

POLICY SERVICES *ADVISORY*

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Policy Advisory Discussion

In January of 2008 the President signed into law H.R.4986, the National Defense Authorization Act (NDAA). Among other things, section 585 of the NDAA amends the Family and Medical Leave Act of 1993 (FMLA) to permit a "spouse, son, daughter, parent, or next of kin" to take up to 26 workweeks of leave to care for 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."

The following language was added to the reasons for taking FMLA leave in policy GCCC and as needed to the relevant exhibits in support of the policy:

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- Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.
- An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of twenty six (26) workweeks of leave during a twelve (12)-month period to care for the servicemember. The leave described to care for a covered servicemember shall only be available during a single twelve (12)-month period.
- The aggregate number of workweeks of leave to which both the husband and wife may be entitled under covered servicemember family leave combined with leave as described in the previous sentence shall be limited to twenty six (26) workweeks during only one twelve (12)-month period.
- Certification of active military duty or call to active duty in support of a contingency operation for purpose of receiving family leave shall be required under the same conditions as FMLA certification for leave indicated above.
- In the case of continuation, recurrence, or onset of a serious health condition to the employee, covered family of the employee (including a servicemember being cared for by an employee) and the employee is unable to return to work, certification issued by the health care provider of the entity with the serious health condition shall be required to support the inability of the employee to return to work.

These statements are explanatory of the content of NDAA as it affects FMLA. Family leave may be taken when an employee or a family member is ordered or called to active duty or when an employee or family member is a covered servicemember and is in need of care to recover from service related injuries or illness.

In addition to the above mentioned modifications to Policy GCCC and accompanying exhibits the identifying phrase "serious medical condition" was changed to the current FMLA terminology "serious health condition". This change was made in several places throughout the policy and exhibits.

Local education agencies (schools) are covered employers under the Family Medical and Leave Act (FMLA). However, the employees of a school system are eligible for provisions of the FMLA only when the school system has fifty (50) or more employees within a seventy-five (75) mile radius. Therefore, *the recommendations*

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in this Advisory and adopting the FMLA section of this policy need be only considered by districts having at least fifty employees within the prescribed geographic area (29 C.F.R. 825.108d).

If there are not fifty (50) or more employees in the district within a seventy five (75) mile radius, then the employees are not eligible for the benefits of FMLA and the district should ignore the additions to the policy and the exhibits.

Policy Services is recommending the option that limits the taking of FMLA to once each year following a period of twelve (12) months after the first and each subsequent leave. This language will permit the use as required by federal statute but only following a twelve (12) month period after the first (1st) use of FMLA. Be aware that you may keep the language currently in your policy if it does not conform to the above indicated change. The suggestion is made in light of observations that there may be an attempt to serialize the use of FMLA and that such serialization may not be in the best interest of student learning or ongoing programs.

Another change in the policy was to change the citations referent to position restoration at the end of the policy from federal statute citation to federal regulation citation.

Major changes are recommended to the Forms in the exhibits. Policy Service has chosen to duplicate the forms recommended by the Department of Labor in so far as is practicable. The following exhibits have been modified or added to conform to the recommended forms of the Department of Labor:

- GCCC-EA** Certification of Health Care Provider (formerly Physician or Practitioner)
- GCCC-EB** The former Family Medical Leave Act explanation is replaced by the Employer Response to Employee Request for FMLA
- GCCC-EC** Your Rights under the FMLA of 1993
- GCCC-ED** Notice of Military Family Leave (added)
- GCCC-EF** A fact sheet was added for general information about FMLA

The FMLA final rules may be downloaded from the following URL or by going to the U.S. Department of Labor web site.
<http://www.dol.gov/federalregister/HtmlDisplay.aspx?DocId=21763&Month=11&Year=2008>

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If you have any questions, call Policy Services at (800) 238-4701. Ask for Dr. Donn Williams, Director of Policy Services. E-mail address [dwilliams@azsba.org]

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PROFESSIONAL / SUPPORT STAFF
LEAVES OF ABSENCE WITHOUT PAY**

GCCC

The District recognizes that on occasion extenuating circumstances arise that may necessitate absence from duty that is not covered by other specific leave provisions of the District. To address such situations, a leave of absence, without pay, may be granted a member of the certificated or support staff for not longer than one (1) year.

Leave of absence may be requested for, but not limited to, the following purposes:

- For additional education that relates to the employee's primary assignment. A plan of contemplated course work must be presented.
- To provide for an unpaid leave in a situation where the employee will be absent from work because of (1) a reason that conforms to a policy currently in effect but the maximum number of days provided for in that policy will be exceeded, or (2) failure to report to work without prior notification to the Superintendent.
- For a leave of absence that benefits or is in the best interest of the District, as determined by the Board upon review of the application.
- For leave under the Family and Medical Leave Act.

A leave of absence requested pursuant to this policy may be:

- Approved by the Superintendent if the leave period does not exceed twelve (12) weeks; or
- Recommended by the Superintendent and approved by the Governing Board if the leave period exceeds twelve (12) weeks.

A request for leave of absence shall not be denied by the District if the employee is entitled to the leave under the Family and Medical Leave Act. All other applications for leave of absence may be granted or denied by the District, in its sole discretion.

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Each request for such a leave of absence shall be in a written application stating the purpose, starting date, and duration of the leave of absence, the reasons for its necessity or desirability, and any other information the applicant deems relevant to the request.

The leave of absence shall be only for the purpose and duration approved and may not be extended without written approval by the District.

All rights of continuing status (certificated teachers only), retirement, salary increments, and other benefits shall be restored at the level earned when the leave was granted. All accrued sick, vacation, personal, and other paid leave shall be applied to the leave period unless otherwise agreed to by the District or prohibited by the Family and Medical Leave Act.

Family and Medical Leave Act (FMLA)

The District shall fully comply with the Family and Medical Leave Act and all interim and final regulations interpreting the FMLA issued by the U.S. Department of Labor. Accordingly, all portions of this policy that pertain to the FMLA shall be interpreted in a manner consistent with the FMLA and its regulations. Subject to the conditions set forth herein, any eligible employee of the District may take up to twelve (12) weeks of leave (FMLA leave) measured backward for each employee from the first time such employee uses leave under FMLA ~~during any one (1) fiscal year (July 1 to June 30)~~, without pay, for any one (1) or more of the following reasons:

- Because of the birth of a child of the employee and in order to care for such child.
- Because of the placement of a child with the employee for adoption or foster care.
- In order to care for the spouse or a son, daughter, or parent of the employee, if such person has a serious health condition.
- Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.
- Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

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An eligible employee is one who has been employed by the District at least twelve (12) months and who has completed at least one thousand two hundred fifty (1,250) hours of service immediately prior to the time the FMLA leave is to commence, and if there are at least fifty (50) employees of the district within a seventy-five (75) mile radius.

Serious health condition means an illness, injury, impairment, or physical condition that involves inpatient care in a hospital, hospice, or residential medical facility, or outpatient care with continuing medical treatment by a licensed physician. Any employee who has been employed by the District at least twelve (12) months and who has completed at least one thousand two hundred fifty (1,250) hours of service immediately prior to the time the leave is to commence shall be eligible for FMLA leave.

Special conditions applicable to FMLA. Entitlement to leave for the birth of a child or the placement of a child for adoption or foster care ends at the expiration of a twelve (12)-month period, beginning on the date of the event. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of twenty-six (26) workweeks of leave during a twelve (12)-month period to care for the servicemember. The leave described to care for a covered servicemember shall only be available during a one (1) single twelve (12)-month period.

A husband and wife working for the District may be limited to a total of twelve (12) weeks of leave during each ~~fiscal year~~ applicable twelve (12)-month period for leave for the birth of a child or the placement of a child for adoption or foster care and to care for an employee's parent with a serious health condition. The aggregate number of workweeks of leave to which both the husband and wife may be entitled under covered servicemember family leave combined with leave as described in the previous sentence shall be limited to twenty-six (26) workweeks during ~~only~~ one (1) single twelve (12)-month period.

The District shall not require an employee to substitute accrued sick leave for FMLA leave used by reason of a birth, adoption, or foster placement. An employee shall substitute accrued vacation or personal leave for FMLA leave used by reason of a birth, adoption, or foster placement, to the extent available by policy, unless otherwise agreed to by the District. In any other circumstance, an employee's accrued sick, vacation, personal, or other applicable leave shall be substituted for FMLA leave, to the extent available by policy, unless otherwise agreed to by the District.

Notice. An employee must provide at least thirty (30) days notice before the FMLA leave is to begin if the need for the leave is foreseeable based on an expected

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birth, placement for adoption, or foster care, planned medical treatment for a serious health condition, or military service leave of the employee or family member. If thirty (30) days notice is not practicable, notice must be given as soon as practicable. The notice shall be in the form of a request for leave of absence as specified in this policy. The District may deny FMLA leave to any eligible employee until such time as the employee has provided the required notice.

Certification. All FMLA leave shall be supported by medical certificate provided by the employee's health provider in the form of the exhibit accompanying this policy. In any instance where the FMLA leave must be preceded by thirty (30) days notice, the medical certificate should accompany the request for leave of absence. In any other instance, the medical certificate should be provided within fifteen (15) days after the FMLA leave commences.

Certification of active military duty or call to active duty in support of a contingency operation for purpose of receiving family leave shall be required under the same conditions as FMLA certification for leave indicated above.

The employee may be requested (at the District's expense) to provide recertification of medical conditions in support of leave if the District feels that the circumstances so warrant and notice is given. Recertification shall not be required for intervals shorter than thirty (30) days.

Whenever a medical certification or recertification is required of an employee, notice describing such requirement and providing the form of such certification shall be provided to the employee. An employee shall not be denied FMLA leave or other rights under the FMLA unless a notice required by FMLA in such situation has first been provided to the employee.

In the case of continuation, recurrence, or onset of a serious health condition to the employee, covered family of the employee (including a servicemember being cared for by an employee) and the employee is unable to return to work, certification issued by the health care provider of the entity with the serious health condition shall be required to support the inability of the employee to return to work.

Intermittent or reduced time (IRT) leave. FMLA leave may be taken intermittently or on a reduced leave schedule under the following circumstances: ~~only (1) if medically necessary to care for a family member or for the employee's own serious medical condition or (2) if approved by the District. The District may, for the term of the leave, transfer the employee to an alternative position with equivalent pay and benefits.~~

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- If medically necessary to care for a family member or for the employee's own serious health condition;
- Because of any qualifying exigency the spouse, or a son, daughter, or parent, of the employee is on active duty, or notified of an impending call or order to active duty in support of a contingency operation; or
- If approved by the District.

The District may, for the term of the leave, transfer the employee to an alternative position with equivalent pay and benefits.

If the IRT leave is for an *instructional employee* (one whose principal function is to instruct students in a class, small group, or as individuals), the District can require the employee either to take leave for a period or periods of a particular duration not greater than the duration of the planned treatment or to transfer temporarily to an available alternative position with equivalent pay and benefits that provides better accommodation of recurring periods of leave, provided the leave is:

- Requested to care for a qualifying family member or as a result of the employee's serious health condition preventing job performance;
- Foreseeable, based upon planned medical treatment; and
- For more than twenty percent (20%) of the working days in the leave period.

The employee may be granted leave under these circumstances, subject to reasonable efforts to schedule treatment so as not to unduly disrupt the educational program.

Special end-of-semester circumstances for instructional employees. Under each of the following conditions, leave for an instructional employee may be required to continue to the end of the academic semester:

- Leave begins more than five (5) weeks before the end of the semester, leave is for at least three (3) weeks, and return to employment would occur during the last three (3) weeks of the semester.
- Leave other than for the employee's serious health condition begins within the last five (5) weeks of the semester, leave is for greater than two (2) weeks duration, and return to employment would occur during the last two (2) weeks of the semester.

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- Leave other than for the employee's serious health condition begins within the last three (3) weeks of the semester and leave exceeds five (5) working days.

Employee notification. *With each request for FMLA leave, the employee shall be notified:*

- About FMLA by provision of the FMLA fact sheet (~~e~~Exhibit 2 EE).
- As appropriate concerning the expectations, obligations, and consequences of taking FMLA leave per 29 C.F.R. 825.301 of FMLA.
- That FMLA leave may be withheld until a requested notice is provided or the time frame is met.
- That if leave is granted to an employee who is unable to perform the work required, restoration may be denied until the employee has complied with the request to provide medical certification of ability to return to work.

The District will post notices in conspicuous places on the District premises that provide a summary of FMLA and information on how to file a charge for an FMLA violation.

Health care continuation. An employee taking FMLA leave shall be entitled to have the health care plan in which the employee is participating continue under the same terms and conditions applicable to actively working employees. The District shall require the repayment of any health care premiums paid by the District for continuing coverage during the period of the FMLA leave if the employee fails to return to work after the FMLA leave expires and the failure to return is not due to circumstances beyond the employee's control.

Position restoration. Upon return from FMLA leave, an employee shall be restored to the same position held before the FMLA leave commenced or to an equivalent position with equivalent pay, benefits, and working conditions. The District requires an employee to provide a medical certificate from a health care provider that the employee is able to resume work before returning from FMLA leave for a serious personal health condition. The District may delay the return of an instructional employee from FMLA leave at the end of a semester, in accordance with Section ~~108(d)~~ 825.602 of FMLA rules. The District may deny restoration of position to any key employee (i.e., one who is among the highest-paid ten percent [10%] of all employees of the District), in accordance with Section ~~104(b)~~ 825.218 of FMLA rules.

Adopted: date of manual adoption

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LEGAL REF.: A.R.S. 15-510
Family and Medical Leave Act of 1993
29 C.F.R. Part 825

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GCCC-EA

EXHIBIT

EXHIBIT

**PROFESSIONAL / SUPPORT STAFF
LEAVES OF ABSENCE WITHOUT PAY**

**CERTIFICATION OF ~~PHYSICIAN OR PRACTITIONER~~ HEALTH CARE
PROVIDER**

(Family and Medical Leave Act of 1993)

1. ~~Employee's name~~ _____

2. ~~Patient's name (if other than employee)~~ _____

3. ~~Diagnosis~~ _____

4. ~~Date condition~~ _____ 5. ~~Probable duration~~
~~commenced~~ _____ ~~of condition~~ _____

6. ~~Regimen of treatment to be prescribed (Indicate number of visits, general nature and duration of treatment, including referral to another provider of health services. Include schedule of visits or treatment if it is medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal schedule of hours per day or days per week.)~~

a. ~~By physician or practitioner~~ _____

b. ~~By another provider of health services, if referred by the physician or practitioner~~ _____

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~~IF THIS CERTIFICATION RELATES TO CARE FOR THE EMPLOYEE'S FAMILY MEMBER WITH A SERIOUS HEALTH CONDITION, SKIP ITEMS 7, 8, AND 9 AND PROCEED TO ITEMS 10 THROUGH 16. OTHERWISE, CONTINUE BELOW.~~

~~7. Yes No Is inpatient hospitalization of the employee required?~~

~~8. Yes No Is the employee able to perform work of any kind? (If "No," skip Item 9.)~~

~~9. Yes No Is the employee able to perform the functions of the employee's position? (Answer after reviewing a statement from the employer of essential functions of the employee's position, or, if none is provided, after discussing it with the employee.)~~

~~10. Yes No Is inpatient hospitalization of the family member (patient) required?~~

~~11. Yes No Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety, or transportation?~~

~~12. Yes No After review of the employee's signed statement (see "Employee Statement" below), is the employee's presence necessary, or would it be beneficial for the care of the patient?~~

~~13. Estimate the period of time care is needed or the employee's presence would be beneficial. _____~~

~~14. Signature of physician or practitioner _____~~

~~15. Date _____~~

~~16. Type of practice or field of specialty _____~~

~~Employee Statement~~

~~Complete the following when family leave is needed to care for a family member with a serious health condition or to care for a servicemember.~~

~~What care will the employee provide? _____~~

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~~Estimate what the time period will be during which the employee will care for the family member. (If intermittent or reduced leave is anticipated, provide a suggested schedule).~~

Employee Signature _____ Date _____

When completed, this form goes to the employee, **Not to the Department of Labor.**

1. Employee's Name _____

2. Patient's Name (If different from employee) _____

3. A definition of "serious health condition" under the Family and Medical Leave Act is provided near the end of this form. Does the patient's condition¹ qualify under any of the categories described? If so, please check the applicable category.

(1) _____ (2) _____ (3) _____ (4) _____ (5) _____ (6) _____, or None of the above _____

4. Describe the **medical facts** which support the patient's certification, including a brief statement as to how the medical facts meet the criteria of the category checked above:

5. a. State the approximate **date** the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present **incapacity**² if different):

b. Will it be necessary for the employee to take work only **intermittently or to work on a less than full schedule** as a result of the condition (including for treatment described in Item 6 below)?

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If yes, give the probable duration:

- c. If the condition is a **chronic condition** (condition 4) or **pregnancy**, state whether the patient is presently incapacitated² and the likely duration and frequency of **episodes of incapacity**²:

¹ Here and elsewhere on this form, the information sought relates **only** to the condition for which the employee is taking FMLA leave.

² "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

6. a. If additional **treatments** will be required for the condition, provide an estimate of the probable number of such treatments.

If the patient will be absent from work or other daily activities because of **treatment** on an **intermittent** or **part-time** basis, also provide an estimate of the probable number of and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

- b. If any of these treatments will be provided by **another provider of health services** (e.g., physical therapist), please state the nature of the treatments:

- c. If a **regimen of continuing treatment** by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

-
7. a. If medical leave is required for the employee's **absence from work** because of the **employee's own condition** (including absences due to pregnancy or a chronic condition), is the employee **unable to perform work** of any kind?

- b. If able to perform some work, is the employee **unable to perform any one or more of the essential functions of the employee's job** (the employee or the employer should supply you with information about the essential job functions)? If yes, please list the essential functions the employee is unable to perform:

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c. If neither a. nor b. above applies, is it necessary for the employee to be absent from work for treatment?

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-
8. a. If leave is required to **care for a family member** of the employee with a serious health condition, **does the patient require assistance** for basic medical or personal needs or safety, or for transportation?
- b. If no, would the employee's presence to provide **psychological comfort** be beneficial to the patient or assist in the patient's recovery?
- c. If the patient will need care only **intermittently** or on a part-time basis, please indicate the probable **duration** of this need:

Signature of Health Care Provider

Type of Practice

Address

Telephone Number

Date

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

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Employee Signature

Date

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Definitions

A "Serious Health Condition" means an illness, injury impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity² or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

(a) A period of incapacity² of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity² relating to the same condition), that also involves:

(1) **Treatment³ two or more times** by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) **Treatment** by a health care provider on **at least one occasion** which results in a **regimen of continuing treatment⁴** under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to **pregnancy**, or for **prenatal care**.

4. Chronic Conditions Requiring Treatments

A **chronic condition** which:

(1) Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and

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(3) May cause **episodic** rather than a continuing period of incapacity² (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision

A period of **Incapacity**² which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need not be receiving active treatment by, a health care provider.** Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that **would likely result in a period of Incapacity² of more than three consecutive calendar days in the absence of medical intervention or treatment,** such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

This optional form may be used by employees to satisfy a mandatory requirement to furnish a medical certification (when requested) from a health care provider, including second or third opinions and recertification (29 C.F.R. 825.306).

³ Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

⁴ A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

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GCCC-EB

EXHIBIT

EXHIBIT

**PROFESSIONAL / SUPPORT STAFF
LEAVES OF ABSENCE WITHOUT PAY**

~~FAMILY AND MEDICAL LEAVE ACT OF 1993~~

EMPLOYER RESPONSE TO EMPLOYEE REQUEST
FOR FAMILY OR MEDICAL LEAVE

(Family and Medical Leave Act of 1993

Optional Use Form - See 29 C.F.R. § 825.301)

~~The Family and Medical Leave Act of 1993 (FMLA) requires employers of fifty (50) or more employees within a seventy five (75) mile area to provide up to twelve (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 (1) year, and for one thousand two hundred fifty (1,250) hours over the previous twelve (12) months.~~

~~Reasons for taking leave. An employer must grant unpaid leave to an eligible employee for one (1) or more of the following reasons:~~

- ~~• For the care of the employee's child (birth, or placement for adoption or foster care);~~
- ~~• For the care of the employee's spouse, son or daughter, or parent, who has a serious health condition; or~~
- ~~• For a serious health condition that makes the employee unable to perform the employee's job.~~
- ~~• Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.~~

~~At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.~~

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~~Advance notice and medical certification. The employee may be required to provide advance leave notice and medical certification.~~

- ~~• In certain cases, the employee ordinarily must provide thirty (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.~~
- ~~• An employer may also require medical certification if the employee is unable to return from leave because of a serious health condition of a family member or cared for servicemember.~~

~~Intermittent or reduced leave:~~

- ~~• An employee may take intermittent or reduced leave to reduce the usual number of hours per day or work week.~~
- ~~• Intermittent or reduced leave schedules are subject to employer approval unless medically necessary.~~

~~Job and benefits protection:~~

- ~~• Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. Employers may deny restoration to certain highly compensated employees, but only if necessary to avoid substantial and grievous economic injury to the employer's operation.~~
- ~~• 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.~~
- ~~• The use of unpaid FMLA leave cannot affect the exempt status of bona fide executive, administrative, and professional employees under the Fair Labor Standards Act.~~

~~Medical insurance coverage:~~

- ~~• For the duration of FMLA leave, the employer must maintain the employee's medical insurance coverage under any "group health plan," under the conditions coverage would have been provided if the employee had continued working.~~

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- ~~In some cases, the employer may recover premiums paid for maintaining an employee's health coverage if the employee fails to return to work from FMLA leave.~~

~~Unlawful acts by employers.—FMLA makes it unlawful for any 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.~~
- ~~Discharge or discriminate against any person because of involvement in any proceeding under or related to FMLA.~~

~~Miscellaneous provisions:~~

- ~~Similar provisions of the law apply to federal and congressional employees.~~
- ~~Special rules apply to employees of local education agencies.~~
- ~~Employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. Any employer who willfully violates this requirement may be subject to a fine of up to one hundred dollars (\$100) for each separate offense.~~
- ~~A "Commission on Leave" will conduct a comprehensive study of existing and proposed policies relating to leave, and submit a report to Congress within two (2) years.~~

~~FMLA does not:~~

- ~~Affect any federal or state law prohibiting discrimination.~~
- ~~Supersede any state or local law that provides greater family or medical leave rights.~~
- ~~Diminish an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan, nor may the rights provided under FMLA be diminished by such agreement or plan.~~
- ~~Discourage employers from adopting policies more generous than are required by FMLA.~~

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Enforcement:

- ~~The Secretary of Labor is authorized to investigate and attempt to resolve complaints of violations, and may bring an action against an employer in any federal or state court of law.~~
- ~~FMLA's enforcement procedures parallel those of the federal Fair Labor Standards Act. The FMLA will be enforced by the department's Wage and Hour Division.~~
- ~~An eligible employee may bring a civil action against an employer for violations.~~
- ~~Employers who act in good faith and have reasonable grounds to believe their actions did not violate FMLA may have any damages reduced to actual damages, at the discretion of a judge.~~

~~For more information, please contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.~~

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Date: _____

To: _____
(Employee's Name)

From: _____
(Name of Appropriate Employer Representative)

Subject: **REQUEST FOR FAMILY/MEDICAL LEAVE**

On _____, you notified us of your need to take family/medical
(Date)

leave due to:

- The birth of a child, or the placement of a child with you for adoption or foster care; or
- A serious health condition that makes you unable to perform the essential functions for your job; or
- A serious health condition affecting your spouse, child, parent, _____ for which you are needed to provide care.

You notified us that you need this leave beginning on _____
(Date)

and that you expect leave to continue until on or about _____.
(Date)

Except as explained below, you have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

This is to inform you that: (check appropriate boxes: explain where indicated)

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1. You are eligible not eligible for leave under the FMLA.
2. The requested leave will will not be counted against your annual FMLA leave entitlement.
3. You will will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by _____ (insert date) (must be at least 15 days after you are notified of this requirement), or we may delay the commencement of your leave until the certification is submitted.
4. You may elect to substitute accrued paid leave for unpaid FMLA leave. We will will not require that you substitute accrued paid leave for unpaid FMLA leave. If paid leave will be used, the following conditions will apply: (Explain)
5. (a) If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you, and it is agreed that you will make premium payments as follows: (Set forth dates, e.g., the 10th of each month, or pay periods, etc., that specifically cover the agreement with the employee.)

(b) You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work. We will will not pay your share of health insurance premiums while you are on leave.

(c) We will will not do the same with other benefits (e.g., life insurance, disability insurance, etc.) while you are on FMLA leave. If we do pay your premiums for other benefits, when you return from leave you will will not be expected to reimburse us for the payments made on your behalf.
6. You will will not be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until certification is provided.
7. (a) You are are not a "key employee" as described in § 825.217 of the FMLA regulations. If you are a "key employee:" restoration to employment may be denied following FMLA leave on the grounds that such restoration

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will cause substantial and grievous economic injury to the District as discussed in § 825.218.

(b) We have have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. ([a] and/or [b] may be explained if requested. See §825.219 of the FMLA regulations.)

8. While on leave, you will will not be required to furnish us with periodic reports every _____ (indicate interval of periodic reports, as appropriate for the particular leave situation) of your status and intent to return to work (see § 825.309 of the FMLA regulations). If the circumstances of your leave change and you are able to return to work earlier than the date indicated on the reverse side of this form, you will will not be required to notify us at least two work days prior to the date you intend to report to work.

9. You will will not be required to furnish recertification relating to a serious health condition. (Explain below, if necessary, including the interval between certifications as prescribed in §825.308 of the FMLA regulations.)

This optional use form may be used to satisfy mandatory employer requirements to provide employees taking FMLA leave with written notice detailing specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. (29 C.F.R. 825.301(b).)

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PROFESSIONAL / SUPPORT STAFF LEAVES OF ABSENCE WITHOUT PAY

YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993

~~The Family and Medical Leave Act of 1993 (FMLA) requires covered employers to provide up to twelve (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 (1) year, and for one thousand two hundred fifty (1,250) hours over the previous twelve (12) months, and if there are at least fifty (50) employees within seventy five (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.~~
- ~~• Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.~~

~~At the employee's or employer's option, certain kinds of *paid* leave may be substituted for unpaid leave.~~

~~**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.~~

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- ~~• The employee ordinarily must provide thirty (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 second or third opinions (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 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 any 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 that 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~~

<p><i>Note:</i> This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.</p>

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of Labor."

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The Family and Medical Leave Act of 1993 (FMLA) requires covered employers to provide up to twelve (12) weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for their employer for at least one (1) year, and for one thousand two hundred fifty (1,250) hours over the previous twelve (12) months, and if there are at least fifty (50) employees within seventy-five (75) miles. The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.

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

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

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 thirty (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 second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

Job Benefits and Protection:

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- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- Upon return from 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 any 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

If you have access to the Internet visit the FMLA website: <http://www.dol.gov/esa/whd/fmla>. To locate your nearest Wage-Hour Office, telephone the Wage-Hour toll-free information and help line at 1-866-4USWAGE (1-866-487-9243); a customer service representative is available to assist you with referral information from 8am to 5pm in your time zone; or log onto the following at <http://www.wagehour.dol.gov>.

***A Spanish translation of this form may be downloaded
at <http://www.dol.gov/esa/whd/fmla/>***

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**PROFESSIONAL / SUPPORT STAFF
LEAVES OF ABSENCE WITHOUT PAY**

MILITARY FAMILY LEAVE

On January 28, President Bush signed into law the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181. Section 585(a) of the NDAA amended the Family and Medical Leave Act of 1993 (FMLA) to provide eligible employees working for covered employers two (2) important new leave rights related to military service:

- (1) New Qualifying Reason for Leave.** Eligible employees are entitled to up to twelve (12) weeks of leave because of "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation. By the terms of the statute, this provision requires the Secretary of Labor to issue regulations defining "any qualifying exigency." In the interim, employers are encouraged to provide this type of leave to qualifying employees.
- (2) New Leave Entitlement.** An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to twenty-six (26) weeks of leave in a single twelve (12)-month period to care for the servicemember. This provision became effective immediately upon enactment. This military caregiver leave is available during "a single twelve (12)-month period" during which an eligible employee is entitled to a combined total of twenty-six (26) weeks of all types of FMLA leave.

Additional information on the amendments and a version of Title I of the FMLA with the new statutory language incorporated are available on the FMLA amendments Web site at http://www.dol.gov/esa/whd/fmla/NDAA_fmla.htm.

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*A Spanish translation of this form may be downloaded
at <http://www.dol.gov/esa/whd/fmla/>*

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**PROFESSIONAL / SUPPORT STAFF
LEAVES OF ABSENCE WITHOUT PAY**

**FACT SHEET NO. 28:
THE FAMILY AND MEDICAL LEAVE ACT OF 1993**

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employees, and some federal employees. Most federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management or the Congress.

The FMLA became effective on August 5, 1993 for most employers and entitles eligible employees to take up to twelve (12) weeks of unpaid, job-protected leave in a twelve (12)-month period for specified family and medical reasons. Amendments to the FMLA by the National Defense Authorization Act for FY 2008 (NDAA). Public Law 110-181, expanded the FMLA to allow eligible employees to take up to twelve (12) weeks of job-protected leave in the applicable twelve (12)-month period for any "qualifying exigency" arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The NDAA also amended the FMLA to allow eligible employees to take up to twenty-six (26) weeks of job-protected leave in a "single twelve (12)-month period" to care for a covered servicemember with a serious injury or illness.

Employer Coverage

FMLA applies to all public agencies, including state, local and federal employers, local education agencies (schools), and private-sector employers who employed fifty (50) or more employees in twenty (20) or more workweeks in the current or preceding calendar year, including joint employers and successors of covered employers.

Employee Eligibility

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To be eligible for FMLA benefits, an employee *must*:

- work for a covered employer;
- have worked for the employer for a total of twelve (12) months;
- have worked at least one thousand two hundred fifty (1,250) hours over the previous twelve (12) months; and
- work at a location in the United States or in any territory or possession of the United States where at least fifty (50) employees are employed by the employer within seventy-five (75) miles.

While the twelve (12) months of employment need not be consecutive, employment periods prior to a break in service of seven (7) years or more need not be counted unless the break is occasioned by the employee's fulfillment of his or her National Guard or Reserve military obligation (as protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA)), or a written agreement, including a collective bargaining agreement, exists concerning the employer's intention to rehire the employee after the break in service. See, *special rules for returning reservists under USERRA.*

Leave Entitlement

A covered employer must grant an eligible employee up to a total of *twelve (12) workweeks* of *unpaid* leave during any twelve (12)-month period for one (1) or more of the following reasons:

- For the birth and care of a newborn child of the employee;
- For placement with the employee of a son or daughter for adoption or foster care;
- To care for a spouse, son, daughter, or parent with a serious health condition;
- To take medical leave when the employee is unable to work because of a serious health condition; or
- For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation.

A covered employer also must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including

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a member of the National Guard or Reserves, with a serious injury or illness up to a total of *twenty-six (26) workweeks* of *unpaid* leave during a "single twelve (12)-month period" to care for the servicemember.

Spouses employed by the same employer are limited in the *amount of* family leave they may take for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition to a combined total of twelve (12) weeks (or twenty-six [26] weeks if leave to care for a covered servicemember with a serious injury or illness is also used). Leave for birth and care, or placement for adoption or foster care, must conclude within twelve (12) months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently - taking leave in separate blocks of time for a single qualifying reason - or on a reduced leave schedule - reducing the employee's usual weekly or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation. If FMLA leave is for birth and care, or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.

Under certain conditions, employees or employers may choose to "substitute" (run concurrently) accrued *paid* leave (such as sick or vacation leave) to cover some or all of the FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

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

- Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; or
- Continuing treatment by a health care provider, which includes:
 - A period of incapacity lasting more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that *also* includes:
 - ▲ treatment two (2) or more times by or under the supervision of a health care provider (i.e., in-person visits, the first within seven (7) days and both within thirty (30) days of the first day of incapacity); or

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- ▲ one (1) treatment by a health care provider (i.e., an in-person visit within seven (7) days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); or
- Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or
- Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or
- A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
- Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) days if not treated.

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. If applicable, 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 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 the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. 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, nor be counted against the employee under a "no fault" attendance policy. If a bonus or other payment, however, is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, payment may be denied unless it is paid to an employee on equivalent leave status for a reason that does not qualify as FMLA leave.

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An employee has no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed.

Notice and Certification

Employee Notice

Employees seeking to use FMLA leave are required to provide thirty (30)-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than thirty (30) days in advance, the employee must provide notice as soon as practicable - generally, either the same or next business day. When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the employer's usual and customary notice and procedural requirements for requesting leave.

Employees must provide sufficient information for an employer reasonably to determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, and/or that the employee or employee's qualifying family member is under the continuing care of a health care provider.

When an employee seeks leave for a FMLA-qualifying reason for the *first* time, the employee need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the employer has previously provided the employee FMLA-protected leave, the employee *must* specifically reference either the qualifying reason for leave or the need for FMLA leave.

Employer Notice

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 one hundred ten dollars (\$110) for each separate offense. Additionally, employers must either include this general notice in employee handbooks or other written guidance to employees concerning benefits, or must distribute a copy of the notice to each new employee upon hiring.

When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA purpose, the employer must notify the employee of his or her eligibility to take leave, and inform the employee of his/her rights and

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responsibilities under FMLA. When the employer has enough information to determine that leave is being taken for a FMLA-qualifying reason, the employer must notify the employee that the leave is designated and will be counted as FMLA leave.

Certification

Employers may require that an employee's request for leave due to a serious health condition affecting the employee or a covered family member be supported by a certification from a health care provider. An employer may require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition. An employer may use a health care provider, a human resource professional, a leave administrator, or a management official - but not the employee's direct supervisor - to authenticate or clarify a medical certification of a serious health condition. An employer may have a uniformly-applied policy requiring employees returning from leave for their own serious health condition to submit a certification that they are able to resume work. If reasonable safety concerns exist, an employer may, under certain circumstances, require such a certification for employees returning from intermittent FMLA leave.

Unlawful Acts

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. 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

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also be able to bring a private civil action against an employer for violations.

Other Provisions

Special rules apply to employees of local education agencies. Generally, these rules apply to intermittent leave or when leave is required 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 overtime under Regulations, 29 C.F.R. Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special

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exception to the "salary basis" requirements for FLSA's exemption extends only to an "eligible" employee's use of leave required by FMLA.

For additional information, visit the Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call the toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866- 4USWAGE (1-866-487-9243).

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The following comments are relative to codified legislation enacted during the 49th New Mexico Legislature, 1st Session, 2009.

Policy Advisory No. 62. BCB — Board Member Conflict of Interest. 22-5-6 NMSA (1978) was revised in Senate Bill 212 to expand the number of relatives of members of the local board who can not be employed or approved for employment by adding the following: brother, brother-in-law, sister or sister-in-law. This change was added to BCB accordingly.

Policy Advisory No. 63. GBEAA — Staff Conflict of Interest. 22-5-6 NMSA (1978) was revised in Senate Bill 212 to expand the number of relatives of the local superintendent who can not be employed or approved for employment to include brother, brother-in-law, sister or sister-in-law unless the local school board waves the rule on nepotism. This change was added to GBEAA accordingly.

Policy Advisory No. 64. IC — School Year. 22-2-8.1 NMSA (1978) was amended in House Bill 691a to establish the length of the regular and variable school year at 180 and 150 full instructional days, respectively. Additionally, program time requirements were restated in hours, omitting the number of minutes equivalency. The statute goes on to specify by grade level the amount of time in hours required for each grade level as a full instructional day. The law now reads that with the exception of amounts of time for home visits, parent teacher conferences and consultation with parents on next step plans in specific grades and levels stated in the law, days or parts of days that are lost to weather, in-service training or other events shall be made up so students are given a full instructional year. A new policy IC has been added to provide the interpretation of this data.

Policy Advisory No. 65. JHB — Truancy. In revising 22-8-2 NMSA (1978) in Senate Bill 189a the legislature changed a term so that what was a truant is now a student in need of early intervention. A student in need of early intervention is one who per 22-12-9 NMSA (1978) has accumulated five unexcused absences within a school year (formerly this was within twenty (20) days). In other modifications the legislature cleared up the required steps in dealing with a habitually truant student in 22-12-7NMSA (1978) by requiring that schools give parents notice of the habitual truant status and a meeting place, time and date to discuss intervention strategies.

In 22-12-9 NMSA (1978) revised by Senate Bill 189a the legislature defined when an absence would be considered a half day and full day referenced to unexcused absences and the instructional day. This section also requires each district to maintain an "attendance policy" containing certain inclusions that will be reviewed and approved by the Public Education Department (PED). These inclusions are:

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

- Provide interventions focusing on keeping the truant students in an educational setting while prohibiting out of school suspension and expulsion as a punishment.
- Use withdrawal only after exhausting intervention efforts.
- Require class attendance be taken for every instructional day in every public school or school program.
- Provide for documentation of the following on each student identified as a habitual truant;
 - Attempts to notify parents that the student had unexcused absences.
 - Attempts to meet with the parent to discuss intervention.
 - Intervention strategies implemented to support keeping the student in school.

Regarding the second bullet above. Withdrawal is to be used "only after exhausting intervention" according to 22-12-9 NMSA (1978). While in 22-8-2 NMSA (1978) paraphrased, withdrawals "include students absent from public school for as many as ten consecutive school days; provided that withdrawals do not include students in need of early intervention and habitual truants the district is required to intervene with and keep in an educational setting as provided in Section 22-12-9 NMSA (1978)." These quotes mean to Policy Services that habitual truants are not to be included in withdrawals until or unless the district can document an "exhaustion of intervention strategies", depending on who makes the determination of exhaustion the task is at best very difficult.

All of the items to be included in the "attendance policy" indicated in 22-12-9 NMSA (1978) will be found in policy, regulation and exhibits for JHB - Truancy. For the district's information, however, your *attendance policies* begin with policy coded JE - School Attendance and end with policy coded JHD - Exclusions and Exemptions from School Attendance, a set of about thirty-two (32) documents. For the PED however, submitting JHB as included in this advisory should be sufficient to the meet the requirements of 22-12-9 NMSA (1978).

Policy Advisory No. 66. KDB — Public's Right to Know/Freedom of Information. House Bill 598 modified 14-2-8 NMSA (1978) by permitting a written request for records inspection to include electronic communications. Policy KDB was modified to reflect this addition. Other modifications to the policy were made to better reflect the statutory requirements of identification and notice of when records will be available.

<p><i>Note:</i> This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.</p>

Informational Advisory — A uniform mileage rate has been established for reimbursement of miles traveled in a privately owned vehicle by public officers and employees on approved travel necessary to the discharge of the persons duties. The rate is the Federal Internal Revenue Service standard mileage rate set January 1 of the previous year. This action was taken in House Bill 336a revising Section 10-8-4 NMSA (1978) on Per Diem and Mileage rates.

Senate Bill 226a revised Section 22-29-7 NMSA (1978) on the private use of school facilities. One part of the revision calls for the Public School Insurance Authority (PSIA) to by rule, establish a policy to be followed by participating school districts on the use of school facilities by private persons related only to the liability and risk issues. From this language it appears that school districts must incorporate the PSIA standards for liability and risk into their policy KF - Community Use of School Facilities. Upon the PSIA's promulgation of such a rule, Policy Services will provide a model for each school district participating in the PSIA.

For those school districts not participating in PSIA programs the statute requires the local board to establish a policy to be followed relating the to use of volunteers and one related to the use of school facilities. These policies are to be distributed to each school and posted upon the school district web site. If you are a school district that does not participate in the PSIA programs please let Policy Services know of your need to have the policies indicated and models will be prepared and sent to your attention.

ALERT

There will be a communication coming in June from NMSBA and Policy Services regarding some changes in address, phone numbers and procedures to enhance and improve the service provided. We alert you to this happening during a very busy time and desire that you pass on any information as changes in offices and assignments occur during this period.

If you have any questions, call Policy Services at (800) 238-4701. Ask for Donn Williams, Director of Policy Services. E-mail address [dwilliams@azsba.org]. This information is not intended as legal advice. If you have questions as to the legality contact your attorney.

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

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**B-0800 ©
BOARD MEMBER CONFLICT
OF INTEREST**

BCB

A Board member shall not have any direct pecuniary interest in a contract with the School District, nor shall a Board member furnish directly any labor, equipment, or supplies to the District.

Voting Restriction

In the event a Board member is employed by a corporation or business or has a secondary interest in a corporation or business which furnishes goods and services to the District, the Board member shall declare the interest and refrain from debating and voting upon the question of contracting with the company.

Nepotism

~~After March 1, 2003 a~~ A person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-law, sister, sister in law of a member of the Board may not be ~~recommended for~~ initially employed or approved for employment in any capacity in the District. Nothing in this section of this policy shall prohibit the continued employment of such a person employed on or before March 1, 2003.

Prohibited Acts

It is unlawful for a public officer or licensed employee to take an official act for the primary purpose of directly enhancing a personal financial interest or position.

A Board member or licensed employee shall not, directly or indirectly, solicit, sell or be a party to a transaction to solicit or sell a product or service to the school or district with which they are associated. This does not apply to a person making a sale in the regular course of business while complying with the procurement laws and rules of the State of New Mexico.

No person shall sell or use a student, faculty or staff list with personal identifying information obtained from the District for the purpose of direct marketing of goods

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Policy Services

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or services except for legitimate educational purposes or with the authorized release of each individual on the list(s).

Adopted: date of manual adoption

LEGAL REF.: 10-16-3 NMSA
10-16-4 NMSA
22-5-6 NMSA
6.10.6.8 NMAC

CROSS REF.: BBBA - Board Member Qualifications

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

**G-0700 ©
STAFF CONFLICT OF INTEREST**

GBEAA

Nepotism

A person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter or daughter-in-law, brother, brother-law, sister, sister in law of a member of the Board or Superintendent may not be ~~recommended for~~ initially employed or approved for employment in any capacity in the District. The local school board may waive the nepotism rule for family members of a local superintendent. Nothing in this section of this policy shall prohibit the continued employment of such a person employed on or before March 1, 2003.

Prohibited Acts

It is unlawful for a public officer or licensed employee to take an official act for the primary purpose of directly enhancing a personal financial interest or position.

A Board member or licensed employee shall not, directly or indirectly, solicit, sell or be a party to a transaction to solicit or sell a product or service to the school or district with which he is associated. This does not apply to a person making a sale in the regular course of business while complying with the procurement laws and rules of the State of New Mexico.

No person shall sell or use a student, faculty or staff list with personal identifying information obtained from the district for the purpose of direct marketing of goods or services except for legitimate educational purposes or with the authorized release of each individual on the list(s).

Vendor Relations

No employee of the District will accept gifts from any person, group, or entity doing, or desiring to do, business with the District. The acceptance of any business-related gratuity is specifically prohibited, except for widely distributed, advertising items of nominal value.

This policy should not be construed to deem unacceptable inexpensive novelty advertising items of general distribution. Acceptance of business lunches and holiday gifts for general consumption are acceptable under this policy.

<p><i>Note:</i> This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.</p>

Policy Services
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Adopted: date of manual adoption

LEGAL REF.: 10-16-3 NMSA
10-16-4 NMSA
22-5-6 NMSA
6.10.6.8 NMAC

CROSS REF.: BCB - Board Member Conflict of Interest

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

I-0200 _____ ©
SCHOOL YEAR

IC _____

The school year shall consist of at least one hundred eighty (180) full instructional days for a regular school year calendar and one hundred fifty (150) full instructional days for a variable school year calendar, exclusive of any release time for in-service training.

Each instructional day shall consist of not less than the minimum amount of time prescribed in 22-2-8.1(B) N.M.S.A. for each respective program level exclusive of lunch with the following exceptions:

- Home visits or parent-teacher conferences may be held for up to:
 - thirty-three (33) hours of the full day kindergarten program; and
 - twenty-two hours of grades one (1) through six (6) programs.
- Consultation with parents to develop next step plans for students and for parent-teacher conferences may be held for up to twelve (12) hours of grades seven (7) through twelve (12) programs.

Whole or part days that are lost to weather, in-service training or other events shall be made up so students are given a full instructional year.

The Board shall establish the school calendar each year after recommendations from the Superintendent.

Adopted: date of manual adoption

LEGAL REF.: 22-2-8.1 NMSA

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

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J-1650 ©
TRUANCY

JHB

A student with five (5) unexcused absentees within ~~any twenty day period~~ a school year is a "~~truant~~" a student in need of early intervention and one with ten (10) or more unexcused absences within a school year is "habitually truant". The Superintendent will establish procedures to identify, and intervene with ~~and discipline truant~~ students in need of early intervention, beginning with ~~notification of contacting~~ parents and requesting an opportunity to discuss interventions. Discipline shall not include out-of-school suspension or expulsion, but should focus on intervention and fostering retention of ~~truant~~ students in the educational setting.

Parents of "habitually truant" students are to receive notice of such which shall include a specific date, time and place for the "habitually truant" student's parent to meet with school personnel to develop intervention strategies for keeping the student in an educational setting. Only after exhaustion of intervention strategies may the district consider withdrawal of the student from membership in the school.

An excused absence shall be as determined in Policy JH but statutes and regulations relative to notice and intervention do not apply to any absence if the parent has contacted the school to explain the absence.

Adopted: date of manual adoption

LEGAL REF. 22-8-2 NMSA (1978)
 22-12-7 NMSA (1978)
 22-12-8 NMSA (1978)
 22-12-9NMSA (1978)
 6.10.8.7 NMAC
 6.10.8.8 NMAC
 6.10.8.9 NMAC
 6.10.8.10 NMAC

CROSS REF.: JE - Student Attendance
 JEA - Compulsory Attendance Ages
 JH - Student Absences and Excuses

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

J-1661

©

JHB-R

REGULATION

REGULATION

TRUANCY

Parental Involvement

Upon a student's fifth (5th) unexcused absence within ~~twenty (20) school days a school year~~ parent(s)/guardian(s) shall be contacted to inform them of the ~~truancy absences~~ and ~~request their cooperation~~ to meet and establish a cooperative arrangement to prevent future ~~truancy~~ absences by identifying:

- the cause(s),
- preventive measures,
- resources to address the causes, and
- a corrective action plan including follow-up procedures.

The parental meeting notice shall be respectful and the meeting shall be held in a language and manner understandable to the parent(s)/guardian(s).

Notice of Habitual Truancy

Upon a student's tenth (10th) unexcused absence within a school year, written notice of the habitual truancy shall be given by ~~certified~~ regular mail to or by personal service on the parent of the student subject to and in noncompliance with the provisions of the Compulsory School Attendance Law. The notice shall including the date, time and place for the parent to meet with a district representative to develop intervention strategies focused on keeping the student in school.

Should an additional unexcused absence occur after delivery of a written notice of habitual truancy, the probation services office of the district where the student resides shall be notified within seven (7) days.

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

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Follow up with the probation office shall be accomplished within a reasonable time to determine the disposition of the violation of the Compulsory School Attendance Law, and may, if no referral was made to the children's court, include contact with the children's court attorney to determine what action is to be taken. If the probation office determined that the parent or guardian may have caused the habitual truancy and no charges have been filed, the school district may contact the district attorney's office to determine what action will be taken.

Record Keeping

The following records shall be kept for each student identified as habitually truant:

- Attempts to notify the parent of student unexcused absences,
- Attempts to meet with the parents to discuss intervention strategies, and
- Intervention strategies implemented to support keeping the student in school.

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

J-1681

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JHB-EA

EXHIBIT

EXHIBIT

TRUANCY

The following letter may be used in alternative forms, one (1) for the students in need of intervention and one (1) for those habitually truant. Copy and remove the appropriate sentences to make the adjustment.

Dear _____:

(For students in need of intervention) This letter is to inform you that the School District has noted at least five (5) unexcused absences on the part of (student name).

(For students habitually truant) This letter is to inform you that (student name) has ten unexcused absences and is considered habitually truant which if such absences continue may result in referral to the court system.

An unexcused absence is one that does not fall within the following:

- illness,
- bereavement,
- other family emergencies,
- observance of major religious holidays of the family's faith, or
- an absence that has been approved by school authorities.

An unexcused absence of two (2) or more classes up to fifty percent of an instructional day shall be counted as one-half day absent and an unexcused absence of more than fifty percent of an instructional day shall be counted as one full day.

A representative of the school would like to meet with you to discuss methods of preventing future unexcused absences and interventions that may ensure that your child will continue to receive an appropriate public education. Please make

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Policy Services

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the time to attend a meeting. *(For students in need of intervention)* The following dates and times are available for the meeting. *(For habitually truant students)* The following dates and times have been established for the meeting. Please contact us by telephone or return mail to confirm the time and location.

Date _____

Time _____

Location _____

If you have any questions, please contact me at _____.

Sincerely,

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

J-1682

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JHB-EB

EXHIBIT **EXHIBIT**

TRUANCY

**ACTION PLAN FOR STUDENTS WITH
ATTENDANCE PROBLEMS**

School year _____

_____ Student's name _____ Grade level _____ Date _____

_____ Parent's name _____ Address _____

Phone _____ Cell Phone _____

E-mail address _____

_____ Person responsible for home-school coordination _____ Position _____ School _____

Action list: Comments

_____ 1.

_____ 2.

_____ 3.

_____ 4.

_____ 5.

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

_____ 6.

_____ 7.

_____ 8. Student agrees to attend classes

Student's Signature _____

Date _____

Parent/guardian agrees to contact the school for absences during the school year.

Parent's Signature _____

Date _____

Approved: _____
Principal's signature

Annual review of Action Plan:

___ Number of excused absences ___ Number of unexcused absences Transcripts and attendance records

For the _____ school year, should / should not be continued on an action plan.

Superintendent's signature

Parent's signature

Date

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

**K-1000 ©
PUBLIC'S RIGHT TO KNOW/
FREEDOM OF INFORMATION**

KDB

The Board recognizes the right of the public to information concerning its actions, its policies, and the details of its educational and business operations. The Superintendent is appointed the custodian of public records and may delegate this duty as necessary. The custodian of records shall follow the directives of 14-2-7 NMSA (1978) in providing access to public records including the posting in a conspicuous place at the administrative office of the district the proper notice of a person's rights and the procedures.

The office of the Superintendent will be open to receive requests for records inspection or copying during normal business hours on Monday through Friday.

Requests for access to records shall be made in writing (which may include electronic communication such as e-mail or facsimile) directed to the office of the Superintendent. Any written communication should contain the name, address and telephone number of the requestor and should state the record required with reasonable particularity.

The Superintendent may permit access to, or provide for the copying of, the records requested within a reasonable period of time following receipt of the signed written request (fifteen [15] days) or will provide an explanation of a cause for further delay if the records are not available and will give notification of the time the records will be available, or, may deny access if there is no record to match the request. If the inspection of the requested records is not permitted within three (3) days the Superintendent will explain in writing when the records will be available for inspection or when the Board will respond to the request.

Requirements of access and inspection apply only to existing records and do not require creation of new records. Public inspection of a document that otherwise would be a public record may be denied by the Superintendent if (1) the record is made confidential by statute, or (2) the record involves the privacy interests of persons. If a public record contains material that is not subject to disclosure, the District will delete such material and make available to the requester such material in the record as is subject to disclosure.

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Policy Services

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Records contained on a computer will be provided only in the form in which the information can be made available using existing computer programs.

Copies of radio or recording tapes of discs, video or films, pictures, slides, graphics, illustrations, or similar audio or visual items or devices will not be furnished unless such items or devices have been shown or played at a public meeting of the Board.

A fee shall be levied on each request to cover the cost of making copies, staff time, computer time, etc. Fees will be collected prior to releasing material.

The fees will be based upon the following:

- 10¢ per page for materials indicated as Board minutes, agendas, financial records, contracts, courses of study, or statistical summaries.
- 35¢ per copy for materials not listed above that require additional clerical and/or professional staff time to make available.
- Actual cost, if available, will be assessed.
- Free copies shall be furnished if they are to be used in claims against the United States.

Adopted: date of manual adoption

LEGAL REF.: 14-2-1 to 14-2-12 NMSA (1978)
14-3-1 to 14-3-24 NMSA (1978)

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

POLICY SERVICES

ADVISORY

Volume 6, Number 3

September 2009

CONTENTS

Policy Advisory No. 67	GCCB—Professional / Support Staff Personal / Emergency / Religious Leave
Policy Advisory No. 68	GCCD—Professional / Support Staff Military / Legal Leave

Policy Advisory Discussion

The enacted Senate Bill applicable to the changes to policy GCCB can be found attached following the full text of the advisory document. The applicable statute related to the discussion on policy GCCD is quoted within the discussion.

GCCB—Professional / Support Staff Personal / Emergency / Religious Leave. Senate Bill 68 enacted during the last legislative session and effective July 1, 2009 titled Promoting Financial Independence for Victims of Domestic Abuse, requires a school or district to provide an employee with intermittent paid or unpaid leave time of up to fourteen days in any calendar year for up to eight hours in one day for the purpose of:

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- Obtaining or attempting to obtain an order of protection or judicial relief from domestic abuse;
- Meet with law enforcement officials, consult with attorneys or district attorneys' victim advocates or attend court proceedings related to domestic abuse of an employee or an employees minor child.

Such leave may be unpaid or the employee may use paid leave if available by school or district policy. When the leave is take in an emergency notice must be given to the employer within twenty-four (24) hours. Verification may be required in the form of court order or other court evidence of the incident of domestic abuse or may be in the form of a written statement of appearance or schedule to appear as a victim or on behalf of a minor child victim in a domestic abuse incident made by an attorney, advocate or law enforcement official knowledgeable of appearance.

Confidentiality of any disclosed material and a position of non-retaliation for use of such leave is mandated.

As a matter of consistency, Policy Services has maintained that accumulation of leave, being a liability against the district budget as a future obligation, is not in the best interest of the school or district. For that reason the policy contains the basics for implementation of the law as summarized above but also includes a statement that any and all leave, compensatory time or any other paid for time off available to the employee is to be used before the imposition of unpaid leave time. Because of the difficulties of accounting, exemption requirements of the Fair Labor Standards Act and acquiring substitutes as needed, the policy includes a minimum time off period of four (4) hours in an employees normal eight (8) hour day or the equivalent time based on the employees work day.

Additionally, a correction allowing the principal to approve emergency personal leave upon his discretion was added to implement the emergency use of personal leave, normally requiring preplanning of a district designated number of days and limited by the percent of staff taking the leave.

GCCD — Professional/Support Staff Military/Legal Leave. The change in this policy is made to reflect 20-4-7 NMSA1978. The statute was overlooked in the previous revision of the policy. The statute states "All state, county, municipal, school district and other public employees who are members of organized units of the army or air national guard or army, air force, navy, marine or coast guard reserves shall be given not to exceed fifteen working days' military leave with pay per federal fiscal year when they are ordered to duty for training, such leave to be in addition to other leave or vacation time with pay to which such employees are

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otherwise entitled. The governor may grant any member of the national guard or reserves who is a state employee additional military leave with pay in excess of that allowed above, not to exceed fifteen working days per federal fiscal year, for periods of active duty for training when he deems that such training will benefit the state by enabling that employee to better perform the duties required in his state occupation."

The statute provides a fifteen (15) working day leave with pay each federal fiscal year for qualified employees who are ordered to military duty for training purposes. There will be no change recommended for Exhibit GCCD-E and it should be retained.

For those unfamiliar with military leave, there are now three different forms of military leave in the NMSBA recommended policy manual:

- **Military Family Leave**-Available to military personnel or family for any qualifying exigency (determined by federal regulation) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation. It follows the qualifications and directions found in the Family and Medical Leave Act at Policy GCCC in your manual.
- **Military Leave Without Pay**-Such leave is mandated by the Uniformed Services Employment and Reemployment Rights Act with the right to return to the same employment with proper notice to the employer at the time of the leave and upon leaving military service. This leave is found in Policy GCCD which is the subject of this advisory.
- **Up to fifteen (15) days Training Leave**-The subject of this advisory. Such leave is available for training purposes to school district employees who are in military service, the national guard or military reserves.

If you have any questions, call Policy Services at (505) 469-0193. Ask for Donn Williams, Policy Services Director. E-mail address, [nmsbapolicy@cox.net].

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Policy Services

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**^G-2600 ©
PROFESSIONAL / SUPPORT STAFF
PERSONAL / EMERGENCY /
RELIGIOUS LEAVE**

GCCB

Each staff member will be granted personal leave not to exceed two (2) days per year. No more than ten percent (10%) of the staff or other groupings of employees may take personal leave at any one time. Requests for personal leave must be received at least four (4) working days prior to the first day of leave unless considered an emergency by the approving administrator, and must be approved by the principal.

Requests shall be acted upon in order of receipt, and the availability of substitutes, if necessary, may limit the number of requests granted at any one (1) time.

Personal leave will not be granted during the following periods:

- On the day immediately preceding or following a holiday or vacation.
- During the first two (2) weeks of school or the last two (2) weeks of school.

Victims Domestic Abuse Leave

An employee will be allowed intermittent paid or unpaid leave time of up to fourteen days in any calendar year for up to eight hours in one day for the purpose of:

- Obtaining or attempting to obtain an order of protection or judicial relief from domestic abuse;
- Meet with law enforcement officials, consult with attorneys or district attorneys' victim advocates or attend court proceedings related to domestic abuse of the employee or the employees minor child.

The leave will be allowed in increments of one half (1/2) day of the normal work day for the employee.

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Policy Services

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Such leave shall include any and all leave, compensatory time or any other paid for time off available to the employee before the imposition of unpaid leave time. The Superintendent may authorize up to fourteen (14) days of leave for the victim abuse purposes indicated above.

When the leave is taken in an emergency notice must be given to the Superintendent's office within twenty-four (24) hours of the type of leave requested. Other policies on notice for absence may apply. Verification will be required in the form of:

- A court order or other court evidence of the incident of domestic abuse;
- A written statement of appearance or schedule to appear as a victim or on behalf of a minor child victim in a domestic abuse incident made by an attorney, advocate or law enforcement official knowledgeable of the appearance.

Confidentiality of any disclosed material and a position of non-retaliation for use of such leave will be maintained by the district..

Emergency Responder Leave

An employee serving as a volunteer emergency responder in a declared emergency of up to ten (10) regular business days by the State Governor or President of the United States may not be terminated, demoted or discriminated against in the terms and conditions of employment. The employer may charge regular pay against the employee for the time the employee is absent from employment due to service as an emergency responder.

Adopted: date of manual adoption

LEGAL REF.: 12-10-C1 *et seq.* - Voluntary Emergency Responder
Leave Act

50-4-2 *et seq.* - Domestic Abuse Act

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

G-2950 ©
PROFESSIONAL / SUPPORT STAFF
MILITARY / LEGAL LEAVE

GCCD

The Board recognizes the fact that its employees have citizenship responsibilities. In order to make it possible for said employees to carry out their responsibilities to the city, county, state, or nation, the Board will grant leaves, in addition to jury duty, when an employee is called to military services or to attend training for the Military Reserve or National Guard.

When an employee receives notice that requires leave as delineated above, it is the responsibility of the employee to notify the Superintendent or principal.

Subpoena

You will be granted leave if you are served a subpoena for a deposition or a trial that is related to your employment. Please notify your supervisor as soon as you receive the subpoena and you must attach a copy of the subpoena to your Absence Report.

Jury Duty

It is recognized by the Board that no employee is exempt from jury duty and that leaves of absence for such duty must be granted.

- Only the regular salary may be received by an employee on jury duty.
 - It is the responsibility of the employee to reimburse the District for jury duty pay when such payment is made directly to the employee. Failure to reimburse the District at the completion of the jury duty service will result in a full deduction equal to the number of contract days missed.
 - An employee excused from jury duty after being summoned shall report for regular duty as soon as possible. Failure to report for duty will result in a deduction equal to that portion of a contract day missed.

Military Leave

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

- An employee who is a member of the army or air national guard or army, air force, navy, marine or coast guard reserves shall be given not to exceed fifteen working days' military leave with pay per federal fiscal year when they are ordered to duty for training, such leave to be in addition to other leave or vacation time with pay to which such employees are otherwise entitled.
- An employee who is a member of the uniformed service may use any vacation leave or other accumulated paid time off during their service, or may take an unpaid leave of absence.
- The District must reemploy uniformed service members, as defined in 38 U.S.C. 4303, returning from a period of service, if the service member:
 - Was employed by the District.
 - Gave the District notice that he or she was leaving the job for service in the uniformed services, unless giving notice was precluded by military necessity or otherwise impossible or unreasonable.
 - Has a cumulative period of service in the uniformed services not exceeding five (5) years.
 - Was not released from service under dishonorable or other punitive conditions.
 - Has reported back to the District in a timely manner or has submitted a timely application for reemployment in accordance with the Uniformed Services Employment and Reemployment Rights Act.

Adopted: date of manual adoption

CROSS REF.: GCCC - Professional/Support Staff Leaves of Absence Without Pay

LEGAL REF.: 20-4-7 NMSA, Military leave for National Guard

and Reserves.

38 U.S.C. 4301 *et seq.*, Uniformed
Services Employment

and Reemployment Rights Act

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Policy Services

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Relevant Statutes and Rules

AN ACT RELATING TO LABOR; PROMOTING FINANCIAL INDEPENDENCE FOR VICTIMS OF DOMESTIC ABUSE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"SHORT TITLE.--This act may be cited as the "Promoting Financial Independence for Victims of Domestic Abuse Act"."

Section 2. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"DEFINITIONS.--As used in the Promoting Financial Independence for Victims of Domestic Abuse Act:

A. "domestic abuse" has the same meaning as it does in the Family Violence Protection Act;

B. "domestic abuse leave" means intermittent paid or unpaid leave time for up to fourteen days in any calendar year, taken by an employee for up to eight hours in one day, to obtain or attempt to obtain an order of protection or other judicial relief from domestic abuse or to meet with law enforcement officials, to consult with attorneys or district attorneys' victim advocates or to attend court proceedings related to the domestic abuse of an employee or an employee's family member;

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C. "employee" means a person who is employed by an SB 68 Page 1
employe
r;

D. "employer" includes a person, a firm, a partnership, an association, a corporation, a receiver or an officer of the court of New Mexico, a state agency, or a unit of local government or a school district;

E. "family member" means a minor child of the employee or a person for whom the employee is a legal guardian;

F. "order of protection" means a court order granted pursuant to the Family Violence Protection Act; and

G. "retaliation" means an adverse action against an employee, including threats, reprisals or discrimination for engaging in the protected activity of taking domestic abuse leave."

Section 3. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"DOMESTIC ABUSE LEAVE REQUIRED--RETALIATION PROHIBITED.--An employer shall grant an employee domestic abuse leave without interfering with, restraining or denying exercise of rights under the Promoting Financial Independence for Victims of Domestic Abuse Act or attempting to do so. Retaliation against an employee for using domestic abuse leave is prohibited."

Section 4. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"CERTIFICATION--VERIFICATION.--

A. When domestic abuse leave is taken in an emergency, the employee or the employee's designee shall give notice to the employer within twenty-four hours of commencing the domestic abuse leave.

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B. An employer may require verification of the need for domestic abuse leave, and, if so, an employee shall provide one of the following forms of verification through furnishing in a timely fashion:

(1) a police report indicating that the employee or a family member was a victim of domestic abuse;

(2) a copy of an order of protection or other court evidence produced in connection with an incident of domestic abuse, but the document does not constitute a waiver of confidentiality or privilege between the employee and the employee's advocate or attorney; or

(3) the written statement of an attorney representing the employee, a district attorney's victim advocate, a law enforcement official or a prosecuting attorney that the employee or employee's family member appeared or is scheduled to appear in court in connection with an incident of domestic abuse."

Section 5. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"IMPACT OF DOMESTIC ABUSE LEAVE ON OTHER EMPLOYEE BENEFITS.--

A. For domestic abuse leave, an employee may use accrued sick leave or other available paid time off, compensatory time or unpaid leave time consistent with the employer's policies.

B. To the extent permitted by law, an employer shall not withhold pay, health coverage insurance or another benefit that has accrued to the employee when an employee takes domestic abuse leave. An employer shall not include time taken for domestic abuse leave in calculating eligibility for benefits."

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Section 6. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:
"CONFIDENTIALITY.--An employer shall not disclose verification information provided under Subsection B of Section 4 of the Promoting Financial Independence for Victims of Domestic Abuse Act and shall maintain confidentiality of the fact that the employee or employee's family member was involved in a domestic abuse incident, that the employee requested or obtained domestic abuse leave and that the employee made any written or oral statement about the need for domestic abuse leave. An employer may disclose an employee's information related to domestic abuse leave only when the employee consents, when a court or administrative agency orders the disclosure or when otherwise required by federal or state law."

Section 7. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"ENFORCEMENT.--

A. The workforce solutions department is authorized to enforce the Promoting Financial Independence for Victims of Domestic Abuse Act and to investigate complaints made by persons who claim to be aggrieved pursuant to the provisions of that act.

B. The workforce solutions department and the employee have the right to bring an action in violation of the Promoting Financial Independence for Victims of Domestic Abuse Act in a court of competent jurisdiction to enjoin further violations, recover actual damages sustained or both, together with costs and reasonable attorney fees."

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Section 8. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"EFFECT ON OTHER LAWS AND EXISTING EMPLOYMENT BENEFITS.--

A. Remedies in this section are provided in addition to other common law, federal or state remedies.

B. Nothing in the Promoting Financial Independence for Victims of Domestic Abuse Act shall supersede any provision of law or contract that provides greater rights than the rights established under that act.

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C. The rights provided in the Promoting Financial Independence for Victims of Domestic Abuse Act shall not diminish an employers obligation to provide greater rights in compliance with another contract, collective bargaining agreement or employment benefit program, policy or plan.

Section 9. EFFECTIVE DATE. – The effective date of the provisions of this act is ~~Month-7-Day-1-Year-2009~~ July 1, 2009

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