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EXPLANATION: FAMILY AND MEDICAL LEAVE

Preface

Changes in this policy are based on regulations released before the U.S. Supreme Court validated same-sex marriage in all states. At this time, the regulations integrated into this policy are law and must be followed by Missouri school districts. It is unclear whether additional changes will be forthcoming. Similarly, this explanation was written prior to the decision and uses examples that, while consistent with the law at the time of the decision, are not as generally applicable now. However, given that some states have indicated they may not be providing marriage licenses to same-sex couples for some time, MSBA has decided to use the examples as originally written. The regulations integrated here only apply to eligibility for Family and Medical Leave Act (FMLA) leave and do not address any of the other rights that accompany marriage.

This policy is being updated because the federal regulations interpreting the FMLA have been amended. The federal regulations were amended primarily to ensure that employers recognize same-sex marriages when applying the FMLA, even if the employee lives in a state in which those marriages are not performed. This amendment also allows for the recognition of common law marriages in some circumstances.

Previously the regulations defined a "spouse" based on the definition of marriage in the state where the employee lived. Now the federal regulations define "spouse" as the "other person with whom an individual entered into marriage" as defined in the state in which the marriage took place. If the marriage takes place outside the United States, the marriage will be recognized if it is recognized in the country in which it was entered into and would also be recognized in at least one state in the United States.

This means that if an employee of a Missouri school district goes to Iowa to marry his or her same-sex partner, the Missouri school district must recognize the marriage for FMLA purposes.

Likewise, if an employee entered into a common law marriage in a state that recognizes such marriages, the district would also be required to recognize that marriage even though Missouri does not currently recognize common law marriages. Washington, DC, and the following states recognize common law marriages:

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Alabama
Colorado
Georgia (if created before 1/1/97)
Idaho (if created before 1/1/96)
Iowa
Kansas
Montana
New Hampshire (for inheritance purposes only)
Ohio (if created before 10/10/91)
Oklahoma
Pennsylvania (if created before 1/1/05)
Rhode Island
South Carolina
Texas
Utah

The regulations have also removed references to "mother" and "father" and now reference "parents" or "expectant mother" to be more inclusive.

<i>MSBA recommends that copies of this document be routed to the following areas because the content is of particular importance to them. The titles on this list may not match those used by the district. Please forward copies to the district equivalent of the title indicated.</i>				
	Board Secretary	X	Business Office	Coaches/Sponsors
	Facility Maintenance		Food Service	Gifted
X	Human Resources	X	Principals	Library/Media Center
	Health Services		Counselor	Special Education
	Transportation		Public Info/Communications	Technology

FAMILY AND MEDICAL LEAVE

The district will administer leave that qualifies for Family and Medical Leave Act (FMLA) protection in accordance with federal law. This policy is intended for guidance and shall not be interpreted to expand the district's responsibilities beyond the requirements of the law. For employees who are not eligible for FMLA leave, including employees who have exhausted available FMLA-protected leave, requests for leave shall proceed according to the district's established policies.

Definitions

The following definitions apply to FMLA leave:

~~*Covered Active Duty* – In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country. In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in accordance with law.~~

Armed Forces – Army, Navy, Air Force, Marine Corps and Coast Guard, including the National Guard and Reserves.

Child – A biological, adopted or foster child; a stepchild; a legal ward; or a child of a person acting as a parent if the child is under 18 or 18 or over but incapable of self-care due to mental or physical disability at the time that FMLA leave is to commence. For the qualifying exigency leave and military caregiver leave only, the age of the child does not matter.

Covered Active Duty – In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country. In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in accordance with law.

Covered Servicemember (for qualifying exigency leave) – The employee's spouse, child or parent under a federal call or order to covered active duty.

Covered Servicemember (for military caregiver leave) – The employee's spouse, child, parent or next of kin who is 1) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or 2) a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness

and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date the eligible employee takes FMLA leave to care for the veteran.

Instructional Employees – Employees whose principal function is to teach and instruct students in a class, a small group or an individual setting. This term includes athletic coaches, driving instructors and special education assistants, such as signers for the hearing impaired. It does not include teachers' assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists or curriculum specialists. It also does not include cafeteria workers, maintenance workers or bus drivers.

Next of Kin – For the purposes of military caregiver leave, the nearest blood relative other than a spouse, parent, son or daughter, in order of priority as established by 29 C.F.R. § 825.127.

Outpatient Status – Covered servicemember assigned to a military medical treatment facility or a unit established for the purpose of providing command and control of members of the Armed Forces as outpatients.

Parent – The biological, adoptive, stepparent or foster parent of a "child" as defined in this policy.

Qualifying Exigency – Issues that arise due to covered active duty or a call to covered active duty of an employee's spouse, child or parent, including issues involved with short-notice deployment, military events and related activities, childcare and school activities, the need for financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, parental care, and other activities as defined by 29 C.F.R. § 825.126.

Serious Health Condition – Illness, injury, impairment or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical facility or continuing treatment by a healthcare provider.

Serious Illness or Injury (for military caregiver leave) – 1) In the case of a current member of the Armed Forces, an injury or illness incurred in the line of duty on active duty in the Armed Forces (including the National Guard or Reserves) or that existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty, that may render the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank or rating; and 2) in the case of a veteran, an injury or illness that meets one or more of the standards listed in 29 C.F.R. § 825.127 and that was incurred in the line of duty on active duty in the Armed Forces, or that existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty, and that manifested itself before or after the servicemember became a veteran.

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Spouse – Husband or wife as defined or recognized under the state law in the state in which the employee resides. In accordance with law and for the purposes of this policy, this includes the other person with whom an individual entered into marriage as defined or recognized under state law in the state in which the marriage was entered into. If the marriage was entered into outside of any state, the marriage will be recognized if it is valid in the place where it was entered into and could have been entered into in at least one state. This definition includes an individual in a same-sex or common law marriage.

Veteran – An individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the veteran. For veterans discharged or released prior to March 8, 2013, the period between October 28, 2009, and March 8, 2013, does not count toward the determination of the five-year period mentioned in the previous sentence.

Eligibility

To be eligible for FMLA leave benefits, the employee must:

1. Have been employed in the district for at least 12 months (but not necessarily consecutively).
2. Have been employed for at least 1,250 hours of service during the 12-month period immediately preceding the leave.
3. Be employed at a worksite where 50 or more employees are employed by the district within 75 miles of that worksite.

An absence may qualify for FMLA protection if it is for one of the following reasons:

1. Birth and first-year care of the employee's child.
2. Adoption or foster placement of a child with the employee.
3. Serious health condition of the employee that makes the employee unable to perform one or more of the essential functions of his or her job or the serious health condition of the employee's spouse, child or parent.
4. Care of a spouse, child, parent or next of kin who is a covered servicemember (including some veterans) with a serious illness or injury (military caregiver leave).

5. A qualifying exigency arising out of the fact that the spouse, child or parent of the employee is on covered active duty, or has been notified of an impending call or order to covered active duty, in the Armed Forces.

Notice to Employees

General Notice

The district will post notice to employees explaining FMLA benefits in accordance with law. If the district employs 50 or more employees, it will include FMLA notice in an employee handbook or other written guidance to employees concerning employee benefits or leave rights or will distribute a copy of the general notice to each new employee upon hiring. Notice may be provided electronically in accordance with law.

Eligibility and Rights and Responsibilities Notices

Absent extenuating circumstances, the district will provide the employee notice of the employee's eligibility to take FMLA leave and the rights and responsibilities of the employee within five business days of the request for leave or acquiring knowledge that an employee's leave may be for an FMLA-qualifying reason. Such notice will be provided at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period, and no subsequent notice is required in the 12-month period unless leave is taken for a different qualifying reason or the employee's eligibility status has changed.

Designation Notice

When the district has enough information to determine whether the leave is being taken for an FMLA-qualifying reason, the district will provide written notice to the employee within five business days, absent extenuating circumstances, regarding whether the leave will be counted as FMLA leave. The district will notify the employee if a fitness-for-duty certification is required before returning to work and, if required, include a list of the essential functions of the employee's position. The district will notify the employee of the number of hours, days or weeks that will be counted against the employee's FMLA leave entitlement, if known. The district may designate leave as FMLA leave retroactively if the retroactive designation will not cause harm or injury to the employee.

Employee Notice to the District

An employee must notify the district of the need for leave and explain the reasons for the leave so the district can determine whether the leave qualifies for FMLA. The leave may be delayed or denied if the employee fails to give such notice.

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In all cases of foreseeable leave, the employee must provide notice, in the same manner that is required under the district's leave policies, to the superintendent or designee of the reasons for the leave, the anticipated duration of the leave and the anticipated start of the leave. If an employee fails to provide the required notice, the district may delay or deny the FMLA-protected leave.

When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the district as soon as practicable under the facts and circumstances of the particular case, in the same manner that notice is required under the district's leave policies. The employee or the employee's spokesperson, if necessary, shall provide sufficient information for the district to reasonably determine whether the FMLA may apply to the leave request.

If the leave is for a qualifying exigency, an employee must provide notice as soon as practicable, regardless of how far in advance the leave is foreseeable. For all other qualifying reasons, an employee must provide 30 days' notice of the need to take FMLA leave when the need for leave is foreseeable. When 30 days' notice is ~~unforeseeable or impractical~~ **not practicable**, the employee must provide notice as soon as practicable. ~~If fewer than 30 days' notice is given, the employee shall~~ **and must** explain upon request why ~~such~~ **30 days'** notice was not practicable.

"As soon as practicable" means as soon as both possible and practical under all the facts and circumstances of the individual case.

Leave Use

For all FMLA purposes except military caregiver leave, the district adopts a 12-month leave year beginning on July 1 and ending the following June 30.

1. All eligible employees are entitled to leave for a period not to exceed 12 workweeks per leave year for:
 - ▶ The birth and first-year care of the employee's child.
 - ▶ The adoption or foster placement of a child with the employee.
 - ▶ A serious health condition of the employee that makes the employee unable to perform one or more of the essential functions of his or her job or the serious health condition of the employee's spouse, child or parent.
 - ▶ A qualifying exigency arising out of the fact that the spouse, child or parent of the employee is on covered active duty, or has been notified of an impending call or order to covered active duty, in the Armed Forces. The amount of leave available for a particular type of qualifying exigency may be limited by law.

2. The FMLA leave year for military caregiver leave begins on the first day that such leave is taken and runs for the following 12 months. All eligible employees are entitled to military caregiver leave for a period not to exceed 26 workweeks of leave per single 12-month period for the care of a spouse, child, parent or next of kin who is a covered servicemember. Twenty-six weeks of leave are available per covered servicemember, per injury/illness; however, no more than 26 weeks of leave may be used during each single 12-month period.
3. An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during a single 12-month period, provided that the employee is entitled to no more than 12 workweeks of leave for one or more of the following: the birth of the employee's child or to care for such child; the placement of a child with the employee for adoption or foster care; in order to care for the employee's spouse, son, daughter or parent with a serious health condition; for the employee's own serious health condition; or because of a qualifying exigency. For example, an employee could take 16 weeks of military caregiver leave and still have ten weeks available for the birth of a child. However, an employee who used ten weeks of military caregiver leave could not take 14 weeks for the birth of a child because that exceeds the 12 weeks allowed for such leave. Leave that qualifies as both military caregiver leave and leave for the serious health condition of a parent, spouse or child will be designated first as military caregiver leave.
4. When a ~~husband and wife~~ entitled to FMLA leave are both **spouses are** employed by the district and ~~both wish to use FMLA leave for the same qualifying event, both employees~~ **eligible for FMLA leave, the leave** will be limited to an aggregate total of 12 workweeks during a 12-month period in cases where the leave is taken for the birth or first-year care of the employees' child, adoption or foster placement of a child with the employees, or to care for a parent with a serious health condition. However, where ~~the husband and wife~~ both **spouses** use a portion of the total 12-week FMLA leave entitlement for the same qualifying event, the ~~husband and wife~~ **spouses** would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for another qualifying purpose. When a ~~husband and wife~~ are both **spouses are** employed by the district and ~~both wish to use~~ military caregiver leave or a combination of military caregiver leave and leave for the birth or first-year care of their child, adoption or foster placement of a child with the employees, or to care for a parent with a serious health condition, both employees will be limited to an aggregate total of 26 workweeks of leave.
5. The district shall apply all appropriate paid leave to an FMLA absence to the extent allowed by law and policy, giving proper notice to the employee. If an employee's accrued paid leave is exhausted, but an FMLA-qualifying reason for absence persists or a new FMLA-qualifying reason for absence occurs, the resulting absences will continue to be protected FMLA leave until allowable FMLA leave has been used, but such absences will be unpaid.

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6. When an employee has an absence that meets the criteria to be an FMLA-qualified absence, the district will designate such absence as part of the employee's total annual FMLA entitlement, even if the employee has not requested FMLA leave and/or is absent under paid or unpaid leave in accordance with law or district policy. If an employee is on a Workers' Compensation absence due to an injury or illness that would also qualify as a serious health condition under the FMLA, the same absence will also be designated as an FMLA-qualifying absence and charged against the employee's FMLA-protected time entitlement.
7. FMLA leave may be taken intermittently as required for the health of the employee or family member or as reduced-schedule leave in increments no greater than the shortest period of time that the district uses to account for use of other forms of leave, provided that it is not greater than one hour and provided that the FMLA entitlement is not reduced by more than the amount of leave actually taken. Instructional employees may take intermittent or reduced-schedule leave to be with a healthy newborn only when the district and the employee have reached agreement for how the leave will be used.
8. The district reserves the right to require adequate certification and recertification of any FMLA-qualifying event or condition of the employee or employee's spouse, child, parent or next of kin and authentication or clarification of such certification as the district deems necessary. Failure to provide such certification when requested will result in denial of the leave, and may result in discipline or termination of employment. Employees on FMLA-designated leave must periodically report on their status and intent to return to work. The district may also require that an employee present a certification of fitness to return to work.

Instructional Employees

If intermittent leave or reduced-schedule leave equals more than 20 percent of instructional time, the district may require instructional employees who take such leave due to medical reasons to take block leave or to find an alternative placement for the period of planned medical treatment. When an instructional employee on FMLA leave is scheduled to return close to the end of a school term, the district may elect to use a special rule to prolong the employee's leave until the beginning of the next school term, thus extending the leave beyond the period where an FMLA-qualifying reason exists. In such an instance, the prolonged leave time is unpaid and is not charged against the employee's annual FMLA entitlement. In cases where the special rules for instructional employees apply, the superintendent may apply those special rules or the general FMLA rules as best serves the interest of the district.

Leave Protections

The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of the employee's leave. Eligible employees are entitled to continued participation in the

district's health plan as long as they are entitled to FMLA leave protection; however, an employee who fails to return to work after the expiration of his or her allowed leave time will be expected to reimburse the district for those benefits paid, as required by law.

Eligible employees who are absent for an FMLA-qualifying reason generally may return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave, in accordance with law. However, the district has the discretion to assign employees taking intermittent leave or returning from FMLA leave to a different position or a position in a different building, grade level or classroom as long as the employee has the appropriate certification or license for the position. Depending on the circumstances, instructional employees may be assigned to substitute teacher positions, positions as in-school suspension supervisors or other district positions for which they are certificated if the district determines that such placement is necessary to ensure consistency of instruction.

The FMLA makes it unlawful for any employer to interfere with, restrain or deny the exercise of any right provided under the FMLA. Additionally, it is unlawful for any employer to discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

Recordkeeping

The superintendent or designee will ensure that personnel records regarding FMLA eligibility and leave are maintained in accordance with law and available for inspection, copying and transcription by representatives of the U.S. Department of Labor upon request.

Enforcement

The U.S. Department of Labor is authorized to investigate and resolve complaints of violation of the FMLA. An eligible employee may bring a civil action against an employer for violations. For additional information, contact the nearest office of the U.S. Department of Labor's Wage and Hour Division.

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Note: The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.

Adopted: 08/10/2009

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Revised: 01/10/2011; 06/09/2014;

Cross Refs: DLB, Salary Deductions

Legal Refs: 10 U.S.C. § 101(a)(13)
Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2611 - 2619
29 C.F.R. §§ 825.100 - 1.702

Camdenton R-III School District, Camdenton, Missouri

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