

**SUBJECT: FAMILY AND MEDICAL LEAVE ACT (FMLA)**

The BOCES allows eligible employees to take unpaid FMLA leave for up to 12 work weeks in a 12-month period to be eligible, the employee must:

- a) Have been employed with the BOCES for a total of at least 12 months; and
- b) Have worked for the BOCES at least 1,250 hours during the 12 month (July 1 – June 30) fixed leave year.

In certain cases, FMLA leave may be taken on an intermittent or reduced schedule basis rather than all at once. The entitlement to leave for the birth or placement of a child expires at the end of the 12-month period beginning on the date of the birth or placement.

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

- a) The birth of a child and care for the child;
- b) Adoption of a child and care for the child;
- c) The placement of a child with the employee from foster care;
- d) To care for a spouse, minor child or parent who has a "serious health condition" as defined by the FMLA;
- e) To care for an adult child who is incapable of self-care due to a disability (regardless of date of the onset of disability) and has a serious health condition; or
- f) The employee's serious health condition prevents the employee from performing his or her job.

A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider that renders the person incapacitated for more than three consecutive calendar days.

**Military Family Leave Entitlements****Military Caregiver Leave**

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness may take up to 26 weeks of leave during a single 12-month period to care for the servicemember.

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**SUBJECT: FAMILY AND MEDICAL LEAVE ACT (FMLA) (Cont'd.)****Qualifying Exigency Leave**

An "eligible" employee may take qualifying exigency leave when his or her spouse, son, daughter, or parent who is a member of the Armed Forces, National Guard, or Reserves is on covered active duty or has been notified of an impending call or order to covered active duty.

**Concurrent (Substitute) Leave**

Employees must use paid leave concurrently with periods of FMLA leave.

**Special Provisions for Instructional Employees**

An instructional employee's principal function is to teach and instruct students in a class, a small group, or an individual setting. Teaching assistants and aides who do not have instruction as the principal function of their job are not considered an instructional employee.

**Intermittent Leave Taken by Instructional Employees**

FMLA leave that is taken at the end of the school year and resumes at the beginning of the next school year is continuous leave. The period during summer vacation is not counted against an employee's FMLA leave entitlement; the employee will continue to receive any benefits that are customarily given over the summer break.

If an instructional employee requests intermittent leave or leave on a reduced schedule, and will be on that leave for more than 20% of the number of working days during that period, the BOCES may:

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

**Leave Taken by Instructional Employees Near the End of the Instructional Year**

If the instructional employee begins leave more than five weeks before the end of the term, the BOCES may require him or her to continue taking leave until the end of the term if the leave lasts more than three weeks and the employee would return during the three weeks before the end of the term.

If the instructional employee begins leave less than five weeks before the end of the term for any FMLA-related reasons except qualifying exigency, the BOCES may require that the employee remain out for the rest of the term if the leave lasts more than two weeks and the employee would return to work during that two-week period at the end of the instructional term.

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**SUBJECT: FAMILY AND MEDICAL LEAVE ACT (FMLA) (Cont'd.)**

If the instructional employee begins taking leave during the three weeks before the end of the term for any FMLA-related reason except qualifying exigency, the BOCES may require that the employee continue leave until the end of the term if the leave will last more than five working days.

Any additional time that is required by the BOCES will not be charged against the employee as FMLA leave.

**Benefits and Restoration**

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

In most instances, an employee has a right to return to the same or an equivalent position following a leave. The District Superintendent or designee may reassign an employee in accordance with any applicable collective bargaining agreement to a different grade level, building, or assignment consistent with the employee's certification and tenure area.

**Employee Notice and Medical Certification**

When leave is foreseeable, the employee must give at least 30 days' advance notice of when and how much leave he or she needs. When leave is not foreseeable, the employee must provide notice as soon as practicable.

The BOCES may require an employee to submit certification from a healthcare provider to substantiate a leave request. If the certification is incomplete or insufficient, the BOCES will identify in writing what information the employee must provide to correct the deficiency within seven days. If the employee fails to timely provide the requested information, the BOCES may deny his or her FMLA leave request.

The BOCES may also request a second opinion regarding the employee's medical status from a healthcare provider of its choice at its expense, and a third opinion from a provider agreed upon by the BOCES and the employee, to be paid for by the BOCES.

**FMLA Notice**

The BOCES will display a general notice to employees about FMLA leave rights, that will include how to file a complaint, in each school building. The BOCES will also provide a written general notice about the FMLA in the employee handbook to each new employee upon hire.

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**SUBJECT: FAMILY AND MEDICAL LEAVE ACT (FMLA) (Cont'd.)**

Family and Medical Leave Act of 1993 (as amended), Public Law 103-3  
National Defense Authorization Act of 2008, Public Law 110-181  
10 USC Section 101(a) (13)  
29 USC Sections 1630.1 and 2611-2654  
29 CFR Part 825 and Part 1630  
42 USC Section 12102  
Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191  
45 CFR Parts 160 and 164

NOTE: Refer also to Policy #6552 -- Military Leaves of Absence