

FMLA “What Does Your District Do?”



What is the FMLA?

The Family & Medical Leave Act (FMLA) allows **eligible** employees to take up to 12 weeks of **unpaid**, job protected leave over a 12 month period for certain family and medical reasons.

Who is Eligible for FMLA Leave?

- Have been employed by the District for at least 12 months (does not have to be consecutive)
 - **AND**
 - Have worked at least 1,250 hours during the prior 12 months
-
- Only Actual Hours Worked Count (Not paid leave)
 - Exempt employees with no time records will likely meet 1,250 hour requirement
 - Certified staff typically work outside of the normal school day and that time must be considered in the 1,250 calculation.

What Absences are covered by FMLA Leave?

- Birth of Child, Adoption of Child, or Placement of Child with Employee for foster care
- Employee's own serious health condition
- To care for an immediate family member who has a serious health condition
- Up to 12 weeks for qualifying urgencies related to covered family member's active duty
- Up to 26 weeks in a 12-month period to care for a covered service member recovering from a serious health condition

What is a Serious Health Condition?

- Prenatal care or incapacity due to pregnancy
- Inpatient care with overnight stay at hospital
- Incapacity due to a chronic health condition (ex: diabetes, HBP, asthma)
- Incapacity due to a permanent or long-term condition (ex: stroke, cancer, heart failure)
- More than 3 consecutive days of incapacity & 2 visits to Health Care Provider or 1 visit to HCP followed by continuing treatment (ex: Rx meds)

How does your
District identify those
employees who may
be eligible for FMLA
protection?

Employer Notice Requirements

- Once an employee misses more than 3 consecutive days, District must inform the employee of their rights under FMLA
- Determine if leave qualifies for FMLA (can be conditional)
- Give notice of FMLA leave designation as soon as practical after requested FMLA leave
- May give retroactive FMLA designation after receiving all necessary information

Employer Notice Requirements

Forms that can be used to meet notice requirements

- Make sure FMLA poster is posted at each school/site
(<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fmlaen.pdf>)
- WH-381 - Eligibility Notice
(<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-381.pdf>)
- WH-382 - Designation Notice
(<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-382.pdf>)
- WH-380 E&F - Health Care Provider Certification
(<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-E.pdf>)
(<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-F.pdf>)

Certifications

- Would suggest using WH-380 forms
- Can require recertification on a reasonable basis (ex: every 30 days) or if question about status
- Must notify employee of any deficiency in certification and allow 7 days to correct
- May contact HCP directly only after notifying employee about deficiency & employee has had chance to correct
- HCP contact should be made through HR and administration, not by their supervisor
- May request a second opinion at District expense
- If conflicting opinions, District & employee must agree on 3rd HCP opinion and it would be final

How does your District
notify employees and what
do you send?

Four Methods to determine the 12 Month Period

1. Calendar Year (1/1 - 12/31)
2. Any fixed 12-month period (example: fiscal year 7/1 - 6/30)
3. 12-month period measured forward from the first date that FMLA leave is taken
4. “Rolling” 12-month period looking backwards each time FMLA leave is used.

What method does
your District use for
the 12-month period?

Intermittent FMLA Leave Rules

- Potential Issues: Recordkeeping, Difficulty finding subs, Suspensions of healthy employees
- Should only be granted when medically necessary. Certification must have enough information to decide
- May be taken in separate blocks of time or may allow for a reduced work schedule
- Not required to provide intermittent for the birth of child or adoption, but District and employee may agree to it
- May transfer employee to alternate role, with equal pay & benefits, to better accommodate absences. Required to transfer back to original position when leave is not needed.

Examples of Medical Necessity

- Ongoing treatments (ex: dialysis, chemotherapy)
- Recovering from surgery/treatment and not strong enough for full day.
- Prenatal exams
- Follow up appointments

How does your District
handle intermittent leave
requests?

Do you grant intermittent
leave for pregnancy?

Special Considerations

- FMLA is unpaid. District may require that paid leave be taken concurrently but need a policy
- FMLA may run concurrently with disability insurance or workers comp benefits
- If employee under workers comp, they cannot be paid more than 100% of typical wages. District will have to adjust to reduced paid leave usage. (Typically workers comp is 60% of pay)
- Special Rule #1 for Instructional employees - If intermittent leave request is more than 20% of scheduled work, may require employee to stay on leave until ready to return or may transfer to temporary position (equal pay & benefits)
- Special Rule #2 for more than 5 weeks from end of school term (semester) -may require employee to remain on leave until end of term
- #2 less than 5 weeks - may require to remain on leave if return is less than 2 weeks from end
- #2 less than 3 weeks - may require to remain on leave if leave extends past 5 days

Donated Leave

- **Must meet State Definition of Catastrophic Illness - MS Code 25-3-91** (a life-threatening injury or illness of an employee or a member of an employee's immediate family which totally incapacitates the employee from work, as verified by a licensed physician, and forces the employee to exhaust all leave time earned by that employee, resulting in the loss of compensation for the employee. Short-term illnesses are not catastrophic but long-term or chronic conditions may be)
- **Employee must exhaust all leave, including sub-dock days**
- **Leave can now only be donated within your District**
- **Donor cannot donate more than 50% of their accumulated sick leave balance, cannot donate personal days if balance would go below 7 days, and cannot donate after tendering resignation or notice of separation**
- **Donated leave cannot extend past 90 days (FMLA only provides 60 days and could be issue)**

What is your District
process for handling
donated leave
requests?

Suggestions

- Document Everything!!! Possibly handle all FMLA business through email so you can easily access files/dates
- Have training with school staff responsible for tracking absences or scheduling subs. They're the first ones to know when someone is out.
- Make sure you have a District policy that states the latest FMLA regulations, how your District determines the 12-month period, whether or not paid leave is taken concurrently
- Communicate with employees a few weeks prior to the expiration of FMLA leave to determine their potential return to work
- Keep Jim Keith or another educational employment attorney on Speed Dial. The regulations are constantly changing and you will always encounter new things.

Thanks!

Contact us:

Margaret Pope, South Panola

mpope@spanola.net

662-563-6329

Elton Bienvenue, Biloxi

elton.bienvenue@biloxischools.net

228-374-1810 ext 1110



MISSISSIPPI ASSOCIATION OF
SCHOOL BUSINESS OFFICIALS