



Section: CLASSIFIED
EMPLOYEES

Title: FAMILY AND MEDICAL
LEAVE ACT

Adopted: October 19, 1993

Revised: December 18, 2001

	525. FAMILY AND MEDICAL LEAVE ACT	
<p>1. Purpose</p> <p>2. Authority</p> <p>3. Guidelines</p>	<p>This policy specifies the manner in which family and medical leaves will be provided to Career and Technology Center employees pursuant to the Federal Family and Medical Leave Act of 1993.</p> <p>The Joint Operating Committee reserves the right to specify the conditions under which Family and Medical Leaves may be taken consistent with the Family and Medical Leave Act of 1993 (FMLA), P.L. 103-3, 29 CFR Part 825 and consistent with the School Laws of Pennsylvania.</p> <p><u>General Provisions</u></p> <p>A family medical leave for any eligible Career and Technology Center employee shall be granted for the following four purposes:</p> <ol style="list-style-type: none"> 1. The birth and first year care of a child as defined by the Family and Medical Leave Act of 1993; 2. The adoption or foster placement of a child as defined by the Family and Medical Leave Act of 1993; 3. The “serious health condition” of a school employee’s spouse, parent or biological, adopted or foster minor child or minor step-child, where the employee is needed to care for the family member as defined by the Family and Medical Leave Act of 1993; and 4. The employee’s own “serious health condition”, as defined by the Family and Medical Leave Act of 1993. <p>This family and medical leave policy entitles eligible employees, male or female, to take up to twelve (12) work weeks of unpaid leave per “leave year” for any of the above mentioned four leave situations. For purposes of FMLA leave, the school shall compute the 12-month “leave year” to be a rolling 12 month period measured backward from the date leave is used.</p> <p>When both a husband and a wife work for the school, Family and Medical Leave Act leave is limited to an aggregate of twelve (12) weeks for the birth, adoption or foster care of a child, or to care for a sick family member.</p> <p>All words, phrases, terms and conditions of this school policy shall be construed and interpreted pursuant to the provisions of the Family and Medical Leave Act of 1993 and its regulations. Furthermore, all the provisions of the Family and Medical Leave Act of 1993 are specifically incorporated into this policy.</p> <p><u>Employee Eligibility</u></p> <p>Eligible employees are those who have worked for the school for at least twelve (12) months and have worked for at least 1,250 hours during the twelve (12) months before the leave is requested.</p>	

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Other Types of Leaves

The terms and provision of this Family and Medical Leave policy are not meant to limit any other type of leave previously granted by the school to its employees. The purpose of this policy is merely to supplement other types of leaves and to implement the terms and provisions of the Family and Medical Leave Act of 1993.

Family and Medical Leave is “unpaid”. Any other type of paid leave, such as personal days, sick leave, workers’ compensation disability leave, medical sabbatical leave, vacation leave, annual leave, military leave or any other type of paid leave for which an employee requesting Family and Medical Leave is eligible, shall be substituted for the twelve (12) weeks of Family and Medical Leave Act unpaid leave.

Employees shall substitute any paid leave for which they are eligible for unpaid FMLA leave. This paid leave shall be appropriately counted against the employee’s 12 week FMLA leave entitlement during the “leave year”.

Benefits Protection For Employees

Each employee returning from Family and Medical Leave Act leave will be provided with the same position that the employee held when the leave started, or to an equivalent position with the same benefits, pay and other terms and conditions of employment.

Health care plan coverage for employees on FMLA leave will be maintained by the school during the unpaid FMLA leave under the school’s group health plan at the same level and conditions of coverage that would have been provided to the employee had the employee not taken the leave. Employees who have taken leaves of absence under the FMLA will not lose any other benefits that had accrued before the leave began.

Intermittent Leave Or A Reduced Leave Schedule

Family and Medical Leave Act leave for the serious health condition of an employee’s spouse, parent or biological, adopted or foster minor child or minor step-child and FMLA leave for the employee’s own serious health condition, can be taken intermittently or on a reduced leave schedule, if medically necessary. A “reduced leave schedule” is defined generally to mean a leave schedule that reduces the usual number of hours per work week, or hours per workday of an employee. “Intermittent leave” means a series of nonconsecutive leave periods of a day or more at a time taken within a consecutive 12 month period (i.e. the “leave year”).

If an employee requests intermittent or a reduced leave schedule because of planned medical treatment, the employee may, at the school’s option, be temporarily transferred to an equivalent job which better accommodates the employee’s need for recurring periods of leave. Intermittent leave or reduced leave schedule leave is unpaid, unless this type of leave is covered by other paid leaves granted by the school.

Intermittent leave or reduced leave schedule types of FMLA leave will not be granted for the birth or first year care of a child. Nor will FMLA leave be granted for the adoption or foster placement of a child on an intermittent or reduced leave schedule basis.

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Employee Obligations

When FMLA unpaid leave is foreseeable, the employee must provide at least thirty (30) days written notice to the school. If thirty (30) days notice is not possible under the circumstances, the employee must give as much written notice "as is practicable." With respect to foreseeable medical treatments, the employee must make reasonable efforts to schedule the treatment so as to not unduly disrupt the school's educational program. If medically possible, the employee should schedule foreseeable non-emergency medical treatments during normal school vacation times.

If an employee fails to return to work with the school after an FMLA leave has expired, the employee must reimburse all health care plan insurance premiums, or its equivalent for self-insured plans, paid by the school for the employee during the leave, unless the failure to return to work is caused by the continuance, recurrence or onset of the employee's serious health condition for which FMLA leave was granted.

Employees are required to submit three (3) types of medical certifications to the school in connection with a Family and Medical Leave Act leave relating to either the serious health condition of an employee's spouse, parent or biological, adopted or foster minor child or minor step-child, or for the employee's own serious health condition. The three types of medical certification are:

1. Medical certification to take leave;
2. Medical certification to continue the leave; and
3. Medical certification that the employee is able or unable to return from the leave (e.i. a fitness-for-duty report).

FIRST, an employee desiring a FMLA leave for the previous stated purposes shall provide timely certification from the health care provider (as defined by the Family Medical Leave Act and its regulations) as to: the date that the condition commenced; duration; necessity for the employee's leave; and the employee's inability to perform his/her job functions. **SECOND**, the employee shall provide certification from the health care provider (as defined by the Act and its Regulations) that the serious medical condition of the employee or family member continues to prevent the employee from returning to work.

Such certification shall be submitted on a three-week periodic basis during the time of the FMLA leave. **THIRD**, each employee seeking restoration of his/her job after a FMLA leave because of the employee's own serious health condition shall provide a medical certification from the health care provider as defined by the Act and its Regulations) that the employee is able to resume work. If the employee is unable to return to work at the expiration of the FMLA leave, a medical certification to that effect shall be provided to the school.

The school will only accept medical certifications from health care providers of the types specified in the FMLA regulations. If the school doubts the validity of the treating health care provider's medical certification, the school may make a written demand for a second opinion. The school shall select and pay for such an independent medical examination to be conducted by a physician of its choice, other than the school's own doctor. If the health care provider's opinion and that of the aforementioned independent medical examiner differ, the school and the employee shall select and the school shall pay for another independent medical evaluation of the employee. This third opinion shall be final and binding upon both the school and the employee.

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Certification Of Physician Or Practitioner

If the school chooses to use Optional Form WH-380 set forth in the U.S. Department of Labor’s Regulations for FMLA (29 CFR Part 825-Appendix B – attached to this policy for a FMLA leave for the employee’s own serious health condition, a copy of the most recent job description for the employee’s position may also be sent with the certification form to the physician or practitioner.

FMLA Nondiscrimination Policy

The policy of the Joint Operating Committee forbids discrimination against any employee or applicant for employment on the basis of the employee or applicant exercising his/her rights under the FMLA. No one employed by the school shall interfere with any employee’s attempt to exercise FMLA guaranteed rights. Any person engaging in such discrimination shall be subject to sanctions, including but not limited to, warning or reprimand, suspension, or termination, subject to applicable procedural requirements.

Notice To Employees Of Rights Under FMLA

The school shall post written notice to its employees of their rights under FMLA in a form set forth under FMLA regulations – see attachment to this policy.

Limitations Applying To The Taking Of Intermittent Leave Or Leave On A Reduced Leave Scheduled By Instructional Employees

1. **Definitions**

For purposes of FMLA leave, “instructional employees” are those whose principal function is to teach and instruct students in a class, a small group or an individual setting. This term includes not only teachers but also athletic coaches, driving instructors and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principle job the actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists or curriculum specialists. It does not include cafeteria workers, maintenance workers, custodians, etc.

For purposes of the provision concerning FMLA leave limitations applying to instructional employees, the regular school year is divided into two (2) “semesters”. The phrase “academic term” is to be interpreted as school semester.

2. **Limitations**

a. If an eligible instructional employee requests intermittent leave or leave on a reduced leave schedule to care for a family member, or for the employee’s own serious health condition which is foreseeable based on planned medical treatment and the instructional employee would be on leave for more than 20% of the total number of working days over the period the leave would extend, the school may, as its operational needs dictate, require the instructional employee to choose either to:

- (1) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

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(2) Transfer temporarily to an available alternative position for which the instructional employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

- b. If an eligible instructional employee does not give required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the school may require, at its option, that the instructional employee take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the school may, at its option, require the instructional employee to delay the taking of leave until the notice requirement under the FMLA Act and Regulations is met.

Limitations Applying To The Taking of FMLA Leave Near The End Of An Academic Term By Instructional Employees.

The following rules shall apply with respect to periods of FMLA leave taken near the conclusion of an academic term by an eligible instructional employee:

1. LEAVE MORE THAN FIVE WEEKS PRIOR TO END OF TERM.

If the eligible instructional employee begins the FMLA leave more than five (5) weeks prior to the end of the academic term, the school may require, at its option, the instructional employee to continue taking leave until the end of the academic term, if –

- a. The leave is of at least three (3) weeks duration; and
- b. The return to employment would occur during the three (3) week period before the end of such academic term.

2. LEAVE LESS THAN FIVE WEEKS PRIOR TO END OF TERM.

If the eligible instructional employee takes leave because of: the birth or first year care of the child, the adoption or foster care of a child, or to care for the spouse, or a child or parent of the employee who has a serious health condition, and the leave begins during the period that commences five (5) weeks prior to the end of the academic term, the school may require, at its option, the instructional employee to continue taking leave until the end of such term, if –

- a. The leave is of greater than two (2) weeks duration; and
- b. The return to employment would occur during the two (2) week period before the end of such term.

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3. LEAVE LESS THAN THREE WEEKS PRIOR TO END OF TERM.

If the eligible instructional employee begins leave for the purpose of the birth or first year care of a child, or the adoption or foster placement of a child, or to care for the employee's spouse, son or daughter or parent, who has a serious health condition, and the leave begins during the period that commences three (3) weeks prior to the end of the academic term and the duration of the leave is greater than five (5) working days, the school may require, at its option, the instructional employee to continue to take the leave until the end of such academic term.

The Family and Medical Leave Act of 1993, P.L. 103-3 and the Regulations found at 29 CFR Part 825.

Refer to Policy 329 for:

- ***"Family and Medical Leave Act Summary"***
- ***"Family and Medical Leave Act Application"***
- ***"Other Leaves Summary"***