

Policy

FAMILY LEAVE AND MEDICAL LEAVE

Statement of Purpose

In accordance with the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., (FMLA) and the New Jersey Family Leave Act, N.J.S.A. 34:11B-1 et seq., (NJFLA), the board of education will permit eligible employees to take an job-protected leave of absence due to certain qualifying events. All requests by eligible employees for a leave of absence that qualify under the FMLA, the NJFLA, or both, are subject to this policy.

Scope and Effective Date

This policy applies to all board employees eligible for leave under the FMLA or the NJFLA and will apply to all applications for a leave of absence pursuant to the FMLA and/or the NJFLA made on or after the date of adoption of this policy.

Non-waiver of Rights

The interaction between the FMLA, the NJFLA, and other applicable laws is complicated and may need to be reviewed on a case-by-case basis. Employees will receive that to which they are entitled by law. This policy will not serve to grant any greater rights or waive any right that the board may have under the FMLA or the NJFLA.

Eligibility and Qualifying Events

An employee must be an eligible employee and choose to take a leave of absence because of one or more of the qualifying events described below:

A. Federal Family and Medical Leave Act (FMLA)

Employees are eligible for FMLA leave when employed by the board for at least 12 months and have worked at least 1,250 hours during the 12 months prior to the date your leave commences.

Employees qualify for FMLA benefits for:

1. The birth of your child;
2. The placement of a child with you for adoption or foster care;
3. Your need to care for a spouse, parent or dependent child who has a serious health condition;
4. A serious health condition that prevents you from performing the essential functions of your job;
5. Military family qualifying exigency and care giver.

B. New Jersey Family Leave Act (NJFLA)

Employees are eligible for NJFLA when employed by the board for at least 12 months and have worked at least 1,000 base hours during the immediately preceding 12 month period.

As of June 30, 2019, all employers with 30 or more employees worldwide will be covered. In addition, all state and local government agencies, regardless of size, are covered by the NJFLA.

Employees qualify for NJFLA benefits for:

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1. The birth of your child, including childbirth under a valid agreement between and employee and a gestational carrier;
2. The placement of a child with you for adoption or foster care;
3. Your need to care for a family member including a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, domestic partner, or one partner in a civil union couple, or any other individual related by blood to the employee, and any other individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship who has a serious health condition;
4. Leave authorized pursuant to the New Jersey Safe Act for domestic violence or a sexually violent offense;
5. Your need to care for a parent-in-law, sibling, grandparent, grandchild, child, parent, spouse, domestic partner, or civil union partner individual, or any other individual related by blood to the employee, and any other individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship, who was a victim of domestic violence or a sexually violent offense. This unpaid leave shall be no more than 20 days in one 12-month period, to be used in the 12-month period next following any incident of domestic violence or any sexually violent offense.

Note: Paid leave and unpaid leave are not included for purposes of calculating the number of hours worked under the FMLA and the NJFLA.

Note: Leave taken for the birth, adoption or placement of a child in foster care must begin within one year of the birth, adoption or placement.

Duration of Leave

The amount of leave that may be taken by an eligible employee because of a qualifying event and how the amount of leave is measured depends upon whether the leave is taken pursuant to the FMLA, the NJFLA, or both. The amount of leave available to an employee will be calculated on a "rolling forward" basis. If a leave of absence qualifies pursuant to both statutes, an employee is eligible to take the maximum amount of leave provided by either statute as follows:

A. Federal Family and Medical Leave Act (FMLA)

The 12 month period is measured forward from the first date that FMLA leave is taken; the next 12 month period begins the first time FMLA leave is taken after completion of any previous 12 month period.

An eligible employee may receive up to a total of 26 workweeks of unpaid, job-protected military care giver leave during a single 12-month period to care for a covered service member with a serious injury or illness. The employee must be the spouse, son, daughter, parent, or next of kin of the covered service member. A service member is either a current member of the Armed Forces or a veteran of the Armed Forces who requires care due to a qualifying condition incurred or aggravated by their service (see: regulation for special criteria applying to military service members).

B. New Jersey Family Leave Act (NJFLA)

An employee's NJFLA unpaid leave entitlement is limited to a total of 12 weeks in any 24 month period upon advanced notice to the board. The 24 month period is any 24 months measured from the first date any leave is taken.

Definition of Serious Health Condition

A "serious health condition" is defined as an illness, injury, impairment or physical or mental condition which requires inpatient care in a hospital, hospice or residential medical care facility or continuing medical

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treatment or continuing supervision by a healthcare provider as described by the FMLA and NJFLA. Serious health condition does include routine physical, eye or dental examinations.

Advance Notice

In all cases, an employee requesting leave must complete an application for a leave of absence form. If the employee intends to take a leave of absence to care for a family member with a serious medical condition, he or she is required to provide the board with 30 days notice. If the need for the leave of absence is unforeseeable, the employee must notify the board as soon as possible. If the employee does not complete the required forms, or if he or she fails to give the required notice, the board may deny the leave request or delay the commencement of the leave.

Notice of Rights

The chief school administrator shall ensure that conspicuous notice is displayed of district employees' rights and obligations pursuant to the New Jersey Security and Financial Empowerment Act (N.J.S.A. 34:11-1 et seq.), regarding family leave for victims of domestic violence or a sexually violent offense or employees who must care for a family member who is a victim. The notification shall be in the form and manner that the Commissioner of Labor and Workforce Development prescribes. The district shall use other appropriate means to keep its employees so informed.

How Leave May Be Taken

Under certain circumstances, leave may be taken intermittently or on a reduced leave schedule. Intermittent leave is leave taken in separate blocks of time due to a single qualifying event. A reduced leave schedule is a leave schedule that reduces your usual number of working hours per workweek or per workday. Intermittent leave may be taken due to the birth or adoption of a child without the approval of chief school administrator. A reduced leave schedule will be approved for leaves due to the serious health condition of the employee only if medically necessary. If the leave of absence is needed for a planned medical treatment, the employee must schedule the treatment so as to create minimum disruption to the school district.

Intermittent leave is non-consecutive leave comprised of intervals each of which is at least one but less than twelve weeks (12) weeks within a consecutive twelve month (12) period for each single serious health condition. The board shall approve all requests for medically necessary intermittent leave.

If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on care of or planned medical treatment for a family member, or if an employee is given approval to take intermittent or reduced schedule leave for the birth of a child or placement of a child for adoption, the employee may be required to temporarily transfer to an available alternative position with equivalent pay and benefits during the period of leave. Additionally, those employees who are employed mainly in an instructional capacity (instructional employees) who request leave that is foreseeable based on a planned medical treatment may be required to take leave for periods of a particular duration or transfer temporarily to an alternative position with equivalent pay and benefits when the employee would be gone for more than 20 percent of the working days during the period of leave. Instructional employees who fail to give 15 day notice of foreseeable leave to be taken intermittently may also be required to take leave of a particular duration, to transfer temporarily to an alternative position, or to delay the taking of leave until the required notice is given.

Continuity of Instruction

Where applicable, the board reserves the right to require that an instructional employee continue his or her leave until the end of a term if leave begins more than five weeks prior to the end of a term, lasts at least three weeks, and the employee would return during the three-week period prior to the end of the term. If an employee is required to take leave until the end of an academic term, only the period of leave until the

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employee is ready and able to return to work shall be charged against the employee's leave entitlement. The board has the option not to require the employee to stay on leave until the end of the school term.

Medical Certification

If the application for a leave of absence is based on a serious health condition of an employee or the serious health condition of a spouse, one partner in a civil union couple, parent or child, the employee must submit an approved medical certification completed and signed by a health care provider. If the medical certification is not timely submitted, the board may deny the leave. The board has the right to require periodic re-certifications from the health care provider. The board also may require, at its expense that the employee submit to a medical examination by a health care provider designated by the board concerning the information stated in the medical certification. If the second opinion differs from the first opinion, the board may require that the employee obtain a third opinion from a health care provider chosen jointly by the employee and the board at the board's expense. The third opinion shall be final and binding.

Exhaustion of Paid Leave

An approved leave of absence under the FMLA and the NJFLA is unpaid leave. Where applicable, all leaves shall be counted and run concurrently with leave granted in accordance with the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., (FMLA) and the New Jersey Family Leave Act, N.J.S.A. 34:11B-1 et seq., (NJFLA).

Paid leave time does not accrue during unpaid FMLA and NJFLA leave. Similarly, holidays occurring during an FMLA or NJFLA leave of absence will not be paid.

Time taken off by an employee due to an on-the-job injury which is covered by workers' compensation will be charged as FMLA leave. This means that an employee's FMLA 12 workweek entitlement runs concurrently with every absence covered by disability.

Continuation of Benefits

During FMLA and NJFLA leave, the board will continue group health care benefits at the level and under the conditions that coverage was provided prior to the commencement of leave. If an employee out on FMLA and/or NJFLA leave normally pays a portion of the premiums for health insurance coverage, these payments will continue during the period of leave. Health insurance coverage will terminate if the employee's premium payment is more than thirty (30) days late. The board will advise employees at least fifteen (15) days prior to termination of coverage. The board retains the right to recover health insurance premiums that it has paid for an employee on leave if the employee fails to return to work, unless the employee does not return because of (a) the continuation, recurrence, or onset of a serious health condition that would entitle the employee to leave, or (b) other circumstances beyond the employee's control.

An employee on an unpaid leave of absence is entitled to retain those employment benefits accrued at the time leave was taken. However, additional employment benefits, such as seniority, will not accrue during leave as provided by law.

Spouses Employed by the Board

If a husband and wife are both employed by the board, the aggregate number of workweeks of FMLA leave to which both employees are entitled may be limited to 12 workweeks during any 12 month period if the leave is due to the birth or adoption of a child or to care for a parent who has a serious health condition.

Return from Leave

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The board may require an employee on leave to periodically report on whether he or she plans to return to work. If the employee wishes to return to work prior to the expiration of the approved leave, the employee must give notice to the chief school administrator or his/her designee at least five working days prior to the planned return. Additionally, if the employee wishes to return to work later than the expiration of the approved leave, the employee must give notice to the chief school administrator or his/her designee at least five working days prior to the date the approved leave was scheduled to conclude. The employee may be permitted to return to work prior to the expiration of the leave if the chief school administrator or his/her designee determines that it will not cause an undue hardship to the board.

If FMLA leave was taken because of an employee's own serious health condition, the board may require that the employee provide a certificate from his or her treating health care provider which states that the employee is able to resume working.

If the employee does not return to work at the expiration of an approved leave, the employee will be considered to have voluntarily resigned his or her employment with the board.

Restoration to Position

When an employee returns from leave, the employee will be restored to the same or to an equivalent position, with equivalent pay and benefits to the extent required by law. However, in no event shall the board be obligated to extend a non-tenured employee's unpaid leave of absence beyond the contract year for which the employee is employed. Additionally, an employee is not entitled to restoration to a position or an equivalent position where that employee would not otherwise be employed at the time reinstatement is requested (e.g., expiration of contract, layoff). The board can also deny restoration where an employee is unable to work at the conclusion of the 12-week leave period or where an employee gives an unequivocal notice of his or her intent not to return to work after FMLA/NJFLA leave.

Coordination of FMLA and NJFLA Leaves

If an employee's leave qualifies under both the FMLA and the NJFLA, the leave used will be counted against the employee's entitlement under both laws. For example, if an employee takes 12 workweeks of leave because of the birth of a child, the 12 workweeks will be counted against both the employee's FMLA and NJFLA entitlement. It shall be the responsibility of the employee to keep track of days used, it shall not be the responsibility of the district.

No Retaliation

No employee shall be retaliated against for having exercised his or her rights under the FMLA and/or the NJFLA nor shall they be discouraged from the use of family and medical leave.

Employee Acknowledgement

Each employee or prospective employee shall be given a copy of this policy. He/she must acknowledge receipt and understanding of the policy as a condition of employment by signing an acknowledgement form.

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 NJSBA Review/Update:
 Adopted:

Key Words

Family Leave, Disability, Birth, Adoption, Family Illness, Consecutive Leave, Intermittent Leave

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Legal References: N.J.S.A. 34:11B-1 et seq. Family Leave Act

29 U.S.C. 2601 et seq.

29 C.F.R. 825.200 et seq.

P.L. 2008, c. 17, Family Temporary Disability Leave

P.L. 2019, c. 37, concerning family leave, temporary disability and family temporary disability leave, and domestic or sexual violence safety leave, amending various parts of the statutory law and supplementing P.L.1948, c.100

Possible

Cross References: *4151/4251 Attendance patterns
*4151.1/4251.1 Personal illness and injury/health and hardship

*Indicates policy is included in the Critical Policy Reference Manual.