

Marion County Board of Education

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Family and Medical Leave

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MCBOE complies with the Federal Family and Medical Leave Act guidelines in accordance with United States Department of Labor Regulations 29 CFR Part 825.

PURPOSE

To provide up to twelve (12) weeks of unpaid leave for the birth and care of the newborn child of an employee, for placement with the employee of a child for adoption or foster care, to care for an immediate family member (spouse, parent or child); to take medical leave when the employee is unable to perform the essential functions of his/her job position because of a serious health condition, or because of any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

ELIGIBILITY

Employees eligible for leave are those who have worked for at least 1,250 hours during the previous 12 months prior to the start of the leave and have worked for MCBOE for at least 12 months.¹

FAMILY AND MEDICAL LEAVE

Employees shall contact the Human Resources department to determine if the reason for leave qualifies as Family and Medical Leave. If the leave is foreseeable, the employee shall give 30 days' notice. If the leave is not foreseeable, the employee shall notify Human Resources as soon as practicable, but within two (2) business days before leave commences. Furthermore, when certification is requested, the employee shall return the completed certification within 15 days after receipt of the form, unless there are unusual circumstances preventing timely completion and return. If the employee fails or refuses to return a certification or any medical documentation at all without good cause, the leave shall not be treated as authorized under FMLA. The district reserves the right to designate leave as FMLA if provided with adequate medical documentation and/or information concerning the leave.

MCBOE uses a rolling year for leave calculations. Employees on a leave of absence from MCBOE may not work for another employer during the time of leave.

Granting of leave under this policy shall be subject to, and in accordance with, the provisions of applicable federal and state laws. An employee shall substitute accrued paid leave for unpaid time. Use of accrued paid leave shall run concurrently with and be counted toward the employee's total period of FMLA leave.

Special rules apply to school employees which affect the taking of intermittent leave, leave on a reduced schedule, or return from a leave near the end of an academic term (semester), by instructional employees.

These are stated in greater detail below.

Upon return from FMLA, most employees will be restored to their original or equivalent position reduced schedule or return from a leave near the end of an academic term (semester), by instructional employees. These are stated in greater detail below.

Upon return from FMLA, most employees will be restored to their original or equivalent position with equivalent pay and benefits. An employee returning from medical leave shall provide medical certification of his or her ability to return to work.

MATERNITY/PATERNITY LEAVE

1. Relationship between FMLA leave and Tennessee Maternity Leave Act- FMLA leave shall run concurrently with leave provided under the Tennessee Maternity Act, which affords eligible employees leave for a period not to exceed four (4) months for the adoption, pregnancy, childbirth, and nursing of a newborn child.²
2. In accordance with state law, an employee who goes on maternity or paternity leave shall be allowed to use all or a portion of the employee's accumulated sick or annual leave for maternity or paternity leave purposes. To be eligible to use sick leave, the employee must submit a written request accompanied by a statement from the physician verifying pregnancy shall be submitted. Upon verification by a written statement from an adoption agency or other entity handling an adoption, an employee may also be allowed to use leave for adoption of a child (dependent upon the age of the child) for up to twelve weeks. If both adoptive parents are employed by the district, however, only one (1) parent is entitled to use such leave.³

Spouses who are both eligible employees of the school district are limited to a combined total of twelve (12) workweeks of FMLA leave in a single twelve (12) month period if the leave is taken for the birth and care of a newborn child, for the placement of a child for adoption or foster care, or to care for a parent who has a serious health condition. Under certain circumstances, spouses who share leave for the birth or adoption of a child may be eligible for limited amounts of additional leave for other qualifying FMLA reasons.⁴

LEAVE FOR MILITARY FAMILY MEMBERS

1. Qualifying Exigency Leave - Eligible employees are entitled to up to twelve (12) workweeks of leave because of any "qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee, as defined under the FMLA, is on active duty, or has been notified of an impending call to active duty or has been notified of an impending call to active duty status in the Armed Forces.

Qualifying exigencies may include:

- a. Issues arising from the service member's short notice deployment;
- b. Military events and related activities (e.g., official ceremonies, support programs);
- c. Making or updating financial and legal arrangements;
- d. Attending counseling;

- e. Taking up to fifteen (15) days leave to spend time with a covered service member who is on short-term rest and recuperation leave during deployment; or
- f. Attending post-deployment activities.⁵

- 2. **Military Caregiver Leave-** An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member or covered veteran with a serious injury or illness is entitled to up to twenty-six (26) workweeks of leave in a “single twelve (12) month period.” A covered service member is a current 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 out-patient status, or is otherwise on the temporary disability retired list for a serious injury or illness.

A covered veteran is an individual who was a member of the Armed Forces at any time during the period of five (5) years preceding the date of the medical treatment, recuperation, or therapy that has a serious injury or illness who is currently receiving medical treatment, recuperation, or therapy.

The calculation of this five (5) year period shall not include the interval of October 28, 2009, through March 8, 2013. The “single twelve (12) month period” for military caregiver leave begins on the first day the employee takes leave for this reason and ends twelve (12) months later. An eligible employee is limited to a combined total of twenty-six (26) workweeks of leave to provide care for a covered service member. The maximum of twenty-six (26) workweeks may include no more than twelve (12) workweeks of leave that is taken for the birth and care of a newborn child, for the placement of a child for adoption or foster care, for care of a parent who has a serious health condition, or for the employee's own serious health condition.⁶

INTERMITTENT LEAVE

Eligible employees may take FMLA leave intermittently when medically necessary to care for a seriously ill family member, because of the employee's own serious health condition, or for the care for a newborn, a newly adopted child, or a newly placed foster care child. When an employee requests foreseeable leave for planned medical treatment and the employee would be on leave for greater than 20% of the total number of working days in the period during which the leave would extend, the school district may require that such employee elect either to take the leave for periods of a particular duration, not to exceed the duration of the planned medical treatment, or to transfer temporarily to an available alternative position offered by the school district for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave.⁷

RESTRICTIONS

- 1. **Notice Requirements**
 - a. **Employee Notice⁸** - For foreseeable leave, the employee shall provide the Director of Schools with at least thirty (30) days' written notice before the beginning of the anticipated leave.
- 2. **Certification Requirement⁹**
 - a. MCBOE may require that a request for leave be supported by certification issued by a health care provider with the following information:
 - i. The date on which the serious health condition commenced;
 - ii. The probable duration of the condition;
 - iii. The appropriate medical facts within the knowledge of the health care provider regarding the condition; and

- iv. A statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed.
 - b. If there is any reason to doubt the validity of the certification provided, MCBOE reserves the right to require, at the expense of the school district, an opinion of a second health care provider.
3. Period Near the End of an Academic Term (Professional Employees)
- a. If leave is taken more than five (5) weeks prior to the end of the term, the Director of Schools may require the employee to continue taking leave until the end of the term if the leave is at least three (3) weeks in duration and the return to employment would occur during the three (3) week period before the end of the term.
 - b. If the leave is taken within five (5) weeks prior to the end of the term, the Director of Schools may require the employee to continue taking leave until the end of the term if the leave is greater than two (2) weeks duration and the return to employment would occur during the two (2) week period before the end of the term.

EMPLOYMENT AND BENEFITS

Family and Medical Leave shall run concurrently with Tennessee Maternity Leave, On the Job Injuries, MCBOE sick leave, personal leave, and/or paid vacation time. After using all accrued paid leave, then an employee's Family and Medical Leave shall be without pay.

If the employee returns to work, the employee shall be restored to the same position of employment or an equivalent position with no loss of benefits, pay, or other terms of employment and is entitled to sick leave, and other benefits the employee would have enjoyed before the employee left. The employee's health benefits will continue during the leave unless the employee fails to pay his or her portion of the premiums in a timely manner.

The Board may recover the premium(s) paid if the employee fails to return from leave after the period of leave has expired and/or the employee fails to return to work for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the control of the employee.

KEY EMPLOYEES

Certain key employees may not be eligible to return to the same or similar position upon returning from FMLA leave, if such denial is necessary to prevent substantial and grievous economic injury to MCBOE. A key employee is a salaried employee who is among the highest paid ten percent (10%) of the employees employed by MCBOE.

PAID LEAVE FOR TEACHERS

Eligible licensed employees (teacher, principal, supervisor, or other individual required to hold a valid license of qualification for employment in an LEA and who has been employment full-time for at least twelve (12) consecutive months may be granted absence from work with pay for a period of time equal to six (6) work weeks after the birth or still birth of the employee's child or the employee's adoption of a newly placed minor child upon giving thirty (30) days' notice. If the employee learns of the birth, still birth, or adoption less than thirty (30) days in advance of the event, the employee must give notice as soon as possible in order to be granted leave.¹¹

Leave used by an employee pursuant to this policy will not be charged to sick, annual, or other leave the employee may have accumulated. Leave granted pursuant to this section will count toward the teachers' use of leave required to be given by this state as an employer under the federal Family and Medical Leave Act (FMLA) and state maternity leave.^{12,13}

An employee must not be granted more than six (6) work weeks of paid leave under this policy during a twelve-month period, but the work weeks do not need to be taken consecutively. A teacher may receive no more than six (6) work weeks of paid leave during a twelve-month period, even if there is more than one (1) qualifying birth or adoption. Leave granted pursuant to this section must be used within twelve (12) months of the qualifying birth or adoption.

TEACHER DEFINITION

As used in this policy, "Teacher" means a teacher, principal, supervisor, or other individual required by law to hold a valid license of qualification for employment in a local education agency and who has been employed full-time with a local education agency for at least twelve (12) consecutive months.

Legal References:

1. 29 USC 261136
2. TCA 4-21-40837
3. TCA 49-5-71038
4. 29 CFR 825.120(a)(3)39
5. 29 CFR 825.12640
6. 29 CFR 825.124, 825.12741
7. 29 CFR 825.20242
8. 29 CFR 825.302-825.30443
9. 29 CFR 825.305 to 825.31344
10. Pub. Ch. 399 (2023)
11. T.C.A. § 8-50-812.
12. 29 U.S.C. § 2601, et seq.
13. T.C.A. § 4-21-408.

Cross References: