

SOUTHERN FULTON SCHOOL DISTRICT

SECTION: SUPPORT
EMPLOYEES

TITLE: FAMILY AND MEDICAL
LEAVES

ADOPTED: July 20, 1999

REVISED: February 16, 2010

<p>535. FAMILY AND MEDICAL LEAVES</p>	
<p>1. Purpose 29 U.S.C. Sec. 2601 et seq</p>	<p>The purpose of this policy is to address specific leave of absence issues and to ensure the district's compliance with the Family And Medical Leave Act, hereinafter referred to as FMLA.</p> <p>Employee requests for FMLA leave shall be processed in accordance with law, Board policy and administrative regulations.</p>
<p>2. Delegation of Responsibility 29 U.S.C. Sec. 2619</p>	<p>The Superintendent shall develop and disseminate any administrative regulations necessary to implement FMLA leave for eligible employees.</p> <p>The district shall post, in conspicuous places in the district customarily used for notices to employees and applicants, a notice regarding the provisions of the FMLA and the procedure for filing a complaint.</p> <p>Employee requests for leave, both FMLA leave and non-FMLA leave, shall be made in writing on the district-provided form to the Superintendent.</p>
<p>3. Guidelines</p>	<p><u>Eligibility</u></p> <p>In order to be eligible for FMLA leave an employee must:</p> <ol style="list-style-type: none"> 1. Have been employed by the district for at least twelve (12) months (which need not be consecutive); and 2. Have worked 1,250 hours during the twelve-month period immediately preceding the commencement of the leave. <p>Eligibility for FMLA leave shall be based entirely on the eligibility criteria established by the FMLA. This policy shall not be construed to expand eligibility for FMLA leave beyond that which is required by law.</p>

<p>29 U.S.C. Sec. 2611, 2612</p>	<p>All hours an employee works, including overtime, are considered hours worked. Paid leave time, such as vacation, sick leave, personal leave and holidays are not considered hours worked.</p>
<p>29 CFR Sec. 825.200 et seq</p>	<p><u>Basic FMLA Leave And Entitlements</u></p> <p>Reasons For Leave</p> <p>Leave may be taken for any one (1), or for a combination of, the following reasons:</p> <ol style="list-style-type: none"> 1. To care for a child after birth, or upon placement for adoption or foster care. This entitlement shall expire at the end of the twelve-month period beginning on the date of the birth or placement. Leave to care for a child after birth, or placement for adoption or foster care, must be taken all at once, and may not be taken on an intermittent or reduced schedule. 2. To care for the employee’s spouse, son or daughter, or parent, who has a serious health condition as defined herein. 3. For a serious health condition, as defined herein, which makes the employee unable to perform one (1) or more of the essential functions of the employee’s job. 4. Qualifying exigency due to the fact that the employee’s spouse, child or parent is on covered active duty or has been notified of an impending call or order to covered active duty as a member of the National Guard or Reserves. 5. Care of a spouse, child, parent or next of kin in the regular Armed Forces, including the National Guard and Reserves, who is a covered servicemember undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, is on the temporary disability retired list for a serious injury or illness incurred in the line of duty on active duty, or is a veteran qualifying as a covered servicemember, as that term is defined by law and federal regulation.
<p>29 CFR Sec. 825.127(c)</p>	<p>Amount Of Leave</p> <p>Eligible employees shall be granted a total of twelve (12) workweeks of unpaid leave for qualifying family and medical reasons during a twelve-month period.</p> <p>Eligible employees shall be provided up to twenty-six (26) workweeks of unpaid leave in a single twelve-month period to care for an ill or injured covered servicemember.</p>

29 CFR
Sec. 825.207

Leave to care for an ill or injured covered servicemember, when combined with other qualifying leave under FMLA, will not exceed twenty-six (26) workweeks in a single twelve-month period.

Calculation Of Twelve-Month Period

For the purposes of determining whether an eligible employee has exhausted the twelve (12) weeks of leave in any twelve-month period, the district shall utilize a rolling twelve-month period measured backwards from the date leave is used.

Spouses Employed By District

A husband and wife employed by the district who are both eligible for FMLA leave will be limited to a combined total of twelve (12) workweeks per year when the leave is taken for the birth, adoption, foster placement or first-year care of a child or to care for a parent with a serious health condition.

A husband and wife employed by the district who are both eligible for FMLA leave will be limited to a combined total of twenty-six (26) workweeks per year if the leave is taken to care for a covered servicemember or is taken as a combination of leave to care for a covered servicemember and leave for the birth, adoption, or foster placement of a child, to care for a child after birth, adoption, or foster placement; or to care for a parent with a serious health condition.

If the FMLA leave taken by a husband and wife employed by the district includes a combination of leave taken for the birth, adoption, or foster placement of a child or to care for the child after birth, adoption, or foster placement, and to care for a parent with a serious health condition, the leave will be limited to twelve (12) workweeks per year.

FMLA Leave Application, Conditions, And Restrictions

Substitution Of Paid Leave

FMLA leave will be applied and shall run concurrently with any paid leave taken by the employee where the reason for the absence is a qualifying reason under the FMLA and this policy. The district shall designate the leave taken as FMLA leave and will count this leave time against the employee's maximum FMLA leave of twelve (12) workweeks in the relevant twelve-month period.

Approved short-term disability leave and workers' compensation injury/illness absence will also run concurrently with approved FMLA leave.

<p>29 CFR Sec. 825.300 et seq</p>	<p><i>Mandatory Use Of Paid Leave –</i></p> <p>When an employee requests an FMLA leave and qualifies for and is entitled to any accrued paid sick, vacation, personal, or family leave, the employee is required to utilize such paid leave during the FMLA leave, to the extent permitted by law or applicable bargaining agreement.</p> <p>Upon exhaustion of any paid leave time, all remaining FMLA leave up to the maximum of twelve (12) workweeks shall be unpaid; however, all applicable benefits will continue as prescribed in the policy.</p> <p>Continuation Of Benefits</p> <p>FMLA leave is not considered a break in service for determining the employee’s seniority or length of continuous service. Credit shall be given during FMLA leaves for any benefit accruals as it is given for all other leaves.</p> <p><i>Healthcare Coverage –</i></p> <p>During FMLA leave, eligible employees are entitled to receive any group health plan coverage on the same terms and conditions they would have had if they had continued to work.</p> <p>Where applicable, employees must continue to make their share of the premium payments for health insurance in order to maintain their health benefits while on leave, to the extent such payments are consistent with any applicable bargaining agreement.</p> <p>Payments are due at the same time as they would be if made by payroll deduction and must be paid directly to the district.</p> <p>The district’s obligation to maintain healthcare coverage ceases if the employee’s premium payment is more than thirty (30) days late, unless provided otherwise by Board policy or an applicable bargaining agreement.</p> <p>If the employee’s payment is more than fifteen (15) days late, the district will send the employee a letter notifying the employee that his/her coverage will be dropped on a specified date unless the employee’s premium payment is received before that date.</p>
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Employee Obligations Under The FMLA

Notification

Employees who need to take FMLA leave must timely notify the district of their need for FMLA leave. In order to trigger leave protections, the employee must inform the district's Superintendent or designee of the need for FMLA-qualifying leave and the anticipated timing and duration of the leave, if known. Employees may do this by providing answers in response to information requested by the district-provided forms for FMLA and non-FMLA leave requests.

Employees must provide thirty (30) days of advance notice of the need for FMLA leave when the need is foreseeable.

If the necessity for leave is foreseeable based on an expected birth or placement, or planned medical treatment, the employee shall make a reasonable effort to schedule treatment to minimize disruption of the operations of the school or district and will notify the district of his/her intention to take leave at least thirty (30) days prior to the beginning date of the leave.

When thirty (30) days notice is not possible, or the approximate timing of the need is not foreseeable, employees must provide the district with notice of the need as soon as practical under the facts and circumstances of the particular case, and must follow the district's established procedures for requesting leave.

Depending on the facts and circumstances of the particular case, the Superintendent or designee shall determine whether sufficient information has been communicated to initiate the FMLA leave process and whether such notice has been provided in accordance with the requirements of the FMLA.

Failure To Provide Notice –

Failure to provide notice according to these requirements may result in the delay of an employee's FMLA leave until the notice requirements have been met or in the denial of FMLA leave to the extent permissible by law.

Timing Of Employee Notice While On FMLA Leave

Employees must comply with all normal absence procedures while taking FMLA leave, provided there are no extenuating circumstances which would justify any failure to comply by the employee.

Employees who call in sick without providing reasons for the needed leave will not be considered to have provided sufficient notice to the district to qualify for FMLA leave for the absence under this policy.

Requests For Information And Medical Certification

Employees are required to cooperate with district requests for information in compliance with the FMLA and this policy in order to allow the district to make determinations regarding the applicability of FMLA leave.

Medical Certification –

1. The district will require employees to submit medical certifications supporting their need for FMLA-qualifying leave.
2. It is the employee’s responsibility to provide the district with timely, complete, and sufficient medical certifications from his/her healthcare provider, or, where applicable, the healthcare provider of a family member or covered servicemember. Medical certifications should be submitted on a district-provided form, and must include the following information:
 - a. Date the serious health condition began.
 - b. Probable duration of the condition.
 - c. Appropriate medical facts regarding the condition.
 - d. Statement that the employee is unable to perform the essential functions of the job, or that the employee is needed to care for the family member.
 - e. Where applicable, an estimate of the amount of time the employee is needed to care for the family member.
3. When medically necessary, an employee is eligible to take intermittent or reduced schedule leave, as described below, for planned medical treatment for a serious health condition of the employee, a spouse, child or parent or covered servicemember. The required certification must contain a statement of the medical necessity for this type of leave, the expected treatment dates, and the expected duration of such treatment.

4. In general, whenever the district requests employees to provide FMLA medical certifications, employees must provide the requested information within fifteen (15) calendar days after the district's request unless it is not practicable to do so despite the employee's diligent, good faith efforts.
5. A new initial medical certification will be required on an annual basis for medical conditions lasting beyond a single leave year.

Requests For Further Information/Clarification –

The district will inform an employee if an employee's certification forms are incomplete or insufficient. Employees shall have at least seven (7) calendar days to cure the deficiencies, unless it is not practicable under the particular facts and circumstances.

If the initial medical certification or any other certification required by this policy is incomplete or unclear, the district may request that the certification be clarified by the treating physician.

If the district has reason to doubt the initial medical certification, it may require employees to obtain a second opinion at the district's expense.

If the opinions of the initial and second health care providers differ, the district may, at its expense, require employees to obtain a third binding certification from a healthcare provider designated or approved jointly by the district and the employee.

The district may require that the employee provide a HIPAA-compliant release form along with the required medical certification in order to allow the district to authenticate and clarify the information contained within the medical certification where the district believes such authentication and/or clarification is necessary.

The employee's healthcare provider will only be contacted by a healthcare provider engaged by the district, the Business Manager, or the Superintendent. Under no circumstances will the employee's direct supervisor contact the employee's healthcare provider in order to authenticate or clarify a medical certification.

The district reserves the right to deny FMLA leave to employees who fail to submit requested medical certifications, to otherwise clarify their certifications, or to provide a HIPAA-compliant release for purposes of authentication and clarification of a certification.

Medical Recertification –

Depending on the circumstances and duration of the leave, the district may require employees to provide recertification of medical conditions giving rise to the need for the leave.

Examples of when the district will request a recertification include, but are not limited to, the following:

1. Every six (6) months in connection with an intermittent absence.
2. Each leave year for an intermittent condition that lasts longer than one (1) year.
3. If the employee requests an extension of a medical leave.

The district will notify employees if recertification is required and will give employees at least fifteen (15) calendar days to provide medical recertification.

Return To Work/Fitness For Duty Medical Certifications –

Unless impossible/impracticable in the circumstances of the particular case, an employee on FMLA leave must report his/her status and intention regarding his/her return to work every four (4) weeks.

An employee intending to return to work must provide at least five (5) work days' notice of his/her date of return.

When the FMLA leave is related to the employee's own serious health condition, the district will require the employee to submit certification from the employee's health care provider that the employee is able to return to work.

Failure To Return To Work

If the employee fails to return to work after the exhaustion of FMLA leave, the employee may be required to reimburse the district for the health insurance premiums paid during the employee's FMLA leave, depending upon the circumstance surrounding the employee's failure to return.

Premium recovery will not be sought if the failure to return to work is due to the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control.

<p>29 CFR Sec. 825.300</p>	<p>Failure to return to work upon the exhaustion of FMLA leave may result in termination at the discretion of the district to the extent permitted by law and the terms of any collective bargaining agreement.</p> <p>At the end of FMLA leave, subject to some exceptions, employees generally have a right to return to the same or equivalent positions with equivalent pay, benefits, and other employment terms. The district will notify employees if they are key employees, who are not entitled to job restoration under the FMLA and if the district intends to deny reinstatement for the key employee.</p> <p>The district may delay and/or deny job restoration until employees provide return to work/fitness for duty certifications.</p> <p><u>Employer Obligations</u></p> <p>Employees requesting FMLA leave are entitled to receive written notice from the district informing the employee as to their eligibility for FMLA leave or for the reason the employee was determined to be ineligible.</p> <p>When eligible for FMLA leave, the employee is entitled to receive written notice of the following:</p> <ol style="list-style-type: none">1. Their rights and responsibilities in connection with the leave.2. The district's designation of the leave as FMLA-qualifying or nonqualifying and the reason why the leave is nonqualifying.3. The amount of leave, if known, that will be counted against the employee's leave entitlement. <p><i>Notice Of Eligibility, Rights And Responsibilities And Designation –</i></p> <p>The expectations and obligations of a district employee eligible for FMLA leave are as set forth on the written Notice of Eligibility and Rights & Responsibilities. This notice shall be provided to an employee within five (5) business days of the district's receipt of a request for FMLA leave or knowledge indicating that a requested leave may be for FMLA-qualifying reasons, and may include district forms to be completed for medical certification.</p> <p>Employees shall be required to sign a copy of the form indicating their receipt of said notice.</p>
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An **instructional employee** is one whose principal function is to teach and instruct students, including, for example, teachers, athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. For employees who fit this classification, the following special rules apply:

1. Leave taken for a period ending with the school year and beginning at the start of the next school year is considered consecutive and not intermittent leave. The period of time of summer vacation is not counted against the employee's FMLA leave entitlement. An employee must be provided with all benefits the employee would have been provided had s/he been working at the end of the school year.
2. When an instructional employee begins FMLA leave for more than five (5) weeks before the end of an academic term:
 - a. The district may require the employee to continue the leave until the end of the term if the leave is at least three (3) weeks in duration and the return to work would occur during the last three (3) weeks of the academic term.
 - b. If the FMLA leave beginning during the five-week period before the end of the academic term is for a purpose other than the employee's own serious health condition or qualifying exigency, the district may require the employee to continue the leave until the end of the academic term if the leave is longer than two (2) weeks in duration and the return to work would occur during the last two (2) weeks of the academic term.
3. When an instructional employee begins FMLA leave for a purpose other than the employee's own serious health condition or qualifying exigency during the three-week period before the end of an academic term, the district may require the employee to continue the leave until the end of an academic term if the leave is longer than five (5) working days in duration.
4. When an instructional employee is required to continue leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work will be counted against the FMLA leave entitlement. However, the district will continue the group health insurance coverage under the same conditions as if the employee were working.
5. If an eligible instructional employee needs intermittent leave or a reduced schedule because of their own serious health condition; the serious health condition of a spouse, parent, or child; to care for a covered servicemember with a serious injury or illness; or for a qualifying exigency; which is foreseeable

based upon a planned schedule of medical treatment where the employee would be on leave for more than twenty percent (20%) of the total number of working days over the period the leave would extend, the district may require that the employee choose to do one (1) of the following:

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

A period of particular duration is 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 of the period of requested leave and may be one (1) uninterrupted period of leave.

6. Except as provided in the case of leave taken toward the end of an academic term, when an instructional employee selects to take leave for a period of a particular duration, the entire period of leave taken will count against the employee's available FMLA leave for that rolling twelve-month period.
7. Where an instructional employee fails to provide the required notice for foreseeable intermittent or reduced schedule leave, the district may require the employee to take leave of a particular duration or to transfer temporarily to an alternative position. The district also has the right to delay the employee's taking of FMLA leave until the notice provision has been met.

Special Rules – Qualifying Exigency – Active Duty/Call To Active Duty

29 CFR
Sec. 825.122,
825.126

An employee will be eligible for leave because of a qualifying exigency due to the fact that the employee's spouse, child, or parent is on active duty or has been notified of an impending call to active duty. An employee may take FMLA leave for the following **qualifying exigencies**, as each term is defined by federal regulation at 29 CFR Sec. 825.122, 825.126:

1. Short-notice deployment.
2. Military events and related activities.
3. Childcare and school activities.

4. Financial and legal arrangements.
5. Counseling.
6. Rest and recuperation.
7. Postdeployment activities.
8. Additional activities agreed to by the district and employee and consistent with applicable law.

If the necessity for leave is foreseeable, the employee shall provide notice as soon as practicable. If the necessity for leave is not foreseeable, the employee must follow the district's established procedures for requesting leave.

The district may require that a request for leave because of a qualified exigency be supported by a certification. If the district requests a certification, the employee will provide it in a timely manner. The certification must contain the following:

1. Date the qualifying exigency began or will begin.
2. Probable duration and frequency of absences(s).
3. Statement of appropriate facts regarding the qualifying exigency.
4. If the exigency involves a meeting with a third party, the third party's contact information and a description of the meeting.

The employee should attach a copy of the covered servicemember's active duty orders or other documentation from the military certifying that the covered servicemember is on active duty or has been notified of an impending call to active duty in support of a contingency operation to the certification.

Continued Application Of District Policies

Nothing in this policy insulates an employee from the application of any other district policies, e.g., while on FMLA leave an employee is still subject to all other employment-related policies of general applicability. No employee is permitted to work or take another job while on FMLA leave. Employees who obtain outside employment while on FMLA may be subject to immediate termination, to the extent permitted by law.

Administration Of Policy

The district will take any and all steps necessary to administer this policy, including deciding which absences from work will qualify as FMLA leave. To the extent consistent with applicable law, the district has the responsibility and authority to interpret this policy and to decide any issue whether or not it is directly and clearly covered by this policy or not expressly addressed by this policy.

At any time the district may revise, amend, alter, or modify this policy at its sole discretion so long as all changes comply with applicable law.

Questions

If you have any questions regarding this policy, please contact the Superintendent's office.

Prohibitions

The FMLA makes it unlawful for employers to:

1. Interfere with, restrain, or deny the exercise of any right provided under the FMLA.
2. Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

If the employee believes his/her rights have been violated, s/he should contact the Business Manager immediately. The district will investigate any FMLA complaint and take prompt and appropriate remedial action to address and/or remedy any FMLA violation. Employees may also file FMLA complaints with the U.S. Department of Labor or may bring private lawsuits alleging FMLA violations.

References:

Family and Medical Leave Act – 29 U.S.C. Sec. 2601 et seq.

Family and Medical Leave, Title 29, Code of Federal Regulations – 29 CFR Part 825

Board Policy – 000, 813