

Policy GBRIA: Family and Medical Leave Act

Status: DRAFT

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IMPORTANT NOTICE

Due to the complexity of the Family Medical Leave Act (FMLA) and because it involves consideration of your district's leaves and absences policy and your practices, along with the Americans with Disabilities Act (ADA), the Fair Labor Standards Act (FLSA), the Consolidated Omnibus Budget Reconciliation Act (COBRA) and parts of the Internal Revenue Code relating to group health plans and cafeteria plans, all federal anti-discrimination laws and applicable state laws, it is not practical to attempt development of a detailed policy for the administration of the FMLA. Each request for leave will be evaluated individually due to myriad combinations of circumstances and medical conditions one may have to consider.

The Jackson County School District (JCS D) will post in all schools and offices where employees are employed and where applications for employment are taken a notice explaining the FMLA's provisions. Information will also be provided concerning the procedures for filing complaints of violations of the FMLA guidelines with the Wage and Hour Division.

Information concerning FMLA entitlements and employee obligations will be included in the employee handbook.

An employee who has filed for FMLA leave will be provided the following information as is appropriate to the leave request being considered:

1. Whether the district will require a medical certificate of a serious health condition or recertification and what will happen if the employee fails to do so
2. Whether the district will require the employee to furnish, prior to being restored to employment, a fitness for duty certificate
3. That the taking of this leave will count against the employee's annual FMLA leave entitlement
4. That the employee has a right to substitute paid leave (sick leave, vacation, personal days) for FMLA leave or whether the district will require the substitution of paid leave and any conditions related to substitution
5. Whether the employee is a "key employee" and that restoration might possibly be denied after taking FMLA leave, explaining the condition required for you to deny restoration
6. Whether the employee will be required to pay any health insurance premiums to maintain benefits while on leave and the arrangements for making the payments
7. That if the employee fails to return to work after taking unpaid FMLA leave, he is potentially liable for payment of health insurance premiums paid by the school district.
8. That the employee has a right to restoration to the same or equivalent job* upon return from leave.

JCS D will act in good faith in answering questions from employees about their rights and responsibilities under the FMLA.

GENERAL INFORMATION

Definition:

1. "Eligible employee" means one who is employed at a school facility where at least 50 persons are employed, either there or within a 75-mile radius of that school facility as measured by road miles by the shortest route possible; and who has been employed for at least 12 months by the school district as of the date leave commences, and who has also provided at least 1,250 hours of service during that 12-month period. Fifty-two (52) weeks of casual, intermittent or occasional employment qualifies as "at least 12 months." School district employees exempt from FLSA requirements are presumed to have worked 1,250 hours.
2. "Employee's spouse" means husband or wife as defined by Mississippi Law.
3. "Employee's son or daughter" means biological child, adopted child or foster child, legal ward or the child for whom the employee is standing in loco parentis who is either under the age of 18 or above the age of 18 and incapable of self-care because of a mental or physical disability.
4. "Employee's parent" means biological parent or an individual who stood (or now stands) in loco parentis to an employee when the employee was a child (not to include parents-in-law).

5. "Employee's immediate family member" means a spouse, son, daughter or parent as defined hereinabove.
6. For the purposes of FMLA, "serious health condition" means an illness, injury, impairment or physical or mental condition that involves either in-patient care (overnight stay) in a hospital, hospice or residential medical care facility or continuing treatment by a health care provider.

Leave Provisions:

1. An eligible employee is entitled to 12 unpaid workweeks of leave during any 12-month period for any one or more of the following reasons:
 - The birth of a son or daughter, and to care for the newborn child (within 12 months of the birth).
 - The placement of a child with the employee for adoption or foster care (within 12 months of the placement).
 - To care for the employee's spouse, son, daughter, or parent with a serious health condition (not "parent-in-law").
 - Because of the employee's own serious health condition, which makes the employee unable to perform the function of his/her job.
2. Service Member Exigency Leave: For absences caused by an active duty exigency when the employee's spouse, child, or parent is a service member.
3. Military Caregiver Leave: To care for the employee's spouse, child, parent, or next of kin (if the employee is the nearest blood relative) 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 incurred in the line of duty on active duty. JCSD will use the calendar year to determine the "12-month period."
 - a. Husband and wife employees have a 12week aggregate leave limit except for personal illness or the illness of a child or the other spouse; that is, if each spouse took 6 weeks of leave for the birth of a child, each could later use an additional 6 weeks due to personal illness or to care for a sick child.
 - b. Brother and sister employees would have an aggregate limit of 12 weeks to care for their parent(s).
 - c. Special rules apply to this school district which allow it to require eligible instructional personnel only to take FMLA leave on an intermittent or reduced leave schedule, or to take leave near the end of a semester. Instructional employees are only those employees whose principal function is to teach and instruct students in a class, small group or individual setting. Instructional employees include teachers, teacher aides and assistant teachers who actually teach, coaches, driver's education instructors and special education assistants such as signers. All other eligible employees may request intermittent leave or leave on a reduced leave schedule to care for a family member or for the employee's own serious health condition.*

Notice Requirement:

JCSD employees must provide this district at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care or planned medical treatment for a serious health condition of the employee or family member.

1. Due to lack of knowledge or a medical emergency, notice must be given as soon as is practicable, which means as soon as both practical and possible or at least verbally within one or two working days when the need for leave becomes known to the employee (followed by written notice).*
2. Failure to give 30-day notice for foreseeable leave may result in the denial of the taking of FMLA leave until at least 30 days after the date the employee provides notice.*

REQUIRED CERTIFICATION

1. Eligible employees shall provide Human Resources with a **medical** certification of a serious health condition for his/her own serious health condition or that of a family member. The certification, to be signed by the health care provider, * shall be attached to the required written notice or submitted in a timely manner, which shall be no more than three (3) working days after providing written notice. No leave period may begin without the approval of Human Resources. No approval shall be granted by Human Resources without the required written notice and certificate.
2. The **medical** certification is to include the following:
 - a. The date on which the serious health condition in question began.
 - b. The probable duration of the condition.
 - c. Appropriate medical facts regarding the condition.
 - d. A statement that the employee is needed to care for a spouse, parent or child (along with an estimate of the time required) or that the employee is unable to perform his/her functions, and, in the case of intermittent leave, the duration of treatment to be given.
 - e. Signature of a health care provider.
3. JCSD may require that a second opinion be obtained at the school district's expense. The second opinion may not be provided by a health care provider employed by this school district. In the event of conflicting opinions, the school district may pay for a third and final provider to offer a binding decision.
4. JCSD may require subsequent written recertification on a reasonable basis.

EMPLOYMENT BENEFITS PROTECTION

1. An employee who completes a period of leave and has complied fully with the terms of this policy shall be returned either to the same position he/she had before the taking of leave or to a position which is genuinely equivalent (as compared to a comparable or similar job) in pay, benefits, and other terms and conditions of employment.
2. Taking of leave shall not result in the loss of any previously accrued seniority or employment benefits. Except for health benefits, no other benefits will accrue during the leave period.
3. The school district may exempt from the restoration requirement in paragraph A above a key employee who is in the highest paid 10 percent of this district's workforce within a 75-mile radius of the school facility if restoring the key employee would cause substantial and grievous injury to the classroom and instructional program.
4. The school district shall notify the key employee of its intent not to restore him/her at the time of the request for leave or when the determination is made. If the leave has begun, the key employee shall have the option of deciding whether or not to return to work after receiving the notice. An employee who is not restored shall be considered to be on leave for the duration of his/her leave period.*
5. Health benefits shall continue through an employee's leave period, even for key employees who have been notified that reinstatement will be denied. The school district shall recover health coverage premiums paid for an employee who fails to return from leave except as follows:
 - a. No recovery will be made from a key employee who has chosen to take or continue leave after receiving notice of non-reinstatement.
 - b. No recovery will be made from an employee who fails to return from leave if the reason is the continuation, recurrence, or onset of a serious health condition, or something else beyond the employee's control, all of which is subject to the certification requirement in Section II, above.

PROHIBITED ACTS

This school district shall not interfere with or restrain an eligible employee's right to exercise the provisions of this policy.* This policy shall take effect and be in force from and after August 5, 1993. An employee's service prior to this effective date shall be counted in determining whether the employee is eligible for leave.
