

All eligible employees of this district may take leave as provided by the FMLA. The FMLA entitles eligible employees to take up to twelve (12) weeks of unpaid, job-protected leave during a twelve-month (12-month) period for specified family and medical reasons.

An eligible employee is defined as an individual who:

1. Has been employed by the district for at least twelve (12) months; and
2. Has been employed for at least one thousand two hundred fifty (1,250) hours of service during the twelve-month (12-month) period immediately preceding the commencement of the leave; and
3. Is employed at a worksite where fifty (50) or more employees are employed by the district within seventy-five (75) miles of the worksite.

For the purpose of determining eligibility for FMLA, this district will calculate the “twelve-month (12-month) period immediately preceding the commencement of the leave” as a rolling 12-month period measured backward from the date an employee uses any FMLA leave.

BASIS FOR TAKING FMLA

FMLA leave may be taken by an employee for any of the following reasons:

1. To care for the employee’s child after birth or placement of a child with the employee for adoption or foster care;
2. To provide care for the employee’s spouse, child, or parent, who has a serious health condition; or
3. For a serious health condition that makes the employee unable to perform the employee’s job.

DEFINITIONS

“Child (son or daughter)” includes biological, adopted, or foster child, stepchild, legal ward, or a child of a person standing *in loco parentis* (in place of parent). The child must be either under 18 years of age or, if over 18, incapable of self-care because of a mental or physical disability.

“Parent” includes a biological parent (not parent-in-law) or someone who stood *in loco parentis* when the employee was a child.

“Spouse” is a husband or wife, including a common-law husband or wife, but does not include a “significant other” or “domestic partner.”

“Serious health condition” is a condition that involves either in-patient care or “continued treatment” by a health care provider.

“Continued treatment” includes:

1. Any three (3)-day period of incapacity that involves: (a) at least two (2) visits to a health care provider; or (b) a regimen of continued treatment under a health care provider’s supervision;
2. Any period of incapacity due to pregnancy (including severe morning sickness), even if no treatment is obtained for prenatal care;
3. Any period of incapacity due to a chronic medical condition, such as asthma, diabetes, or epilepsy, even if no treatment is obtained;
4. Any period of absence to receive multiple treatments for restorative surgery or a serious illness such as cancer, severe arthritis, or kidney disease; or
5. Any permanent or long-term incapacity (e.g., Alzheimer’s or severe stroke), even if no treatment is being provided.

Any accrued paid leave used by an employee for absences which qualify for FMLA coverage will be counted as FMLA leave, unless the district determines otherwise.

The district will comply with the mandates of FMLA, including any special rules which may apply regarding the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term by instructional employees. Exhibits A and B set forth employees’ rights under this Act.

The district will also comply with all mandates of FMLA regarding health insurance coverage and will provide any necessary notice of termination of such insurance coverage due to the employee’s failure to pay his/her portion of the premium or the employee’s request for termination of coverage. Such notice will be provided at least fifteen (15) days prior to the termination of coverage.

This district will post a notice approved by the Secretary of Labor explaining the rights and responsibilities under FMLA at the district offices.



LEGAL REFERENCE:

Family and Medical Leave Act of 1993
29 USC 2654
29 CFR 825
Idaho Code Section 33-1216

ADOPTED: June 18, 1996

AMENDED: June 8, 2004
November 14, 2006

ATTACHMENTS:

Exhibit A, *The Family and Medical Leave Act of 1993,*
Fact Sheet No. ESA 93-
Exhibit B, *Notice to Employees of Rights Under FMLA*

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THE FAMILY AND MEDICAL LEAVE ACT OF 1993

Fact Sheet No. ESA 93-

The Family and Medical Leave Act of 1993 (FMLA) was enacted on February 5, 1993.

The new law is effective on August 5, 1993, for most employers. If a collective bargaining agreement (CBA) is in effect on the date, the Act becomes effective on the expiration date of the CBA or February 5, 1994, whichever is earlier.

The U.S. Department of Labor's Employment Standards Administration administers and enforces FMLA for all private, state and local government employees, and some Federal employees

FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave each year for specified family and medical reasons. An eligible employee's right to FMLA leave begins on August 5, 1993; and any leave taken before that date does not count as FMLA leave.

The law contains provisions relating to employer coverage; employee eligibility for the benefits of the law; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protections for employees who request or take FMLA leave. In addition, the law includes certain employer recordkeeping provisions.

EMPLOYER COVERAGE

FMLA applies to all:

- public agencies, including state, local and federal employers; and,
- private sector employers who employ 50 or more employees and who are engaged in commerce or in any industry or activity affecting commerce or in any industry or activity affecting commerce including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee must:

- 1) work for a covered employer;

- 2) have worked for the employer for at least 12 months;
- 3) have worked at least 1,250 hours over the previous 12 months; and
- 4) work at a location where at least 50 employees are employed by the employer within 75 miles.

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of 12 work weeks of unpaid leave during any 12-month period for one or more of the following reasons:

- for the birth or placement of a child for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; or,
- to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to combined total of 12 work weeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a child or parent (but not a parent "in law") who has a serious health condition.

Leave for birth or adoption (including foster care placement) must conclude within 12 months of the birth or placement.

Under some circumstances, employers may take FMLA leave intermittently - which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

- Where FMLA leave is for birth or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.
- FMLA leave may be taken intermittently whenever it is medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Also subject to certain conditions employees or employers may choose to use accrued paid leave (such as sick or vacation leave) to cover some or all

of the FMLA leave. The employer is responsible for designating if paid leave used by an employee counts as FMLA leave, based on information provided by the employee. In no case can an employee's paid leave be credited as FMLA leave after the leave has been completed.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility;
- any period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or,
- 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, and for parental care.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. Where appropriate, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health insurance coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to his or her original job, or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave.

Under specified and limited circumstances, the employer may refuse to reinstate certain highly-paid "key" employees after using the FMLA leave. In order to do so, the employer must:

- notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;
- notify the employee as soon as the employer decides to deny job restoration and explain the reasons for this decision; and,
- offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice

A "key" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees within 75 miles of the work site.

NOTICE AND CERTIFICATION

Employees seeking use of FMLA leave may be required to provide:

- 30-day advance notice of the need to take FMLA leave when the need is foreseeable;
- medical certifications supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;
- second or third medical opinions and periodic recertifications (at the employer's expense); and, periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must schedule treatment so that it will not unduly disrupt the employer's operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$100 for each separate offense.

In addition, covered employers are obliged to provide information to their employees about their rights and responsibilities under FMLA, including specific information (in response to an employee's notice of the need for FMLA leave) regarding just what will be required for the employee and what

might happen in certain circumstances, such as if the employee fails to return to work from FMLA leave.

most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.

UNLAWFUL ACTS

FMLA makes it unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided by this law. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

FMLA will be enforced by the U.S. Labor Department's Employment Standards Administration. This agency will investigate complaints of violations. If violations cannot be satisfactorily resolved, the Secretary may bring action in court to compel compliance.

An eligible employee may bring a private civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules provide for FMLA leave to be taken in blocks of time when the leave is needed near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and over-time under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid, FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other Federal or State law which prohibits discrimination. It does not supersede any State or local law which provides greater family or medical leave protection. Nor does it affect any employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan.

The FMLA also encourages employers to provide more generous leave rights.

For more information, please contact the nearest office of the **Wage and Hour Division**, listed in

NOTICE TO EMPLOYEES OF RIGHTS UNDER FMLA

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;
- for a serious health condition that makes the employee unable to perform the employee's job.

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 a second or third opinion (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 the 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 an 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.