

FAMILY AND MEDICAL LEAVE REGULATIONS

Definitions

Continuing treatment means 2 or more visits to, or ongoing supervision by, a health care provider (29 C.F.R. 825.114).

FMLA refers to the Family Medical Leave Act of 1993, implemented by 29 C.F.R. 825.

Health care providers are: licensed doctors of medicine or osteopathy; licensed podiatrists, dentists, clinical psychologists, optometrists, and chiropractors; licensed nurse practitioners and nurse-midwives; and Christian Science practitioners listed by the First Church of Christ Science (29 C.F.R. 825.118).

Instructional employees are those whose principal function is to teach and instruct students (29 C.F.R. 825.600).

Intermittent leave is leave taken in separate blocks of time due to a single illness or injury, and may include leave of periods from an hour or more to several weeks (29 C.F.R. 825.203).

Parent means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child; the term does not include "in-law" (29 C.F.R. 825.113).

Reduced leave schedule is a leave schedule that reduces an employee's usual number of work hours per workweek, or hours per workday (29 C.F.R. 825.203).

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves (29 C.F.R. 825.114):

1. Any period of incapacity or treatment in connection with, or consequent to, inpatient care in a hospital, hospice, or residential medical care facility.
2. Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than 3 calendar days, that also involves continuing treatment by a health care provider.
3. 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 3 calendar days.
4. Prenatal care
 - a. Excluded from the term *serious health condition* are: voluntary or cosmetic treatments which are not medically necessary and routine preventive physical examinations (29 C.F.R. 825.114[c]).

Son or daughter include biological, adopted, foster, step child, ward, and child of person standing in loco parentis, provided that the individual is under 18 years of age or is any age if incapable of self care due to mental or physical disability (29 C.F.R. 825.113).

Spouse means husband or wife as defined under North Dakota law (29 C.F.R. 825.113).

Leave Description

The use of unpaid family and medical leave is subject to the following:

1. It may be used for up to a combined total of 12 weeks each year, beginning August 1 and ending July 31 of the next year (29 C.F.R. 825.200).
2. Other available paid vacation, personal, or family leave will be substituted for family and medical leave necessitated by birth or adoption/foster care placement. Other available paid vacation, personal, or sick leave will be substituted for family and medical leave necessitated by a family member's or employee's own serious health condition. The district will pay family leave or sick leave only under circumstances permitted by the applicable leave plan (29 C.F.R. 825.207).
3. To be eligible for family and medical leave, an employee must (29 C.F.R. 825.110 and 825.111):
 - a. Have been employed by the Midway School District (District) for at least 12 months (the 12 months need not be consecutive).
 - b. Have been employed for at least 1,250 hours of service during the 12 month period immediately before the beginning of the leave or be a full-time classroom teacher.
4. Family and medical leave is available in one or more of the following instances (29 C.F.R. 825.112 and 825.200):
 - a. The birth and first-year of care of son or daughter
 - b. The adoption or foster placement of a child
 - c. The serious health condition of an employee's spouse, parent, or child.
 - d. The employee's own serious health condition.
5. Midway School Board (Board) policy will govern family and medical leaves, but the FMLA, and its implementing regulations, will be the final authority.

Procedure to Request Leave

1. If possible, an employee shall notify the superintendent of the date the employee will need a family and medical leave at least 30 days before leave is to begin. If 30 days notice is not practicable, the employee should give the notice at least two business days after the need becomes known to the employee. (29 C.F.R. 825.302).
2. Upon the Superintendent's request, an employee must support his or

her request for a leave necessitated by a family member's or the employee's own serious health condition, with a certificate completed by the employee's or family member's health care provider. The certificate must be provided to the superintendent within 15 calendar days after the request and on the District's form. Failure to provide the certification may result in denial of the leave request (29 C.F.R. 825.208, 825.302, 805.305, 825.311).

3. Intermittent or reduced leave schedule
 - a. Leave increments are limited to one-hour periods of time (29 C.F.R. 825.208[d])
 - b. An employee should follow the regular notice procedures when requesting an intermittent or reduced-hour leave. If the leave is taken because of birth or placement of a child, leave may be taken intermittently or on a reduced schedule only if the superintendent agrees. If the leave is taken to care for a sick family member or for the employee's own serious health condition, leave may be taken intermittently or on a reduced schedule when medically necessary (29 C.F.R. 825.203[a]).
 - c. Instructional employees taking leave which is 20 percent or less of the working days during the leave period, and all non-instructional employees, may be required to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of intermittent or reduced-schedule leave (29 C.F.R. 825.203, 825.204, 825.205, and 825.601). The alternative position must be equivalent in pay and benefits; benefits will not be eliminated even though they are not available to part-time employees (29 C.F.R. 825.204).
 - d. If an instructional employee requests intermittent leave or leave on a reduced-leave schedule to care for a family member, 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 superintendent may require the instructional employee to choose either to:
 - i. Take leave for a period(s) of a particular duration, not greater than the duration of the planned treatment.

- OR -

- ii. Transfer temporarily to an available alternative position for which the employee is qualified, which has the equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position (29 C.F.R. 825.601).

Response to Leave Request

1. Regardless of the type of leave requested, the superintendent must (29 C.F.R. 825.208):
 - a. Determine the reason for any requested leave.
 - b. Decide whether it is a FMLA-qualifying leave.
 - c. Decide whether the district will require the employee to substitute available paid leave for family and medical leave.
2. If the leave qualifies as a FMLA leave, the superintendent must immediately provide the employee with written Notice of the Leave's Terms and Procedures, which should include (29 C.F.R. 825.208 and 825.301):
 - a. An explanation that the leave is designated as, and will be counted against, the annual FMLA leave entitlement. If appropriate, the explanation should also indicate if the District is requiring the substitution of otherwise available paid leave.
 - b. Any medical certification requirement, if the superintendent so desires, and an explanation of the consequences for failing to furnish one. The health care provider must certify: in the case of family medical leave, that "the employee is needed to care for" the family member; in the case of medical leave, that "the employee is unable to perform the functions of the position;" and in the case of leave taken intermittently on a reduced-leave schedule, the medical necessity for such leave (29 C.F.R. 825.114 and 825.306)
 - c. Any requirement for the employee to make premium payments to maintain health benefits and the arrangement for making such payments (29 C.F.R. 825.209).
 - d. Any requirement for the employee to present a fitness-for-duty certificate to be restored to employment (29 C.F.R. 825.310).
 - e. An explanation of the employee's right to restoration to the same or an equivalent job upon returning from leave.
 - f. Any requirement that the employee periodically report on his or her status and intention to return to work (29 C.F.R. 825.309).
3. The Superintendent may challenge the adequacy of a medical certification and require the employee to obtain a second opinion from second health care provider, paid for by the district (29 C.F.R. 825.307). If a second medical opinion conflicts with the first, the superintendent may require a third opinion, paid for by the District. The third health care provider must be designated or approved jointly by the District and the employee. The third opinion is final and binding (29 C.F.R. 825.308).
4. The Superintendent shall inform an instructional employee whenever the employee will be required to wait to return to work until the next semester because (29 C.F.R. 825.208):

- a. The employee's leave begins more than 5 weeks before the end of a term, the leave will last at least 3 weeks, and the employee would return during the 3-week period before the end of the semester.
- b. The employee's leave, for a purpose other than the employee's own serious health condition, begins during the 5-week period before the end of a term; the leave will last more than 2 weeks; and the employee would return during the 2-week period

- OR -

- c. The employee's leave, for a purpose other than the employee's own serious health condition, begins during the 3-week period before the end of a term and the leave will last more than 5 working days.

If an employee chooses, or is required, to take leave for *periods of particular duration* in the case of intermittent or reduced-schedule leave, or is required to continue taking leave until the end of a school term, the entire period of leave taken will count as a FMLA leave (29 C.F.R. 825.603).

5. The Superintendent shall ensure that work and teaching schedules are arranged so that an employee returning from a family and medical leave will be given an equivalent position to his or her position before the leave, subject to the District's assignment and reassignment policies and practices (29 C.F.R. 825.604).

Posting and Notice to Employees

Building principals shall post a notice explaining FMLA's provision in a location where it can be readily seen by employees and applicants for employment (29 C.F.R. 825.300). The FMLA Fact Sheet, published by the Department of Labor, Wage and Hours Division, shall be incorporated into any employee handbook or provided to employees (29 C.F.R. 825.301).

Recordkeeping

The Superintendent shall ensure that records are kept according to requirements contained in 29 C.F.R. 825.500.

Legal Ref:

- 29 U.S.C. 2601 et seq Family and Medical Leave Act of 1993
- 29 C.F.R. Part 825 Regulations