



# NEBO SCHOOL DISTRICT BOARD OF EDUCATION POLICIES AND PROCEDURES

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**SECTION:** G - Personnel  
**POLICY TITLE:** Family and Medical Leave Act of 1993  
**FILE No.:** GBEC  
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### **1. PURPOSE AND PHILOSOPHY**

The Family and Medical Leave Act of 1993 (FMLA), [29 U.S.C. § 2601, et seq.](#) and its implementing regulations, [29 CFR Part 825](#), grant eligible employees up to twelve (12) weeks of unpaid, job-protected leave per year for certain family and medical reasons and for a qualifying exigency as described herein. This policy outlines rights, responsibilities, and procedures related to FMLA leave. The FMLA statute and regulations provide more detailed descriptions and should be consulted when questions arise.

### **2. DEFINITIONS**

For purposes of this policy, the following definitions apply. The definitions are derived from federal regulations found at [29 CFR 825.102](#), which supersede any missing or conflicting provisions in this policy.

- 2.1. “Eligible employee”** means an employee who has been employed by the District for a total of at least 12 months on the date on which any FMLA leave is to commence and who has worked for the District for at least 1,250 hours during the immediately preceding twelve (12) month period prior to any request for leave under this policy.
- 2.2. “Employment benefits”** means all benefits provided by the District to its employees, such as group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pension or retirement benefits.
- 2.3. “Health care provider”** means a licensed doctor of osteopathy or medicine and others listed in the applicable regulation.
- 2.4. “Instructional Employee”**
  - 2.4.1.** means an employee whose principal function is to teach and instruct students in a class, small group, or individual setting and includes not only teachers but also coaches, driving instructors, and special education assistants such as signers for the hearing impaired;

- 2.4.2. does not mean teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, child nutrition workers, maintenance workers, bus drivers, or other primarily noninstructional employees.
- 2.5. **“Parent”** means the biological, adoptive, step, or foster parent of a child, or a child’s legal guardian who acts in the place of a parent.
- 2.6. **“Serious health condition”** means an illness, injury, impairment, or physical or mental condition that requires:
  - 2.6.1. Inpatient care consisting of an overnight stay in a hospital, hospice, or residential medical facility and subsequent treatment; OR
  - 2.6.2. Continuing treatments by a health care provider, which includes:
    - 2.6.2.1. Periods of inability to work more than three (3) consecutive calendar days that also involves treatment two (2) or more times by a health care provider or at least one (1) time which results in a regimen of continuing treatment;
    - 2.6.2.2. Any period of incapacity due to pregnancy or prenatal care;
    - 2.6.2.3. Any period of incapacity or treatment due to a chronic, serious health condition which:
      - 2.6.2.3.1. Requires periodic visits for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;
      - 2.6.2.3.2. Continues over an extended period of time (including recurring episodes of a single underlying condition); AND
      - 2.6.2.3.3. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
    - 2.6.2.4. A period of incapacity which is permanent or long-term due to a serious health condition for which treatment may not be effective, such as Alzheimer’s disease, severe stroke, or terminal stages of a disease; OR
    - 2.6.2.5. Any period of absence to receive multiple treatments by a health care provider for restorative surgery or for treatment leading to incapacity for more than three (3) consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).
- 2.7. **“Son or daughter”** means a biological, adopted, or foster child; a stepchild; or a legal ward of a person who acts as parent. A child is: (a) less than eighteen (18) years of age; or (b) older than eighteen (18) years, but incapable of self-care due to mental or physical disability.
- 2.8. **“Spouse”** means a legal husband or wife.

### 3. REASONS FOR TAKING LEAVE

- 3.1. The District will grant leave, as described in section 4, to eligible employees for any of the following reasons:
  - 3.1.1. For the birth of a son or daughter, and to care for the newborn child.

- 3.1.2. For placement with the employee of a son or daughter for adoption or foster care.
- 3.1.3. To care for the employee's spouse, son or daughter, or parent who has a serious health condition.
- 3.1.4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.
- 3.1.5. Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status).
- 3.1.6. To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember.
  - 3.1.6.1. A covered servicemember means a current member of the armed forces, as defined in the FMLA regulations, 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, or a covered veteran as defined in the FMLA regulations.
  - 3.1.6.2. A serious injury or illness means an injury or illness sustained in the line of duty on active duty, or that was aggravated by service in the line of duty on active duty and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.
- 3.2. The right to take leave under FMLA applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption, or foster care of a child.
- 3.3. An expectant mother may take FMLA leave before the birth of the child for prenatal care if her condition makes her unable to work.

#### **4. AMOUNT OF LEAVE**

- 4.1. An eligible employee is entitled to a total of 12 workweeks of leave during any 12-month period for any of the reasons listed in paragraphs 3.1.1 through 3.1.5.
- 4.2. An eligible employee is entitled to a total of 26 workweeks of leave during a single 12-month period under subsection 3.1.6 to care for the covered service member.
- 4.3. During the single 12- month period described in paragraph 4.2, the eligible employee is entitled to a combined total of 26 workweeks of all types of FMLA leave.
- 4.4. To calculate an employee's available FMLA leave, the District uses a rolling 12-month period measured backward from the date the employee uses any FMLA leave.
- 4.5. Employees eligible for FMLA leave who have accrued sick leave are required to substitute the accrued sick leave for FMLA leave, consistent with [29 CFR 825.207](#), so that the sick leave and FMLA leave run concurrently.
  - 4.5.1. Under the regulations, the term "substitute" means that the paid sick leave will run concurrently with the unpaid FMLA leave, so that both are used simultaneously. Thus, a single absence that qualifies for both sick leave and FMLA leave will use up both a day of accrued sick leave and a day of allotted FMLA leave.
  - 4.5.2. The requirement to take sick leave and FMLA leave concurrently is applicable only when the condition for which the FMLA leave is taken also qualifies for sick leave.

- 4.6. FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.

## 5. INSTRUCTIONAL EMPLOYEES

- 5.1. If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered servicemember, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the District may require the employee to choose either to:
- 5.1.1. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
  - 5.1.2. Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.
- 5.2. If an eligible instructional employee begins FMLA leave more than five weeks before the end of a semester, the District may require the employee to continue taking leave until the end of the semester if
- 5.2.1. The leave will last at least three weeks, and
  - 5.2.2. The employee would return to work during the three-week period before the end of the term.
- 5.3. If an eligible instructional employee begins FMLA leave during the five-week period before the end of a semester because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember, the District may require the employee to continue taking leave until the end of the term if
- 5.3.1. The leave will last more than two weeks, and
  - 5.3.2. The employee would return to work during the two-week period before the end of the term.
- 5.4. If an eligible instructional employee begins leave during the three-week period before the end of a semester because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember, the District may require the employee to continue taking leave until the end of the semester if the leave will last more than five working days.
- 5.5. If an employee is required to take leave until the end of a semester under subsection 5.2, 5.3, or 5.4, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement.
- 5.6. Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. An instructional employee who is on FMLA leave at the

end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

## **6. ADVANCE NOTICE AND MEDICAL CERTIFICATION**

**6.1.** The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

**6.1.1.** The employee ordinarily must provide thirty (30) days advance notice when the leave is “foreseeable.”

**6.1.2.** The District may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer’s expense) and a fitness for duty report to return to work.

**6.1.3.** The employee shall make a reasonable effort to schedule treatment so as not to unduly disrupt the operations of the District.

**6.1.4.** Medical certification must include the following:

**6.1.4.1.** The date on which the serious health condition commenced.

**6.1.4.2.** The probable duration of the condition.

**6.1.4.3.** If additional treatments will be required for the condition, an estimate of the probable number of such treatments.

**6.1.4.4.** Which part of the definition of “serious health condition,” if any, applies to the patient’s condition and the medical facts which support the certification, including a brief statement as to how the medical facts meet the criteria of the definition.

**6.1.4.5.** If medical leave is required for the employee’s absence from work because of the employee’s own condition (including absences due to pregnancy or a chronic condition), whether the employee:

**6.1.4.5.1.** Is unable to perform work of any kind.

**6.1.4.5.2.** Is unable to perform any one or more of the essential functions of the employee’s position, including a statement of the essential functions the employee is unable to perform, based on either information on a statement from the employer of the essential functions of the position or, if not provided, discussion with the employee about the employee’s job functions.

**6.1.4.5.3.** Must be absent from work for treatment.

**6.1.4.5.4.** A statement that the serious medical condition prevents the employee from performing the tasks of the position or that requires the employee to attend and care for a son, daughter, spouse, or parent.

## **7. JOB BENEFITS AND PROTECTION**

**7.1.** For the duration of FMLA leave, the employer must maintain the employee’s benefits, including health coverage under any “group health plan,” as described above.

- 7.2. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- 7.3. The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.
- 7.4. If an employee fails to return to work after leave expires for reasons other than continuation, recurrence, or onset of a serious health condition of the employee, son, daughter, or spouse, then the District may recover the premium paid for maintaining coverage for the employee during the leave period.

## 8. UNLAWFUL ACTS BY EMPLOYERS

- 8.1. FMLA makes it unlawful for any employer to:
  - 8.1.1. Interfere with, restrain, or deny the exercise of any right provided under FMLA; OR
  - 8.1.2. Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

## 9. ENFORCEMENT

- 9.1. The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- 9.2. An eligible employee may bring civil action against an employer for violations.
- 9.3. FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

## 10. NOTICE

- 10.1. The District shall post in a conspicuous place on school premises or websites a notice of rights under this policy. The notice must meet the criteria found in [20 CFR 825.300](#).
- 10.2. Upon receipt of a written request for FMLA leave, the District will provide the employee written notification of the status of the leave request within 5 working days.

## 11. ADDITIONAL INFORMATION

For additional information, employees may contact the nearest office of the Wage and Hour Division, which can be found at [www.dol.gov/whd](http://www.dol.gov/whd).

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### **EXHIBITS**

None

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### **REFERENCES**

Family and Medical Leave Act of 1993, [29 U.S.C. § 2601, et seq.](#) & [29 CFR Part 825](#).

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### **FORMS**

None

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### **HISTORY**

Revised: 9 March 2022 – updated definitions consistent with federal regulations; added provisions related to instructional employees; reorganized some sections; added notice provisions.  
Revised: 12 November 2008 – repealed and replaced.  
Adopted 12 January 1994.

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