

SUBJECT: FAMILY AND MEDICAL LEAVE ACT

The Board of Cooperative Education Services, in accordance with the Family and Medical Leave Act of 1993 (FMLA), gives "eligible" employees of the St. Lawrence-Lewis BOCES the right to take unpaid leave for a period of up to 12 workweeks in a 12-month period as determined by the BOCES. For purposes of this Act, the 12-month period shall be the BOCES fiscal year, i.e., July 1st through June 30th.

Employees are "eligible" if they have been employed by the BOCES for at least 12 months and for at least 1,250 hours of service during the previous 12-month period. Full-time teachers are deemed to meet the 1,250 hour test. The law covers both full-time and part-time employees. However, a break in employment for military service (i.e., call to active duty) will not interrupt the 12 months/1,250 hours requirement and will be counted toward fulfilling this prerequisite.

Qualified employees may be granted leave for one or more of the following reasons:

- a) The birth of a child and care for the infant;
- b) Adoption of a child and care for the infant;
- c) The placement with the employee of a child in foster care;
- d) To care for a spouse, child or parent who has a serious health condition as defined by the FMLA;
- e) A serious health condition of the employee, as defined by the FMLA, that prevents the employee from performing his or her job;
- f) Because of "any qualifying exigency" (*see below*) arising out of the fact that the spouse, son, daughter, or parent of the employee is serving in either the National Guard or the Reserves and is on active duty during a war or national emergency called for by the President of the United States or Congress, or has been notified of an impending call to active duty status, in support of a contingency operation.

Qualifying Exigency

A qualifying exigency related to families of the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve personnel on (or called to) active duty to take FMLA protected leave to manage their affairs is defined as any one of the following reasons:

- a) Short-notice deployment;
- b) Military events and related activities;
- c) Childcare and school activities;

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- d) Financial and legal arrangements;
- e) Counseling
- f) Rest and recuperation;
- g) Post-deployment activities; and,
- h) Any additional activities where the employer and employee agree to the leave.

In any case in which the necessity for leave due to a qualifying exigency is foreseeable, the employee shall provide such notice to the employer as is reasonable and practicable.

Service Member Family Leave

An eligible employee who is the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative of that individual) of a covered service member who is recovering from a serious illness or injury sustained in the line of duty while on active duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member. This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave

The term "covered service member" means a member of the Armed Forces, including a member of the National Guard or Reserves. Tolling for any military caregiver leave portion of FMLA begins the first day of such leave taken.

Implementation/Benefits

At the option of the BOCES, certain types of accrued paid leave must be substituted for unpaid leave.

An employee on FMLA leave is also entitled to have health benefits maintained while on leave. If an employee was paying all or part of the premium payments prior to leave, the employee will continue to pay his/her share during the leave period.

In most instances, an employee has a right to return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave.

The BOCES has a right to 30 days advance notice from the employee where practicable. In addition, the BOCES may require an employee to submit certification from a health care provider to substantiate that the leave is due to the serious health condition of the employee or the employee's immediate family member. Failure to comply with these requirements may result in the denial of FMLA leave. The BOCES may also require that an employee present a certification of fitness to return to work when the absence was caused by

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the employee's serious health condition. The BOCES has the right to deny restoration to employment if the employee does not furnish the certificate of fitness.

FMLA Notice

A notice which explains the FMLA's provisions and provides information concerning the procedures for filing complaints of violations of the FMLA shall be posted in each BOCES building and/or location.

The BOCES has developed, and will make available upon request, regulations and procedures to implement this policy, informing employees of their rights and responsibilities under the FMLA.

Family and Medical Leave Act of 1993 (as amended)
Public Law 103-3
29 Code of Federal Regulations (CFR) Part 825
National Defense Authorization Act, Section 585(a)
10 United States Code (USC) 101(a) (13)

Adopted: 07/10/2002
Revised: 06/05/2008; 06/04/2009