

VENTURA COUNTY OFFICE OF EDUCATION

SUPERINTENDENT POLICY NO. 4161.8

ADOPTED: 02/14/96

CLASSIFICATION: Personnel

REVISED:

SUBJECT: Family and Medical Leave (FMLA)

AUTHORITY and Reference: Federal Family and Medical Leave Act of 1993, California Family Rights Act of 1991 (G.C. 12945.2) Amended by AB 1460, Chapter 827, 1993.
EFFECTIVE DATE: August 5, 1993

Length of Leave Entitlement: An eligible employee is entitled to a total of 12 workweeks of leave during any 12 month period. Entitlement to leave for the birth or placement of a child for adoption or foster care expires 12 months after the birth or placement.

The 12 month period is measured backward from the date of leave use. All leave usage which qualifies under the terms of the FMLA leave shall be counted towards the available 12 workweeks within a 12 month period, including intermittent and reduced workload leaves.

Reduced workload leave entitlement is calculated on cumulative hours of leave taken, up to the number of hours equivalent to 12 times the number of hours normally worked weekly.

Length of Employment Eligibility: Any employee who has been employed for at least 12 months AND who has been in a paid status for at least 1250 hours during the 12 month period immediately preceding the commencement of the leave is eligible for family and medical leave.

Eligible Purposes: Leaves for any of the following purposes qualify for Family and Medical Leave:

The birth of a child of an employee, and to care for a newborn;

The placement of a child with an employee in connection with the adoption or foster care of a child by an employee;

Leave to care for a child, parent or a spouse who has a serious health condition; or

Leave because of serious health condition that makes the employee unable to perform the essential functions of his/her position.

Both father and mother may take leave for the birth, or placement for adoption or foster care, of a child. In addition, an expectant mother may be entitled to leave prior to the birth of a child for prenatal care purposes if her condition makes her unable to work. Circumstances may also require leave prior to the actual placement of a child for adoption or foster care. For example, to attend counseling sessions, appear in court or consult with his/her attorney in connection with the placement of a child.

If both the husband and wife are employed by the Ventura County Office of Education, the aggregate number of workweeks of leave to which both are entitled is limited to 12 workweeks during any 12 month period for the birth or placement for adoption or foster care of the employees' child, or to care for a parent with a serious health condition. This limitation does not apply to leave taken by either spouse to care for the other who is seriously ill and unable to work, to care for a child with a serious health condition, or for his or her own serious illness.

Leave to care for a family member includes both physical and psychological care, including providing comfort and reassurance which would be beneficial to a seriously ill child or parent receiving inpatient care; or, making arrangements for third-party care of a family member.

A "serious health condition" includes an illness, injury, impairment, or physical or mental condition that involves:

- Any period of incapacity or treatment in connection with or in consequent to a hospital, hospice or residential medical care facility;

- Any period of incapacity requiring absence from work, school or regular daily activities of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or

- Continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days or for prenatal care.

- Continuing supervision by a health care provider when the parent, child, spouse or employee are severely ill but may not be receiving continuing active care or treatment (e.g., when suffering from Alzheimer's, late stages of cancer or a severe stroke).

"Continuing treatments" include:

- Two or more visits to a health care provider;

- Two or more treatments by a health care practitioner (e.g., physical therapist) on referral from, or under the direction of a health care provider; or

- A single visit to a health care provider that results in a regimen of continuing treatment under the supervision of the health care provider (e.g., medication therapy).

Intermittent leave or reduced work schedule leaves may be allowed when the absence required is not due to a condition that is incapacitating at that point in time (e.g. appointments for cancer treatments, physical therapy, prenatal care). When leave is taken because of the birth or the placement of a child for adoption or foster care, intermittent leave or reduced workload schedule will not be approved if the intermittent leave or reduced workload schedule will adversely impact the office or department of the employee.

If an employee requests intermittent leave or reduced workload leave to care for a spouse, child or parent or for the employee's own serious health condition, the employee may be required to temporarily transfer to an available alternative position for which the employee is qualified and that:

- a). has equivalent pay and benefits; and
- b). better accommodates recurring periods of leave than the regular position of the employee.

Voluntary or cosmetic treatments which are not medically necessary are not "serious health conditions," unless inpatient hospital care is required. Absence because of an employee's substance abuse, without treatment, does not qualify for FMLA leave.

Paid / Unpaid Leave: Leave provided by FMLA in excess of available accrued paid leave shall be unpaid. Any available paid accrued leave shall be used prior to unpaid leave (e.g., vacation, comp time or sick leave) for the employee. Sick leave available for illness of a family member, under provisions of the Personal Necessity Leave and Catastrophic Leave policies, may be used prior to unpaid leave, at the discretion of the employee.

Health and Dental Insurance Benefits: Health care and dental benefits coverage shall be continued during the 12 weeks FMLA leave period under the same terms and conditions as applicable to all other employees. Upon expiration of FMLA leave entitlement, if additional unpaid leave is authorized, continuation of health care and dental benefits coverage shall be allowed with the employee paying all costs of coverage or as may be allowed in other applicable policies.

Failure to Return from FMLA Leave: If an employee indicates his/her intent not to return from leave (including at the start of the leave), or if the employee fails to return from leave, paid health and dental coverage will cease unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition which would entitle the employee to FMLA leave, or other circumstances beyond the employee's control, (such as where an employee's spouse is unexpectedly transferred to a new job location, someone other than an immediate family member has a serious health condition which the employee needs to care for, or the employee is laid off while on leave. The employee's desire to stay with a family member even though the family member no longer requires the employee's care, or a mother's decision to stay home with a newborn child and not return to work, do not qualify as "other circumstances beyond the employee's control.")

Except as provided above, if an employee fails to return after expiration for eligibility for FMLA leave, the employee shall pay the full cost of coverage for health and dental benefits during the entire period of unpaid FMLA leave. Any amounts due under this section may be deducted from any sums due the employee (e.g., unpaid wages, vacation pay, etc.). Failure to reimburse the VCOE for the cost of coverage during the period of the unpaid leave shall result in termination of coverage.

If an employee is unable to return to work because of the continuation, recurrence or onset of a serious health condition, the employee shall provide medical certification of such claim. The certification shall be issued by the health care provider of the employee or by health care provider of the employee's child, spouse or parent if the employee is unable to return to work because of the need to take care of one of these individuals. The certification shall indicate that the employee is prevented from performing the functions of the position or is needed to care for the family member on the date the leave expired. If a requested certification is not provided within 30 days, the cost of coverage provided during the period of unpaid FMLA leave shall be due and payable.

Employee Status While on Leave: FMLA leave does not constitute a break in service for purposes of longevity and/or seniority. Seniority shall not be earned for any period of time on unpaid leave. Employees returning from leave shall return with no less seniority for purposes of layoff, recall, vacation accrual or other seniority related benefits.

Medical Certification / Recertification: Medical certification from the health care provider of the individual requiring care shall be provided initially upon request for FMLA leave. The certification shall indicate the estimated duration of the need for leave. Periodic updates or recertification may be required upon expiration of the period of leave originally estimated or every 30 days, if requested by the Personnel Office.

The VCOE may, at its own expense, require the eligible employee obtain the opinion of a second health care provider designated or approved by the VCOE. When the second opinion differs from the first, the VCSS may require, at its own expense, that the employee obtain the opinion of a third health care provider designated and approved jointly by the VCOE and employee. The opinion of the third health care provider shall be considered final and binding on the VCSS and employee.

If leave is foreseeable, medical certification must be provided within fifteen days after receipt of the employee's request for leave. If the employee fails to provide certification, the leave may be denied until certification is provided. If the leave is not foreseeable, the certification shall be provided within fifteen days, or as soon as is practicable under the circumstances. Failure to provide certification within a reasonable time under the pertinent circumstances may result in denial of continuation of the leave.

Advance Notice Required: If the event necessitating the leave becomes known to the employee more than 30 calendar days prior to the need for a leave, the employee shall provide notice as soon as he/she learns of the need for a leave -- at a minimum, 30 days written advance notice.

If the event necessitating the leave becomes known to the employee less than 30 calendar days prior to the employee's need for a leave, the employee shall provide as much advance notice as possible, and, at a minimum, written notice no more than five working days from learning of the need for the leave.

If the need for a family care leave is foreseeable, due to a planned medical treatment or planned supervision of a child, parent or spouse with a serious health condition, the employee shall provide reasonable advance notice of the need for the leave and consult with the supervisor regarding the scheduling of the treatment or supervision so as to minimize disruptions to the school/department. Any such scheduling shall be subject to the approval of the health care provider of the family member.

Prior to granting a leave under this policy, medical certification as identified above, may be required.

Reinstatement upon Return from Leave: Upon return from FMLA leave, an employee shall be restored to the position held when the leave commenced or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment, provided the employee is able to perform the essential duties of the position.

If the FMLA leave was due to the employee's own serious health condition, prior to returning to work the employee shall provide a certification from the health care provider that the employee is able to resume the essential duties of the position.

Remedies for Employer Violation of the Act: If an employee's rights under the FMLA have been violated, the employee may file a complaint with the Secretary of Labor, the Fair Employment and Housing Commission, or file a private lawsuit within two years after the last action which the employee contends was in violation of the Act, or three years if the violation was willful.