

FAMILY AND MEDICAL LEAVE

This policy applies to leave under the federal Family and Medical Leave Act (FMLA), the Maine Family Medical Leave Act (Maine FMLA) and the Maine Family Care Act.

PURPOSE

The Bangor School Department recognizes the occasional need for time away from work due to an employee's own serious health condition and to participate in early child rearing and the care and support of family members who have serious health conditions or military service obligations. This policy is intended to assist employees of the School Department in better balancing those family needs with workplace demands.

The provisions of this policy shall not supersede any state or local law or collective bargaining agreement that provides greater employee leave benefits and rights than are offered in this policy, nor shall the provisions and benefits detailed in this policy be diminished by any collective bargaining agreement.

APPLYING FOR A FAMILY LEAVE

Employees should complete and submit for supervisory approval, a written request for family leave of absence. (Form GCBD – Request for Leave). This request should conform to the notice and certification requirements of this policy.

The payroll department must be notified using the appropriate documentation tool (Employee Information form, timecard/sheet, etc.) of any changes in an employee's wages or salary. For example, if any of the leave is paid, payroll must be informed when to initiate and cease pay.

A copy of any documentation concerning an employee's family leave will be placed in the employee's personnel file. Documentation concerning employee medical information shall be kept separate from the personnel file.

CONCURRENT LEAVE

Leave under the FMLA, Maine FMLA, and Maine Family Care Act will run concurrently to the extent allowed by law.

SEVERABILITY

The invalidity or unenforceability of any provision of this policy shall not affect the validity or enforceability of any other provision of this policy or any other application of such provisions.

COMMUNICATION

This policy will be communicated by the School Department to all School Department employees. The communication vehicles used should ensure employees understand the benefits and responsibilities under this policy.

FEDERAL FAMILY AND MEDICAL LEAVE ACT

ELIGIBILITY

All School Department employees are eligible for FMLA leave if they have been employed by the School Department for at least twelve (12) months, and have been employed for at least 1,250 hours of service during the twelve (12) month period immediately preceding the commencement of the leave.

Employees applying for and granted FMLA leave are required to meet the notification and documentation



requirements outlined in this policy. Failure to meet these requirements may result in the denial or revocation of FMLA leave.

PROCEDURAL DETAIL

A. Duration and Basis of Leave

1. Eligible employees are entitled to up to twelve (12) workweeks of leave during any twelve (12) month period for one or more of the following reasons:
 - Birth of a child;
 - Placement of a child with an employee for adoption or foster care;
 - An employee's own serious health condition;
 - To care for a spouse, child or parent with a serious health condition;
 - A qualifying exigency arising out of the fact that an employee's spouse, child, or parent is a covered military member on active duty or call to active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation.
2. Eligible employees are entitled to up to twenty-six (26) workweeks of leave during any twelve (12) month period for the following reasons:

To care for a covered military member with a serious injury or illness if the employee is the military member's spouse, child, parent or next of kin.
3. Eligibility for leave for the birth or placement of a child expires twelve (12) months after the child's birth or placement.
4. If both an employee and his/her spouse are employed by the School Department, their combined time off may not exceed twelve (12) work weeks during any twelve (12) month period for the birth or placement of a child, or to care for a parent with a serious health condition. Each spouse is, however, eligible for the full twelve (12) weeks within a twelve (12) month period to care for a child or spouse with a serious health condition. If both an employee and his/her spouse are employed by the School Department, their combined time off may not exceed twenty-six (26) weeks in a single twelve (12) month period if the leave is to care for a covered military member with a serious injury or illness, and for the birth or placement of a child or to care for a parent with a serious health condition.
5. For purposes of determining the amount of leave to which an employee is entitled, the twelve (12) month period shall be measured backward from the date an employee uses any FMLA leave. The only exception to this rule is for leave to care for a military member with a serious injury or illness, in which case the twelve (12) month period shall be measured forward from the first day of qualifying leave.

B. Intermittent or Reduced Schedule Leave

1. Leave may be taken on an intermittent or reduced schedule basis if medically necessary for the serious health condition of the employee or the employee's spouse, child, or parent.
2. Intermittent or reduced schedule leave cannot be taken for birth, adoption or foster care purposes unless the employee and the School Department agree otherwise.
3. The School Department may require a non-instructional employee on intermittent or reduced schedule leave to transfer temporarily to an available alternative position for which the employee is qualified if the position has equivalent pay and benefits and better accommodate recurring



periods of leave than the employee's regular position.

4. If an eligible instructional employee requests intermittent or reduced schedule leave due to their own or a family member's serious health condition, if the leave is foreseeable based on planned medical treatment, and if the employee would be on leave for more than 20 percent of the total number of working days over the period that leave would extend, the School Department may require the employee to choose either to:
 - a. take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment, in which case the entire period of leave taken shall count as FMLA leave; or
 - b. transfer temporarily to an available alternative position for which the employee is qualified if the position has equivalent pay and benefits and better accommodates recurring periods of leave than the employee's regular position.

C. Leave by Instructional Employees Near the End of a Term

1. The School Department may require an instructional employee who begins taking leave more than five weeks before the end of a term to continue taking leave until the end of a term if:
 - a. the leave will last at least three weeks; and
 - b. the employee would return to work during the three-week period before the end of the term.
2. The School Department may require an instructional employee, who begins leave for a reason other than the employee's own serious health condition or a qualifying exigency during the five-week period before the end of a term, to continue taking leave until the end of the term if:
 - a. the leave will last more than two weeks; and
 - b. the employee would return to work during the two-week period before the end of the term.
3. The School Department may require an employee who begins leave for reasons other than the employee's own serious health condition or a qualifying exigency during the three-week period before the end of a term to continue taking leave until the end of the term if the leave will last more than five working days.
4. For purposes of these provisions, an academic "term" means the school semester that ends near the end of the calendar year and the school semester that ends near the end of spring each school year.
5. In the case of an instructional employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's leave entitlement.

D. Paid or Unpaid Leave

1. FMLA leave is without pay except in the following situations:
 - a. In cases of leave needed in order to care for the employee's serious health condition, the employee shall be required to substitute their accrued sick leave benefits. In the case of leave needed for the serious health condition of employee's qualifying family member, the employee must use any family sick leave days.



- b. Where the employee has accrued vacation leave or personal days, the employee may elect to use any of the accrued vacation or personal days for any part of the FMLA leave period;
- c. The employee is entitled to payment during the leave under a temporary disability plan;
- d. The employee is entitled to payment during the leave under workers' compensation laws.

E. Employee Notice and Scheduling Requirements

1. An employee requesting FMLA leave is required to give 30 days' notice before the date the leave is to begin, if the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member.
2. If thirty days' notice is not possible, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable.
3. When FMLA leave is related to a serious health condition, the employee must make a reasonable effort to schedule treatment(s) so as not to unduly disrupt the School Department's operations.

F. Medical Certification and Reporting Requirements

1. The School Department requires that FMLA leave related to a serious health condition be supported by a certification issued by the health care provider of the employee or the employee's spouse, son, daughter, or parent, as appropriate. A copy of this certification shall be provided to the School Department in a timely manner.
2. The certification shall be provided by the employee on the form entitled Bangor School Department Certificate of Health Care Provider, which is available from the Office of the Superintendent of Schools.
3. A health care provider representing the School Department may contact the employee's health care provider, with the employee's permission, for purposes of clarifying and establishing the authenticity of the medical certification.
4. If the School Department questions the validity of the certification, it may require, at the School Department's expense, that the employee obtain a second opinion. If the second opinion conflicts with the original opinion, the School Department may require, at its expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the School Department and the employee. This third opinion will be considered final and binding on both parties.
5. The School Department may require that the employee obtain subsequent recertifications on a reasonable basis.
6. The employee on a FMLA leave must notify his/her supervisor periodically of his/her status and intention to return to work. The supervisor has the authority to determine how often the employee must provide this notification, based on all of the relevant facts and circumstances related to the individual employee's leave situation.

G. Return to Work Certification



Prior to returning to work, any employee who is on FMLA leave due to his/her own serious health condition must provide certification from his/her healthcare provider that the employee is able to resume work. The return-to-work certification shall relate to the particular health condition that caused the employee's need for FMLA leave, and shall state that the employee is able to return to work. The cost of the return-to-work certification shall be borne by the employee.

H. Restoration to Position

1. When an employee returns to work following FMLA leave, he/she must be:
 - a. restored to the position held by the employee when the leave began; or
 - b. at the School Department's discretion, restored to an equivalent (not comparable or similar) position with equivalent employment benefits, pay, and other terms and conditions of employment. Any disputes as to what constitutes "equivalent" should be reviewed with the Superintendent's office.
2. If an employee would have been laid off had he/she not been on FMLA leave, any right to reinstatement would be no greater than it would have been had he/she not been on a leave of absence when the layoff occurred.

I. Effect on Accrued Benefits

Taking FMLA leave will not result in the loss of any employee benefit accrued prior to the date on which the leave began. However, vacation and sick leave benefits may not accrue during the period of leave. An employee will not accrue any right, benefit, or position of employment other than one which he/she would have been entitled to had a leave not been taken.

J. Continuation of Employee Benefits

1. An employee on FMLA leave may remain a participant in the School Department's employee benefit plans throughout the duration of the leave, as if actively employed. He/she will be required to pay the same cost of coverage as if actively at work.
2. If the employee fails to return to work at the conclusion of the leave, the School Department may require the employee to reimburse it for the full cost of health care coverage during any period of unpaid leave. However, the employee may not be asked to reimburse the School Department if he/she fails to return to work because of legitimate medical reasons or circumstances beyond the employee's control, or because of the continuation, recurrence, or onset of a serious health condition.

DEFINITIONS

- A. Employee Benefits – All benefits provided or made available to employees by the School Department, including group health, life, and short-term and long-term disability insurance; vacation; educational benefits; and pensions -- regardless of whether these benefits are provided by a practice or written policy.
- B. Parent – The biological parent of an employee, an individual who stood in place of the parent to that employee, or an employee who has day-to-day responsibility for caring for a child.
- C. Serious Health Condition – An illness, injury impairment; or physical or mental condition involving inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.



- D. Serious Illness or Injury – An injury or illness incurred by a covered military member in the line of duty on active duty that may render the military member medically unfit to perform the duties of his or her office, grade, rank or rating.
- E. Child – A biological, adopted, step- or foster child; a legal ward; or child of a person standing in the place of a parent. To qualify for FMLA leave to care for a child, the child must be under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability. A child need not be under 18 years of age for an employee to qualify for FMLA based on the child’s status as an active duty military member or call to active duty.
- F. Spouse – The husband or wife of the employee. This definition does not apply to unmarried domestic partners.
- G. Instructional Employee – An employee whose principal function is to teach and instruct students in a class, a small group or an individual setting, including athletic coaches, driving instructors and special education assistants. The term instructional employee does not include teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists or curriculum specialists. It also does not include cafeteria workers, maintenance workers or bus drivers.
- H. Equivalent Position – a position which is virtually identical to the employee's former position in terms of pay, benefits and working conditions. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.
- I. Qualifying Exigency – Includes the following:
- The need to address an issue that arises from the fact that a military member is notified of a call to active duty in support of a contingency operation seven or fewer days prior to the date of deployment;
 - To attend an official ceremony or event sponsored by the military and related to the call to active duty;
 - To attend family support or assistance programs or counseling related to the call to active duty;
 - To arrange for alternative childcare when necessitated by the call to active duty, or to provide childcare on an urgent, immediate need basis;
 - To enroll or transfer a child in a new school or to attend school meetings when necessitated by the call to active duty;
 - To make or update financial or legal arrangements to address the military member’s absence;
 - To spend time with a military member on short-term rest and recuperation leave (up to 5 days);
 - To attend post-deployment activities; or
 - To address issues arising from the death of a military member while on active duty.

MAINE FAMILY MEDICAL LEAVE ACT

ELIGIBILITY

All School Department employees are eligible for Maine FMLA leave if they have been employed by the School Department for at least twelve (12) consecutive months. Employees are required to meet the



notification and documentation requirements described below in order to be eligible for Maine FMLA.

PROCEDURAL DETAIL

A. Duration and Basis of Leave

Eligible employees are entitled to up to ten (10) workweeks of Maine FMLA leave during any two (2) year period for one or more of the following reasons:

- An employee's own serious health condition;
- The birth of a child, or a domestic partner's child;
- The placement of a child age 16 or younger with the employee or a domestic partner in connection with that child's adoption;
- To care for a child, domestic partner's child, parent, domestic partner, sibling, or spouse with a serious health condition;
- To donate an organ for transplant; or
- The death or serious health condition of a child, spouse, domestic partner, parent, sibling, or child, if that relative is a member of the state or federal armed forces and dies or incurs a serious health condition while on active duty.

For purposes of determining the amount of leave to which an employee is entitled, the two (2) year period shall be measured backward from the date an employee uses any Maine FMLA leave.

B. Intermittent or Reduced Schedule Leave

1. Maine FMLA leave may be taken on an intermittent or reduced schedule basis if medically necessary for an employee's serious health condition, for an organ transplant, or to care for a child, domestic partner's child, parent, domestic partner, sibling, or spouse with a serious health condition.
2. Intermittent or reduced schedule leave cannot be taken for the birth or adoption of a child unless the employee and the School Department agree otherwise.
3. The taking of leave intermittently or on a reduced leave schedule may not result in a reduction in the total amount of Maine FMLA to which the employee is entitled beyond the amount of leave actually taken.
4. If an employee requests intermittent leave or leave on a reduced leave schedule for a serious health condition of the employee or his/her child, domestic partner's child, parent, domestic partner or spouse, or for organ donation by the employee that is foreseeable based on planned medical treatment, the employer may require the employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that 1) has equivalent pay and benefits, and 2) better accommodates recurring periods of leave than the regular employment position of the employee.

C. Paid or Unpaid Leave

Any leave taken for Maine FMLA qualifying purposes, including leave taken under other applicable statutes, employment policies, and collective bargaining agreements or contracts, shall also be considered leave under Maine FMLA and shall be applied to an employee's 10-week Maine FMLA entitlement. When paid leave taken for Maine FMLA qualifying purposes is exhausted, the balance of Maine FMLA shall be unpaid.



D. Employee Notice Requirements

An employee requesting Maine FMLA shall provide at least 30 days' notice of the intended dates upon which the leave will commence and terminate, unless prevented by medical emergency from giving the required notice.

E. Medical Certification and Reporting Requirements

The School Department shall require certification from a physician to verify the amount of Maine FMLA leave requested. An employee who in good faith relies on treatment by prayer or spiritual means, in accordance with the tenets and practice of a recognized church or religious denomination, may submit certification from an accredited practitioner of those healing methods.

F. Return to Work Certification

An employee taking Maine FMLA leave for his/her own serious health condition shall be required to submit certification that he/she is fit to return to work and is able to perform the functions of the position.

G. Restoration to Position

Upon an employee's return to work from Maine FMLA leave, he/she will be restored to his/her previous position or to a position with equivalent seniority status, benefits, pay, and other conditions and terms of employment.

H. Benefits

During Maine FMLA leave, an employee shall be permitted to continue his/her medical insurance plan, providing the employee remits the monthly premium to the Superintendent's Office no later than the first day of the month for which the premium is due.

DEFINITIONS SPECIFIC TO MAINE FMLA

Domestic partner - The partner of an employee who is a mentally competent adult; has been legally domiciled with the employee for at least 12 months; is not legally married to or legally separated from another individual; is the sole partner of the employee and expects to remain so; is not a sibling of the employee; and is jointly responsible with the employee for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property.

Sibling - A sibling of an employee who is jointly responsible with the employee for each other's common welfare as evidenced by joint living arrangements and joint financial arrangements.

MAINE FAMILY CARE ACT

This section governs employee leave under Maine's Family Care Act, which sets forth circumstances in which employees may be allowed to use paid leave benefits for the care of an immediate family member.

Employees may use up to 40 hours of accrued, unused paid leave in a 12-month period for the purpose of caring for an immediate family member who is ill. The 12-month period shall be calculated based on the contract year for contractual employees and the fiscal year for all others. To the extent that an applicable collective bargaining agreement permits an employee to use 40 or more hours of paid leave annually to care for an immediate family member, the collective bargaining agreement shall govern.

Any employee electing to take Family Care Leave must apply such leave first against personal leave, and



if personal leave is unavailable against vacation leave, and if vacation leave is unavailable against sick leave, and if sick leave is unavailable against any undesignated paid leave.

Notice/verification of illness for leave to care for an ill family member shall be the same as that required for the employee's own illness. The employee must specify that leave is being taken to care for an immediate family member who is ill.

DEFINITIONS SPECIFIC TO MAINE FAMILY CARE ACT LEAVE

Immediate family member - An employee's child, spouse or parent.

Paid leave - Paid time away from work provided by the Bangor School Department as sick leave, vacation leave, personal leave, or undesignated paid time off. Paid leave does not include paid short-term or long-term disability, catastrophic leave or similar types of benefits.

Legal References: 26 U.S.C. § 201 *et seq.*
29 C.F.R. Part 825
26 M.R.S.A. § 843 *et seq.*
26 M.R.S.A. § 636

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