

**FMLA AND MEDICAL LEAVE (FMLA) COVERING:
Employee, FMLA, Maternity,
Military and Military Caregiver Leave**

The employer is responsible in all circumstances for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee.

Every employee of the district who has worked for the district at least one year and for at least 1,250 hours in the preceding year is entitled to twelve (12) workweeks of ¹unpaid, job-protected FMLA and/or medical leave, with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave during any twelve (12) month period for:

- A. Medical leave due to an employee's own ²serious health condition.
- B. Care for a newborn child, an adopted child of the employee who is under the age of eighteen at the time of placement for adoption, or a newly placed foster child;
- C. Care for a spouse, parent or child of the employee who has a serious health condition; or
- D. Respond to a qualifying exigency occurring because the employee's spouse, son or daughter, or parent is on active duty or has been notified of pending active duty in support of a contingency operation.

NOTICE OF LEAVE

Eligible employees seeking to use FMLA leave must complete an Application for FMLA and Medical Leave and return it to the Human Resources Department.

1. 30-day advance notice of the need to take FMLA leave when the need is foreseeable;
2. Notice "as soon as practicable" when the need to take FMLA leave is not foreseeable ("as soon as practicable" generally means at least verbal notice to Human Resources within **one or two business days** of learning of the need to take FMLA leave);
3. Sufficient information to the employer to understand that the employee needs leave for FMLA-qualifying reasons (the employee need not mention FMLA when requesting leave to meet this requirement, but may only explain why the leave is needed); and,
4. Where the employer was not made aware that an employee was absent for FMLA reasons and the employee wants leave counted as FMLA leave, timely notice (generally within **two business days** of returning to work) that leave was taken for FMLA-qualifying reason.

(For Maternity Leave- please refer to the Maternity Leave Section)

¹ Unpaid Leave – If employee has accrued paid leave they will be required to use it and it will run concurrently with the 12 work weeks of FMLA.

² Serious Health Condition (as per RCW 49.78.020): An illness, injury, impairment, or physical or mental condition that involves (a)
Inpatient care in a hospital, hospice, or residential medical care facility;

(b) Continuing treatment by a health care provider.

Please see RCW for extended definitions.

- This definition is specific to A & C above; it is not the definition of "serious illness or injury for a covered veteran".

JOB RESTORATION FOLLOWING APPROVED FMLA LEAVE

Upon return from FMLA leave, an employee must be restored to his or her original job, or to an **“equivalent”** job, which means virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions.

In addition, an employee’s use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using (but not necessarily during) FMLA leave.

“Key” Employee Exception: Under limited circumstances where restoration to employment will cause “substantial and grievous economic injury” to its operations, an employer may refuse to reinstate certain highly-paid, salaried “key” employees. In order to do so, the employer must notify the employee in writing of their status as a “key” employee (as defined by FMLA), the reasons for denying job restoration, and provide the employee a reasonable opportunity to return to work after so notifying the employee.

Reinstatement of an employee returning from FMLA leave need not occur if:

1. The specific job is eliminated by a bona fide restructuring, or a reduction-in-force resulting from lack of funds or lack of work,
2. An employee on FMLA leave takes a position with another employer outside the home, or
3. The employee fails to provide the required notice of intent to take FMLA leave or fails to return on the established ending date of leave. If an employee fails to return from FMLA leave, the district may recover the costs of the employee’s health benefits paid during the leave.

Instructional staff may be required to delay their return from FMLA leave to the beginning of the next semester under the following circumstances:

1. If FMLA leave begins five or more weeks before the end of the semester, the leave is for more than three weeks, and the employee would otherwise return to work within three weeks of the end of the semester.
2. If FMLA leave begins less than five weeks before the end of the semester, the leave is for more than two weeks, and the employee would otherwise return to work within two weeks of the end of the semester.

If FMLA leave begins three or fewer weeks before the end of the semester and the period of leave is more than five working days.

EMPLOYEE’S OWN SERIOUS HEALTH CONDITION

When an employee requests FMLA, the superintendent may require written verification from the employee’s health care provider.

The district may obtain the opinion of a second health care provider, at district expense, concerning any information pertinent to the employee’s leave request. If the opinions of the health care providers differ on any matter determinative of the employee’s eligibility for FMLA leave, the two health care providers will select a third provider, whose opinion, obtained at the employer’s expense, will be conclusive.

MATERNITY LEAVE

Leave taken for newborn or adopted childcare will be completed within one year after the date of birth or placement for adoption. FMLA leave authorized under this policy must be taken full-time and consecutively unless an alternative schedule is approved by the superintendent or where intermittent or reduced leave is medically necessary.

The district will grant leave upon the same terms to male employees as is available to female employees upon the birth or adoption of the employee's child. Leave will be granted upon the same terms to employees who become adoptive parents or stepparents, at the time of birth or initial placement for adoption of a child under the age of six, as is available to employees who become biological parents. Such leave is available only when the child lives in the employee's household at the time of birth or initial placement.

If both parents of a newborn or newly adopted child are employed by the school district, they will be entitled to a total of twelve workweeks of FMLA leave during any twelve month period, and leave will be granted to only one parent at a time.

There is no pooling effect for spouses if the FMLA leave is related to a serious health condition.

Washington State Family Leave Act also allows for time to be taken before and after the 12 weeks of FMLA if medically necessary. RCW 49.78. Contact the Human Resources Department for more information.

A Leave of Absence may be requested for more time off (after the 12 work weeks of FMLA), approval will be at the discretion of the superintendent based upon consideration of educational program needs and the desires of the staff member, together with the recommendation of her personal physician or licensed practitioner. If the employee does not want to return to work at the end of 12 weeks and an additional Leave of Absence is not approved, they can resign.

Notice Required:

Pregnancy: A pregnant staff member is requested to notify her immediate supervisor and the Human Resources Department by the beginning of the fourth month of pregnancy by completing the FMLA Application.

Adoption: Employees' adopting a child are requested to notify their immediate supervisor and the Human Resources Department 30 days prior to the adoption (if possible) by completing the FMLA Application.

Foster Care: Employees' who are Foster Parents are requested to notify their immediate supervisor and the Human Resources Department as soon as practicable of the placement of a foster child both verbally and by completing the FMLA Application.

Employment Conditions:

Working during Pregnancy: A pregnant staff member may continue working as long as she is capable of performing her normal duties.

Return to Work: The staff member may return to work when physically able to perform her duties. If the staff member would like to return earlier than stated in the FMLA Application she will give as much advance notice as possible but no less than 2 days. A written release from the staff member's

personal physician stating she may return to work will be required. The written release needs to include whether her return will be with or without restrictions and if there are restrictions, list what they are.

The staff member will return to her duties following an extended leave of absence on the date approved by the superintendent unless a Leave of Absence or Washington State FLA has been requested and approved.

MILITARY

An eligible employee will be granted up to a total of 12 workweeks of unpaid leave during any 12-month period a qualifying exigency or to be a military caregiver.

Qualifying Exigency

Qualifying exigencies may arise when an:

- a. For a “qualifying exigency” arising because an employee’s spouse, son, daughter, or parent is on covered active duty in a foreign country (or has been notified of an impending call or order to covered active duty in a foreign country) in the ³US Armed Forces;
- b. To address familial issues, or for the employee to care for the military member’s parent who is incapable of self-care where those activities arise (i.e., the need for this care) from the military member’s covered active duty, or up to 15 calendar days during a Rest & Recuperation (R&R) leave.

Military Caregiver Leave

An employee who is providing care to their spouse, son or daughter, parent or next of kin, who is a ⁴covered service member and has a ⁵serious injury or illness is entitled to twenty six (26) weeks of unpaid leave in a 12 month period to care for the service member. If more than one FMLA member is employed by the school district and FMLA eligible they will be entitled to a total of twenty six (26) weeks and leave will be granted to one employee at a time.

³ US Armed Forces includes the Regular Armed Forces (active duty), the National Guard and Reserves.

⁴ A Covered Service Member is:

- a) A member of the Armed Forces, National Guard or Reserves undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is on the temporary disability retired list for a serious injury or illness, OR;
- b) A veteran undergoing medical treatment, recuperation, or therapy, having been discharged or released under conditions other than dishonorable at any time during the period of five years preceding the start of FMLA leave.

⁵ Serious Injury or Illness:

- a) One incurred in the line of duty on active duty in the Armed Forces (or pre-existing and aggravated in the line of duty) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating, OR;
- b) For Veterans, one incurred in the line of duty on active duty (or pre-existing and aggravated in the line of duty), manifesting before or after the member became a veteran.

Legal References: Chapter 49.78 RCW FMLA Leave
WAC 162-30-020 Pregnancy, childbirth, and pregnancy related conditions
US Department of Labor: 29 CFR Part 825 The FMLA and Medical Leave Act
of 1993

Adoption Date: December 12, 2016
Clarkston School District