

FAMILY AND MEDICAL LEAVE POLICY

PURPOSE:

THE NORTH KINGSTOWN SCHOOL DEPARTMENT (NKSD) has adopted this policy to implement the terms of the Family and Medical Leave Act of 1993 (FMLA) and the Rhode Island Parental and Family Medical Leave Act (PFMLA) (as amended from time to time).

PHILOSOPHY:

Eligible employees are entitled to family and medical leave on the terms and conditions stated in this policy, the regulations issued by the Department of Labor under the FMLA and PFMLA and the NKSDs other applicable leave policies.

POLICY STATEMENT:

A. Definitions:

For purposes of this policy, the following definitions apply:

1. “Eligible Employee” means an individual who has been employed by the District for at least 12 months, has worked at least 1,250 hours during the 12 month period immediately preceding the commencement of the requested leave.
2. “FMLA Leave” means leave that qualifies under the Family and Medical Leave Act of 1993, as amended by the National Defense Authorization Act of 2008, Pub. L. 110-181, and the Department of Labor’s regulations and is designated by Company as so qualifying.
3. “Leave Year” means the 12 month period measured backward from the date each employee’s leave commenced.
4. “Serious Health Condition” means an illness, injury, impairment or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider.
5. “Inpatient Care” means an overnight stay in a hospital, hospice, or residential medical care facility, including a period of incapacity or any subsequent treatment in connection with the inpatient care.
6. “Continuing Treatment” includes any one or more of the following:
 - a. A period of consecutive incapacity of more than days within the NEANK contract, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

- i. Treatment by a health care provider two (2) or more times within 30 days of the first day of incapacity; or
 - ii. Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of a health care provider;
 - b. A period of incapacity due to pregnancy or prenatal care;
 - c. A period of incapacity or treatment for such incapacity due to a chronic serious health issue;
 - d. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or
 - e. Any period of absence to receive multiple treatments by a health care provider.
7. “Covered Servicemember” means a member of the Armed Forces, including a member of the National Guard or Reserves, 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.
8. “Covered Military Member” means the employee’s spouse, son, daughter or parent on active duty or call to active duty status.
9. “Active duty or call to active duty” means duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation as either a member of the reserve components, or a retired member of the Armed Forces or Reserves.
10. “Serious Injury or Illness” in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in 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.
11. “Qualifying Exigency” means one or more of the following circumstances:
- a. Short-notice deployment To address any issues that may rise due to the fact that Covered Military Member received notice of the deployment seven (7) or less calendar days prior to the date of deployment;
 - b. Military events and related activities To attend any official ceremony, program, or event sponsored by the military that is related to the Covered

Military Member's active duty; or to attend family support or assistance programs and informational briefings sponsored by the military;

- c. Child care and school activities To arrange for alternative childcare; to provide childcare on an urgent or immediate basis; to enroll or transfer a child to a new school; and to attend meetings with school staff that are made necessary by the Covered Military Member's active duty or call to active duty;
- d. Financial and legal arrangements To make or update financial or legal arrangements related to the Covered Military Member's absence while on active duty; and to act as the Covered Military Member's representative with regard to obtaining, arranging, or appealing military benefits;
- e. Counseling To attend counseling sessions related to the Covered Military Member's deployment or active duty status;
- f. Rest and recuperation To spend up to five (5) days with a Covered Military Member who is on short-term, temporary rest and recuperation leave;
- g. Post-deployment activities To attend ceremonies and reintegration briefings for a period of 90 days following the termination of the Covered Military Member's active duty status; and to address issues arising from the death of a Covered Military Member; and/or
- h. Other activities that the Company and the employee agree qualify as an exigency.

12. "Instructional Employees" are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

Does not apply to teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers or bus drivers.

B. Reasons for FMLA Leave:

An Eligible Employee is entitled to a total of 12-weeks of unpaid leave during each Leave Year (or 13 consecutive weeks in any two leave years) in the event of one or more of the following:

1. The birth, adoption, or placement for foster care of a son or daughter of the employee and to care for such a child. (Leave must be taken during the 12-month period following the birth or placement, and must be taken in a single consecutive period and may not be taken intermittently or on a reduced schedule.)
2. A serious health condition of a qualifying family member, *i.e.*, spouse, son, daughter or parent of the employee, if the employee is needed to care for such family member.
3. A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of his or her job.
4. Any “qualifying exigency” arising out of the fact that an employee’s spouse, parent, son or daughter is on active duty or has been called to active duty in the Armed Forces in support of a contingency operation.

An Eligible Employee is entitled to a total of 26-weeks of unpaid leave during a single 12-month period to care for a parent, son, daughter, spouse or next of kin who is a Covered Servicemember, regardless of whether the employee has taken leave for another FMLA qualifying reason in the past 12 months.

Any leave taken under one or more of these circumstances will be counted against the employee’s total entitlement to FMLA leave for that Leave Year.

C. Paid Leave Benefit Coordination with FMLA Leave:

FMLA Leave under this policy is generally unpaid leave. If, however, the employee is eligible for any paid leave under an applicable Collective Bargaining Agreement such as accrued vacation, unused sick or personal days, the employee will be required to exhaust the paid leave upon the commencement of, and concurrently with, FMLA leave (unless the employee is receiving workers’ compensation benefits). Paid leave will run concurrently with and be counted toward the employee’s total 12-week (13 consecutive week) or 26-week period of FMLA leave.

D. Intermittent or Reduced Scheduled Leave:

FMLA leave may be taken intermittently or on a reduced work schedule basis. If FMLA leave is taken intermittently or on a reduced schedule basis, then the NKSD may require the employee to transfer temporarily to an available alternative position with an equivalent pay rate and benefits, including a part-time position, to better accommodate recurring periods of leave due to foreseeable medical treatment.

Every employee is obligated to make a reasonable effort to schedule medical treatment so as not to unduly interrupt the NKSD’s operations. Any employee who needs an intermittent or reduced schedule leave shall submit an application for such leave on a form supplied by the NKSD at the time described above. The employee shall also, within the time limits set forth, furnish the NKSD with the proper medical certification on a form, which will be supplied by the

NKSD, regarding the need for such intermittent or reduced schedule leave. As in the case for other FMLA leaves, The NKSD may require a second or third medical certification. Prior to the commencement of any intermittent or reduced schedule leave, the employee requesting intermittent or reduced scheduled leave must advise the NKSD of the reasons why the intermittent/reduced scheduled leave is necessary and of the schedule for treatment, if applicable. The employee and the NKSD shall attempt to work out a schedule for such leave that meets the employee's needs without disrupting the NKSD's operations.

E. Employee Notice Requirement:

Employees are required to provide the NKSD with sufficient information to make it aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. Sufficient information may include the following: that the employee is unable to perform his or her job functions; that the employee's family member is unable to perform his or her daily activities; that the employee or his or her family member must be hospitalized or undergo continuing treatment; or the circumstances supporting the need for military family leave. When an employee seeks leave due to a FMLA-qualifying reason for which the NKSD has previously provided FMLA-protected leave, the employee must specifically reference the qualifying reason for the leave and the need for "FMLA" leave.

If the need for leave is foreseeable, the employee is required to provide such notice to the Designated Leave Administrator at least 30 days before the commencement of the leave, unless impracticable to do so under the circumstances, in which case notice must be given as soon as possible, generally the same or the next business day. The employee also must follow any NKSD policy or CBA provision requiring advance notice, reasons for leave, and anticipated start and duration of the leave. Failure to provide advance notice or follow the NKSD's policy when the need for leave is foreseeable may result in delay or denial of FMLA leave. If the leave is not foreseeable, the employee must provide notice to the NKSD of need for leave as soon as practicable, and must follow the NKSD's normal call-in procedures, as set forth in any applicable CBA or NKSD procedure. Failure to follow the NKSD's call-in procedures, absent unusual circumstances, will result in delay or denial of the leave.

In case of planned medical treatment for a serious health condition, the employee is required to make a reasonable effort to schedule the treatment so as not to disrupt the operations of the NKSD.

Employees are required to give additional notice as soon as practicable whenever there is a change in the dates of scheduled leave. the NKSD requires that the employee's health care provider complete a fitness-for-duty certification that specifically addresses whether the employee is able to perform the essential functions of his or her job before the employee can return to work. If the NKSD has a "reasonable safety concern", it may also require periodic fitness-for-duty certifications prior to the employee's return from intermittent FMLA leave, up to once every 30 days. A "reasonable safety concern" means a reasonable belief of significant risk of harm to the individual employee or others.

Upon receiving sufficient notice of an employee's need for FMLA-qualifying leave, the NKSD will notify the employee of his or her eligibility to take FMLA leave within five (5)

business days of request, absent extenuating circumstances. At this time, the NKSD will also provide the employee written notice of the employee's rights and obligations with respect to the leave (as well as providing copies of the required certification form).

F. Application and Medical Certification:

A leave to care for the employee's own serious health condition, or the serious health condition of a covered family member, must be supported by a medical certification completed by the health care provider for the employee or the covered family member. A qualifying exigency leave or a leave to care for a Covered Servicemember with a serious injury or illness must also be supported by a certification. The NKSD will provide the proper certification to the employee for his or her respective leave within five (5) business days of the employee's request for leave.

The employee must return a complete and sufficient copy of the appropriate certification to the NKSD within fifteen (15) calendar days of receiving the certification, unless it is not practicable. If the employee returns an incomplete or insufficient certification, then the NKSD shall advise the employee in writing what additional information is necessary to make the certification complete and sufficient. In order to cure the deficiency, the employee must then return a complete and sufficient certification to the NKSD within seven (7) calendar days. If the employee fails to cure a deficiency in a certification, or fails to return a certification, within the prescribed time period, The NKSD may deny the taking of leave.

A NKSD representative (other than the employee's direct supervisor) may contact the employee's health care provider to clarify or authenticate the medical certification submitted for leave for the employee's own serious health condition or the serious health condition of a family member. If the NKSD has reason to doubt the validity of a medical certification, the employee will be required to obtain a second or third opinion at the NKSD expense. Failure to comply with these certification requirements will result in the delay, denial or termination of leave.

An employee who will be on a FMLA leave for more than one (1) week is required to call Designated Leave Administrator weekly to report when and if the employee expects to return to work. The NKSD may request recertification at any time during the course of the leave for the employee's own serious health condition if: (1) the employee requests an extension of leave; (2) the circumstances of the employee's condition as described in the previous certification have changed significantly, or (3) if the NKSD has reason to suspect that an employee on FMLA leave has fraudulently obtained the FMLA leave. If desired by the NKSD, a second or third certification in the manner provided above may be required. If the employee's leave to care for his or her own serious health condition or that of a family member is expected to last more than thirty (30) days, the NKSD will require a new certification from the employee's health care provider when leave is scheduled to expire, or every six (6) months, whichever occurs earlier.

When the NKSD learns of an FMLA reason for leave after a leave has commenced under another of the NKSD policies or collective bargaining agreements, the NKSD will designate the leave as FMLA-qualifying from the commencement of the leave. Employees are required to cooperate in providing the NKSD with information needed to make this determination.

G. Continuation of Group Health Benefits:

The NKSD will maintain the employee's coverage under a group health plan during the period of FMLA leave under the same terms and conditions as though the employee were actively working. During the leave, the employee will be required to continue to make all premium payments that he/she otherwise would have had to make if actively employed. Where feasible, the NKSD will advise the employee concerning the necessary arrangements for such payments prior to the commencement of the leave. If the employee fails to return to work following the expiration of FMLA leave for a reason other than a serious health condition or circumstances beyond the employee's control, the NKSD will be entitled to the repayment by the employee of any premiums paid by the NKSD during the leave. Failure to make timely premium payments may result in termination of coverage.

An employee on FMLA leave should deliver payment of the employee's portion of such premium to Designated Leave Administrator prior to the first work day of each month. Failure to make prompt payment of the employee's portion of such premium may result in the loss of medical insurance coverage for the duration of the FMLA leave, but upon the employee's return to work, the medical insurance will be restored as of the date that the employee returns. If the employee does not return from FMLA leave or returns to work, but does not remain an active employee for at least thirty (30) days, the NKSD may seek to recover the amount paid for such insurance premiums from the employee.

An employee on FMLA leave shall be responsible for the payment of the full premium for all other insurance. Failure of the employee to pay the entire premium for such items shall result in their lapse for the duration of the FMLA leave. If the employee returns from FMLA leave, all such insurance, and other benefits shall be restored without any break in service.

An employee shall not accrue any credit toward vacation or other benefits based upon time worked for the time that he or she is on FMLA leave.

H. Return to Work/Fitness-for-Duty Certification:

Consistent with the NKSD practice, before returning to work following a medical leave due to the employee's serious health condition, the employee will be required to present a fitness-for-duty certification from his/her health care provider that the employee is medically able to resume work and to perform the essential functions of his or her job according to that particular employee's job description. If the date on which an employee is scheduled to return to work from an FMLA leave changes, the employee is required to give notice of the change, if foreseeable, to the NKSD within two (2) business days of the change.

Subject to the limitations below, an employee returning from FMLA leave will be restored to the position of employment held when the leave commenced or to an equivalent position. Job restoration may be denied if conditions unrelated to the FMLA leave have resulted in the elimination of an employee's position or if the employee qualifies as a "key employee" (generally the highest paid 10% of the workforce). Key employees may be denied job restoration if it would cause substantial and grievous economic injury to the NKSD, in which case the key employee will be notified of this decision.

In summary, upon expiration of a FMLA leave, an employee who returns to work shall be restored to the same or an equivalent job, if the employee shall have:

1. Called Designated Leave Administrator in accordance with terms above;
2. Furnished Designated Leave Administrator with proper certifications and recertification's in accordance with the terms above;
3. Submitted to any second or third examination by a health care provider upon request of the NKSD;
4. Furnished Designated Leave Administrator with a medical certification of the employee's ability to return to work and to perform the essential functions of the job; and
5. Returned to work immediately upon the expiration of the FMLA leave.

Failure to call Designated Leave Administrator weekly to provide the required medical recertification or to return to work immediately upon expiration of a FMLA leave may result in termination of the employee. Failure to furnish a fitness-for-duty certification of the employee's ability to return to work and to perform the essential functions of the job may result in the delay of job restoration or the termination of the employee.

I. Additional Rules for Instructional Employees:

Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employees' FMLA leave entitlement. An instructional employee who is on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered servicemember, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than twenty (20) percent of the total number of working days over the period the leave would extend, the employer may require the employee to choose either to:

- (i) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- (ii) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five (5) days each week needs to take two (2) days of FMLA leave per week over a period of several weeks, the special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position. "Periods of a particular duration" means a block, or blocks of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one (1) interrupted period of leave.

If an instructional employee does not give required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the employer may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the employer may require the employee to delay the taking of leave until notice provision is met.

There are also different rules for instructional employees who begin leave more than five (5) weeks before the end of a term, less than five (5) weeks before the end of a term, and less than three (3) weeks before the end of a term. Regular rules apply except in circumstances when:

1. An instructional employee begins leave more than five (5) weeks before the end of a term. The employer may require the employee to continue taking leave until the end of the term if:
 - a. The leave will last at least three (3) weeks, and
 - b. The employee would return to work during the three (3) week period before the end of the term.

2. The employee begins leave during the five (5) week period before the end of the term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered service member. The employer may require the employee to continue taking leave until the end of the term if:
 - a. The leave will last more than two (2) weeks, and
 - b. The employee would return to work during the two-week period before the end of the term.

3. The employee begins leave during the three (3) week period before the end of a term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered service member. The employer may require the employee to continue taking leave until the end of the term if the leave will last more than five (5) working days.

For purposes of these provisions, “academic term” means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two (2) academic terms or semesters each year for purposes of FMLA. An example of leave falling within these provisions would be where an employee plans two (2) weeks of leave to care for a family member which will begin three (3) weeks before the end of the term. In that situation, the employer could require the employee to stay out on leave until the end of the term.

If an employee chooses to take leave for “periods of a particular duration” in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

If in the case of an employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employees’ FMLA leave entitlement. The employer has the option not to require the employee to stay on leave until the end of the school term. Therefore, any additional leave required by the employer to the end of the school term is not counted as FMLA leave; however, the employer shall be required to maintain the employee’s group health insurance and restore the employee to the same or equivalent job, including other benefits at the conclusion of the leave.

The determination of how an employee is to be restored to “an equivalent position” upon return from FMLA leave will be made on the basis of “established school board policies and practice, private school policies and practices, and collective bargaining agreements.” The “established policies” and collective bargaining agreements used as a basis for restoration must be in writing, must be made known to the employee prior to the taking of FMLA leave, and must clearly explain the employee’s restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to “an equivalent position” must provide substantially the same protections as provided in the Act for reinstated employees. In other words, the policy or collective bargaining agreement must provide for restoration to an “equivalent position” with equivalent employment benefits, pay, and other terms and conditions of employment. For example, an employee may not be restored to a position requiring additional licensure or certification.

J. Questions:

Questions about this policy or eligibility for FMLA should be directed to Designated Leave Administrator.

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Second Read: 5/14/2013

Adopted: 5/14/2013