



SECTION V: EMPLOYEES

POLICY 5160

FAMILY AND MEDICAL LEAVE / AUTHORIZED MEDICAL LEAVE

FAMILY AND MEDICAL LEAVE

It is the policy of the District to comply fully with the requirements of the Family and Medical Leave Act of 1993 (FMLA) and all its related revisions, including the National Defense Authorization Act (NDAA), collectively referred to in this policy as “FMLA.” The District is a covered employer and, accordingly, will provide up to 12 workweeks of unpaid leave to eligible employees. This leave must run concurrently with any paid leave the eligible employee has available. Eligible employees may also be entitled to 14 additional workweeks of leave (26 workweeks total) for servicemember family leave.

Any employee utilizing FMLA leave is required to cooperate in matters of scheduling, providing prompt notice of the need to use leave and availability for return to work, completing paperwork, etc.

This policy is not intended to create any leave obligations for the District in addition to those provided under the FMLA. In the event any conflict exists between this policy and the FMLA, the FMLA will be the final authority.

Definitions

“Eligible employees” are those employees who:

- have been employed for at least one year by the District; and
- worked at least 1,250 hours during the previous 12-month period; and
- have requested leave for a reason covered by the FMLA; and
- there are at least 50 employees within a 75-mile radius.

Full-time instructional employees are deemed to have met the 1,250 hours of employment requirement if they worked full-time during the prior year.

- A “child” means a biological, adopted, foster or step child, a legal ward, an individual with an in loco parentis relationship with the employee or military member, and adult children who are physically or mentally incapable of self-care.
- A “serious health condition” is one that requires either in-patient care or continuing treatment by a health care provider. This includes conditions or illnesses affecting health to the extent that in-patient care is required, or absences are necessary on a recurring basis or for more than just a few days. A “serious health condition” does not include short-term conditions for which treatment and recovery are very brief as such conditions would normally be covered by the District’s sick leave policies.
- A “year” means a rolling 12-month period measured backward from the date an employee



SECTION V: EMPLOYEES

POLICY 5160

FAMILY AND MEDICAL LEAVE / AUTHORIZED MEDICAL LEAVE

uses any leave.

- A “workweek” means the employee’s usual or normal schedule (hours / days per week) prior to the start of FMLA leave.
- A “covered military member” (for purposes of active duty leave) is an individual serving in the Regular Armed Forces or the National Guard and Reserves and who has been called to active duty. Veterans receiving treatment or therapy, or those who are recuperating and were discharged or released for any reason other than dishonorable discharge within the 5 years preceding the employee’s request for leave are also included in this definition.
- A “covered military member” (for purposes of servicemember family leave) is an individual serving in the Regular Armed Forces or the National Guard and Reserves who is undergoing treatment or therapy for a serious injury or illness incurred or exacerbated while on active duty.
- A “serious injury or illness” is an injury or illness incurred (or exacerbated) by the servicemember in the line of duty in the Armed Forces or National Guard and Reserves which:
 - may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; or
 - resulted in the member receiving a VA Service Related Disability Rating of 50% or more; or
 - substantially impairs the veterans’ ability to be gainful employed; or
 - resulted in the member’s enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Reasons for Leave

All eligible employees who meet FMLA requirements may be granted leave as provided in this policy and required by law for the following reasons:

1. for the birth of a child and to care for such child, or placement for adoption or foster care of a child;
 - If both parents are employed by the District, the combined amount of FMLA leave cannot exceed 12 workweeks
2. to care for a spouse, child or parent with a serious health condition;



SECTION V: EMPLOYEES

POLICY 5160

FAMILY AND MEDICAL LEAVE / AUTHORIZED MEDICAL LEAVE

3. for a serious health condition of the employee that makes the employee unable to perform his or her job functions;
4. for covered active duty leave with one or more of the following exigencies:
 - Short-notice deployment: employees can take up to 7 calendar days leave to address issues that arise from servicemembers' call or order to active duty seven calendar days or less prior to the date of deployment;
 - Military events and related activities: employees can take leave to attend official ceremonies, programs, or events sponsored by the military that are related to servicemembers' active duty or call to active duty or attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to servicemembers' active duty or call to active duty;
 - Childcare and school activities: employees can take leave to arrange alternative childcare, provide childcare on an urgent, immediate need (but not every day) basis, enroll in or transfer a child to a new school or day care facility, or attend meetings with school or day care staff (such as parent-teacher conferences) due to servicemembers' active duty or call to active duty;
 - Financial and legal arrangements: employees can take leave to make or update financial or legal arrangements to address servicemembers' absence while on active duty or call to active duty, such as executing powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System, or obtaining military identification cards and to act as the servicemembers' representative before governmental agencies to obtain, arrange, or appeal military service benefits while servicemembers are on active duty or called to active duty and for 90 days following termination of active duty status;
 - Counseling: employees can take leave to attend counseling that is provided by someone other than a healthcare provider for servicemembers or their children for needs arising from servicemembers' active duty or call to active duty;
 - Rest and recuperation: employees can take up to 15 days leave to spend time with servicemembers on short-term, temporary rest and recuperation leave during a period of deployment;
 - Post-deployment activities: employees can take leave to attend arrival ceremonies, reintegration briefings and events and other official ceremony or program sponsored by the military that occurs within 90 days following termination of servicemembers' active duty status or to address issues arising



SECTION V: EMPLOYEES

POLICY 5160

FAMILY AND MEDICAL LEAVE / AUTHORIZED MEDICAL LEAVE

from servicemembers' death while on active duty, including meeting and recovering the body and making funeral arrangements; and

- Additional activities: employees can take leave to address any other events that arise from servicemembers' active duty or call to active duty when the district and employee agree that such leave qualifies as an exigency and agree upon the timing and duration of the leave.
5. for servicemember family caregiver leave, provided that the leave (when combined with other forms of FMLA leave) does not exceed 26 workweeks during a 12-month period;
 6. for parental care leave to care for (including making arrangements for care, patient transfer and meetings with staff at a care facility) a parent-in-law who is unable to care for him/herself while the servicemember is on active duty.

Application for Leave

Employees who wish to utilize FMLA leave must submit an application for leave (with all required supporting documentation) on the forms available through the Human Resources department (the District will utilize all required forms as provided by the US Department of Labor. The forms are available at <http://www.dol.gov/whd/fmla/index.htm#Forms>). The District requests that, when practical, FMLA requests be submitted at least 30 days prior to the use of the leave. In emergency circumstances, the District may provisionally place an employee on FMLA leave if conditions appear to warrant such action. The employee is ultimately responsible for completing the necessary paperwork to finalize the use of FMLA leave at least 15 days in advance.

Medical Documentation (for Leave Related to a Serious Medical Condition)

In addition to all medical documentation required pursuant to the FMLA, the District may, in its sole discretion and at its own expense, require a second opinion related to the need for FMLA leave. If the first and second opinions differ regarding the need for FMLA leave, the District and the employee shall mutually agree upon a provider to conduct a third opinion of the employee's need for leave. The cost of this third opinion will be paid for by the employer.

The District may also require supplemental certifications of the employee's continuing need for leave. These certifications may not be more than one time per month unless the employee requests an extension of leave, changes circumstances regarding the illness or injury, or the District receives information that casts doubt on the validity of an existing certification.

In the event an employee wishes to request an extension of leave, such request must be promptly submitted to the Human Resources department with supporting documentation from the health care

provider regarding the reason for the extension. The extension is only available as long as the employee does not exceed the maximum leave permitted by the FMLA.



SECTION V: EMPLOYEES

POLICY 5160

FAMILY AND MEDICAL LEAVE / AUTHORIZED MEDICAL LEAVE

Right to Conduct Surveillance

In an effort to combat misuse of leave permitted by the FMLA, an employee may be surveilled to determine if the employee is not using the FMLA leave for the purpose for which it was granted. The District may conduct non-workplace (off-site) surveillance of an employee based on an honest belief or suspicion that the employee is misusing the FMLA leave granted. If the employee is found to be misusing the FMLA leave, the employee will be subject to all disciplinary action allowed by law, including but not limited to dismissal or nonrenewal. Circumstances which may give rise to an honest belief or suspicion of FMLA leave misuse include, but are not limited to, an employee providing inconsistent reasons for the FMLA leave, an employee engaging in a suspicious pattern of absences over a short period of time, verifiable information from co-workers evidencing misuse by an employee and significant changes in the frequency or duration of an employee's absences.

Intermittent Leave or Leave on a Reduced Leave Schedule

Eligible employees may request to use their available leave on an intermittent basis by following the same application and certification process as described above and under the following conditions:

- intermittent leave in connection with the arrival of a new child must be approved by the District;
- employees must coordinate the intermittent leave with their supervisor to attempt to reduce the negative impact of the leave on school operations;
- the District reserves the right to transfer the employee to a position better suited to intermittent leave;
- if an instructional employee will be absent more than 20% of the total working days in the period in which the leave will be used, the District may require the employee to either:
 - take leave for a "particular duration" or time which is not greater than the duration of the planned treatment, or
 - be transferred to an alternative position.

Leave Taken Near the End of an Academic Term

If an instructional employee begins any type of covered leave more than 5 weeks before the end of a semester, and if the leave will last at least 3 weeks and the employee would otherwise return to work during the 3 weeks before the end of the semester, the District may require the employee to continue taking leave until the end of the semester.

If an instructional employee takes leave (for a reason other than the employee's own serious health



SECTION V: EMPLOYEES

POLICY 5160

FAMILY AND MEDICAL LEAVE / AUTHORIZED MEDICAL LEAVE

condition) which commences during the 5 weeks before the end of the semester, and if the leave will last more than 2 weeks and the employee would otherwise return to work during the last 2 weeks of the semester, the District may require the employee to continue taking leave until the end of the semester.

If an instructional employee takes leave (for a reason other than the employee's own serious health condition) which begins during the last 3 weeks of the semester, and if the leave will last more than 5 working days, the District may require the employee to take leave until the end of the semester.

The Effect of Leave on Benefits

During a period of FMLA leave, an employee will be retained on the District's medical insurance plan under the same conditions that applied before leave began, including making any payments the employee previously made. An employee's failure to timely pay his/her share of the medical premium may result in loss of coverage. The employee is required to pay all of the premiums for any other type of insurance coverage which may exist.

If the employee fails to return to work after the expiration of the leave, the employee will be required to reimburse the District for payment of health insurance premiums during the FMLA leave, unless the reason for the failure to return to work are due to circumstances beyond the employee's control.

Employees do not accrue or lose any seniority or employment benefits during a period of FMLA leave.

Return to Work

Employees must update the Human Resources department regarding the intent to return to work, including providing all necessary releases and paperwork, at least 5 business days in advance of the expected return date.

Although the District cannot guarantee that an employee will be returned to his/her original position, employees will generally be restored to an equivalent position and employment conditions upon return from FMLA leave. Highly-compensated employees are those individuals who are salaried and are among the highest paid 10% of the employees employed within 75 miles of the employee's worksite. A highly-compensated employee may not be returned to work if it is necessary to prevent substantial and grievous economic injury to the operations of the District. The District will make all

determinations regarding job duties upon an employee's return from FMLA leave.

Failure to Return from Leave

Employees who fail to return to work when scheduled (absent an approved extension) are subject to immediate termination for cause, subject to applicable due process hearing rights.



SECTION V: EMPLOYEES

POLICY 5160

FAMILY AND MEDICAL LEAVE / AUTHORIZED MEDICAL LEAVE

AUTHORIZED MEDICAL LEAVE

Employees that do not meet the eligibility requirements for FMLA may use authorized medical leave as follows:

Employee

- Employees unable to perform all their essential job duties due to illness or injury may request leave for 30 working days or the number of work days equal to their paid leave available, whichever is longer
- Medical certification from a physician or practitioner must be provided to Human Resources

Employee Family Member

- Employee may request days to care for the serious illness or injury of an immediate family member if paid leave is available
- Immediate family is defined as spouse, parent, sibling, child (this includes foster child), grandparent, or grandchild and corresponding in-laws and corresponding step relatives
- Medical certification from a physician or practitioner must be provided to Human Resources

Employees that have been a member of the Sick Leave Sharing Bank for a year may request to use days from the bank once they have exhausted their own sick leave. For guidelines refer to Board Policy 5310.

Employees that have exhausted FMLA and/or authorized medical leave may continue to use any available paid leave.

Return to Work

Although the District cannot guarantee that an employee will be returned to his/her original position, employees will generally be restored to an equivalent position and employment conditions upon return from authorized medical leave.

Employees that have exhausted all leave options, are expected to return to work. If an employee is unable to return to work or medically unable to perform the duties of their job, a meeting will be scheduled with Human Resources to discuss next steps.

Source: *Broken Arrow Board of Education policy adoption, July 13, 2009.*
Broken Arrow Board of Education policy revised, July 10, 2017.
Broken Arrow Board of Education policy revised, November 12, 2018.
Broken Arrow Board of Education policy revised, May 13, 2019.
Broken Arrow Board of Education policy revised, October 11, 2021.
Broken Arrow Board of Education policy revised, November 7, 2022.
Broken Arrow Board of Education policy revised, July 17, 2023.