

## PROFESSIONAL STAFF LEAVES AND ABSENCES

Code **GCC-R** Issued **3/09**

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### **Family and Medical Leave Act (FMLA)**

Pursuant to board policy GCC, the Latta School District adopts the following guidelines to provide a fair and systematic procedure by which eligible employees may take unpaid leaves of absence for family and medical reasons.

#### *Eligibility requirements*

To qualify for leave under this policy, an employee must have been employed by the school district for at least 12 months as of the date on which the requested leave will commence. In addition, the employee must have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12-month period.

#### *Leave entitlement*

An eligible employee is entitled to a total of 12 workweeks of unpaid leave during any fiscal year (July 1 through June 30) for any of the following.

- birth of a son or daughter of the employee
- placement of a child with the employee for adoption or foster care
- to care for a spouse, son, daughter or parent of the employee, if such spouse, son, daughter or parent has a serious health condition
- because of a serious health condition of the employee that renders the employee unable to perform the essential functions of the position
- A family member (spouse, son, daughter or parent) is on active duty or has been called to active duty for any "exigency situation" as defined in federal regulation

However, an eligible employee who is the spouse, son, daughter, parent or next of kin (nearest blood relative of the individual) of a covered service member is entitled to a total of 26 workweeks of leave in a single 12-month period to care for the service member with a serious illness or injury incurred in the line of duty on active duty. Leave under this paragraph is available only during a single year. During that year, the employee is entitled to a combined total of 26 workweeks of leave under this policy.

An eligible employee who desires to take leave under this policy will request such leave from his/her immediate supervisor, who will then notify the superintendent or his/her designee of the request. Requests will be responded to in a timely manner.

The entitlement to leave for the birth or placement of a child for adoption or foster care expires 12 months after the date of such birth or placement.

If circumstances require, an employee may take family leave prior to the birth or placement of a child for prenatal care or to prepare for placement, e.g., to attend counseling sessions or appear in court.

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“Foster care” is 24-hour care for children in substitution for, and away from, their parents or guardian, by or with the agreement of the state or pursuant to a judicial determination.

“Son or daughter” means a biological, adopted or foster child, stepchild, legal ward or child, or a person standing in loco parentis, who is either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability. Persons who are “in loco parentis” include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child.

A “serious health condition” is an illness, injury, impairment or physical or mental condition that involves any of the following.

- any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice or residential medical care facility
- any period of incapacity requiring absence from work or other regular daily activities of more than three consecutive calendar days, that also involves visits to a healthcare provider and/or continuing treatment by a healthcare provider
- continuing treatment by a healthcare 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 treatment by a healthcare provider” means any of the following.

- The employee or family member is treated two or more times for the injury or illness by a healthcare provider.
- The employee or family member is treated for the injury or illness two or more times by a provider of healthcare services (e.g., physical therapist) under orders of, or on referral by, a healthcare provider, or is treated for the injury or illness by a healthcare provider on at least one occasion which results in a regime of continuing treatment under the supervision of the healthcare provider.
- The employee or family member is under the continuing supervision of, but is not necessarily being actively treated by, a healthcare provider due to a serious long-term or chronic condition or disability which cannot be cured.

A “healthcare provider” is the following.

- A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices.
- A podiatrist, dentist, clinical psychologist, optometrist or chiropractor (limited to treatment of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist), authorized to practice in the state and performing within the scope of his/her practice as defined under state law.
- A nurse practitioner or nurse midwife who is authorized to practice under state law and who is performing within the scope of his/her practice as defined under state law.
- A Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts.

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### *Intermittent or reduced schedule leave*

“Intermittent leave” is leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time, and may include leave periods from one hour or more to several weeks.

A “reduced schedule leave” is a leave schedule that reduces an employee’s usual number of working hours per workweek, or hours per workday.

Leave for the birth or placement of a child will not be taken intermittently or on a reduced schedule without the written consent of the superintendent or his/her designee who will consult with the employee’s immediate supervisor before granting such consent.

Leave to care for a seriously ill spouse, son, daughter or parent, or for the employee’s own serious health condition, may be taken intermittently or on a reduced schedule only when medically necessary.

If an employee requests intermittent or reduced schedule leave that is foreseeable based on planned medical treatment, the superintendent or his/her designee may require such employee to transfer temporarily to an available alternative position for which the employee is qualified that does the following.

- has equivalent pay and benefits
- better accommodates recurring periods of leave, or family leave (for instructional employees, see section entitled, “Rules applicable to periods near the conclusion of an academic term for employees employed principally in an instructional capacity”)

### *Substitution of paid leave*

An eligible employee may elect, or the superintendent or his/her designee may require the employee, to substitute any available accrued paid vacation leave, personal leave or family leave of the employee for leave taken for either of the following.

- the birth or placement of a child
- to care for a seriously ill spouse, child or parent

An eligible employee may elect, or the superintendent or his/her designee may require the employee, to substitute any of the available accrued paid vacation leave, personal leave or medical or sick leave of the employee for leave taken for either of the following.

- to care for a seriously ill spouse, child or parent
- for the employee’s own serious health condition

Paid vacation or personal leave may be substituted, at either the employee’s or the school district’s option, for any qualified unpaid family or medical leave without limitation. Paid family, medical or sick leave may be substituted for unpaid leave under this policy only if the circumstances necessitating the leave entitle the employee to paid leave under the applicable policy.

### *Foreseeable leave/notice required*

When the necessity for leave for the birth or placement of a child is foreseeable based on an expected birth or placement, the employee must provide at least 30 days notice to his/her immediate supervisor of the anticipated timing and duration of the employee’s leave. The failure

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to provide such notice with no reasonable excuse for the delay may result in the denial of a request for leave until 30 days after the employee provides notice.

If the date of the birth or placement requires leave to begin in less than 30 days, the employee must provide as much notice as is practicable.

When leave to care for a seriously ill spouse, child or parent, or for an employee's own serious health condition, is foreseeable based on planned medical treatment, the employee must do the following.

- Make a reasonable effort to schedule the treatment so as not to disrupt unduly the school district's operations, subject to the approval of the healthcare provider and duration of the employee's leave, except that if the date of treatment requires leave to begin in less than 30 days, the employee must provide as much notice as practicable.
- Provide at least 30 days notice to his/her immediate supervisor of the anticipated timing and duration of the employee's leave, except that if the date of treatment requires leave to begin in less than 30 days, the employee must provide as much notice as practicable.

### *Spouses employed by the school district*

A husband and wife who are both eligible for family and medical leave and are employed by the district may be granted family and medical leave only for a combined total of 12 workweeks of leave per year when the leave is taken for the birth, foster placement or adoption of a child or to care for the child after birth, foster placement or adoption or to care for a parent with a serious health condition.

A husband and wife who are both eligible for family and medical leave and are employed by the district may be granted family and medical leave to care for a covered service member with a serious illness or injury only for a combined total of 26 workweeks of leave per year.

A husband and wife who are both eligible for family and medical leave and are employed by the district may be granted family and medical leave only for a combined total of 26 workweeks of leave per year if the leave is taken for the birth, foster placement or adoption of a child or to care for the child after birth, adoption or foster placement or to care for the employee's parent with a serious health condition, or to care for a covered service member with a serious illness or injury.

### *Certification*

A request for leave to care for a seriously ill spouse, child or parent, or for the employee's own serious health condition, must be supported by a certification issued by the healthcare provider of the employee or family member. The district has pre-approved forms available which an employee may use for this purpose.

The certification must contain the following information.

- date on which the serious health condition commenced
- probable duration of the condition
- appropriate medical facts regarding the condition
- for leave taken to care for a seriously ill spouse, child or parent, a statement that the employee is needed to care for the spouse, child or parent, and an estimate of the amount of time the employee will be needed for that purpose

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- for leave taken due to an employee's serious health condition, a statement that the employee is unable to perform the essential functions of the position
- for intermittent or reduced schedule leave for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment
- for intermittent or reduced schedule leave for an employee's serious health condition, the statement of the medical necessity for the intermittent or reduced schedule leave and the expected duration of such leave
- for intermittent or reduced schedule leave to care for a seriously ill spouse, child or parent, or for a serious injury or illness of a covered service member which requires treatment by a healthcare provider periodically, rather than for one continuous period of time, a statement that the employee's intermittent or reduced schedule is necessary for the care of the spouse, child, parent or service member or will assist in their recovery, and the expected duration and schedule of the intermittent or reduced schedule leave

If the superintendent or his/her designee or the employee's immediate supervisor has reason to doubt the validity of a certification, he/she may require, at the district's expense, the employee obtain the opinion of a second healthcare provider designated or approved by the superintendent or his/her designee.

A healthcare provider designated or approved by the superintendent or his/her designee will not be one who is employed on a regular basis by the school district.

If the first and second opinions of the healthcare providers are conflicting, the opinion of a third healthcare provider designated or approved jointly by the superintendent or his/her designee may require the employee or family member to submit to an examination (though not treatment) to obtain a second or third certification from a healthcare provider other than a Christian Science practitioner.

The superintendent or his/her designee may require subsequent recertification on a reasonable basis, but no more often than every 30 days, unless one of the following occurs.

- The employee requests an extension of leave.
- The circumstances described by the original certification have changed significantly.
- The superintendent or his/her designee receives information which casts doubt on the continuing validity of the prior certification.

### *Employment and benefits protection*

#### Restoration to position

Any employee who takes leave for the intended purpose of the leave will be entitled, on return from leave, to be restored to the position of employment held by the employee when the leave commenced or to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

The taking of leave will not result in the loss of any employment benefits accrued prior to the date on which leave commenced.

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A restored employee is not entitled to the accrual of any seniority or employment benefits during any period of leave, or any right, benefit or position of employment other than that to which the employee would have been entitled had the leave not been taken.

As a condition of restoration for an employee who has taken leave due to his/her own serious health condition, the employee must provide a certification from the healthcare provider stating that the employee is able to resume work. Until such a certification is provided, reinstatement will be denied.

An employee on leave must report periodically to his/her immediate supervisor on his/her status and intention to return to work.

### Exemption of certain highly compensated employees

The superintendent or his/her designee may deny restoration to a salaried employee who is among the highest paid 10 percent of school district employees if the following occurs.

- Such denial is necessary to prevent substantial and grievous economic injury to the operations of the school district.
- The superintendent or his/her designee notifies the employee of the intent to deny restoration at the time he/she determines such injury would occur.
- If leave has commenced, the employee decides not to return to work.

If the superintendent or his/her designee believes that reinstatement may be denied to a key employee, the superintendent or his/her designee must give written notice to the employee at the time leave is requested that he/she qualifies as a key employee. In addition, the employee must be fully informed of the potential consequences with respect to reinstatement and maintenance of health benefits if it is determined that substantial and grievous economic injury will result from the employee's reinstatement.

As soon as the superintendent or his/her designee determines that such an injury will result from reinstatement, he/she must again notify the employee in writing of this determination and advise the employee that the school district cannot deny leave but that it intends to deny restoration to employment on completion of the leave. This notice must be delivered in person or by certified mail. It also must explain the basis for the finding that substantial and grievous economic injury will result and must provide the employee a reasonable time in which to return to work.

If the employee elects to remain on leave, the school district will continue to maintain his/her health records benefits until the employee gives notice that he/she no longer wishes to return to work, or until reinstatement is actually denied at the conclusion of the leave.

Once the key employee's leave has expired, he/she still is entitled to request reinstatement. The superintendent or his/her designee must then determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that such an injury will result, the superintendent or his/her designee must then determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that such an injury will result, the superintendent or his/her designee will notify the employee in writing of the denial of restoration. This notice must be delivered in person or by certified mail.

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## Maintenance of health benefits

During an employee's leave, the school district will maintain coverage under any group health plan at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave.

The employee must continue to pay his/her portion of all insurance premiums to maintain coverage. If an employee's premium payment is more than 30 days late, the school district may discontinue coverage of the employee under the policy. The district will provide 15 days advance notice before any such cancellation of coverage.

If coverage lapses because an employee has not made premium payments, upon the employee's return from leave, the school district will restore the employee to coverage and benefits equivalent to those the employee would have had if leave had not been taken and the premium payments had not been missed.

If the school district continues coverage under the policy by paying the employee's portion of the premiums, the district is entitled to recover all such payments. Further, the school district may recover from an employee its share of health plan premiums paid during a period of leave under this policy if the employee fails to return to work at the expiration of the leave, unless the reason for the employee's failure to return is due to the continuation, recurrence or onset of a serious health condition or other circumstances beyond the employee's control. If an employee fails to return because of the continuation, recurrence or onset of a serious health condition, the employee must provide a certification of the employee's or family member's serious health condition. The district also will not seek recovery for its share of premiums for any portion of paid leave substituted or used by an employee.

## Intermittent or reduced schedule leave for instruction employees

If an eligible employee employed principally in an instructional capacity requests leave to care for a serious ill spouse, child or parent, or for the employee's own serious health condition or leave to care for a covered service member which is foreseeable based on planned medical treatment, and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the superintendent or his/her designee, in consultation with the school principal, may require that the employee elect either of the following.

- to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatments
- to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits, and which better accommodates recurring periods of leave

## Rules applicable to periods near the conclusion of an academic term for employees employed principally in an instructional capacity

If an eligible employee employed principally in an instructional capacity begins leave more than five weeks prior to the end of an academic semester, the superintendent or his/her designee, in consultation with the school principal, may require the employee to continue taking leave until the end of the semester under the following circumstances.

- The leave is of at least three weeks duration.
- The return would occur during the three-week period before the end of the term.

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If an eligible employee employed principally in an instructional capacity begins leave for the birth or placement of a child or to care for a seriously ill child, spouse or parent during the period that commences five weeks prior to the end of an academic semester, the superintendent or his/her designee, in consultation with the school principal, may require the employee to remain on leave until the end of the semester if the following occurs.

- The leave is greater than two weeks.
- The return to employment would occur during the two-week period before the end of the term.

If an employee employed principally in an instructional capacity begins leave for the birth or placement of a child or to care for a seriously ill spouse, child or parent during the period that commences three weeks prior to the end of an academic semester and the duration of the leave is greater than five working days, the superintendent or his/her designee, in consultation with the school principal, may require the employee to continue taking leave until the end of the term.

If the school district requires an employee to remain on leave until the end of an academic term and this results in the employee taking more leave than is necessary to resolve the condition which necessitated the leave, the additional leave time required to be taken will not be deducted from the employee's total available FMLA leave. The employee, however, will continue during this time to be entitled to the maintenance of health benefits and job restoration in accordance with this administrative rule.

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