



WINDHAM SCHOOL
DISTRICT

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April 17, 2015

WINDHAM BOARD POLICY

SUBJECT: FAMILY AND MEDICAL LEAVE

AUTHORITY: Texas Family Code §§ 2.001-.501; *Family and Medical Leave Act of 1993* (FMLA), 29 U.S.C. § 2601-2654; 29 Code of Federal Regulations (C.F.R.) Part 825

APPLICABILITY: Windham School District (WSD)

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The WSD reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the superintendent's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the WSD and **do not** create any legally enforceable interest or limit the superintendent's authority to terminate an employee at will.

POLICY:

The WSD will administer Family and Medical Leave Act (FMLA) leave to eligible employees without regard to race, color, religion, sex (gender), national origin, age, disability, genetic information, or uniformed service status. The WSD posts the mandatory FMLA Notice and upon hire provides all new employees with notices required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the Family and Medical Leave Act in Texas.

The purpose of this policy is to provide employees with a general description of their FMLA rights and responsibilities.

DEFINITIONS:

“Certification of Health Care Provider” is written documentation from a physician supporting an employee's need for leave.

"Covered Active Duty" for members of a regular component of the armed forces is duty during deployment of the member with the armed forces to a foreign country. In the case of a member of the reserve components of the armed forces, this means duty during the deployment of the member with the armed forces to a foreign country under a federal call or order to active duty in support of a contingency operation, in accordance with 29 CR 825.102.

"Covered Service Member" is:

- a. a member of the armed forces, including a member of the National Guard or Reserve, 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
- b. a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the armed forces, including a member of the National Guard or Reserve, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

"Child" is an employee's biological, adopted, foster son or daughter, stepchild, legal ward or a child for whom the employee is standing "in loco parentis" (in place of a parent), who is under age 18, or is age 18 or older and incapable of self-care because of a mental or physical disability. This definition does not include son-in-law or daughter-in-law.

"Foreign Health Care Provider" is a health care provider who is authorized to practice in accordance with the law of that country and who is performing within the scope of their practice as defined under such law.

"Health Care Provider" is a doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, licensed acupuncturist, nurse practitioner, nurse midwife, clinical social worker who is performing within the scope of their practice as defined under state law, any health care provider recognized under the Texas Employees Group Benefits Program, or a Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts.

"Health Care Provider's Statement" is a written statement from an attending health care provider that identifies the following: (1) the medical fact(s) associated with the injury/illness; (2) the expected duration of the injury/illness; and (3) if the statement is for the care of a family member, the type and duration of assistance required from the employee and projected date that the employee's assistance shall no longer be required. NOTE: It is possible for a written statement from the employee's attending health care provider to meet the requirements to be considered both a "health care provider's statement" and a "release to return to work." However, a "health care provider's statement" does not automatically meet the requirements to be a "release to return to work."

"Incapacity" is the physical or mental inability to work, attend school, or perform other typical daily activities.

“Instructional Employee” is an employee whose principal function is to teach and instruct students in a classroom setting, a small group, an individual setting, or through distance learning. This term includes teachers and special education assistants such as signers for the hearing impaired. It does not include auxiliary personnel.

“Intermittent Leave” is approved FMLA taken in separate blocks of time.

“Marriage” is the legally or formally recognized union of two people as partners in a personal relationship. Ceremonial marriage and informal marriage are the two types recognized by the State of Texas and are defined as:

“Ceremonial marriage” is a marriage documented by: (1) a marriage license recorded with a county clerk; and (2) a marriage certificate issued by the county clerk.

“Informal marriage” (previously known as common law) is a marriage that is not necessarily documented through a county clerk, but is valid when a couple either sign and register a declaration of their marriage, or perform all of the following: (1) agree to be married; (2) after the agreement, live together in the State of Texas as a married couple; and (3) represent to others that they are married.

“Medical Fact” is a description of a condition that identifies the cause or nature of the illness or injury. A medical fact does not require a diagnosis.

“Next of Kin of a Covered Service Member” is the nearest blood relative other than the covered service member’s spouse, parent, or child, in the following order of priority: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts, uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as the nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. For example, if a covered servicemember has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered servicemember's next of kin. Alternatively, where a covered servicemember has siblings and designates a cousin as his or her next of kin for FMLA purposes, only the designated cousin is eligible as the covered servicemember's next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered servicemember pursuant to § 825.122(k).

“Parent” is a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined in this section. This term does not include parents "in-law."

“Physically Worked” is time an employee reports for duty.

“Reduced Leave Schedule” is a leave schedule that reduces the employee’s usual number of working hours per workweek or per workday for a specific period of time.

“Rolling 12-Month Period” is the 12-month period measured backward from the date an employee uses FMLA.

“Serious Health Condition” is a condition that requires inpatient care at a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

“Spouse” means a person to whom a person is legally married.

“Workweek” is any week an employee is expected to work. While out on FMLA, the week is counted as a week of FMLA, regardless of any holidays that may occur within the week. However, when using FMLA intermittent leave in increments of less than one week, the holiday will not count against the FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, when WSD business activity has temporarily ceased and the employee is generally not expected to report for work for one or more weeks, the days WSD activities have ceased do not count against the employee's FMLA leave entitlement.

DISCUSSION:

Under this policy, WSD will grant up to 12 weeks of leave during a 12-month period to eligible employees (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness). The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

PROCEDURES:

I. Eligibility

To qualify to take family or medical leave under this policy, the employee must meet all the following conditions:

- A. The employee must have worked for WSD for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee is on leave during the week.

- B. The employee must have physically worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. The 1,250 hours do not include time spent on paid or unpaid leave. Consequently, these hours of leave will not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

II. Type of Leave Covered

- A. To qualify as FMLA leave under this policy, the leave must be for one of the reasons listed below:
 - 1. The birth of a child and in order to care for that child.
 - 2. The placement of a child for adoption or foster care and to care for the newly placed child.
 - 3. To care for a spouse, child or parent with a serious health condition.
 - 4. The serious health condition (as described below) of the employee.
 - a. An employee may take leave because of a serious health condition that makes the employee unable to perform the essential functions of his or her position.
 - b. This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.
 - c. If an employee takes paid sick leave for a condition that progresses into a serious health condition, and the employee requests unpaid leave as provided under this policy, the WSD may designate all or some portion of the related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.
 - 5. Qualifying exigency leave for families of members of the National Guard or Reserve or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

- a. An employee whose spouse, child, or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The leave may commence as soon as the individual receives the call-up notice. This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.
 - b. The qualifying exigency must be one of the following:
 - 1) short-notice deployment;
 - 2) military events and activities;
 - 3) childcare and school activities;
 - 4) financial and legal arrangements;
 - 5) counseling;
 - 6) rest and recuperation;
 - 7) post-deployment activities; or
 - 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.
6. Military caregiver leave (also known as covered servicemember leave) to care for an injured or ill servicemember or veteran.
- a. Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserve, or a member of the Armed Forces, the National Guard or Reserve who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list.
 - b. An employee whose son, daughter, parent or next of kin is a covered servicemember may take up to 26 weeks of leave in a single 12-month period to care for that servicemember.

- c. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserve, or members on the permanent disability retired list.

B. Amount of Leave

1. If a couple both work for WSD and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, the couple may only take a combined total of 12 weeks of leave.
2. If a couple both work for WSD and each wishes to take leave to care for a covered injured or ill servicemember, the couple may only take a combined total of 26 weeks of leave.

III. Employee Status and Benefits During Leave

- A. Human Resources will designate this leave as FMLA after verification of leave qualification and employee eligibility.
- B. While an employee is on FMLA, WSD will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.
- C. Employees on approved FMLA without pay are eligible to continue participation in the group health plan.
 1. Coverage under any group health plan shall be maintained for the duration of the leave at the level and under the conditions that coverage would have been provided if the employee had continued in active duty with WSD, as long as, the employee continues payment of their portion of the premium.
 2. Failure of the employee to pay their portion of the premium will result in cancellation of optional insurance coverage in effect at the time payment ceases.
 3. Billing for continuation in the group insurance program will be between the employee and Texas Employees Group Benefits Program (GBP).
- D. Continuation of coverage, premium payments and WSD contributions for FMLA leave without pay are as follows:
 1. WSD contributes toward the cost of the employee health insurance coverage and, if applicable, an employee's dependent health insurance coverage.

- a. Full-time employees with dependent coverage who fail to pay their portion of their monthly insurance premium will have coverage reduced to employee only.
 - b. Part-time employees that fail to pay the employee's portion of the monthly insurance premium will have coverage canceled due to non-payment of premiums.
2. If the employee fails to return to work immediately upon expiration of the FMLA without pay, the employee will be required to reimburse WSD for any WSD-paid contributions toward the cost of employee health insurance coverage and an employee's dependent health insurance coverage.
- a. There may be an exception if an employee fails to return to work as a result of a serious health condition affecting the employee or a family member or as a result of other circumstances beyond their control as outlined in the FMLA regulations.
 - b. When an employee fails to return to work, except for the reasons stated above, health premiums paid by WSD during a period of FMLA may be recovered by WSD through deduction of any sums due the employee or through legal action.
3. Once an employee returns to work, health insurance coverage will resume at the level held prior to the reduction to employee only coverage.
4. When the employee returns to work, a pre-existing condition clause will not be applicable to the employee's disability coverage if the pre-existing period had been satisfied prior to the employee going on FMLA.

IV. Employee Status After Leave

- A. An employee who takes leave under this policy must provide a fitness for duty (FFD) clearance from a health care provider prior to performing any work for WSD.
- B. An employee who takes FMLA leave will return to the same position or a position with equivalent status, pay, benefits, working conditions, and other employment terms.

V. Use of Paid and Unpaid Leave

- A. An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of an immediate family member must use all accrued personal or sick leave prior to being eligible for unpaid leave.

- B. Workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA.
- C. An employee who is using military FMLA leave for a qualifying exigency must use all personal leave prior to being eligible for unpaid leave.
- D. An employee using FMLA military caregiver leave must use all accrued personal leave prior to being eligible for unpaid leave.
- E. As an exception to the requirement to utilize paid personal leave or sick leave concurrently with FMLA, an employee receiving group insurance disability benefits payments or worker's compensation payments shall not be eligible to utilize paid personal leave, sick leave, or sick leave pool.

VI. Intermittent Leave or a Reduced Work Schedule

- A. The employee may take FMLA leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill servicemember over a 12-month period).
- B. WSD may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.
 - 1. In instances when leave for the employee or employee's immediate family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care.
 - 2. For the birth, adoption or foster care of a child, WSD and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced-hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.
- C. The employee must provide verification that the use of intermittent leave is medically necessary.
- D. Special rules apply to certain employees of a school district, specifically instructional employees:
 - 1. If an instructional employee does not give required notice of foreseeable leave to be taken intermittently or on a reduced schedule, the district may

require the employee to take leave of a particular duration. Alternatively, the district may require the employee to delay the taking of leave until the notice provision is met.

2. The district may require the employee to take leave for a period not greater than the duration of the planned treatment in the following situation:
 - a. If an eligible instructional employee needs intermittent leave or leave on a reduced schedule to care for a family member with a serious health condition, to care for a covered military service member, or for the employee's own serious health condition;
 - b. The leave is foreseeable based on planned medical treatment; and
 - c. The employee would be on leave for more than 20 percent of the total number of working days over the period of leave.

VII. Certification for the Employee's Serious Health Condition

- A. WSD will require a Certification of Health Care Provider for Employee's Serious Health Condition. The employee must respond to the request for certification within 15 days of the request.
- B. Human Resources may contact the employee's health care provider for verification or for clarification purposes.
 1. WSD will not use the employee's direct supervisor for this contact.
 2. Before Human Resources makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification.
 3. The WSD will not ask the health care provider for additional information beyond that required by the certification form.
 4. WSD will adhere to the requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule when individually identifiable health information of an employee is shared by a HIPAA-covered health care provider.
- C. A certification is "incomplete" if one or more of the applicable entries have not been completed or the entry is illegible. A certification is "insufficient" if it is complete, but the information is vague, ambiguous, or non-responsive. A certification that is not returned to the WSD is not considered incomplete or insufficient, but constitutes a failure to provide certification.

- D. If the employee is visiting another country and a serious health condition develops, WSD will accept medical certification, as well as second and third opinions from a foreign health care provider. If the certification is in a language other than English, the employee must provide WSD with a written translation of the certification upon request.
- E. WSD has the right to ask for a second opinion if it has reason to doubt the certification.
 - 1. WSD will pay for the employee to get a certification from a second doctor, which WSD will select.
 - 2. WSD may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion.
 - 3. If necessary to resolve a conflict between the original certification and the second opinion, WSD will require the opinion of a third doctor. WSD and the employee will mutually select the third doctor, and WSD will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.
- F. Failure to provide certification for the employee's serious health condition may result in a denial of continuation of leave.

VIII. Certification for an Immediate Family Member's Serious Health Condition

- A. WSD will require Certification of Health Care Provider for Family Member's Serious Health Condition. The employee must respond to such a request within 15 days of the request.
- B. Human Resources may directly contact the employee's immediate family member's health care provider for verification or for clarification purposes.
 - 1. WSD will not use the employee's direct supervisor for this contact.
 - 2. Before Human Resources makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification.
 - 3. The WSD will not ask the health care provider for additional information beyond that required by the certification form.

4. WSD will adhere to the requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule when individually identifiable health information of an employee is shared by a HIPAA-covered health care provider.
 - C. If the employee's immediate family member is visiting another country or resides in another country, and a serious health condition develops, WSD will accept medical certification as well from a foreign health care provider. If the certification is in a language other than English, the employee must provide WSD with a written translation of the certification upon request.
 - D. A certification is "incomplete" if one or more of the applicable entries have not been completed or the entry is illegible. A certification is "insufficient" if it is complete, but the information is vague, ambiguous, or non-responsive. A certification that is not returned to the WSD is not considered incomplete or insufficient, but constitutes a failure to provide certification.
 - E. Failure to provide certification for an immediate family member's serious health condition may result in a denial of continuation of leave.
- IX. Certification of Qualifying Exigency for Military Family Leave
- A. WSD will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request. Failure to provide certification may result in a denial of continuation of leave.
 - B. This certification should be provided using the Certification of Qualifying Exigency for Military Family Leave form.
- X. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave
- A. WSD will require certification for the serious injury or illness of the covered servicemember. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay.
 - B. This certification should be provided using the Certification for Serious Injury or Illness of Covered Servicemember form.
 - C. Failure to provide certification for the serious injury or illness of a covered service member may result in a denial of continuation of leave.
- XI. Recertification
- A. WSD will require recertification for the serious health condition of the employee or the employee's immediate family member every 30 days.

- B. WSD may provide the employee's health care provider with the employee's attendance records to verify whether the need for leave is consistent with the employee's serious health condition.
- C. Failure to recertify for the serious health condition of the employee or the employee's immediate family member may result in a denial of continuation of leave.

XII. Procedure for Requesting FMLA Leave

- A. Employees requesting FMLA leave must provide notice of the need for the leave using the online HR Services form and must notify their supervisor according to the usual and customary notice and procedural requirements for requesting leave. Within five business days after the employee has provided this notice, Human Resources will complete and provide the employee with the Department of Labor Notice of Eligibility and Rights.
- B. When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice or as soon as the employee becomes aware of a need for FMLA when less than 30 days in advance. The employee must provide notice of the need for the leave either the same day the need for leave is discovered or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the supervisor's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. The supervisor will then be responsible for completing the online HR Services form on behalf of the employee within one workday of the notification by the employee (or responsible party).

XIII. Designation of FMLA Leave

- A. Within five business days after an employee has submitted the appropriate certification form, Human Resources will complete and provide the employee with a written response to the employee's request for FMLA leave.
- B. Designation notification will use the Department of Labor Designation Notice form.

XIV. Intent to Return to Work from FMLA Leave

- A. On a basis that does not discriminate against employees on FMLA leave, WSD may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.
- B. A physician's release to return to work with or without reasonable accommodation must be provided to Human Resources prior to performing any work for WSD.

1. A health care provider's statement that does not list any restrictions or limitations, will be considered an unconditional release indicating the employee may return to full duty.
2. If the health care provider's statement identifies a physical or mental restriction(s) as permanent or if the employee states the restriction(s) is permanent, the employee must complete the online HR Service form to request a workplace accommodation under the Americans with Disabilities Act as Amended.
3. If the health care provider's statement identifies a physical or mental restriction(s) as temporary, Human Resources will determine if the restriction(s) prevents the employee from performing the essential job functions of the position before the employee is allowed to return to work.
 - a. Temporary workplace accommodations must be reviewed and approved by the superintendent.
 - b. A workplace accommodation for campus employees may also need approval from the unit warden.

Patrick O'Daniel, Chairman
Windham School District Board of Trustees