

# SOUTHERN LEHIGH SCHOOL DISTRICT

SECTION: CLASSIFIED EMPLOYEES

TITLE: FAMILY AND MEDICAL LEAVE

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*Formerly policy 4152.7*

## 535. FAMILY AND MEDICAL LEAVE

In accordance with the Family and Medical Leave Act of 1993 (the "FMLA") and subsequent revisions, the Southern Lehigh School District (the "District") affords its eligible employees leave ("FMLA Leave") as set forth in this Policy.

**A. *Eligible Employees:*** Only eligible District employees are entitled to FMLA leave.

An eligible employee is an employee who has satisfied each of the following conditions.

1. He/she has been employed by the District for at least twelve months, which need not have been consecutive, prior to the commencement of the leave;
2. He/she has worked for the District for at least 1250 hours over the twelve (12) month period immediately prior to the commencement of the leave; and
3. He/she works at a location within 75 miles of which the District employs at least 50 employees.

**B. *Reasons for Leave:*** The District will grant FMLA leave only for one of the following reasons:

1. Birth of a child, or placement of a child with the employee for adoption or foster care. Leave for this purpose must end within one year after the birth or placement, or
2. A serious health condition of the employee's spouse, child, or parent; or
3. A serious health condition that makes the employee unable to perform the regular duties of his/her job, or
4. Those employees with family members serving as active members of a United States military branch are eligible for FMLA leave in situations where:
  - a. a qualifying exigency exists arising out of the fact that an employee's spouse, son, daughter, parent is on active duty in the United States Armed Forces (including National Guard or Reserves) or has been notified of an impending call/order to active duty in the United States

	<p>Armed Forces.</p> <ul style="list-style-type: none"><li>b. To care for a spouse, parent, son, daughter or next of kin who is a member of the United States Armed Forces who is undergoing medical treatment, recuperation, therapy or is otherwise in outpatient status, or is otherwise on the temporarily disabled retired list, for a serious service-related injury or illness that renders the member medically unfit to perform the duties befitting the member's rank, office, grade or rating.</li></ul> <p><b>C. Length of Leave and Determination of Leave Year:</b></p> <ul style="list-style-type: none"><li>1. Eligible employees are entitled to up to twelve (12) weeks of FMLA leave in each twelve (12) month period, except that those employees qualifying for FMLA under the provision B 4 (b) above are eligible for up to twenty-six (26) weeks of FMLA leave in each twelve (12) month period.<ul style="list-style-type: none"><li>a. The twelve (12) month period - or FMLA leave year - shall begin on the date the employee's FMLA leave (or first portion thereof for that year) begins.</li><li>b. Following a period of 12 months after the commencement of a FMLA leave, a new FMLA leave year is established for purposes of look back and look forward. In such cases, the new FMLA leave year shall begin on the date the employee's new FMLA leave begins.</li><li>c. FMLA leave begins on the earlier of the following:<ul style="list-style-type: none"><li>the first day of FMLA leave as requested by the employee and approved by the District, or the date determined by the District to be the first day of paid or unpaid absence by the employee immediately prior to the employee's formal request for FMLA leave when the employee's absence is in connection with the same FMLA eligible reason for which the request is made, or the first day of any absence due to a reason detailed under B 3 above that has a duration of five (5) days or more.</li></ul></li></ul></li><li>2. Spouses employed by the District are limited to:<ul style="list-style-type: none"><li>a. A combined total of twelve (12) weeks of leave for the birth of a child or for placement with them of a child for adoption or for foster care; and</li><li>b. A combined total of twelve (12) weeks of leave to care for a parent who has a serious health condition.</li><li>c. A combined total of twenty-six (26) weeks, if qualified under B 4 (b) above.</li></ul></li></ul> <p><b>D. Benefits During Leave:</b> FMLA leave may be unpaid leave. However, whenever group health insurance is provided to an employee before the employee takes FMLA leave, the District will maintain the employee's health coverage under any group health plan during the leave on the same terms as if</p>
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the employee continued to work.

1. If an employee fails to return to work at the conclusion of his/her FMLA leave, the District will recover from the employee amounts it paid for health insurance for the employee during the leave. However, the District will not recover amounts paid for health insurance for an employee during FMLA leave if the employee fails to return to work because of a serious health condition of the employee, the employee's spouse, child or parent, or if the employee fails to return for other reasons beyond his/her control. If an employee fails to return to work because of his/her serious health condition, the District will require the employee to provide medical certification of the condition within 30 days of the District's request for such certification.
2. The employee's share of group health plan premiums will be paid to the District according to the employer's existing practices for payment by employees on leave without pay.

In the event that an employee's payment is not made within 30 days of the date on which it is due, the District's obligation to maintain health coverage will cease.

**E. *Reinstatement After Leave:*** At the conclusion of FMLA leave, the employee will be restored to his/her original position, or to an equivalent position, with equivalent pay, benefits and other employment terms, as if he/she had not taken such leave unless he/she is denied reinstatement because he/she is an administrative employee who is a key employee. However, the employee shall have no greater right to reinstatement or other benefits or conditions of employment than if the employee had been continuously employed during the leave period.

**F. *Limitations on FMLA Leave:***

1. Intermittent Leave or Reduced Leave Schedule:
  - a. Intermittent leave or a reduced leave schedule may be taken for a serious health condition where this is medically necessary, or for the medical condition of a spouse, parent, daughter, son or next of kin qualified under B 4 (b) above.
  - b. Intermittent leave may not be taken for the birth of a child or for placement of a child for adoption or foster care.
  - c. When intermittent leave or leave on a reduced leave schedule is requested based on planned medical treatment, the District may require the employee to transfer temporarily to an available alternative position for which the employee is qualified, and which better accommodates recurring periods of leave than does the employee's regular position. Alternatively the District may alter an existing job to better accommodate the employee's need for intermittent or reduced leave. The alternative or altered position

	<p>must have equivalent pay and benefits, but not equivalent duties.</p> <ol style="list-style-type: none"><li>2. When FMLA leave is needed to care for a family member or for the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to disrupt the employer's operation unduly.</li><li>3. Special Limitations on FMLA Leave for Instructional Employees:<ol style="list-style-type: none"><li>a. Leave Taken Near the End of an Academic Term (Half-Year) or grading period:<p>The District may require the instructional employee to continue his/her FMLA leave to the beginning of a grading period or term if:</p><ol style="list-style-type: none"><li>1) The leave begins more than five weeks before the term's end, will last at least three weeks, and the employee would return to work within three weeks of the end of the term, "or grading period"; or</li><li>2) The leave is for a purpose other than the employee's serious health condition, begins during the five-week period before semester's end, will last more than two weeks, and the employee would return during the two-week period before the end of the term, "or grading period"; or</li><li>3) The leave is for a purpose other than the employee's own serious health condition, begins during the three-week period before the end of a term, "or grading period", and will last more than five days.</li></ol><p>The entire period of leave taken counts as FMLA leave. However, if the annual FMLA leave entitlement of an employee who is required to take leave until the end of an academic term, "or grading period", ends before the leave is completed, the District will still maintain the employee's health benefits, reinstate the employee and provide other FMLA entitlements when the leave ends.</p></li><li>b. Use of Intermittent Leave or Reduced Leave Schedule:<p>If an eligible instructional employee requests intermittent leave or leave on a reduced leave schedule based on foreseeable planned medical treatment, and if the employee would be on leave for more than 20 percent of the total number of working days over the period of the leave, then the employer may require the employee to choose either (1) to take leave for a period not greater than the duration of the planned treatment; or (2) to transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits, and which better accommodates recurring periods of leave than does the employee's regular position.</p></li></ol></li></ol>
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**G. *Limitation On Reinstatement of Key Employees:***

At the discretion of the Southern Lehigh School Board, administrative employees who are among the highest paid 10% of all District employees may be denied reinstatement from the leave if reinstatement will cause the Southern Lehigh School District substantial and grievous economic injury.

In order to deny reinstatement to a key employee, the District will:

- a. Notify the employee of his/her status as a key employee in response to the employee's notice of intent to take FMLA leave;
- b. Notify the employee that the District has determined that reinstatement will cause the District substantial and grievous economic injury, and that the District therefore will not reinstate the employee at the end of his/her FMLA leave. This notice will be given as soon as the District makes this determination;
- c. Offer the key employee a reasonable time in which to return to work after giving notice pursuant to paragraph G b. above; and
- d. Make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests reinstatement.

**H. *Application for FMLA Leave:***

1. Employees must give 30 days notice of their need for FMLA leave where the need for the leave is foreseeable, or such notice as is practicable under the circumstances.
2. Employees must provide periodic reports during FMLA leave regarding the employee's status and intent to return to work.

**I. *Use of Paid Leave During FMLA Leave:***

1. FMLA is unpaid leave or time away from work. Employees may use accrued paid leave prior to or during unpaid FMLA leave in situations where care is provided to a family member as follows:
  - a. Accrued paid vacation, personal, or family sick leave for FMLA leave taken to provide care for the serious health condition of a spouse, child or parent, or for care provided or for exigencies experienced under B. (4) a and b of this Policy.
  - b. An employee may not require the District to provide paid family or medical/sick leave under the FMLA in circumstances where the employer's policy does not otherwise allow it.
2. During periods in which the employee's disability pursuant to B. (3) of this Policy is the reason for absence, the employee will be charged sick time for days absent until the period of disability has passed or accrued sick time is exhausted, whichever occurs first.

	<p><b>J. <i>Certification of Serious Health Conditions and Certification of Fitness for Work:</i></b></p> <ol style="list-style-type: none"><li>1. Employees must provide medical certification supporting the need for leave due to a serious health condition of the employee or an immediate family member on a form to be provided by the District.</li><li>2. At the request of the District, employees must provide second and, where the first and second options differ, third medical opinions regarding the need for leave due to a serious health condition. (Second and third opinions will be at the expense of the District.) The District will deny leave until the required certification is supplied.</li><li>3. Employees may be required to provide recertification of medical conditions every thirty days, or more frequently at the discretion of the District, as allowed by the FMLA.</li><li>4. An employee who takes FMLA leave because of the employee's own serious health condition must provide certification that he/she is able to resume work in order to be reinstated. The District will deny reinstatement until the requested certification is provided.</li></ol> <p><b>K. <i>Notice to Employees of their Rights and Obligations Under the FMLA:</i></b></p> <ol style="list-style-type: none"><li>1. The District will post a notice, as required by the FMLA, explaining the provisions of the FMLA.</li><li>2. The District will maintain a Board Policy intended to comply with the FMLA.</li><li>3. When an employee gives notice of his/her need for FMLA leave, the District will inform the employee (1) of his/her rights and obligations under the FMLA, including any obligation the employee may have to make contributions toward benefits; and (2) of what may happen if the employee fails to meet those obligations.</li></ol> <p><b>L. <i>Maintenance of Records:</i></b> The District will comply with the record-keeping requirements of the FMLA.</p> <p><b>M. <i>District Discretion:</i></b> Except as set forth in this Policy, the District will comply with the record-keeping requirements of the FMLA.</p> <p><b>N. <i>Definitions:</i></b> To the extent that this Policy employs terms which are defined in the FMLA or in the regulations interpreting it, those definitions are incorporated into this Policy.</p> <p><b>O. <i>Compliance with the FMLA:</i></b> This Policy is intended to comply with the requirements of the FMLA. To the extent it fails to do so, the provisions of the FMLA shall prevail.</p> <p><b>P. <i>Compliance with GINA:</i></b> The Genetic Information Nondiscrimination Act of 2008 prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member</p>
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	<p>of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you <u>not provide</u> any genetic information when responding to this request for medical information. “Genetic Information” as defined by GINA includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.</p>
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