

Ontario-Montclair Administrative Regulation

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Personnel

Family Care and Medical Leave

The district permits eligible employees to utilize family care and medical leave pursuant to federal and state law.

Family care and medical leave taken pursuant to this policy shall run concurrently with any paid leave to which the employee is entitled under any other District policy or state or federal law. (29 CFR 825.208) In the case of pregnancy leave taken pursuant to this policy, the employee may elect to use accrued paid vacation and/or sick leave in lieu of unpaid pregnancy leave, in which case unpaid pregnancy leave under this policy shall run concurrently with the paid leave.

Definitions

Child means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis as long as the child is under 18 years of age or an adult dependent child. (29 USC 2611; Government Code 12945.2)

Parent means a biological, foster or adoptive parent, a stepparent, a legal guardian, or another person who stood in loco parentis to the employee when the employee was a child. (29 USC 2611; Government Code 12945.2)

Instructional employee means an employee whose principal function is to teach; instructional employees include athletic coaches, driving instructors, special education assistants and signers for the hearing impaired. The term does not include teacher assistants or aides, counselors, psychologists, curriculum specialists or other primarily noninstructional employees. (29 CFR 825.600)

Serious health condition means an illness, injury, impairment or physical or mental condition that involves either of the following: (29 USC 2611; Government Code 12945.2)

1. Inpatient care in a hospital, hospice or residential health care facility.
2. Continuing treatment or continuing supervision by a health care provider involving:

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a. A period of incapacity (i.e., inability to work) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(1) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which 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. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition.

d. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

e. Any period of absence to receive multiple treatments by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive days in the absence of medical intervention or treatment.

3. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

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Eligibility

Any eligible employee who has served the district more than one continuous year and who worked at least 1,250 hours in the 12-month period preceding the leave shall be eligible to take unpaid family care and medical leave under the provisions of state and federal law. (29 USC 2611; Government Code 12945.2; 29 CFR 825. 110; 2 CCR 7297.0)

For eligibility purposes, full-time teachers who have been employed by the District for at least one full year are deemed to meet the 1,250 hour test. (29 CFR 825.110)

Family care and medical leave may be used for the following reasons: (29 USC 2612; Government Code 12945.2)

1. Because of the birth of the employee's child, and in order to care for the child.
2. Because of the placement of a child with the employee for foster care or in connection with the employee's adoption of the child.
3. In order to care for the employee's child, parent or spouse with a serious health condition.
4. Because of the employee's own serious health condition which makes the employee unable to perform the functions of his/her job, except for leave taken for disability on account of pregnancy, childbirth or related medical conditions.

Requests, Advance Notice and Certification

The employee shall give the district at least 30 days' written advance notice of his/her need for family care and medical leave. If the employee learns of the need for this leave fewer than 30 days in advance, he/she shall provide such notice as soon as practicable. (29 USC 2612; Government Code 12945.2) Where leave is foreseeable but notice is not provided at least 30 days in advance, the District may deny the leave for up to 30 days from the date notice is given. (29 CFR 825.304)

If leave is needed for a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption of district operations. This scheduling shall be subject to the health care provider's approval. (29 USC 2612; Government Code 12945.2)

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When requesting family care and medical leave because of a serious health condition, the request shall be supported by a certification from the health care provider of the person requiring care. This certification shall include the following: (29 USC 2613; Government Code 12945.2; 2 CCR 7297.0)

1. The date on which the serious health condition began.
2. The probable duration of the condition.
3. If the employee is requesting leave to care for a child, spouse or parent who has a serious health condition, the health care provider's certification of both of the following:
 - a. Estimated amount of time the health care provider believes the employee needs to care for the child, parent or spouse.
 - b. Statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the child, parent or spouse.
4. If the employee is requesting leave because of his/her own serious health condition, the health care provider's certification that due to the serious health condition, the employee is unable to perform the functions of his/her job.

The health care provider's certification need not identify the serious health condition involved. When the employee is requesting leave because of his/her own serious health condition, this information may be included at the employee's option. (2 CCR 7297.0)

If additional leave is needed when the time estimated by the health care provider expires, the district may require the employee to provide recertification as specified above. (29 USC 2613; Government Code 12945.2)

If the employee is requesting leave for intermittent treatment or is requesting leave on a reduced leave schedule for planned medical treatment, the certification must also state the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of such treatment, and the expected duration of the leave. (29 USC 2613)

If the district has reason to doubt the validity of a certification that accompanies a request for leave, the district may challenge the certification and require the employee to obtain, at district expense, a second opinion from a district-approved health care practitioner. If

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the second opinion is contrary to the first, the district may require, again at district expense, that the employee obtain a third medical opinion from a third health care practitioner approved by both the employee and the district. (29 USC 2613; Government Code 12945.2)

Terms of Leave

Family care and medical leave shall not exceed 12 work weeks during any 12-month period. (29 USC 2612; 2 CCR 7297.3) A "12-month period" is a school year, commencing on July 1 and ending on June 30 of each year.

Leave taken pursuant to the California Family Rights Act shall run concurrently with leave taken pursuant to the federal Family and Medical Leave Act (FMLA), except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. In addition to family care and medical leave, an employee may be entitled to take pregnancy disability leave of up to four months. During the otherwise unpaid portion of pregnancy disability leave, the employee may use any accrued vacation, sick time or other paid leave. (Government Code 12945, 12945.2)

Leave taken for the birth or placement of a child must be concluded within one year of the birth or placement of the child.

If both parents of a child work for the district, their family care and medical leave related to the birth or placement of the child shall be limited to a total of 12 weeks. (Government Code 12945.2)

During the period of family care and medical leave, the district shall require the employee to use his/her accrued vacation leave, other accrued time off, and any other paid or unpaid time off negotiated with the district. Accrued sick leave shall be used when the purpose of the family care and medical leave is one for which sick leave may be taken pursuant to collective bargaining agreements and/or Board policy. (Government Code 12945.2)

Instructional Employees: Leaves Near the End of the Term

The district may require an instructional employee to continue taking a requested leave until the end of the term in any of the following situations: (29 USC 2618)

1. If the instructional employee begins a leave of three or more weeks' duration more than five weeks before the end of a term and would subsequently return to work during the last three weeks of the term.

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2. If the instructional employee, for reasons other than his/her own serious health condition, begins a leave of more than two weeks' duration during the period that begins five weeks before the end of the term and would subsequently return to work during the last two weeks of the term.

3. If the instructional employee, for reasons other than his/her own serious health condition, begins a leave of more than five days' duration during the period that begins three weeks before the end of the term.

Maintenance of Benefits

During the period of family care and medical leave, the employee shall continue to be entitled to participate in the district's medical, dental and vision plan. (29 USC 2614; Government Code 12945.2)

If the employee fails to return from leave after the leave period has expired for a reason other than the continuation, recurrence or onset of a serious health condition or other circumstances beyond the employee's control, the employee may be required to reimburse any health premiums paid by the district during the period of leave. (Government Code 12945.2)

The employee shall also continue to be entitled to participate in life, disability and accident insurance plans, pension and retirement plans, supplemental unemployment benefit plans, and/or any other employee welfare benefit plan to the same extent and under the same conditions as apply to an unpaid leave taken for any other purpose. In the absence of these conditions, the employee shall continue to be entitled to participate in these plans and the district may, at its discretion, require the employee to pay the premium for periods not covered by accrued leave. (Government Code 12945.2)

Maintenance of Status

The employee shall retain his/her employee status with the district during the leave period, and the leave shall not constitute a break in service for purposes of longevity or seniority under any employee benefit plan or collective bargaining agreement. For purposes of layoff, recall, promotion, job assignment and seniority-related benefits such as vacation, the employee returning from family care and medical leave shall return with no less seniority than he/she had when the leave began. (29 USC 2614; Government Code 12945.2)

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Reinstatement

Upon granting an employee's request for family care and medical leave, the district shall guarantee to reinstate the employee in the same or a comparable position when the leave ends. (29 USC 2614; Government Code 12945.2)

The district may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply: (29 USC 2614; Government Code 12945.2)

1. The employee is a salaried "key employee" who is among the highest paid 10 percent of those district employees who are employed within 75 miles of the employee's worksite.
2. The refusal is necessary to prevent substantial and grievous economic injury to district operations.
3. The district informs the employee of its intent to refuse reinstatement at the time it determines that the refusal is necessary, and the employee fails to immediately return to service.

An employee who takes leave has no greater right to reinstatement than if he/she had been continuously employed during the leave period. If the district reduces its work force during the leave period and the employee is laid off for legitimate reasons at that time, he/she is not entitled to reinstatement, provided the district has no continuing obligations under a collective bargaining agreement or otherwise. (CFR 825.216)

Notifications

In accordance with law, the district shall notify employees of their right to request family care and medical leave. Separate notices about federal and state law related to family care and medical leave shall be posted in a conspicuous place. Information about employee rights and obligations related to such leaves shall also be included in employee handbooks. (29 USC 2619; 2 CCR 7297.9)

At least the first time in each six-month period that an employee requests family care and medical leave, the Superintendent or designee shall provide written notice detailing specific expectations and obligations and explaining any consequences of a failure to meet these obligations. The notice shall include: (29 CFR 825.301)

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1. Notice that the leave will be counted against the employee's annual family care and medical leave entitlement.
2. Requirements for the employee to furnish medical certification of a serious health condition.
3. The employee's right to substitute paid leave, conditions related to any substitution, and whether the district requires this substitution.
4. Health benefit arrangements.
5. If applicable, the employee's status as a "key employee" and information related to restoration of that status.
6. The employee's right to restoration to the same or an equivalent job.
7. The employee's potential liability for health benefits should the employee not return to service.
8. The district's requirement that the employee, upon return, present medical certification to the effect that he/she is able to resume work.

Regulation ONTARIO-MONTCLAIR SCHOOL DISTRICT
approved: September 20, 2001 Ontario, California