

Regulation GBD-R

Las Cruces Public Schools

Related Entries:

Responsible Office: Associate Superintendent for Human Resources Department

Family and Medical Leave Act (FMLA)

I. PURPOSE

To implement the policy of the Board of Education that the FMLA provides a means for employees to balance their work and family responsibilities.

II. DEFINITIONS

1. *“Eligibility” means* all employees who:
 - a. Have worked a minimum of 1,250 hours during the preceding twelve (12) month period, which may or may not be consecutive, but only to the extent required by law, and
 - b. Have been employed by the District for at least twelve (12) month period.
2. *“FML” means* family medical leave.
3. *“Rolling 12-month period measured backward” means* a 12-month period measured backward from the date an employee uses any FMLA leave. Under the “rolling” 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months. Reference page 7 for examples.
4. *“Year” means* twelve (12) months on a rolling calendar basis, calculated from the date that the leave begins.

III. PROCESS

- A. FML, whether regular or intermittent, may be paid up until the time that all employee’s accumulated leave has been exhausted and non-paid, thereafter. Application for FML will be required after the employee has been absent for five consecutive days. Notwithstanding the provisions set forth below, some restrictions also apply to certain employee requests for FML, as provided in Section J of this regulation.
- B. FML will be granted to an employee who has identified and substantiated an eligible personal qualifying event or condition, or a qualifying event or condition for an eligible family member which will require a temporary short-term release from Las Cruces Public Schools responsibilities. FML is not to exceed twelve (12)

weeks per rolling year as provided for above. FML may be taken for one or more of the following qualifying events or conditions:

- a. For the birth of a son or daughter and to care for a newborn child, if the leave is completed by the child's first birthday.
- b. Placement of the child with the employee for adoption or foster care, if the leave is completed by one year after the initial placement.
- c. To care for a spouse, child or parent of the employee who requires such care because of a serious health condition.
- d. Because an employee has a serious health condition which renders him unable to perform the functions of the employee's job.

C. To be eligible means all employees who:

- a. have worked a minimum of 1,250 hours during the preceding twelve (12) month period, which may or may not be consecutive, but only to the extent required by law, and
- b. have been employed by the District for at least a twelve (12) month period.

D. FML shall not exceed twelve (12) weeks within a twelve-(12) month rolling year (as defined above), including the concurrent use of any accrued accumulated sick leave, personal leave, paid personal leave and annual leave currently granted by the District and which is used in a manner consistent with the terms of the respective negotiated agreement. Notwithstanding the provisions set forth below, some restrictions also apply to certain employee requests for FML, as provided in Section J of this regulation.

- a. When FML is requested for conditions outlined in B.c. and B.d. above, the total combined leave may not exceed twelve (12) weeks unless combined with additional approved accrued paid leave as provided for by the respective negotiated agreement. The use of accrued paid leave for a qualifying event or condition will reduce the amount of FML subsequently available to an employee.
- b. An employee may request intermittent FML, which may be paid or non-paid.
 - i. If FML is required because of the employee's own serious health condition or the serious health condition of a child, spouse or parent of the employee, it may be taken intermittently if it is medically necessary.

- ii. An employee taking FMLA intermittently may be required to transfer to an alternate assignment for which the employee is qualified to better accommodate the recurring period of intermittent leave. The employee will receive equivalent pay and benefits.
 - c. The District will continue to contribute its portion of the appropriate group health insurance coverage in force at the time the leave begins during eligible non-paid FMLA. The employee must pay the required monthly contribution, by check, to the appropriate insurance administrator. If the employee fails to return from leave, the District may recover (as provided for in the Family and Medical Leave Act of 1993, as amended or recodified in the future) any premium that the District has paid for maintaining group health insurance coverage during FMLA from the employee.
- E. When FMLA is requested an employee shall complete a written leave request for FMLA (Form #105) at least thirty (30) days prior to the effective date of the FMLA unless a medical emergency precludes such advance notice. When the need for FMLA is not foreseeable, the employee will submit a written request for FMLA to the appropriate administrator, Human Resources Department, as soon as it is determined leave is necessary. The employee must submit necessary documentation to substantiate the need for FMLA at the time of the request. If the need for FMLA is not foreseeable, the employee must submit proper medical certification within fifteen (15) days of the request or the FMLA may be denied.
- F. The request for a medical FMLA shall be accompanied licensed medical healthcare provider's (HCP) statement. The HCP's statement must be submitted on Form #105 and must outline the need for the employee to be absent, the date on which the serious health condition commenced, the probable duration of the condition, the appropriate medical facts regarding the condition and other pertinent medical facts.

If the FMLA is for a serious health condition of the employee, the HCP's certification must include a statement that the employee is unable to perform the essential functions of his or her job and all other required information.

If the FMLA is to care for an eligible family member, the medical statement must also state that the employee is required to assist in patient care of the spouse, child or parent of the employee and the amount of time required for such care.

- a. Serious health condition is defined as an illness, injury or impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider which satisfies the requirements of law. Unless complications arise which satisfy the meaning of "serious health condition," the common cold, flu, earaches, upset stomach, minor ulcers, headaches, routine dental or orthodontia problems, periodontal disease, etc., **do not qualify for FMLA.**

- b. If intermittent FML is requested, the medical statement must also include the dates on which treatment is expected to be given, the duration of treatment, and that such treatment is not available at a time which would not require leave from duty.
 - c. The District may, at its expense, request a second opinion that FML is necessary. A third medical opinion by a doctor, jointly designated by the District and the employee, may be obtained, at the District's expense, if the second opinion conflicts with the first.
 - d. When FML is requested for an employee's serious health condition, before such leave expires the employee must provide documentation to the Human Resources Department from the original certifying health care provider (Form #105A) certifying that the employee is able to resume work. An employee on FML for a serious health condition who does not provide the District the necessary return-to-work certification prior to the date of their scheduled return may not return to work, must apply for an appropriate leave of absence, resign, or will be subject to termination or discharge, as an employee cannot be absent without leave.
 - e. If the FML is to care for a newborn child or adopted/foster child, documentation (i.e. legal adoption document) must accompany the request for FML.
 - f. The FML request must be submitted in writing to and approved by a Human Resources Department administrator only.
 - g. Calculation for the amount of FML available begins when the qualifying event commenced; whether accrued earned leave or non-paid leave was taken.
- G. An employee who takes FML does not earn service credit toward retirement and does not accumulate other benefits during the period of non-paid leave.
- H. When spouses are employed by the District, the combined amount of FML necessary for recuperation from childbirth, or at the actual time of adoption or placement of a child for both employees will be limited to a total of twelve (12) weeks. For other FML, as specified in B.c. or B.d., each spouse is treated individually. Use of accumulated earned leave will be handled in a manner consistent with the respective negotiated agreement.
- I. If the serious health condition of the employee or eligible family member results in the need for leave in excess of a combined total of twelve (12) weeks (concurrent accrued paid leave and FML) and sufficient accumulated leave is not available to extend the absence, the employee must request an appropriate leave of absence, return to work, or resign from the District.

- J. Certain restrictions for FML apply to requests by an employee employed principally in an instructional capacity.
 - a. If such leave would be for a period of time greater than twenty percent (20%) of the total number of working days in the school year when taken on an intermittent basis, the District may require the employee to take leave for periods of a particular duration or may temporarily transfer the employee to an alternate position for which the employee is qualified and which would better accommodate recurring periods of leave and which has equivalent pay and benefits.
 - b. If such leave would be taken near the conclusion of an academic term and if the eligible employee begins leave more than five (5) weeks prior to the end of an academic term, the District may require the employee to continue taking leave until the end of the academic term if the leave is of at least three (3) weeks duration and the return to employment would occur during the three (3) week period before the end of the term.
 - c. If such leave is for a purpose other than the employee's own serious health condition and would commence less than five (5) weeks prior to the end of the academic term, the District may require the employee to continue taking leave if the leave is greater than two (2) weeks duration and the return to employment would occur during the two- (2) week period before the end of such school term.
 - d. If the leave is for purposes other than the employee's own serious health condition and would commence less than three (3) weeks prior to the end of the academic term and is greater than five (5) working days, the District may require the employee to take leave until the end of the academic term.
- K. Employees returning from FML may be restored to the same position or be assigned to an equivalent position. The District is not obligated to return the employee to the position held by the individual prior to FML.
 - a. Employee must report to HR before returning to previous work site.
 - b. Employee must present documentation that certifies their ability to return to work (form #105A).
- L. The District requires an employee on FML to report periodically on the employee's leave status and intention to return to work with a release from the attending HCP.
- M. A "key employee" is on whose compensation is within the highest ten percent (10%) of the workforce of the District. The District may deny the restoration of benefits and employment to a "key employee" if:

- a. The Superintendent or designee determines that such denial is necessary to prevent substantial and grievous economic injury to the District;
 - b. The Superintendent or designee notifies the “key employee” in writing or in person at the time the Superintendent determines such injury would occur;
 - c. In any case in which the FML has commenced and “the key employee” decided not to return to work after receiving such notice in writing or in person.
- N. An employee on FML is not entitled to unemployment compensation benefits during the leave period.
- O. This regulation is based upon the regulations for the United States Department of Labor's Family and Medical Leave Act of 1993 (FMLA), as amended and recodified in the future. It is not intended to be the complete explanation of the FMLA. An employee may review the regulations by securing a copy of the respective Federal Register. The federal regulations will be used as a source to clarify implementation, when necessary, and the decisions made by the appropriate administrator, Human Resources Department, regarding an employee's eligibility for FML will be based upon this regulation and the applicable regulations.
- P. An employee on FML who fails to return to the assigned position following expiration of the leave, and who does not qualify for additional leave, may be terminated or discharged at the conclusion of the FML since failure of an employee to report for duty is cause for termination or dismissal. An employee who fails to return may be liable for all group health insurance premiums paid by the District on behalf of the employee while on FML without pay.
- Q. Special provisions for FMLA Service member Family Leave
- a. An eligible employee of the District may take up to twelve (12) workweeks of FMLA leave measured backward for each employee from the first time such employee uses leave under FMLA, without pay, because of any qualifying exigency, as the U.S. Secretary of Labor shall by regulation determine, arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.
 - b. An eligible employee of the District may take up to twenty-six (26) workweeks of FMLA to care for a covered service member who is the spouse, son, daughter, parent, or next of kin of a covered service member. A “covered service member” is a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is

otherwise on the temporary disability retired list, for a serious injury or illness. The leave described to care for a covered service member shall only be available during a single twelve (12) month period.

- c. The aggregate number of workweeks of leave to which both the husband and wife working for the District may be entitled under covered service member family leave combined with leave as described in paragraph Q(a), above, shall be limited to twenty-six (26) workweeks during only one (1) twelve (12)-month period.
- d. An employee must provide at least thirty (30) days notice before FMLA service member Family Leave is to begin if the need for the leave is foreseeable. When thirty (30) notice is not practicable, notice must be given as soon as practicable.
- e. Certification of active military duty or call to active duty in support of a contingency operation for purpose of receiving FMLA Service member Family Leave shall be required under the same conditions as FMLA certification for other FMLA leave. In the case of continuation, recurrence, or onset of a serious health condition of the covered service member being cared for by an employee and the employee is unable to return to work, certification issued by the health care provider of the service member with the serious health condition shall be required to support the inability of the employee to return to work.
- f. All other provisions of the FMLA policy shall apply to the FMLA Service member Family Leave.

Elizabeth J. Marrujo

*Approved, Associate Superintendent for
Human Resources Department*

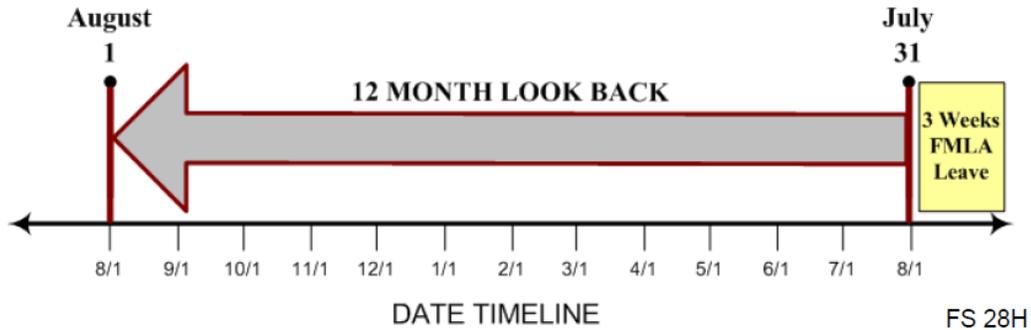
August 15, 2014

Date Approved

History: Formerly Procedure 310; Revised 06.20.06; Revised 08.15.14

Legal Reference: 29 U.S.C. § 2601, *et seq.*; 29 C.F.R. § 825

- Example 1:* Michael requests three weeks of FMLA leave to begin on July 31st. The employer looks back 12 months (from July 31st back to the previous August 1st) to see if any FMLA leave had been used. Michael had not taken any previous FMLA leave, so he is entitled to the three weeks he requested and has nine more weeks available.



- Example 2:* Patricia requests two weeks of FMLA leave to begin on November 1st. The employer looks back 12 months (from November 1st back to the previous November 2nd) and sees that Patricia had taken four weeks of FMLA leave beginning January 1st, four weeks beginning March 1st, and three weeks beginning June 1st. Patricia has taken 11 weeks of FMLA leave in the 12-month period and only has one week of FMLA-protected leave available. After Patricia takes the one week in November, she can next take FMLA leave beginning January 1st as the days of her previous January leave “roll off” the leave year.

