

FAMILY AND MEDICAL LEAVE REGULATION

Family leave may only be taken within one year of the birth or placement of the child with the employee. Furthermore, if both spouses are employed by the North Colonie Schools, the combined amount of leave for family leave or medical leave for a sick parent may be limited to twelve weeks. This limitation of twelve weeks does not apply to medical leave to care for a child or spouse or for an employee's personal medical/sick leave.

The policy provides for unpaid leave during which the district will not pay the employee's salary. The district will continue group health insurance benefits and continue to pay its share of health insurance premium benefits for the employee. The district may recover the premium paid if the employee does not return from the leave for a reason other than health or other circumstances beyond his/her control.

The district may require the use of accrued paid leave to be substituted for unpaid FMLA leave. The following chart shows the type of accrued paid leave which may be substituted for each type of FMLA leave.

<u>Types of FMLA Leave</u>	<u>Accrued, Paid Leave Which may be Substituted</u>
Birth, adoption & foster care	Vacation, personal & family
Employee's own serious health condition	Vacation, personal & sick*
Care of a Seriously Ill family member	Vacation, personal, family*, & sick*

Note: Those types of accrued paid leave with an asterisk may be substituted for FMLA leave to the extent that the collective bargaining agreements permit that type of paid leave to be used for the purpose for which the FMLA leave is taken. For the purposes of FMLA, paid leave provided under a plan covering temporary disabilities is considered sick/medical leave. For specifics about whether accumulated sick leave can be used for leaves granted for disability or illness in the immediate family, please refer to the collective bargaining agreements with the separate bargaining units.

Notification:

The employee must notify the Superintendent of Schools in writing of his/her request for leave at least 30 days prior to the date when the leave is to begin, when the leave is foreseeable. If the leave is not foreseeable then notice must be given as early as is practical. If the employee requests medical leave, reasonable attempts must be made to schedule treatment so as not to disrupt the district's operations.

The employee who uses family leave is not entitled to use such leave on an intermittent basis or by a reduced work schedule. Intermittent leave may be provided for medical leave. However, the district can transfer the employee to a position which is equivalent but more suitable for intermittent periods of leave.

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Instructional employees who have not provided the requisite notice for foreseeable intermittent or reduced leave may be required to take leave for a particular duration or to transfer to an alternative position.

Instructional Employees:

Instructional employees are those whose principal function is to teach and instruct students in a class, small group or individual setting. If an instructional employee requests a leave near the end of an academic term, the district may require the leave to extend to the end of the term in the following circumstances:

- If an employee begins the leave more than 5 weeks before the end of an academic term, and it is to continue for at least 3 weeks and end during the last 3 weeks of the term.
- If an employee takes leave during the last 5 weeks of the term, for reasons other than his or her own serious health condition, which last more than 2 weeks with the employee returning to work during the remaining 2 weeks of the term.
- If an employee takes leave during the last 3 weeks of the term, and leave will continue for at least 5 working days. This special rule does not apply when an employee takes leave as a result of his or her own serious health condition.

Certification:

The employee may be required to provide certification from a health care provider containing specific information required under the law if she/he requests a medical leave or a family leave. The certification must specify the date on which the serious health condition began, the probable duration of the condition and the appropriate medical facts known to the Health Care Provider.

When an employee requests leave to care for an ill relative, the certification must state that the employee is needed to care for the relative and the estimated duration of time the employee will be needed for this purpose. When an employee requests leave for a serious health condition, the certification must state that the employee is "unable to perform the essential functions of the position." 29 C.F.R. #825.306(4)(b).

If there is a question concerning the validity of such certification, a second, and if necessary, a third opinion can be required at the expense of the district. The district must obtain the medical second and/or third opinion from someone other than the district's employed physician. The district may require subsequent certifications, but generally not more than once every 30 days. 29 C.F.R. #825.308.

Restoration of Position:

Upon return from leave, the employee must be restored to the same or an equivalent position of employment with equivalent benefits, pay, terms and conditions of employment. However, employees are not entitled to accrue seniority or additional service related benefits while on leave or to any "right, benefit or position to which the employee would have been entitled had the employee not taken the leave." #2614(a)(3). If an employee would not otherwise have been employed on the date on which the leave ends, then the employer need not reinstate the employee.

Remedies for Aggrieved Employees:

Section 2615 of the FMLA prohibits an employer from denying an employee the rights provided by the statute, or from discriminating against persons for exercising their rights under the FMLA. Employees have a private right of action in either federal or state court against an employer which violated Section 2615. Employees may file administrative complaints with the U.S. Department of Labor alleging violations of the FMLA.

Notification:

The district shall post a notice stating the pertinent provisions of the Family and Medical Leave Act, including information concerning enforcement of the law.

Note: Prior regulation, Family and Medical Leave, 4115(a)-(c)

January 24, 1994

January 25, 1999