

Public Charter School Medical Leave

Coverage

This policy covers a public charter school that employ 25 or more part-time or full-time employees for each working day during 20 or more calendar workweeks in the calendar year in which the leave is to be taken or in the calendar year immediately preceding the year in which the leave is to be taken.

Eligibility

An employee is eligible for leave when the employee employed by the public charter school on the date the leave begins. This policy applies to employees who work an average of 25 hours or more per week for the public charter school during the 180 days or more immediately prior to the first day of the start of the requested leave. Military Family Leave applies to employees who work an average of at least 20 hours per week. For parental leave purposes, an employee becomes eligible upon completing at least 180 days immediately preceding the date on which the parental leave begins. There is no minimum average number of hours worked per week when determining employee eligibility for parental leave.

In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.

In determining 25 hours average workweek, the employer must count the actual hours worked using guidelines set out pursuant to the Fair Labor Standards Act.

Definitions

“Child” - for the purpose of taking parental and sick child leave, child means a biological, grandchild (for serious health conditions only), adopted or foster child, or stepchild of the employee, for whom the employee has parental rights and duties as defined by law or a child with whom the employee is or was in a relationship of “in loco parentis.” A legal or biological relationship is not required. The child must be under 18 years of age or may be 18 years of age or older if incapable of self-care due to mental or physical impairment as defined by ORS 659A.100 (2)(d). For purposes of sick child leave only, child also includes child of employee’s same-sex domestic partner.

“Family Member” - means the spouse, same-sex domestic partner, custodial parent, noncustodial parent, adoptive parent, foster parent, biological parent, grandparent, parent-in-law, parents of same-sex domestic partner or a person with whom the employee is or was in a relationship of “in loco parentis.” It also includes the biological, grandchild (for serious health conditions only), adopted or foster child, child of same-sex domestic partner or stepchild of an employee. For purposes of a serious health condition, child includes both minor and adult children.

A “serious health condition” means an illness, injury, impairment or physical or mental condition of an employee or family member that:

1. Requires inpatient care in a hospital, hospice or residential medical care facility such as a nursing home. When a family member resides in a long-term residential care facility, leave shall apply only to:
 - a. Transition periods spent moving the family member from one home or facility to another, including time to make arrangements for such transitions;
 - b. Transportation or other assistance required for a family member to obtain care from a physician;
 - c. Serious health conditions as described in this regulation.
2. The treating health-care provider judges to pose an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;
3. Requires constant or continuing care such as home care administered by a health-care professional;
4. Involves a period of incapacity. Incapacity is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days and any subsequent required treatment or recovery period relating to the same condition. This incapacity must involve:
 - a. Two or more treatments by a health-care provider;
 - b. One treatment plus a regimen of continuing care; or
 - c. Any period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health-care provider, continues over an extended period of time and may cause episodic rather than a continuing period of incapacity such as asthma, diabetes or epilepsy.
5. Involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer’s disease, a severe stroke or terminal stages of a disease;
6. Involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis or dialysis for kidney disease that if not treated would likely result in incapacity of more than three days; or
7. Involves any period of disability of a female due to pregnancy or childbirth or period of absence for prenatal care.

Purpose of Leave

The public charter school allows eligible employees to take leave for the following purposes commonly referred to as parental leave, serious health condition leave, pregnancy disability leave and sick child leave:

1. Birth of the employee’s child (eligibility expires 12 months after the birth);
2. Placement of a child for adoption or foster care when the child is under 18 or older than 18 years of age if incapable of self-care (eligibility expires 12 months after placement);

3. Care of a family member with a serious health condition;
4. Employee's own serious health condition;
5. Care of a sick or injured child who requires home care but is not suffering from a serious health condition. An employer is not required to grant leave for routine medical or dental appointments;
6. Military Family Leave: Allowing leave for a spouse of a military personnel per each deployment of the spouse when the spouse has either been notified of an impending call to active duty, has been ordered to active duty, or has been deployed or on leave from deployment.

Length of Leave

An employee eligible for leave is entitled to a total of 12 workweeks of leave during any 12-month period for the purposes specified above. The 14 days of military family leave is part of the 12 weeks. Two family members who are eligible and who both work for the public charter school may not take leave at the same time unless one employee needs to care for the other employee who is suffering from a serious health condition or one employee needs to care for a child suffering from a serious health condition while the other employee is also suffering from a serious health condition or both family members are suffering from a serious health condition or if the concurrent leave in such instances is permitted by the public charter school.

There will be occasions where two employees employed by the same public charter school will not have to share the 12- week allotment of leave.

In addition to the 12 workweeks of leave authorized above, a female employee may take an additional 12 workweeks of leave within any one-year period for an illness, injury or condition related to pregnancy or childbirth that disables the employee from performing her work duties. An employee who takes 12 workweeks of leave for parental leave may also take up to an additional 12 workweeks of sick child leave within the same leave year. If the employee uses less than 12 weeks of parental leave, however, no additional sick child leave is available, except for the balance of the initial 12 weeks. The employee may also use this balance for any leave purpose.

A female employee may take up to 36 weeks of leave in one leave year, but only under the following circumstances:

1. The female employee takes 12 weeks of pregnancy disability leave; followed by
2. Twelve weeks of parental leave; followed by
3. Twelve weeks of sick child leave.

A male employee may take up to 24 weeks of leave in one year, but only under the following circumstances:

1. The male employee takes 12 weeks of parental leave; followed by
2. Twelve weeks of sick child leave.

Parental leave must be taken in one uninterrupted period – unless the employer approves otherwise – and must be completed within 12 months of the birth, adoption or placement of the child. An exception must be made to allow parental leave to effectuate adoption or foster placement of the child. Such leave need not be taken in one, uninterrupted period with any additional parental leave.

The birth, adoption or foster placement of multiple children at one time entitles the employee to take only one 12-week period of parental leave.

Sick child leave need not be provided if another family member, including a noncustodial biological parent, is willing and able to care for the child.

For the purpose of intermittent leave, leave entitlement is calculated for an employee by multiplying the number of hours the employee normally works per week by 12. (For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours of leave.) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek. If an employee takes intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of leave to which the employee is entitled.

An eligible employee, who has previously qualified for and taken some portion of leave, may request additional leave within the same leave year. The employee must be employed for 180 days immediately before the date the additional leave begins and:

1. The employee must have worked an average of 25 hours per week in the 180 days preceding the additional period of leave; except that
2. An employee taking parental leave, or sick child leave that is available as a result of the employee taking a full 12 weeks of parental leave, need only be employed for the 180 days immediately before the date any additional leave begins; and
3. The provisions of this section do not apply to intermittent or reduced work schedule leave taken for a serious health condition for an employee or family member.

For situations where leave is taken for a sick child or for serious health condition of a same-sex domestic partner, parent-in-law or parent of the same-sex domestic partner, grandparent or grandchild) the employer:

1. May allow an exempt employee with accrued paid leave to take leave in one-hour blocks or less than a full day. For these purposes, an exempt employee is a salaried executive, administrative or professional employee under the federal Fair Labor Standards Act or the state minimum wage and overtime laws;
2. May not reduce the salary of an employee who does not have or has run out of accrued paid leave and takes intermittent leave in blocks of less than a full day. To do so would result in the loss of exemption under state law.

Intermittent Leave and Alternate Duty

An employer may transfer an employee on intermittent leave or a reduced work schedule into an alternate position with the same or different duties to accommodate the leave, provided the following exist:

1. The employee accepts the transfer position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;
3. Transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and
4. The transfer is not used to discourage the employee from taking intermittent or reduced work schedule leave, or to create a hardship for the employee.

An employee transferred, as provided in 1.-4. above, to an alternate position for the purpose of a reduced work schedule, must be returned to the employee's former position.

Leave time for an employee on intermittent leave or a reduced work schedule is the difference between the number of hours the employee normally works and the number of hours the employee actually works during the intermittent leave or reduced work schedule. Holidays or days in which the employer's business is not in operation are not counted toward intermittent or reduced work schedule leave, unless the employee was scheduled or expected to work on the holiday.

An employer may transfer an employee recovering from a serious health condition to an alternate position that accommodates the serious health condition provided:

1. The employee accepts the position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;
3. The transfer is not used to discourage the employee from taking leave for a serious health condition, or to create a hardship for the employee.

An employee is not on leave if the employee has been transferred, as provided in section 1.-3. above, to an alternate position for the purpose of alternate work duties that the employee is able to perform within the limitations of the employee's own serious health condition, but not requiring a reduced workweek. An employee working in an alternate position retains the right to return to the employee's original position unless all leave taken in that leave year plus the period of time worked in the alternate position exceed 12 weeks.

An alternate position accommodating an employee's serious health condition may result in the employee working fewer hours than the employee worked in the original position. The employee's leave is the difference between the number of hours the employee worked in the original position and the number of hours the employee actually works in the alternate position.

Intermittent leave for teachers is subject to special rules.

Special Rules for Teachers

Special rules apply if leave is requested to be taken near the end of a semester.

1. If a teacher requests, in advance, leave for a serious health condition and the teacher will be absent more than 20 percent of the time the employer may require the teacher to elect one of the following options:
 - a. To take leave for one uninterrupted period of time as necessary to complete medical treatment. (School holidays and school vacation days are not counted as family leave.);
 - b. To transfer temporarily into an available alternative position which better accommodates periodic absences.
2. If a teacher begins leave more than five weeks before the end of the academic term because of the teacher's own serious health condition, the employer may require the teacher to remain on leave until the end of the term if:
 - a. The leave is at least three weeks long; and
 - b. The teacher's return to work would occur within three weeks of the end of the term.
3. If a teacher begins leave within five weeks of the end of the academic term for parental leave or the serious health condition of a family member, the employer may require the teacher to remain on leave through the end of the term if:
 - a. The leave is at least two weeks long; and
 - b. The teacher's return would occur within the last two weeks of the term.
4. If a teacher begins leave within three weeks of the end of the academic term for parental leave or to care for a family member with a serious health condition and the leave is greater than five working days, the employer may require the teacher to remain on family leave until the end of the term.
5. If a teacher takes leave to the end of the school year and continues the leave at the beginning of the next school term, the leave is consecutive rather than intermittent leave.
 - a. The period between the end of the school term and the beginning of the next school term, when a teacher would not have been required to report for duty, is not counted against the teacher's leave entitlement.
 - b. A teacher on leave at the end of the school term must be provided with the same benefits during the period between school terms that the teacher would normally receive if no leave were taken.
6. If a teacher is required by the employer to remain on leave to the end of the academic term, only the period of leave the teacher requested shall be charged against the teacher's leave entitlement.
7. Nothing in prohibits the employer from allowing the teacher to work as a substitute or in some other paid capacity during the weeks prior to the end of term under 3. or 4. above.

8. Full-time employees who have been maintained on the payroll by a public charter school during 180 consecutive calendar days, are thereafter deemed to have been employed by that public charter school for an average of at least 25 hours per week during the 180 days immediately preceding the date leave begins.

Calculating the 12-Month Period for Leave

The public charter school will use the same method for calculating the 12-month period in which the 12 workweek leave entitlement occurs for all employees. The public charter school will use a “rolling” 12-month period measured backward from the date the employee uses any family and medical leave.

Paid/Unpaid Leave

Family leave is generally unpaid. The public charter school requires the employee to use any accrued sick leave, vacation or personal leave days (or other paid time established by Board policy(ies)) in the order specified by the district and before taking leave without pay for the leave period.

The public charter school requires the employee to use any accrued paid leave, including personal and sick leave or accrued vacation leave before taking leave without pay for the leave period. The employee may select the order in which the paid leave is used.

The public charter school will notify the employee if the requested leave has been granted and, if required by the public charter school, that accrued paid leave shall be used during the leave period. Such notification will be given to the employee prior to the commencement of the leave or within two working days of the employee’s notice of an unanticipated or emergency leave.

Continuation of Health Insurance Benefits

Benefits are not required to continue or accrue unless required by Board policy(ies) related to paid and unpaid leaves.

An employer electing to continue health or other insurance coverage for an employee on leave may require that the employee pay only the same share of health or other insurance premium during the leave that the employee paid prior to the leave. If an employee cannot or will not pay such costs, the employer may elect to discontinue benefit coverage, unless to do so would render the employer unable to restore the employee to full benefit coverage as required by law. If an employer pays any portion of any employee’s benefit coverage for employees on leave, the employer must pay that portion during leave.

If an employee gives unequivocal notice of intent not to return to work from leave, the employee is entitled to complete the approved leave, providing that the original need for leave still exists. The employer’s obligations to restore benefits (subject to COBRA requirements) and to restore the employee to his/her position at the end of the leave – cease and the employer is not required to hold a position vacant or available for the employee giving unequivocal notice of intent not to return.

In the event the public charter school is required to pay or elects to pay any part of the costs of providing health, disability, life or other insurance coverage for an employee during the period of leave that should have been paid by the employee, the public charter school may deduct, on the employee’s return to work, such amounts from the employee’s pay as have been advanced.

In no event may the total deducted exceed 10 percent of the employee's gross pay each pay period.

Return to Work

After leave, an employee is generally entitled to be returned to the same position the employee held when leave commenced or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

If the leave was required for the employee's own serious health condition, the public charter school may require the employee to obtain and present certification from the health-care provider that the employee is able to resume work. The employer is responsible for any co-pay or other out-of-pocket costs incurred by the employee in providing certification.

Special rules for teachers will apply if leave is requested to be taken near the end of a semester.

Application

An employee requesting leave shall provide at least 30 days notice prior to the leave date if the leave is foreseeable. The notice shall be written and include the anticipated start, duration and reasons for the requested leave. The employee must make a reasonable effort to schedule treatment, including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the public charter school.

When an employee is able to give advance notice and requests leave, an employer may request additional information to determine that the leave qualifies for leave. The employer may designate the employee as provisionally on leave until sufficient information is received to make a determination. An employee able to give advance notice of the need to take leave must follow the employer's known, reasonable and customary procedures for requesting any kind of leave.

An employee eligible for leave is required, to provide oral or written notice within 24 hours of commencement of the leave in unanticipated or emergency leave situations. The employee may designate a family member or friend to notify the public charter school during that period of time.

In either case, proper documentation must be submitted no later than three working days following the employee's return to work.

Failure of an employee to provide the required notice for leave may result in the public charter school deducting up to three weeks from the employee's unused leave in that one-year leave period.

The employee may be subject to disciplinary action for not following the public charter school's notice procedure.

Medical Certification

When an employee gives 30 days notice for leave, other than for parental leave, the employer may require the employee to provide medical documentation when appropriate to support the request for the leave need before the leave starts. The public charter school will provide written notification to employees of this requirement within three working days of employee's request for leave. If the employee's need for leave precludes giving 30 days notice, the employee is required to submit such medical certification no later than

15 calendar days after receipt of the public charter school's notification that medical certification is required.

If an employee requests leave because of a serious health condition, the public charter school may require a second opinion and designate the health-care provider. The provider may not be employed by the public charter school. Should the two opinions conflict, the public charter school may require a third opinion and that the two providers designate the third health-care provider. The third opinion will be final. Second and third opinions and the actual travel expenses for the employee to obtain such opinions will be paid for by the public charter school.

An employer may not delay the taking of leave in the event that medical certification is not received prior to the commencement of a leave taken subject to the timelines set forth in this regulation. The employer may designate the leave as provisionally approved subject to medical certification. The employer shall provide the employee with written notice of any requirement to provide medical certification of the need for leave and the consequences for failure to do so. The employee must be allowed a minimum of 15 days to provide medical certification.

If the employee elects or the public charter school requires substitution of accrued sick leave, vacation or other paid leave for unpaid leave pursuant to other Board policy, the public charter school will follow the medical documentation requirements of the applicable leave policy or contract provision whenever such requirements are more beneficial to the employee.

If the leave is for the purpose of an employee's own serious health condition, he/she must also provide a fitness for duty medical release from the health-care provider before returning to work.

If an employee has taken sick child leave on all or any part of three separate days during a leave year, the employer may require medical certification on the fourth day or subsequent occurrence of sick child leave within that leave year. The employer must pay the cost of the medical certification not covered by insurance or other benefit plan. The opinion of the health-care provider shall be binding. The employer may not require the employee to obtain a second opinion. The employer is not required to request medical certification for sick child leave exceeding three days and may make such requests at the employer's discretion.

Record Keeping/Posted Notice

The public charter school will maintain all records including dates leave is taken by employees, identified separately from other leave; hours/days of leave; copies of general and specific notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave.

Medical documentation will be maintained separately from personnel files as confidential medical records.