

Sherman County S. D.

Code: GCBDA/GDBDA-AR
Adopted: 8/14/95

Family Medical Leave

Effective Date

Federal law generally took effect August 5, 1993. For employees covered by a collective bargaining agreement, the law becomes effective the date the agreement expires or February 5, 1994, whichever is earlier. Oregon law was enacted in 1991.

Coverage

Federal law covers public agencies, including school districts. In order for school employees to be eligible, however, they must be employed at a worksite with 50 or more employees within a 75 mile radius. State law covers school districts that employ 50 or more employees immediately prior to the first day the requested family medical leave would begin.

Eligibility

Federal law applies to employees who have worked for the employer for at least 12 months and for at least 1,250 hours during the year preceding the start of the leave. State law applies to employees who work an average of 25 hours or more per week and who worked 180 days or more immediately prior to the first day of family medical leave but not those employed on a seasonal or temporary basis for less than six months.

Covered Family Members

Federal law allows employees leave to care for the employee's spouse, son, daughter or parent. Federal law allows the term "spouse" to be defined in accordance with each state's law. (Oregon law does not currently define the term.) Son or daughter means a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing *in loco parentis*. If over 18, the child must be "incapable of self care because of a mental or physical disability". Parent means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child.

State law allows leave to care for a child, spouse, parent and adds the classification of parent-in-law. Spouse is not defined. Child means the biological child, adopted child or stepchild of the employee. Parent includes the biological, adoptive or step-parent of the employee. Parent-in-law includes the biological, adoptive or stepparent of the employee's spouse.

Purpose of Leave

Federal law allows leave to care for the specified individuals with a serious health condition or because of a serious health condition that makes the employee unable to perform the functions of the employee's job. Serious health condition means an illness, injury, impairment or physical or mental condition that involves:

1. Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) 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 three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or
3. Continuing treatment by (or under the supervision of) 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 three calendar days; or for prenatal care.

An employee is unable to perform the functions of the position when the health care provider finds that the employee is unable to work at all or is unable to perform any of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act and federal regulations. The district has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the provider to review.

State law defines "serious health condition" as:

1. An illness of a child of an employee requiring home care;
2. An injury, disease or condition that according to the medical judgment of the treating physician:
 - a. Poses an imminent danger of death;
 - b. Is terminal in prognosis with a reasonable possibility of death in the near future; or
 - c. Is any mental or physical condition that requires constant care.

Paid/Unpaid Leave

Family medical leave under federal law is generally unpaid. An employee may elect to use accrued paid leave for part or all of the leave period. The district can require the employee to use any accrued sick leave, vacation or personal leave days (or other paid time established by Board policy(ies) and/or collective bargaining agreement) for part or all of the leave period.

Family medical leave under state law is also generally unpaid unless otherwise specified by Board policy(ies) or the collective bargaining agreement. An employee may use accrued paid vacation leave. The employee may also use other accrued paid leave time, such as sick leave or personal leave, subject to specifications in Board policy(ies) or the collective bargaining agreement.

Length of Leave

An employee eligible under federal law is entitled to a total of 12 work weeks of leave during any 12 month period. A husband and wife who are eligible and who both work for the district may only take a combined total of 12 weeks of leave if the leave is taken to care for a parent with a serious health condition.

An employee may take leave intermittently or on a reduced leave schedule if the district and employee agree or when medically necessary. The district may require certification. Intermittent leave or leave on a reduced schedule may be taken in increments of less than one full work day.

Special rules will apply if leave is requested to be taken near the end of a semester. State law provides a total of 12 work weeks of leave during any 24 month period. An employee may take leave in increments of a day or more or in one continuous block of time, as the family member's condition requires. Hourly employees may take leave in hourly increments under certain conditions.

Continuation of Health Insurance Benefits

Under federal law, group health insurance benefits and premium payments must be continued on the same basis as coverage would have been provided and premiums paid if the employee had been continuously employed during the leave period. The district will continue to pay premiums except for the employee's required contribution when paid leave is used. A 30-day grace period will be allowed for receipt of employee contributions. The district's obligation to maintain the employee's benefits will cease if the employee's contribution is more than 30 days late.

Under state law, benefits are not required to continue or accrue unless required by Board policy(ies) and/or provisions in the collective bargaining agreement related to paid and unpaid leaves.

Return to Work

After leave, granted under federal law, an employee generally is 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. There are some exceptions.

If the leave was required for the employee's own serious health condition, the district may require the employee to obtain and present certification from the health care provider that the employee is able to resume work.

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

After leave, granted under state law, an employee is entitled to be returned to the same or an equivalent job. There are some exceptions.

Application

Under federal law, an employee must provide the district at least 30 days advance notice before leave is to begin, if the need for the leave is foreseeable based on planned medical treatment. The notice should state the anticipated timing and duration of the leave. The employee must make a reasonable effort to schedule treatment, including intermittent leave and reduced hours, so as not to unduly disrupt the operation of the district.

If advance notice is not possible, for example due to a change in circumstances or medical emergency, notice must be given as soon as practicable. "As soon as practicable" means at least verbal notification within one or two business days of when the need for leave becomes known to the employee.

The district may require medical certification to support a request for leave to care for a seriously ill family member or for the employee unable to perform his/her job because of a serious health condition. The district will provide notification to employees of this requirement upon the employee's request for leave. Employees will be required to submit such medical certification to the district no later than 15 days after notification.

Under state law, in cases where the serious health condition is anticipated, written notice shall be provided to the district 15 days before taking the family medical leave of absence and shall include an explanation of the need for the leave. An employee taking family medical leave of absence shall make a reasonable effort to schedule medical treatment or supervision, subject to the approval of the treating physician, so as to minimize disruption of district operations.

In cases where the serious health condition is not anticipated, an oral request confirmed in writing to the employer within three working days constitutes a written request.

The district may require an employee to provide written verification from the treating physician of need for the leave. The district shall notify the employee within three working days of receipt of the leave request that written verification will be required.

The district shall notify the employee in writing that all requirements have been met and that leave is granted for the requested amount of time.

Notification

Any notice required by federal and state laws explaining employee rights and responsibilities will be posted in all staff rooms and the district office. Additional information may be obtained by contacting the superintendent.

Recordkeeping

The district will maintain all records as required by federal and state laws 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 certifications will be maintained separately from personnel files as confidential medical records.

Federal vs. State Law

Both federal and state law contain provisions regarding leave for family illness. Federal regulations state an employer must comply with both laws; that the federal law does not supersede any provision of state law that provides greater family medical leave rights than those established pursuant to federal law and that state and federal leave entitlements run concurrently. Generally, employees will be deemed to be using leave pursuant to state law except in such cases where federal law provides greater benefits, for example where an employee has exhausted the 12 weeks of leave, granted pursuant to state law, within a 12 month period.

CERTIFICATION OF PHYSICIAN OR PRACTITIONER
(Family and Medical Leave Act of 1993)

1. Employee's Name: _____
2. Patient's Name (if other than employee): _____
3. Diagnosis: _____

4. Date condition commenced: _____
5. Probable duration of condition: _____
6. Regimen of treatment to be prescribed (Indicate number of visits, general nature and duration of treatment, including referral to other health services. Include schedule of visits or treatment if it is necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal schedule of hours per day or days per week.):
 - a. By physician or practitioner:
 - b. By another provide of health services, if referred by physician or practitioner:

IF THIS CERTIFICATION RELATES TO CARE FOR THE EMPLOYEE'S SERIOUSLY-ILL FAMILY MEMBER, SKIP ITEMS 7, 8 AND 9 AND PROCEED TO ITEMS 10 THROUGH 13 ON REVERSE SIDE. OTHERWISE, CONTINUE BELOW:

Check Yes or No in the boxes below, as appropriate:

7. Is inpatient hospitalization of the employee required?
8. Is employee able to perform work of any kind? (If "No", skip item 9.)
9. Is employee able to perform the functions of employee's position? (Answer after reviewing statement from employer of essential functions of employee's position, or, if none provided, after discussing with employee.)

15. Signature of physician or Practitioner: _____
16. Date: _____
17. Type of Practice (field of specialization, if any): _____

FOR CERTIFICATION RELATING TO CARE FOR THE EMPLOYEE'S SERIOUSLY-ILL FAMILY MEMBER, COMPLETE ITEMS 10 THROUGH 14 BELOW AS THEY APPLY TO THE FAMILY MEMBER AND PROCEED TO ITEM 15 ON REVERSE SIDE.

10. Is inpatient hospitalization of the family member (patient) required?
11. Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety or transportation?
12. After review of the employee's signed statement (See Item 14 below), is the employee's presence necessary or would it be beneficial for the care of the patient? (This may include psychological comfort.)
13. Estimate the period of time care is needed or the employee's presence would be beneficial: _____

ITEM 14 IS TO BE COMPLETED BY THE EMPLOYEE NEEDING FAMILY LEAVE.

14. When family leave is needed to care for a seriously-ill family member, the employee shall state the care he or she will provide and an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced leave schedule:

Employee signature: _____

Date: _____

YOUR RIGHTS

under the

FAMILY AND MEDICAL LEAVE ACT OF 1993*

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to “eligible” employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for **any** of the following reasons:

- to care for the employee’s child after birth, or placement for adoption or foster care;
- to care for the employee’s spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee’s job.

At the employee’s or employer’s option, certain kinds of **paid** leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is “foreseeable.”
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer’s expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- For the duration of FMLA leave, the employer must maintain the employee’s health coverage under any “group health plan.”
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee’s leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

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