



School Committee Policy:

#410

Family and Medical Leave Act (FMLA Leave)

Eligibility: To be eligible for FMLA leave, an employee must have worked for Maynard Public Schools for at least 12 months, and the employee must have worked at least 1,250 hours during the 12 month period immediately preceding the date on which the requested leave would begin.

Purpose of Leave: Eligible employees may qualify for FMLA leave for any of the following reasons:

1. for the birth, adoption, or foster care placement of a son or daughter, and in order to care for that child;
2. to care for the spouse, son, daughter, or parent with a serious health condition;
3. because of the employee's serious health condition that makes the employee unable to perform the functions of his or her job;
4. because of any qualifying exigency arising out the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation;
5. because the employee is the spouse, son, daughter, parent or next of kin caring for a covered service member with a serious illness or injury sustained in the line of duty on active duty.

Definitions:

- “Son or daughter” means a biological, adopted or foster child, a step-child, a legal ward, or a child of a person standing *in loco parentis*, who is under age 18, or who is age 18 or older and incapable of self-care because of a mental or physical disability. “Incapable of self-care” means that the individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living

or instrumental activities of daily living. A “physical or mental disability” is a physical or mental impairment that substantially limits one or more major life activities.

- “Parent” means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a “son or daughter” as defined above. For purposes of the FMLA Policy, the term does not include parents “in law.”
- “Spouse” means a husband or wife as defined and/or recognized under Massachusetts state law, (or the applicable state law for employees who do not reside in Massachusetts).
- A “serious health condition,” (which is more fully defined by applicable FMLA Regulations), means any illness, injury, or impairment that involves either: (a) inpatient care in a hospital, hospice or residential medical facility, (including any period of incapacity or any subsequent treatment in connection with such inpatient care); or (b) continuing treatment by a health care provider.

“continuing treatment” for purposes of a serious health condition includes any one or more of the following:

- a. A period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i. treatment two or more times by a health care provider or a provider of health care services under orders of, on or referral by, a health care provider; or
 - ii. treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of the health care provider.
- b. Any period of incapacity due to pregnancy, or for prenatal care.
- c. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective.
- d. Absences to receive multiple treatments for restorative surgery after an accident or injury, or for a condition that (in the absence of such treatment) would likely result in a period of incapacity of more than three consecutive calendar days.
- e. A period of incapacity or treatment for a chronic serious health condition which requires periodic visits for treatment by a health care provider, over an extended period of time, and which may cause episodic rather than continuing incapacity.

- A “health care provider” is defined by the FMLA and applicable regulations, and includes doctors of medicine or osteopathy, podiatrists, dentists, clinical psychologists, and optometrists. The term may also include nurse practitioners, nurse-midwives, and clinical social workers performing within the scope of their practice.
- The following definitions apply to Leave Purposes #4 and #5:
 - The term “qualifying exigency” shall have such meaning as the Secretary of Labor shall define in qualifying regulations under the FMLA.
 - “Active duty” means a duty under a call or order to active duty under applicable federal law.
 - A “member of the Armed Forces” includes a member of the National Guard or Reserves.
 - A “contingency operation” is a military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations or hostilities against an enemy of the United States or an opposing military force; or results in the call or order to, or retention on, active duty of members of the uniformed services under applicable federal law during a war or during a national emergency declared by the President or Congress.
 - “Next of kin” means the nearest blood relative of the covered service member.
 - A “covered service member” means a member of the Armed Forces 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.
 - “Outpatient status” means the status of the covered service member assigned to a military medical treatment facility as an outpatient; or a unit established for the purposes of providing command and control of members of the Armed Forces receiving medical care as outpatients.
 - A “serious injury or illness” in the context of a “covered service member” means an injury or illness incurred by the service member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.

Timing and Length of Leave:

Except in the case of FMLA leave granted to care for a covered service member with a serious illness or injury sustained in the line of duty on active duty, an eligible employee is entitled to a maximum of 12 weeks of unpaid FMLA leave during any rolling 12 month period, measured backward from the date the employee uses any FMLA leave.

Where FMLA leave is granted to care for a covered service member with a serious illness or injury sustained in the line of duty on active duty, (Purpose #5), an eligible employee will be entitled to a total of 26 weeks of unpaid FMLA leave during any rolling 12 month period, measured backward from the date the employee uses any FMLA leave. FMLA leave for this purpose will only be provided during a single 12-month period.

Note: During the 12-month period in which an employee takes leave to care for a covered service member with a serious illness or injury sustained in the line of active duty, (Purpose #5), an eligible employee shall be entitled to a combined total of 26 weeks of leave for all purposes (Purposes #1 through #5, inclusive). This provision shall not limit the availability of leave under Purposes #1 through #4 during any other 12-month period.

Leave provided under the FMLA Policy will run concurrently with any and all available leave under the MMLA, or other applicable laws or benefit programs, to the full extent permitted by law.

Leave taken for the birth, adoption, or foster care placement of a son or daughter, and in order to care for that child, must be completed within 12 months of the child's birth, adoption, or foster care placement.

Eligible Employees Who are Married to One Another:

(a) Where MAYNARD PUBLIC SCHOOLS employs spouses, and each spouse meets the eligibility requirements for FMLA leave, the total length of leave to which both spouses will be entitled during any rolling 12 month period (as described in "Timing and Length of Leave" above) shall be a combined 12 weeks for the following purposes:

- birth, adoption, or foster care placement of a son or daughter, and in order to care for that child; or
- to care for the employee's parent with a serious health condition.

(b) Where MAYNARD PUBLIC SCHOOLS employs spouses, and each spouse meets the eligibility requirements for FMLA leave, the total length of leave to which both spouses will be entitled during any rolling 12 month period (as described in "Timing and Length of Leave" above) shall be a combined 26 weeks for the following purposes:

- leave to care for a covered service member with a serious illness or injury sustained in the line of active duty; or
- a combination of leave to care for a covered service member with a serious illness or injury sustained in the line of active duty, and leave for any of the purposes set forth in section (a) above. *Note, however, that notwithstanding the provisions of this section, under this FMLA policy, eligible spouses receive a combined 12 weeks of leave for any of the purposes described in section (a) above.*

Designation of Leave: MAYNARD PUBLIC SCHOOLS will designate any absence taken for an FMLA-qualifying reason as FMLA leave, and will count such absences against the employee's 12-week or 26-week entitlement, whichever is applicable.

Intermittent or Reduced Work Schedule Leave:

FMLA leave may be taken either on a reduced working schedule basis, or on an intermittent basis, for the following purposes: to care for a son, daughter or parent with a serious health condition; because of the employee's serious health condition that makes the employee unable to perform the functions of his or her job; because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter or parent of the employee is on active duty in the Armed Forces in support of a contingency operation; or because the employee is the spouse, son, daughter parent or next of kin caring for a covered service member with a serious illness or injury sustained in the line of duty on active duty.

When an employee seeks FMLA leave due to his/her own serious health condition, the serious health condition of a son, daughter or parent or to care for a covered service member with a serious illness or injury, the Medical Certification provided by the employee must establish a medical necessity that such leave be provided on a reduced working schedule or intermittent basis.

Unless otherwise approved by MAYNARD PUBLIC SCHOOLS, FMLA leave taken for the birth, adoption or foster care placement of a child, and to care for that child, may not be taken on an intermittent or reduced work schedule basis, and must be taken at one time.

When an employee receives approval to take leave on a reduced work schedule or an intermittent basis for the birth, adoption or foster care placement of a son or daughter, and in order to care for that child, or where an employee takes leave on a reduced work schedule or on an intermittent basis based on planned medical treatment due to his/her own serious health condition, the serious health condition of a son, daughter or parent, or to care for a covered service member with a serious illness or injury, MAYNARD PUBLIC SCHOOLS may transfer the employee temporarily to an alternative position, (with equivalent pay and benefits), if the alternative position would better accommodate the recurring periods of medical leave.

Subject to their medical limitations, employees taking leave on reduced schedule or intermittent basis are expected to consult with the Superintendent of Schools or designee, in an effort to schedule such leave in a manner that will minimize disruption to the operations of MAYNARD PUBLIC SCHOOLS.

Requests for Leave and Medical Certification:

When the need for FMLA leave is foreseeable, the employee is expected to provide written notice to MAYNARD PUBLIC SCHOOLS at least 30 days before the requested leave is to begin. If an employee cannot give the full amount of advance notice, he or she should provide as much notice as practicable under the circumstances.

Where the leave is due to a qualifying exigency arising out the fact that the spouse, or a son, daughter or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation, the employee is expected to provide such notice as is reasonable and practicable under the circumstances.

It is the employee's responsibility to provide MAYNARD PUBLIC SCHOOLS with sufficient information to confirm that the requested leave qualifies as FMLA leave under this policy. Employees requesting a leave due to their own serious health condition, or due to a serious health condition affecting a covered family member or covered service member are generally required to provide a Medical Certification from a qualified health care professional documenting the need for the leave, and setting forth sufficient medical facts to demonstrate that the medical condition qualifies for leave under the FMLA. Unless extenuating circumstances are present, this Medical Certification must be provided within 15 calendar days of the request for leave. Further Medical Certification or recertification may be required during the leave, depending on the circumstances. In addition, employees on leave may be contacted periodically for updates concerning their status and their intent to return to work. Employees are expected to respond fully to such requests for updates.

If MAYNARD PUBLIC SCHOOLS has reason to doubt the validity of the medical certification, MAYNARD PUBLIC SCHOOLS may require the employee to obtain a second opinion from a health care provider designated by MAYNARD PUBLIC SCHOOLS, at MAYNARD PUBLIC SCHOOLS's expense. If there is a conflict between the second opinion and the original Medical Certification, MAYNARD PUBLIC SCHOOLS may require the employee to obtain a third opinion from a health care provider who is selected jointly by MAYNARD PUBLIC SCHOOLS and the employee, and which will be at MAYNARD PUBLIC SCHOOLS's expense. This requirement does not apply to the birth or adoption of a child, nor does it apply to leaves by a spouse, son, daughter, parent, or next of kin, caring for a covered service member with a serious illness or injury.

Employee Status and Benefits While on Leave:

Employees on unpaid FLMA leave do not accrue additional vacation, sick or personal time while they are on leave, nor are they eligible for paid holidays. The employee will not, however, lose any vacation time accrued prior to the commencement of the leave, nor will the employee lose any other benefit rights to the extent that those rights accrued before the leave commenced.

An employee will not be entitled to more favorable employment terms as a result of taking FMLA leave. Thus, the employee will be subject to any pay or benefit reductions or other adverse actions, including layoff, which he or she would have experienced if he or she had not been on leave.

Continuation of Group Health Insurance Coverage:

If an employee participates in any of the Town of Maynard's group health insurance plans prior to his or her leave, the Town of Maynard will continue that employee's group health insurance coverage during his or her leave for up to a total of 12 weeks, provided that the employee continues to pay his or her share of the premium on a timely basis. During any portion of the leave in which the employee is receiving a paycheck, (e.g., where the employee is utilizing accrued vacation), the employee's share of the premium will be deducted from that paycheck. During any portion of the leave in which the employee is not receiving a paycheck, the employee must ensure that his or her share of the premium is received by the School's Business Office on the proper due date.

Mandatory Coordination of FMLA Leave with Available Paid Leave Time:

FMLA leave is unpaid leave, except to the extent that an employee is otherwise eligible for paid leave including, but not limited to, accrued and unused vacation, sick or personal time. Employees may elect to be paid any available and applicable accrued time off while on leave.

Reinstatement:

An employee returning to work at the completion of an FMLA leave (of 12 weeks or less) will be reinstated to his/her former position, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment as he/she had prior to the leave.

An employee who takes a FMLA leave due to his or her own serious health condition will be required to obtain and submit a satisfactory fitness for duty medical evaluation from his or her health care provider as a condition of reinstatement.

Date Approved: 02/26/09

Earlier Version:

Cross Reference:
