GBN-R1 FAMILY AND MEDICAL LEAVE ACT ADMINISTRATIVE PROCEDURE

FAMILY AND MEDICAL LEAVE ADMINISTRATIVE PROCEDURE

I. **Eligibility**

To be eligible under the FMLA, employees must work at a site where 50 or more employees of the same school board are employed within 75 miles of that work site. An employee must have been employed by the school unit for at least twelve months and have worked at least 1250 hours in the previous twelve-month period. According to the law, teachers employed on a full-time basis are presumed to meet the minimum hours requirement.

I. **Benefit**

Under certain conditions, eligible employees, if qualified, may be entitled to up to 12 weeks or 26 weeks leave in a 12-month period with continuing participation in the school unit's group insurance plan.

The 12-month period for FMLA purposes is designated as the 12-month period measured forward from the date an individual employee's first leave begins.

I. **Reasons for Taking Leave**

Unpaid leave will be granted to eligible employees for any of the following reasons:

I. The birth and care of a child;

II. The adoption or foster placement of a child with the employee;

III. To care for a spouse, child or parent with a serious health condition; or

IV. The employee is unable to perform the functions of their position because of a serious health condition.

Military Family Leave

I. **Military Caregiver Leave**

An eligible employee who is a relative of a service member can take up to 26 weeks in a 12-month period in order to care for a covered service member who is seriously ill or injured in the line of duty, or a veteran who is undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment.

II. **Qualified Exigency Leave** (applies to eligible employees with family members who are in the National Guard or Reserves, and Regular Armed Forces)

I. An eligible employee can take up to the normal 12 weeks of leave, if a family member who is a member of the National Guard or Reserve is called up to active duty on a contingency mission.

II. Qualifying exigencies include:

1. Short-notice deployment;
2. Military events and related activities;
3. Childcare and school activities;
4. Financial and legal arrangements;
5. Counseling;
6. Rest and recuperation;
7. Post-deployment activities; and
8. Additional activities agreed to by the employer and the employee.

II. **Substitution of Paid Leave**

Any leave taken for FMLA-qualifying purposes (including leave taken under employment policies, bargaining agreements, or contracts) shall also be applied to an employee's annual FMLA entitlement. When paid leave taken for FMLA-qualifying purposes is exhausted, the balance of FMLA leave shall be unpaid.

I. **FMLA Leave When Both Parents Are School Unit Employees**

If both parents of a child are employed by Cape Elizabeth School Department, they each are entitled to a total of 12 weeks of leave per year. However, leave may be granted to only one parent at a time and if leave is taken: (1) for the birth of a child or to care for the child after birth; or (2) for placement of a child for adoption or foster care or to care for the child after placement.

If spouses are employed by Cape Elizabeth School Department, the aggregate number of weeks of leave that can be taken is 26 weeks in a single 12-month period for serviceperson leave or a combination of exigency and serviceperson leave. The aggregate number of weeks of leave that can be taken by a husband and wife who work for the same employer is 12 weeks if for exigency leave only.

I. **Employee Notice Requirement**

The employee must follow the employer's standard notice and procedural policies for taking FMLA.

Except as provided elsewhere in this policy, an employee must submit an application for leave at least 30 days in advance when the leave is foreseeable or as soon as practicable if it is not foreseeable.

If an employee fails to provide 30 days' notice of foreseeable leave, the leave may be delayed to start 30 days after notice is given, provided the employee had actual notice of the FMLA notice requirements.

When the need for FMLA leave is foreseeable fewer than 30 days in advance, or the need for FMLA leave is not foreseeable, and the employee fails to provide notice as soon as practicable, the extent to which FMLA leave may be delayed depends upon the facts of the particular case.

I. **Medical Certification**

A sick leave request form is to be completed whenever an employee is absent from work for more than three days or when an employee has need to be absent from work for continuing treatment by (or under the supervision of) a health care provider.

The school unit will require medical certification to support a request for FMLA leave because of a serious health condition (at employee's expense).

If the leave request is due to the employee's serious health condition, the employee is required to provide medical certification stating the date the health condition commenced, the probable duration, the appropriate medical facts concerning the condition, and that the employee cannot perform the functions of their job.

If the leave request is due to the serious health condition of a family member, the employee is required to provide medical certification stating the date the health condition commenced, the probable duration, the appropriate medical facts concerning the condition, and an estimate of the time the employee will be needed to care for the family member.

If the leave request is for leave to care for a covered service member, the employee is required to provide certification of the date on which the serious medical condition or injury commenced, the probable duration, the appropriate medical facts within the knowledge of the health care provider regarding the condition or injury, and an estimate of the time the employee will be needed to care for the covered service member.

I. **Notice for Leave Due to Active Duty or Call to Active Duty of Family Member**

In any case in which the necessity for leave is foreseeable, whether because the spouse or a child, or parent of the employee is on active duty or because of notification of an impending call or order to active duty in support of a contingency operation, the employee shall provide such notice to the employer as soon as is practicable.

I. **Employer Notice Requirement (29 C.F.R. § 825.300)**

Employers are required to provide employees with notice explaining the FMLA through a poster and either a handbook or information upon hire. If an employee requests FMLA leave, an employer must provide notice to the employee within five business days of whether the employee meets the FMLA eligibility requirements. If an employee is not eligible to take FMLA, the employer must provide a reason. The employer must also provide a rights and responsibilities notice outlining expectations and obligations relating to FMLA leave. If the employer approves FMLA leave, it must provide the employee with a designation notice stating the amount of leave that will be counted against an employee's FMLA entitlement.

I. **Insurance**

An employee out on FMLA leave is entitled to continued participation in the appropriate group health plan, provided the employee continues paying the usual premiums throughout the leave period. An employee's eligibility to maintain health insurance coverage will lapse if the premium payment is more than 30 days late.

I. **Return**

Upon return from FMLA leave, the employee will be restored to their previous position or to an equivalent position with equivalent pay, benefits, and other employment terms.

An employee returning from FMLA leave for his/her own serious health condition is required to submit medical certification that indicates fitness to return to work and ability to perform the functions of the job.

If the employee is unable to return to work because of his/her own serious health condition at the end of allowable FMLA leave, the Superintendent **[OR: Board]** may consider a request for extension of unpaid leave and benefits on a case-by case

basis. Unless an extension has been granted, failure to return to work upon the expiration of FMLA leave may subject the employee to immediate termination.

I. **Special Rules for Instructional Employees**

Under federal regulations, certain special rules apply to instructional employees. These rules affect the taking of leave near the end of a semester and the taking of intermittent leave or leave on a reduced leave schedule.

I. **Interaction with Maine Law**

When an employee is eligible for leave under both the federal and Maine statutes, the applicable law shall be the one that provides the greater benefit.

An employee who is not eligible for federal FMLA leave may be eligible for leave under the Maine FMLA.

The school unit will analyze each request to determine eligibility for federal and/or Maine FMLA leave.

I. **Recordkeeping**

Employees, supervisors, and building administrators will forward requests, forms, and other material to payroll to facilitate proper recordkeeping.

Legal Reference:

- 29 C.F.R. Part 25 (Regulations to Implement the Family and Medical Leave Act of 1993)

Adopted:

- March 8, 2022

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