

MENOMINEE INDIAN SCHOOL DISTRICT

532.21-Rule

FAMILY AND MEDICAL LEAVE GUIDELINES

1. Eligibility Requirements

To be eligible for leave under federal law, an employee must have been employed by the District for at least 12 months, must have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the requested leave, and be employed at a worksite where 50 or more employees are employed by the District within a 75 mile radius.

To be eligible for leave under state law, an employee must have been employed for more than 52 consecutive weeks and have been paid for at least 1,000 hours in the 52 weeks immediately preceding the request for leave.

2. Types of Leave Available

The District provides family and medical leave for eligible employees under the following circumstances:

- A. For the birth of the eligible employee's child and to care for a newborn child;
- B. For placement with the eligible employee of a child for adoption or foster care;
- C. To care for an eligible employee's spouse, child or parent with a serious health condition.

Under state and federal law, the term "child" generally includes a legal ward or a biological, adopted, foster or stepchild who is under the age of 18. For leaves governed exclusively by the FMLA, the term also includes a "child" for whom the employee has assumed day to day parental responsibilities of care and financial support and who is either under 18 or incapable of self-care because of a physical or mental disability. For leaves governed exclusively by the WFMLA, "child" includes a treatment foster child or a child 18 years of age or older who cannot care for him or herself due to a serious health condition.

"Parent" under this paragraph includes parents in-law only if requesting leave under the WFMLA.

- D. Because of a serious health condition that makes the eligible employee unable to perform any of the essential functions of the employee's job.

Employees should see the assistant bookkeeper to determine whether a request for leave qualifies under one of the above categories.

3. Certification by Health Care Provider

If leave is requested due to the employee's own serious health condition or the serious health condition of the employee's spouse, child or parents, the District requires that the leave request be supported by certification issued by the employee's health care provider or the health care provider of the employee's spouse, child or parent. The District reserves the right to certify all information permitted by law. (See Medical Certification Form)

You must provide the fully completed Certification to the District within fifteen (15) calendar days of the date that the Certification is provided to you, unless it is not practicable to do so despite your diligent, good faith efforts. If it is not practicable to return the Certification within fifteen (15) calendar days, it must be returned to the District as soon as practicable.

If you fail to submit the Certification, the leave or continuation of leave may be delayed until the Certification is submitted. Further, any absence prior to the date the Certification is furnished may be considered unauthorized. If you are absent without authorization, you may be disciplined, up to and including termination.

The District will give you a reasonable opportunity to cure any deficiency in a Certification. It is your responsibility or the responsibility of your family member to use a health care provider who will timely complete and furnish an accurate Certification.

A health care provider representing the District may contact the health care provider, with your prior written consent, to clarify and authenticate the Certification.

If the District doubts the validity of a Certification, it may require, at the District's expense, that you obtain a second opinion from a District-designated provider, not

regularly employed by the District. If the opinions of your provider and the District's health care provider differ, a third, final and binding opinion may be obtained.

The District may request recertification on a periodic basis as permitted by law.

4. Definition of Serious Health Condition

In conjunction with the certification provided by a health care provider, the District reserves the right to determine whether an illness, injury, impairment or physical or mental condition constitutes a serious health condition entitling the employee to family or medical leave under state or federal law.

In general, a "serious health condition" under this policy means an illness, injury, impairment, or physical or mental condition that involves one of the following:

A. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

B. Absence Plus Treatment

A period of incapacity of more than three* consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

- 1) two or more treatments by a health care provider;
or
- 2) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

* Under the WFMLA, leave may also be available for a serious health condition of less than three consecutive days in duration.

C. Pregnancy

Any period of incapacity due to pregnancy, or for prenatal care.

D. Chronic Conditions Requiring Treatments

A chronic condition which:

- 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) continues over an extended period of time (including recurring episodes of a single underlying condition); and
- 3) may cause episodic rather continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.)

E. Permanent/Long-Term Conditions Requiring Supervision

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or employee's family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's disease, a severe stroke, or the terminal stages of a disease.

F. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three 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).

5. Amount of Leave Available

Under federal law, if an employee meets the eligibility requirements spelled out in Section 1, he/she is entitled to a total of 12 work weeks of leave during a 12 month period for any of the reasons stated in Section 2, above. The 12 month period utilized by the District in applying this policy is defined as the calendar year.

Under state law, if an employee meets the eligibility requirements spelled out in Section 1, he/she is entitled to:

- A. A total of six weeks of leave for the birth of his/her natural child and/or the placement of a child with him/her for, or as a precondition to, adoption;
- B. A total of two weeks of leave to care for a covered family member with a serious health condition; and
- C. A total of two weeks of leave if the employee cannot perform his/her employment duties due to a serious health condition, as described in Section 2, above.

The District shall treat use of family or medical leave under this policy as simultaneous use of state and federal leave entitlements whenever permitted by law.

6. Manner in Which Leave Can Be Taken

Leave available under this Policy may be taken in full and, under certain circumstances, may also be taken intermittently or on a reduced leave schedule. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. Reduced schedule leave is leave that reduces the usual number of working hours per day or week. You must consult with your supervisor and make a reasonable effort to schedule intermittent or reduced schedule leave so it does not unduly disrupt the District's operations.

Intermittent or reduced schedule leave due to a serious health condition must be medically necessary. Medically necessary means there must be a medical need for the leave and the leave can be best accommodated through an intermittent or reduced leave schedule, as certified by the health care provider in the Certification.

When leave is governed only by the FMLA, the District may temporarily transfer you to another position for which you are qualified with equivalent pay and benefits that better accommodates the intermittent or reduced schedule leave when the need for leave is foreseeable based on planned medical treatment or you take such leave for the birth of a child or for placement of a child for adoption or foster care.

7. Compensation During Leave

Generally, leave taken under this policy is unpaid. However, for leaves governed exclusively by federal law, employees must use the following leaves provided by the District, if available.

- A. vacation or personal leave, if available, for any family or medical leave;
- B. Accrued paid family leave (i.e., paid leave covering the particular circumstances for which the employee is seeking leave), if available, for birth, adoption, or to care for a seriously ill family member; and
- C. Accrued paid medical or sick leave, if available, to care for a seriously ill family member, or for the employee's own serious health condition.

You may not substitute paid sick leave or paid medical leave for leaves taken under this Policy in any situation where the District would not normally provide such paid leave.

For leaves governed by state law, you may substitute paid or unpaid leave which you have earned and accrued for leave taken under this Policy, if available. The District reserves the right to deny substitution as permitted by law.

8. Continuation of Benefits

An employee shall remain eligible for group health insurance benefits under the District's group health plan during leave taken under this policy under the same conditions as coverage would have been provided if he/she had been actively employed during the entire leave. However, the employee has the option of choosing not to retain such coverage during family or medical leave if he/she prefers.

During leave taken under this policy, the District shall continue to pay any portion of group health insurance premiums for coverage that it was responsible for paying immediately prior to the leave as required by law. The employee is responsible for paying his/her portion of health insurance premiums regardless of whether his/her family and medical leave is paid or unpaid. It is the employee's responsibility to make arrangements with the assistant bookkeeper for making premium payments for group health insurance during leaves.

To the extent permitted by law, the District reserves the right to require employees to place up to eight weeks' health insurance premiums in escrow prior to leave, or to discontinue coverage if such premiums are received more than 30 days late.

Employees' entitlement to benefits other than group health benefits during a period of family or medical leave is determined by the District's policy regarding provision of such benefits when an employee is on other forms of leave.

9. Accrual of Benefits

Employees shall not continue to accrue seniority or any other employment benefit during leave taken under this policy, except that such benefits shall accrue if the employee **uses** other leaves provided by the District pursuant to section 7, above, and if such benefits would normally accrue during such leave.

10. Employment Restoration

You will generally be reinstated to the same position you held when leave began or a position with equivalent pay, benefits, and other terms and conditions of employment, if such position remains available, and you possess the ability to perform your job satisfactorily, with or without any accommodation that may be required by the Americans With Disabilities Act of 1990 or the Wisconsin Fair Employment Act. You, however, have no greater right to reinstatement or benefits than if you had been actively employed during the leave. Further, if you give unequivocal notice of intent not to return to work, you are not entitled to be reinstated.

If you exceed your FMLA/WFMLA leave, but remain off work under a non-FMLA/WFMLA leave policy, you are not entitled to reinstatement to the same or a similar position under the FMLA/WFMLA. Your right to reinstatement will be governed by the non-FMLA/WFMLA leave policy.

If you are able to return to work prior to the expiration of leave, you must notify your supervisor immediately. Upon such notice, the District will promptly reinstate you to active employment, provided you have the present skill and ability to perform the functions of your job satisfactorily with or without accommodation. However, the reinstatement need not occur until the third business day following your notification of your ability to return to work, provided the early return was foreseeable by at least two business days.

11. Required Advance Notice

Employees must provide the District with notice in a reasonable and practicable manner before leave taken under this policy is to begin, if the need for leave is foreseeable (i.e., an expected birth, placement or adoption or foster care, or planned medical treatment for the employee's own serious health condition or that of a family member). When requesting partial or intermittent leave in connection with childbirth or adoption, the employee must provide at least as much notice as required for taking other non-emergency or non-medical leave, as well as a definite schedule for the leave. When advance notice is not practicable due to uncertainty as to when leave will be required to begin, a change in circumstances, or medical emergency, notice must be given as soon as practicable.

The employee must provide a written request for leave, the reasons for the requested leave, and the anticipated beginning date and duration of the leave by submitting a Completed Absence Control Form.

When planning medical treatment, the employee should consult with the District and make reasonable effort to schedule the leave so as not to disrupt unduly the District's operations, subject to the approval of the employee's health care provider. The employee is ordinarily expected to consult with the District in order to work out a treatment schedule which best suits the employee's needs, as well as the District's.

If you must take more leave than originally anticipated, you must notify the District within two business days of learning of the circumstances necessitating the extension.

12. Designation of Leave

In all circumstances, it is the responsibility of the District to designate leave, whether paid or unpaid, as FMLA leave and to give you notice of the designation and your rights and obligations under this Policy. The designation of leave and notice of rights and obligations will be accomplished by providing to you an Employer Notification of Family or Medical Leave.

The District will give you the Notice on each occasion that you notify your supervisor of the need for leave that may be FMLA-qualifying, including, but not limited to, when you request another type of leave for an FMLA-qualifying reason.

In the case of intermittent or reduced schedule leave, only one Notice will be provided unless the circumstances regarding the leave have changed.

Absent extenuating circumstances, the District will, at a minimum, verbally notify you whether leave is being designated as FMLA leave within two business days of the date you provide information to the District sufficient to enable it to determine that the leave is being taken for an FMLA-qualifying reason.

The District will confirm the verbal notice with the written Notice as soon as feasible, but no later than the first payday following the verbal notice (unless the payday is less than one week after the verbal notice, in which case the notice must be no later than the subsequent payday).

If the District knows the reason for leave, but has been unable to confirm that it is FMLA-qualifying, then the District will make a preliminary designation on the Notice that the leave is FMLA-qualifying. This preliminary designation will automatically become final upon receipt of information that the leave is FMLA-qualifying. If the District does not receive such information, it will give you written notice that the preliminary designation has been withdrawn.

13. Fitness-For-Duty Certification

If leave is due to your serious health condition, you must present a fitness-for-duty certification to your supervisor upon returning to work. Your principal attending physician must complete the certification. The certification must indicate that you have been released to return-to-work. It must also specify any physical or other limitation on your ability to perform regular or other duties and the duration of the limitations. No certification will be required when you return from intermittent leave, except as otherwise permitted or required by the Americans With Disabilities Act of 1990 or the Wisconsin Fair Employment Act.

The certification will be limited to the particular health condition that caused your need for leave, except as otherwise permitted by the Americans With Disabilities Act of 1990 or the Wisconsin Fair Employment Act.

Reinstatement may be delayed until you submit the certification. Under such circumstances, if you do not promptly provide a certification or qualify for another leave of absence, you may be disciplined, up to and including termination.

With your written consent, the District's health care provider may contact your health care provider to clarify and authenticate the certification, but no additional information may be requested or required, and your return to work may not be delayed while the contact is being made. No second or third fitness-for-duty certification may be required.

14. Confidentiality

All medical information relating to leave, whether written or verbal, shall be kept confidential as required by law. All medical documents including, but not limited to, medical certification and fitness for duty certification statements must be maintained in confidential, secure files separate from personnel files.

15. No Discrimination

Leave under this Policy will not be used as a negative factor in employment actions, such as hiring, promotions, disciplinary actions or under attendance policies.

11. Miscellaneous

A staff member who fraudulently obtains leave under this Policy is not protected by this Policy's job restoration or maintenance of health benefits provisions and will be subject to disciplinary action, up to and including termination.

APPROVED: December 1999

REVISED: January 7, 2004