

DeForest Area School District
Administrative Regulation

TITLE: <p style="text-align: center;">Family & Medical Leave</p>	NUMBER: AR 3.3a(1f)
<i>Executive Limitation: EL 3.3 – Treatment of Staff (Employee Regulations)</i>	
Recorded as Administrative Regulation: <i>Established: 3/05/04 Revisions: 1/01/09, 6/29/09, 3/08/13</i>	
Origin as Board Of Education Policy: <i>Established: n/a Revisions:</i>	

It is the policy of DeForest Area School District to grant up to 12 weeks of family and medical leave during any calendar year period to eligible employees, in accordance with the requirements of the Wisconsin and Federal Family and Medical Leave Acts (FMLA). In addition we will grant up to 26 weeks of leave during a single 12-month period in compliance with the expansion of FMLA under the Support for Injured Service members Act of 2007. This leave may be paid, unpaid or a combination of paid and unpaid, depending on the reason for leave and the benefits for which the employee may be eligible.

The Wisconsin and Federal laws differ in a number of areas, and the District will comply with both. When the reason for a leave qualifies under both Wisconsin and federal law, the following rules apply:

- The employee is deemed to be exhausting his/her entitlement under both laws concurrently; and
- The provision(s) most favorable to the employee will apply.

If leave qualifies for both Wisconsin and federal FMLA leave, the leave used counts against the employee’s entitlement to leave under both laws. Therefore, where an employee is entitled to leave under both laws, the notice, certification, substitution, and intermittent leave requirements which provide the greater leave rights apply. However, if an employee’s leave extends beyond the period of coverage under one of the laws, an employer may require the employee to comply with the requirements of the continuing law. The leave may run concurrently with any other leave (including leave under the Workers’ Compensation Act, Americans with Disability Act, and the Wisconsin Fair Employment Act) available to the employee under the provisions of current District leave and absence policies.

The taking of leave under this policy will not be used against an employee in any employment decision, including the determination of promotions, discipline, compensation, etc.

Eligibility

To be eligible for leave under this policy, an employee must have been employed by the District for at least 12 months. In addition, in the 12 months immediately preceding the commencement of the leave, the employee must have:

- Been in paid status for 1,000 hours to qualify under Wisconsin law; and
- Worked 1,250 hours to qualify under federal law.

Amount of Leave Available

Under Federal FMLA, an eligible employee is generally entitled up to 12 weeks of protected leave within a calendar year for a combination of reasons. Under Wisconsin FMLA, an eligible employee is entitled up to 6 weeks of protected leave for the birth or adoption of a child, up to 2 weeks of protected leave for the serious health condition of the eligible employee’s child, spouse, domestic partner, parent (including parent-in-law), and up to 2 weeks of protected leave for the eligible employee’s own serious health condition. Designation of leave will be on a case-by-case basis.

Types of Leave Covered

A. Birth or Placement for Adoption or Foster Care

Family leave will be available to eligible employees for the birth of a child or for placement of a child with the employee for purposes of adoption or foster care. Leave under the federal FMLA must be completed within 12 months of the birth or placement. Leave under the Wisconsin FMLA must be completed within 16 weeks of the birth or placement.

B. Serious Health Condition of Employee

An eligible employee who experiences a serious health condition as defined by the Wisconsin and/or federal law may take medical leave under this policy. A serious health condition will generally occur when the employee:

- Receives inpatient care in a hospital, hospice or nursing home;
- Suffers a period of incapacity accompanied by continuing outpatient treatment/care by a health-care provider; or
- Has a history of a chronic condition which may cause episodes of disability.

Medical leave may be taken all at once or, when medically necessary, in smaller increments. The need for leave must be documented by the employee's treating health-care provider through the medical certification process.

An employee may be paid for all or part of a medical leave to the extent he or she is eligible for benefits such as personal leave, sick leave, or long-term disability. Under Wisconsin FMLA the employee may choose to substitute paid leave or take the absence unpaid. When the leave falls under federal only, the District may require the employee to substitute any accrued paid leave.

C. Serious Health Condition of Immediate Family Member

An eligible employee may take family leave under this policy in order to care for a son, daughter, spouse or parent with a serious health condition (see above section for definition). (The Wisconsin FMLA also covers the serious health condition of an employee's domestic partner or parent-in-law.) Similar to leave for the employee's own serious health condition, this leave may be taken all at once or, when medically necessary, in smaller increments. It will be necessary for the family member's treating health-care provider to document the need for leave through the medical certification process.

D. Qualifying Exigency for Military Family Leave

An eligible employee may take family leave under this policy while the employee's spouse, son, daughter, or parent (the "covered military member") is on active duty or call to active duty status for any qualifying exigency under federal law. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings. This leave may be taken all at once or in smaller increments. It will be necessary to submit a complete and sufficient certification for FMLA leave due to a qualifying exigency.

E. Leave to Care for a Covered Service member with a Serious Injury or Illness

An eligible employee may take up to an additional 14 weeks (not to exceed 26 weeks total) of family leave in a single 12-month period under this policy to care for a covered service member. A covered service member is: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves who is undergoing medical treatment, recuperation, or therapy, or otherwise in outpatient status, or otherwise on the temporary disability retired list for a serious injury or illness; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. This entitlement will be applied on a per-covered-service member, per-injury basis. The covered service member must be the eligible employee's spouse, son, daughter, or parent, or next of kin. It will be necessary for the covered service members treating health-care provider, to document the need for leave through the medical certification process.

Notifying the District of the Need for Family or Medical Leave

Generally, a Leave of Absence Request Form must be completed for all leave taken under this policy. When the need for leave is foreseeable, the employee is expected to provide notice to the employer at least 30 days in

advance. When this is not possible, notice should be provided to the employer as soon as the employee learns of the need for leave. In cases of emergency, verbal notice should be given as soon as possible (by the employee's representative if the employee is incapacitated), and the Absence Request Form should be completed as soon as practicable. Failure to provide adequate notice if the leave was foreseeable may result in a delay of the leave. Leave of Absence Request Forms can be obtained from the Human Resource Department.

Calling in "sick" does not qualify as notifying the District that the employee needs FMLA leave. An employee must provide sufficient information regarding the reason for an absence for the District to know that protection may exist under this policy. Failure to provide this information as requested may result in the employee forfeiting all rights under the policy. This means the absence may be counted against the employee for purposes of discipline for attendance, etc.

Notwithstanding the above, if, based on information received from the employee or his or her spokesperson, the District may designate the leave as FMLA-qualifying. Upon making such a designation, the District shall provide written notice to the employee with regard to (1) the employee's eligibility for FMLA leave, (2) the designation of the leave as FMLA-qualifying and (3) the employee's rights and responsibility under the FMLA.

Medical Certification of a Serious Health Condition

Generally, the District will require medical certification to verify that an employee or family member's illness meets the definition of serious health condition and to determine the nature and duration of the leave. In the case of a family illness, the provider must also verify that the employee is needed to care for the family member. Periodic recertification to verify that a condition is ongoing may be required as provided by the law.

The Medical Certification Form can be obtained from the Human Resource Department and should generally be returned within 15 days. Failure to provide this certification may result in delay or denial of the leave.

Additional Certifications

If the District has reason to question the validity of a medical certification, an employee may be required to provide a second certification from a health-care provider selected and paid for by the district. If the second opinion differs from the first, a third opinion may be required. The health-care provider for the third opinion must be mutually chosen by the employee and the company and paid by the district. The third opinion, by law, is binding on all parties.

Use of Paid and Unpaid Leave

Both state and federal FMLA mandate that an employer provide unpaid FMLA leave to eligible employees. However, an employee or employer may elect to substitute a paid benefit for which the employee is eligible in order for the employee to receive pay during the leave. In some cases the District may require that benefits, such as sick leave or vacation, be used before the employee may take unpaid time.

When paid benefits are substituted for the otherwise unpaid FMLA leave, the employee is using the benefits concurrently with FMLA leave, and those benefits will not be available to the employee later. In cases where substitution of a paid benefit is not possible, the employee will receive reduced compensation consistent with the number of hours actually worked.

Combined Leave

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, the maximum combined federal FMLA leave for both spouses for these purposes is 12 weeks. Under the Wisconsin FMLA, each employee is entitled to up to 6 weeks of leave for the birth or adoption of a child. There is no obligation to combine leaves. However, because, in the majority of circumstances, the leave will run concurrently, when a husband and wife both work for the District and intend to take leave for the birth or adoption of a child, they should contact the Human Resource Department to determine the amount of leave available.

Intermittent or Reduced Schedule Leave

Intermittent and/or reduced schedule leave will be permitted generally when it is medically necessary for the serious health condition of the employee or the employee's immediate family members. In some cases, intermittent and/or reduced schedule leave will be permitted for the birth or placement for adoption. Intermittent and reduced schedule leave must be scheduled with minimal disruption to an employee's job. To the extent an employee has control, medical appointments and treatments related to a serious health condition should be scheduled outside of working hours or at such times that allow for a minimal amount of time away from work. Employees who wish to take intermittent and/or reduced schedule leave should provide a proposed schedule to the Human Resource Department to determine whether they are eligible for such leave.

The District may, in some cases, transfer an employee to an alternative position, with equivalent pay and benefits, in order to better accommodate the need for intermittent or reduced schedule leave.

Benefit Continuation During Leave

Employees may elect to continue group health and dental insurance while on leave but must continue to pay their portion of the premium. Other benefits, such as supplemental life insurance, will also be continued during the leave, so long as the employee continues to pay any required contribution. Payment arrangements will be discussed with individuals upon their request for leave.

Return from Leave

A fitness-for-duty statement will be required in order for an employee to return from a medical leave. Failure to provide the statement will result in a delay in the return to work. An employee who wishes to return to work earlier than originally anticipated must provide at least two days notice of such request.

Rights Upon Return From Leave

An employee who takes leave under this policy will be reinstated to the same job or an equivalent position upon completion of the leave. If an individual has exhausted all leave under this policy and is still unable to return to work, the situation will be reviewed on a case-by-case basis to determine what rights and protections might exist under other District policies.

The law provides that an employee has no greater rights upon a return from leave than the individual would have had if he or she had continued to work. Therefore, an employee may be affected by a layoff or other job change if the action would have occurred had the employee remained actively at work. In such cases, the official date of the layoff or other action will be the date on which the employee would otherwise have returned to work following the leave.

Worker's Compensation Absences

When an employee is absent due to a work-related illness or injury which meets the definition of a serious health condition, the absence will be counted against the employee's entitlement to leave under the federal FMLA. In other words, the employee is using federal FMLA leave concurrently with the worker's compensation absence. However, the absence will not be counted against the employee's entitlement to leave under the Wisconsin FMLA.

Forms

Forms are available from the Human Resources Department or printed from the DASD Staff Forms page on the district website: <http://www.deforest.k12.wi.us/staff/dasd-staff-forms.cfm>