12-weeks for the FMLA circumstances or 13-weeks for the PFMLA (Rhode Island) circumstances listed above under this policy during any 12-month period. The District will measure the 12-month period using a fiscal calendar ending each year on June 30th, and beginning July 1st. Each time an employee takes leave, the district will compute the amount of leave under this policy the employees has taken in the current fiscal year and subtract it from the 12/13 weeks available; and the balance remaining is the amount of time the employee is entitled to take at the time.

An eligible employee can take up to 26 weeks for the FMLA circumstance (military caregiver leave) during a single 12-month period. For this military caregiver, the district will measure the 12-month period and will calculate any other FMLA leave take and deduct that total from the 26 weeks available.

If a husband and wife both work for the District, and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not "parent-in-law") with a serious health condition, the husband and wife may only take a combined total of 12/13 weeks of leave. If a husband and wife both work for the district and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

Employee Status and Benefits during Leave

While the employee is on leave, the district will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the district will require the employee to reimburse the district the amount it paid for the employee's health insurance premium during the leave period.

Under the current collective bargaining agreements, the employee pays a portion of the healthcare premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person, or by mail. The payment must be received by the Business Office by the 15th day of each month. If the payment is more than

30 days late, the employee's health care coverage may be dropped for the duration of the leave. The employer will provide 15 days' notification prior to the employee's loss of coverage.

Employee Status After Leave

An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from the health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits, and other employment terms in accordance with any applicable collective bargaining unit agreements in place. The positions will be the same or one which is virtually identical in terms of pay, benefits, and working conditions. The district may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

Use of Paid and Unpaid Leave

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid vacation, personal, or sick leave prior to being eligible for unpaid leave. Sick leave may be run concurrently with FMLA leave if the reason is covered by the established sick policy.

Disability leaves for the birth of a child and for an employee's serious health condition, including workers' compensation leave (to extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA. Accordingly, the employee shall be required to use accrued sick, or vacation time before being eligible for unpaid leave.

An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation and personal leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must use all paid vacation, personal leave or sick leave prior to being eligible for unpaid leave.

Intermittent Leave or a Reduced Work Schedule

The employee may take FMLA leave in 12/13 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed the maximum 12/13 workweeks (or 26 workweeks to care for an injured or ill service member).

If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employer may require the employee to choose either to:

- a) Take leave for a period or periods of a particular duration not greater than the duration of the planned treatment; or
- b) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the current position.

Additionally, for instructional employees who begin leave more than five weeks before the end of a term, and less than five weeks before the beginning of a term, the district may require the employee to continue taking leave until the end of the term if:

- a) The leave will last at least three weeks, and
- b) The employee would return to work during the three-week period before the end of the term.

If the employee is required to take leave to the end of the academic term, only the initial leave applied for shall count against the employees' FMLA leave.

For the birth, adoption, or foster care of a child, the district and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of a child.

For terms of counting work weeks, school vacations and summer break do not count as work weeks for employees who work less than 260 days per year. For all employees (those who work more and less than 260 days) holidays do not count as a work day.

Certification for the Employee's Serious Health Condition

The district will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the serious request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition WH380E updated to include Rhode Island PFMLA regulations.

The Business Manager may directly contact the employee's health care provider for verification or clarification. Before the district contacts the health care provider, the employee will be given the opportunity to correct or clarify the issues with the business office. In compliance with HIPPA and GINA Medical Privacy Rules, the district will obtain the employee's permission for clarification of individually identifiable health information.

The district has the right to ask for a second opinion if it has reason to doubt the certification. The district will be responsible for paying for the employee to obtain a certification from a second doctor, which the district may select. The district may deny FMLA leave to any employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If, to resolve a dispute between the first and second opinion, the district has to require a third opinion, the employee and district must mutually select the third doctor, and the district will pay for the opinion. The third opinion will be considered final. The employee will be provisionally entitled to leave under FMLA pending the second and/or third opinion.

Certification for the Family Member's Serious Health Condition

The district will require certification for the employee family member's serious health condition. The employee must respond to such a request within 15 days of the serious request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition WH380F updated to include Rhode Island PFMLA regulations.

The Business Manager may directly contact the employee family member's health care provider for verification or clarification. Before the district contacts the health care provider, the employee will be given the opportunity to correct or clarify the issues with the business office. In compliance with HIPPA and GINA Medical Privacy Rules, the district will obtain the employee's permission for clarification of individually identifiable health information.

The district has the right to ask for a second opinion if it has reason to doubt the certification. The district will be responsible for paying for the employee to obtain a certification from a second doctor, which the district may select. The district may deny FMLA leave to any employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If, to resolve a dispute between the first and second opinion, the district has to require a third opinion, the employee and district must mutually select the third doctor, and the district will pay for the opinion. The third opinion will be considered final. The employee will be provisionally entitled to leave under FMLA pending the second and/or third opinion.

Certification of Qualifying Exigency for Military Family Leave

The district will require the certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave Form WH384.

Certification for Serious Injury or Illness of a Covered Service Member for Military Family Leave

The district will require the certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service Member Form WH385.

Recertification

The district may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the employee receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the district may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The district

may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

Procedure for Requesting FMLA Leave

All employees requesting FMLA Leave must complete the district's FMLA application and submit to the business office for review and response. In cases of emergency, other forms of communication including email and faxes may be accepted. Within 5 business days, after the receipt of a completed FMLA Application or other notification (in emergency situations only) the Business Manager will respond to the employee using the DOL Notice of Eligibility and Rights Form WH381 updated to include Rhode Island PFMLA regulations.

When the need for leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the district's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

Designation of FMLA Leave

Within 5 business days after the employee has submitted the appropriate certifications from the health care provider(s), the Business Manager will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice Form WH382 updated to include Rhode Island PFMLA regulations.

Due to the time constraints, the Business Manager shall receive approval from the Superintendent before processing any/all DOL Notice and Designation forms. The Superintendent shall be responsible for notifying the school committee of the employee requesting the leave and the dates of the leave at the school committee meeting immediately following the request for leave.

Intent to Return to Work from FMLA Leave

On a basis that does not discriminate against employees on FMLA leave, the district may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

First Reading:	September 2010
Second Reading:	October 5, 2010