

Descriptive Term: <b>FAMILY AND MEDICAL LEAVES OF ABSENCE (FMLA) POLICY</b>	CODE: <b>GBRIA</b>
ADOPTION DATE: <b>January 12, 2010</b>	Revision: <b>May 13, 2014</b>

**FAMILY AND MEDICAL LEAVES OF ABSENCE (FMLA) POLICY**

**SECTION I: GENERAL PROVISIONS**

**Eligibility.** To be an “eligible employee” for any leave under this policy, an employee must meet all of the following requirements: (1) the employee must have worked for the District for at least 12 months, which need not be 12 consecutive months; (2) the employee must have worked for the District for at least 1,250 hours during the 12 months immediately preceding the date the leave of absence begins or requested leave of absence would begin; and (3) the employee must work at a worksite where the District employs 50 or more total employees working either at the worksite or within 75 road miles from such worksite. The District counts towards both the 1,250-hour and 12-months-of-service requirements the time an employee is on an approved military leave of absence or is otherwise serving in the military. The District does not count any hours during any other period of leave of absence towards the second eligibility requirement.

**Types of FMLA Leave.** All leaves covered by this policy are collectively called “FMLA leave.” Eligible employees may take a leave of absence covered by this policy during the “FMLA year” (defined below) for any of these reasons:

- For the birth of the employee’s healthy child, or the placement by a State of a child for adoption or foster care with the employee, including child care after birth or placement for adoption or foster care. Leave to care for a child after birth or after adoption or placement for foster care must be taken within one year after the child’s birth or placement. This type of leave is called “family leave.”
- To care for the employee’s spouse, child, or parent with a *serious health condition*. This type of leave is called “caregiver medical leave.”
- For the employee’s own *serious health condition* (including pregnancy, childbirth and related conditions). This type of leave is called “medical leave.”
- For absences caused by an *active duty exigency* when the employee’s spouse, child, or parent is a service member. This type of leave is called “military exigency leave.”

- To care for the employee’s spouse, child, parent, or “next of kin” (if the employee is the nearest blood relative) who is a “recovering service member.” This type of leave is called “military caregiver leave.”

***FMLA Year.*** In determining the amount of leave available to an employee, the District uses a "rolling" 12-month period measured backward from the date an employee uses leave covered by this policy. The method essentially takes a snapshot of the twelve-month period which changes daily. Each time an employee takes FMLA leave, the remaining leave entitlement is the balance of FMLA leave time not used during the immediately preceding twelve months. This rolling twelve-month period is referred to as the “FMLA year.”

***Maximum Length of Leave.*** An employee may take up to 12 weeks combined total of “family leave,” “caregiver medical leave,” “medical leave” or “military exigency leave” during the FMLA year. An employee may take up to 26 weeks of “military caregiver leave” during the FMLA year, if the employee does not use FMLA leave for any other reason. If an employee requests both “military exigency leave” and “military caregiver leave,” the employee may take only a combined total of 26 weeks of leave for these two reasons during the FMLA year, if FMLA leave is not used for any other reason.

If both a husband and wife are eligible employees of the District, they may take only a combined total of 12 weeks for “family leave” during the FMLA year or 26 weeks of “military caregiver leave” during the FMLA year, if they each do not use FMLA leave for any other reason.

***Form of FMLA Leave (Consecutive, Intermittent, or Reduced Work Schedule/Duties).*** FMLA leave under this policy generally should be taken in a single consecutive absence up to the 12-week or 26-week maximum. But under some circumstances, employees may take leave under this policy “intermittently,” which means taking leave in short blocks of time (of no less than one quarter hour increments) while continuing to work. Under other circumstances, employees may take “leave” under this policy through a reduction of the employee’s normal weekly or daily work schedule while retaining equivalent pay and benefits as the employee’s usual job. Intermittent or reduced-schedule leave may be granted, if necessary, for a “caregiver leave,” “medical leave,” “military exigency leave,” or “military caregiver leave.” “Family leave” must be taken in consecutive workweeks, unless approved in advance in writing by the Superintendent. Regardless of the form of leave, in all cases, the total FMLA leave during the FMLA year will not exceed the maximum length allowed by this policy.

***Special Rules For Certain Leaves Requested By Instructional Employees.*** Specific rules apply with regard to instructional employees who request or take intermittent leave or leave on a reduced leave schedule, or request or take leave near the end of an academic term (semester).

Leave Overlapping Two School Years. FMLA leave taken or required for a period that ends with the school year and begins the first semester of the next school year is leave taken consecutively rather than intermittently. The District does not count against the employee’s FMLA leave entitlement any period during the summer vacation when the employee is not required to report for duty. An instructional employee who is on FMLA leave at the end of the school year will be provided with any benefits over the summer vacation that the

employee would normally receive if he or she had been working at the end of the school year.

Intermittent/Reduced Schedule Leave. With regard to intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment where 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 District may require the employee to choose either to:

- 1) take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- 2) transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates the recurring periods of leave than does the employee's regular position.

These rules apply only to leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave per week over a period of several weeks, this rule would apply.

If an instructional employee does not give the required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the District may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the District may require the employee to delay the taking of leave until the notice provision is met.

“Periods of a particular duration” means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include an interrupted period of leave. If an employee chooses to take leave for “periods of a particular duration” in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

Leave Near The End Of Academic Term. With regard to leave taken near the end of a semester, there are different rules depending on the type of leave and the beginning date of the leave.

*Five Weeks Before End of Semester – Medical Leave, Military Exigency Leave.* If an instructional employee begins either a medical leave or a military exigency leave during the five-week period before the end of an academic term, the District will usually require the instructional employee to remain off work until the end of the academic term if (i) the leave will last at least three weeks, and (ii) it is anticipated the employee would return to work during the three-week period before the end of the semester.

*Five Weeks Before End of Semester - Family Leave, Caregiver Leave, Military Caregiver Leave.* If an instructional employee begins a family leave, caregiver leave, or military

caregiver leave during the five-week period before the end of an academic term, the District will usually require the instructional employee to remain off work until the end of the academic term if (i) the leave will last at least two weeks, and (ii) it is anticipated the employee would return to work during the two-week period before the end of the semester.

*Three Weeks Before End of Semester - Family Leave, Caregiver Leave, Military Caregiver Leave.* If an instructional employee begins a family leave, caregiver leave, or military caregiver leave during the three-week period before the end of an academic term, the District will usually require the instructional employee to continue taking leave and remain off work until the end of the academic term if the leave will last more than five working days.

When taking leaves covered by these special rules, it is the instructional employee's responsibility to notify the District if and when he or she is ready and able to return to work before the end of the academic term. The District retains discretion to require the employee to return to work if the employee is ready and able to do so. If the District requires an instructional employee to remain off work until the end of the academic term under these special rules, only the period of absence until the employee is ready and able to return to work will be charged against the employee's 12 or 26 weeks of FMLA leave entitlement. An instructional employee who the District requires to remain off work until the end of the academic term retains the rights to reinstatement and benefits as if the employee was on FMLA leave, as defined in this policy.

***Fraud.*** An employee who fraudulently obtains FMLA leave is subject to disciplinary action, up to and including termination.

***Compliance With FMLA Law and Regulations.*** The District adopted this policy to comply with the Family and Medical Leave Act of 1993 and applicable federal regulations. The policy is not intended to be interpreted to provide any protections or require restrictions not contemplated by that law and regulations.

## **SECTION II: DEFINITIONS OF TERMS**

The term “parent” includes the biological parent of an employee or an individual who stands or stood *in loco parentis* to the employee when the employee was under 18 or incapable of self-care because of mental or physical disability (such as a foster parent, a step-parent, or an adoptive parent), but does not otherwise include a “parent-in-law” or a grand-parent.

The term “child” includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* towards the child, but does not include any individual age 18 or over, unless the person is incapable of self-care because of mental or physical disability.

The term “spouse” includes an employee’s husband or wife, as defined by applicable State law, including the law of any State other than Mississippi under which a “common law” spouse is one who the employee has previously held out or represented to be the employee’s spouse.

The term “next of kin” means a person’s nearest blood relative other than the person’s parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the person by court decree or statute, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the person has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave.

The phrase “academic term” means the school year’s two semesters, the first of which typically ends near the end of the calendar year (first semester) and the second of which ends in the spring of the calendar year (second semester).

The term “instructional employee” includes an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants, cafeteria workers, building service workers, bus drivers, and other primarily non-instructional employees.

The term “key employee” means a salaried eligible employee who is among the highest-paid 10% of all of the District’s employees, both salaried and non-salaried, eligible and non-eligible. In determining whether an employee is among the highest paid 10%, the District will review year-to-date earnings divided by weeks worked by the employee (including weeks in which paid leave was taken). Earnings include wages, premium pay, incentive pay, and non-discretionary and discretionary bonuses, but do not include the value of any employee benefits. The District determines whether a salaried employee is among the highest paid 10% at the time the employee gives notice of the need for leave or otherwise needs to take the leave.

The term “service member” means a member of the Armed Forces, the United States Reserves, or the National Guard who is related to the employee.

The term “recovering service member” means a service member who suffered a serious injury or illness while on active-duty and in the line of duty that may render the person unable to perform the duties of the person’s office, grade, rank or rating and who is undergoing medical treatment, recuperation, or therapy, is otherwise in an outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

The term “incapacity” means an inability to work, attend school, or perform other regular daily activities because of the serious health condition, treatment, or recovery.

The term “continuing treatment” means the employee either (i) must be seen and treated in-person by a health care provider (or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider) two or more times within 30 days of the first day of incapacity, unless circumstances beyond the employee’s control prevent the follow-up visit, or (ii) must be seen and treated by a health care provider on at least one occasion, which

results in a regimen of treatment under the supervision of the health care provider. A regimen of treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to substitute for the second visit to the health care provider.

The term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves:

- (1) inpatient care (*e.g.*, an overnight stay in a hospital, hospice, or residential medical facility), including any period of incapacity or any subsequent treatment in connection with the inpatient care; or
- (2) a period of incapacity of more than three consecutive full calendar days and “continuing treatment” by a health care provider or a provider of health care services under the supervision or by referral of the health care provider (for purposes of this type condition, the first (or only) in-person treatment visit to the health care provider must take place within seven days of the first day of incapacity); or
- (3) any absences for medical care or any period of incapacity because of pregnancy, childbirth and related medical conditions; or
- (4) any absences for medical care or any period of incapacity because of a chronic condition, which is any medical condition which (i) requires periodic visits (at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider, (ii) continues over an extended period of time (including recurring episodes of a single underlying condition); and (iii) causes or may cause episodic rather than a continuing period of incapacity; or
- (5) any absences for medical care or any period of incapacity because of a permanent long-term condition for which treatment may not be effective (the person must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider); or
- (6) any period of absence to receive or recover from multiple treatments by or under orders or referral from a health care provider for restorative surgery after an injury or for a condition so serious that, in the absence of medical intervention or treatment, would likely result in a period of incapacity of more than three consecutive full calendar days.

A serious health condition may include occupational or on-the-job-related injuries and illnesses that might also qualify for workers’ compensation insurance benefits.

Absences for treatment for alcohol or substance or drug abuse by a health care provider or by a provider of health care services on referral by a health care provider may qualify for medical leave under this policy if the absence involves either in-patient care or a period of incapacity of more than three consecutive full calendar days and “continuing treatment” by a health care

provider. But an absence caused by an employee's use of the drug, alcohol, or substance, rather than for treatment, does not qualify for FMLA leave.

Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not “serious health conditions” unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, or periodontal disease are examples of conditions that do not meet the definition of a “serious health condition.”

The term “active duty exigency” means any of the following seven reasons for taking leave under this policy:

(1) *Short-notice deployment.* The employee may take leave for up to seven calendar days (beginning on the date of the deployment notice) to address any issue arising from a notice to the service member of an impending call or order to active duty in support of a contingency operation, if the service member receives the deployment notice seven or less calendar days before the date of deployment.

(2) *Military events and related activities.* The employee may take leave to attend any official ceremony, program, or event sponsored by the military, or any family support or assistance program or informational briefing sponsored or promoted by the military, military service organizations, or the American Red Cross, if such ceremonies, events, meetings, programs, or briefings are related to the active duty or call to active duty status of the service member.

(3) *Childcare and school activities.* If the service member’s active duty or call to active duty status requires a change in the existing childcare or schooling arrangements for a biological, adopted, or foster child, a stepchild, or a legal ward of the service member, or a child for whom the service member stands in loco parentis, then the employee may take leave: (i) to arrange for alternative childcare for the child; (ii) to provide childcare to the child on an urgent, immediate need basis (but not on a routine, regular, or everyday basis); (iii) to enroll in or transfer the child to a new school or day care facility; or (iv) to attend meetings on behalf of the service member with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, relating to the service member’s child..

(4) *Financial and legal arrangements.* The employee may take leave (i) to make or update financial or legal arrangements to address the service member’s absence while on active duty or call to active duty status (for example, to prepare or update a will); and (ii) to act as the service member’s representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the service member is on active duty or call to active duty status, and for a period of 90 days following the termination of the service member’s active duty status.

(5) *Counseling.* If the employee, the service member, or a child of the service member needs counseling (from someone other than a health care provider) because of the active duty or

call to active duty status of the service member, then the employee may take leave to attend or assist with the counseling.

(6) *Rest and recuperation.* The employee make take up to five days of leave to spend time with a service member who is on short-term, temporary, rest and recuperation leave during the period of deployment.

(7) *Post-deployment activities.* The employee make take leave (i) to attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the service member's active duty status; and (ii) to address issues that arise from the death of a service member while on active duty status, such as recovering the body of the service member and making funeral arrangements.

### **SECTION III: NOTICE AND CERTIFICATION REQUIREMENTS**

***Procedures for Requesting FMLA Leave.*** Notice of an absence qualifying for FMLA leave may be given by the employee or the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to do so personally. To help the District promptly and efficiently process the leave request, employees (or spokespersons) should make all requests for FMLA leave to the Superintendent and must provide enough information to make the District aware that a need for FMLA leave exists. For example, under most circumstances, "calling in sick" does not provide enough information to inform the District an employee needs FMLA leave. Employees must assist with the completion of any requested written documentation to set forth the reasons for the requested leave, the anticipated start of the leave, the anticipated duration of the leave, and anticipated return-to-work date. If a manager or supervisor learns of an employee's circumstances that might qualify for FMLA leave under this policy, the manager or supervisor must advise the employee to contact the Superintendent and then must also personally inform the Superintendent regarding those circumstances.

***Time Frames for Employee Notice.*** The District requires employees to provide notice of the absence and need for FMLA leave in a timely manner. Failure to do so may result in a delay in taking leave or denial of the leave, depending on the circumstances.

**Foreseeable Absences/Scheduled Medical Treatments.** When an employee is aware of a need for an FMLA leave (such as for scheduled medical treatment or a scheduled child delivery date), the employee must give notice of the need for FMLA leave at least thirty (30) days before the date the employee wants the leave to begin. If the employee learns of the need for leave to begin in less than 30 days, the employee must give notice of the anticipated absence either the same day or the next business day. In particular, when planning medical treatment, the employee must consult with the Principal or Superintendent and his or her manager or supervisor to make a reasonable effort to schedule the treatment so as not to disrupt unduly the District's operations, subject to the approval of the health care provider, and to work out a treatment schedule which best suits the needs of both the employer and the District.

Unforeseeable Absences. If the absence and need for FMLA leave is unforeseeable and advance notice of the absence is not possible, the employee must provide as much notice as is practical under the circumstances. For example, while the District expects employees who will be absent from work to follow designated call-in procedures, if an employee requires emergency medical treatment and has no spokesperson (e.g., spouse, parent, doctor or nurse) who could call for him or her, the employee would not be required to follow the call-in procedure until his or her condition is stabilized and the employee has access to, and is able to use, a phone.

***Military Certifications.*** An employee's request for "military exigency leave" must be supported by a certification that the service member is on active duty or has been called to active duty, unless it is impossible or impracticable to obtain such certification within a reasonable period following the request or need for leave.

***Medical Certification & Recertification of a Serious Health Condition.*** If an employee requests "caregiver leave," "medical leave," or "military caregiver leave", the District will require a medical certification of the employee's or family member's health condition and the probable length of time treatment will be required. If the leave is requested to care for a qualifying family member with a serious health condition, the District will require an additional certification regarding the necessity for the employee to provide care to the family member. The District also may require recertification on a reasonable basis during the leave. The District may also require re-certification if an employee's or family member's serious health condition lasts longer than an FMLA year. Certifications must be provided on the *Certification of Health Care Provider* forms. Failure to provide requested certifications may result in delay or denial of the requested FMLA leave and potential treatment of the absence as unexcused, which may lead to discipline, up to and including discharge.

***Second/Third Opinion on Certification.*** To verify any certification given by a health care provider, the District may require the employee to obtain a second medical opinion from another health care provider the District's choose at our expense. If the second opinion differs from the certification provided by the employee's health care provider, the District may require, at its expense, the opinion of a third healthcare provider selected jointly. The third opinion will be final and binding.

***Designation by District.*** If the District determines at any time that an employee's absence is for reasons covered by this policy, including an absence that could qualify for another type of leave provided by the District, the District may designate the absence as FMLA leave covered by this policy and count the absence toward the employee's available weeks of FMLA leave.

#### **SECTION IV: PAY AND BENEFITS**

***Use of Available Paid Leave.*** Unless the employee's absence is related to an on-the-job injury covered by workers compensation insurance for which the employee receives workers' compensation benefit payments, during a FMLA leave covered by this policy, an employee must use available unused earned leave, and earned vacation leave, in that order. For the first ten days in excess of earned leave, a licensed instructional employee shall receive regular pay less \$50.00

per day. After the employee exhausts all available paid leave, the remainder of the leave, if any, will be unpaid. The maximum periods of leave available under this policy are not extended by adding paid leave to the FMLA leave period. Stated otherwise, all paid time off taken will be included in the 12-week or 26-week leave time available under this policy. For example, if an employee has two weeks of earned leave and one week of earned vacation leave, and takes a 12-week FMLA medical leave, the employee will be paid for the first three weeks and not paid for the remaining nine weeks.

***Employment Benefits During FMLA Leave.*** During an approved FMLA leave, an employee's health insurance, if any, will continue just as if the employee had not taken leave. The District will continue to pay any portion of the premium that it would pay if the employee was working, and, if the employee uses earned leave or earned vacation leave during the FMLA leave of absence, the District will make the usual payroll deductions for premiums. If part or all of the FMLA leave will be unpaid, the employee must make arrangements to prepay any portion of the premium the employee would pay if working, or if this is not practical under the circumstances, to pay on time his or her portion of the premium. If an employee fails to pay on time any portion of the premium the employee is required to pay, the insurance coverage may terminate. Other benefits do not continue or accrue during FMLA leave. Employees may continue other benefits, if any, as permitted by the particular benefit plan by making arrangements in advance to make any required contributions or premium payments.

#### **SECTION V: CONDUCT DURING LEAVE; RETURN TO WORK REQUIREMENTS AND RIGHTS**

***No Outside Employment During FMLA Leave.*** Employees may not accept employment with another employer and may not actively engage in self-employment while on any FMLA leave of absence covered by this policy. If the employee does so, the District will consider the employee to have voluntarily quit.

***Reporting During FMLA Leave.*** While on an approved FMLA leave, employees usually will be required to report semimonthly or weekly regarding the employee's status and intent to return to work.

***Return-to-Work Certification.*** When an employee seeks to return to work following an approved medical leave (for the employee's own serious health condition), the employee must provide a medical certification stating whether the employee is able to perform all essential job duties or if there are any limitations on the employee's ability to perform essential job duties. Failure to provide the return-to-work certification may result in delay of the employee's return to work until the certification is provided, or possible disciplinary action.

***Post-Leave Accommodation.*** If an employee continues to have physical or mental impairments at the conclusion of a medical leave taken under this policy, the District will engage in an interactive process with the employee to determine whether an employee is able to return to work with or without reasonable accommodation. If the District offers an employee the opportunity to return to work with a reasonable accommodation and the employee fails to do so, the District will consider the failure to return to work to be a voluntary quit.

***Employment Following FMLA Leave.*** When an employee returns to work as scheduled following FMLA leave, the employee in most circumstances will be assigned to his or her former job or to a substantially equivalent job with substantially equivalent pay, benefits, seniority, requirements, and working conditions. For example, an employee may not be restored to a position which requires additional licensure or certification. Under limited circumstances, the District may be entitled to replace rather than reinstate a key employee during or after a FMLA leave.

***Failure to Return From FMLA Leave.*** The District will consider an employee to have voluntarily quit if the employee does not return to work on or before the third scheduled work day after an approved FMLA leave expires. If an employee fails to return to work following FMLA leave, the employee may be required to reimburse the District for any insurance premiums the District paid during the leave, *unless* the failure to return to work is due to circumstances beyond the employee's control, such as the continuation of a serious health condition or a new serious health condition arising.