Hickman County Board of Education

	Descriptor Term: **Family and Medical Leave**	Descriptor Code: **5.305**	Issued Date: **12/05/22**
		Rescinds: **5.305**	Issued: **11/02/20**

ELIGIBILITY

Anyone who has been employed for at least twelve (12) months by the school system and anyone who has at least 1,250 hours of service (hours used for leave, even FMLA leave, shall not be credited for service for purposes of FMLA eligibility[1]) during the previous twelve-month period.[2]

GENERAL PRINCIPLES

An eligible employee shall be granted, upon request, up to twelve (12) weeks unpaid leave during a fixed calendar year for the following reasons:

1. the birth of a child;
2. the placement of a child with the employee for adoption or foster care;
3. a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her job position;
4. the care of a spouse, child, or parent of the employee who has a serious health condition; and
5. any qualifying circumstances arising out of the fact that a 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.

Granting of leave under this policy shall be subject to, and in accordance with, the provisions of applicable federal and state laws. An employee may substitute accrued paid leave for unpaid time. Use of accrued paid leave shall run concurrently with and be counted toward the employee's total period of FMLA leave.

MATERNITY/PATERNITY LEAVE

1. *Relationship between FMLA leave and Tennessee Maternity Act leave*- FMLA leave shall run concurrently with leave provided under the Tennessee Maternity Act, which affords eligible employees leave for a period not to exceed four (4) months for the adoption, pregnancy, childbirth and nursing of a newborn child.[3]
2. *Teachers' Leave*- In accordance with state law, any teacher who goes on maternity or paternity leave shall be allowed to use all or a portion of the teacher's accumulated sick or annual leave for maternity leave purposes. In order to be eligible to use sick leave, written request of the teacher accompanied by a statement from the teacher's physician verifying pregnancy shall be submitted. Upon verification by a written statement from an adoption agency or other entity handling an adoption, a teacher may also be allowed to use accumulated leave for adoption of a child. If both adoptive parents are teachers employed by the district, however, only one (1) parent is entitled to use such leave.[4]
3. Spouses who are both eligible employees of the school district are limited to a combined total of twelve (12) workweeks of FMLA leave in a single twelve (12) month period if the leave is taken for birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition. Under certain circumstances, spouses who share leave for the birth or

adoption of a child may be eligible for limited amounts of additional leave for other qualifying FMLA reasons.[5]

4. *Paid Parental Leave* – Under state law, an additional six (6) work weeks of paid leave is available to eligible employees after a birth, stillbirth, or adoption of a newly placed minor child. An eligible employee taking leave under this provision shall not be required to utilize any other type of accrued leave during this period. Eligible employees include teachers, principals, supervisors, or other individuals required by law to hold a valid license of qualification for employment who have been employed with a school district full time for at least twelve (12) consecutive months.

   Employees shall provide notice to the school district thirty (30) days prior to the intended use of the leave. If the employee learns about the need for leave less than thirty (30) days in advance, the employee shall give notice as soon as reasonably possible in order to be eligible for the paid leave. This paid leave does not need to be taken consecutively; however, the paid leave shall be used within twelve (12) months of the qualifying event. The leave shall run concurrently with FMLA leave.[6]

LEAVE FOR A SERIOUS HEALTH CONDITION[7]

Eligible employees, upon request, shall be granted up to twelve (12) weeks of unpaid leave when he/she is unable to work because of a serious health condition or to care for an immediate family member with a serious health condition. Granting of such leave shall be subject to the provisions of applicable federal and state laws. Employees shall contact Human Resources to determine if the reason for leave qualifies as Family and Medical Leave. If the leave is foreseeable, the employee shall give thirty (30) days' notice. If the leave is not foreseeable, the employee shall notify Human Resources as soon as practicable—generally, either the same or next business day.

LEAVE FOR MILITARY FAMILY MEMBERS

1. *Qualifying Exigency Leave*[8] - Eligible employees are entitled to up to twelve (12) workweeks of leave because of any "qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee, as defined under the FMLA, is on active duty, or has been notified of an impending call to active duty, or has been notified of an impended call to active duty status, in the Armed Forces. Qualifying exigencies may include:
   a. issues arising from the service member's short notice deployment;
   b. military events and related activities (e.g. official ceremonies, support programs);
   c. making or updating financial and legal arrangements, attending counseling;
   d. taking up to fifteen (15) days leave to spend time with a covered service member who is on short-term rest and recuperation leave during deployment; or
   e. attending post-deployment activities.

2. *Military Caregiver Leave*[9]- An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member or covered veteran with a serious injury or illness is entitled to up to twenty-six (26) workweeks of leave in a "single twelve (12) month period." A covered service member is a current 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 out-patient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

A covered veteran is an individual who was a member of the Armed Forces at any time during the period of five (5) years preceding the date of the medical treatment, recuperation, or therapy that has a serious injury or illness who is currently receiving medical treatment, recuperation, or therapy.

The calculation of this 5-year period shall not include the interval of October 28, 2009 through March 8, 2013. The "single twelve (12) month period" for leave to military caregiver leave begins on the first day the employee takes leave for this reason and ends twelve (12) months later. An eligible employee is limited to a combined total of twenty-six (26) workweeks of leave to provide care for a covered service member. The maximum of twenty-six (26) workweeks may include no more than twelve (12) workweeks of leave that is taken for the birth and care of a newborn child, for placement of a child for adoption or foster care, for care of a parent who has a serious health condition, or for the employee's own serious health condition.

INTERMITTENT LEAVE[10]

Eligible employees may take FMLA leave intermittently when medically necessary to care for a seriously ill family member, or because of the employee's own serious health condition, or for the care for a newborn, a newly adopted child, or a newly placed foster care child. When a licensed employee requests foreseeable leave for planned medical treatment and the employee would be on leave for greater than 20% of the total number of working days in the period during which the leave would extend, the school may require that such employee elect either to take the leave for periods of a particular duration, not to exceed the duration of the planned medical treatment or to transfer temporarily to an available alternative position offered by the school system for which the employee is qualified, and that has equivalent pay and benefits and better accommodates recurring periods of leave.

RESTRICTIONS

1. Notice Requirements
    a. *Employee Notice*[11]- For foreseeable leave, the employee shall provide the director of schools with at least thirty (30) days written notice before the beginning of the anticipated leave.

    b. *District Notice*- Once it has been established that the leave requested qualifies for FMLA, the director of schools/ designee shall notify the employee within three (3) business days (absent extenuating circumstances) that any leave taken pursuant to state leave statutes (paid vacation leave, personal leave, sick leave, or workers' compensation) shall run concurrently with FMLA leave.[12] The notice may be given orally or in writing. If the notice is oral, it shall be confirmed in writing, no later than the following pay day.[13]

2. Certification Requirement[14]
    a. The director may require that a request for leave be supported by certification issued by a health care provider with the following information:
        i. the date on which the serious health condition commenced;
        ii. the probable duration of the condition;
        iii. the appropriate medical facts within the knowledge of the health care provider regarding the condition; and
        iv. a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed.

    b. If there is any reason to doubt the validity of the certification provided, the director may require, at the expense of the school system, an opinion of a second health care provider.

3. Period Near the End of an Academic Term (Professional Employees)[15]
   a. If leave is taken more than five (5) weeks prior to the end of the term, the director of schools may require the employee to continue taking leave until the end of the term if the leave is at least three (3) weeks of duration and the return of employment would occur during the three (3) week period before the end of the term.

   b. If the leave is taken five (5) weeks prior to the end of the term, the director of schools may require the employee to continue taking leave until the end of the term if the leave is greater than two (2) weeks duration and the return to employment would occur during the two (2) week period before the end of the term.

REQUIREMENTS OF THE BOARD[16]

1. The employee shall be restored to the same position of employment or an equivalent position with no loss of benefits, pay, or other terms of employment.

2. The employee shall be kept under any group health plan for the duration of the leave.

3. The board may recover the premium paid under the following conditions:
   a. the employee fails to return from leave after the period of leave has expired.
   b. the employee fails to return to work for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the control of the employee.

Legal References

1. *Hinson v. Tecumseh Products Co.*, 2000 U.S. App. LEXIS 26778, at *1—10 (6th Cir. Oct. 17, 2000)
2. 29 USCA § 2601, 2611—2619
3. TCA 49-5-702; TCA 4-21-408

Cross References

Sick Leave 5.302
Long-Term Leaves of Absence 5.304

4. TCA 49-5-710(a)(2); TCA 8-50-802(a)(4)
5. 29 CFR § 825.120(a)(3)
6. Public Acts of 2023, Chapter No. 399
7. 29 CFR § 825.113
8. 29 CFR § 825.126
9. 29 CFR § 825.124; 29 CFR § 825.127
10. 29 CFR § 825.202
11. 29 CFR § 825.302-825.304
12. 29 CFR § 825.207
13. OP Tenn. Atty Gen 94-006 (Jan 13, 1994); *Plant v, Morton International, Inc.*, 212 F. 3d 929, 932 (6th Cir. 2000)
14. 29 CFR § 825.305-825.313
15. 29 CFR § 825.602
16. 29 USCA § 2614