

POLICY
RHODE ISLAND SCHOOL FOR THE DEAF
BOARD OF TRUSTEES

FAMILY AND MEDICAL LEAVE POLICY (FMLA)

Purpose

It is the policy of the School for the Deaf (the “School”) to provide eligible employees with a leave of absence in accordance with the provisions of the federal Family and Medical Leave Act of 1993 (“FMLA”) and the Rhode Island Parental and Family Medical Leave Act (“RIPFMLA”).

A. Employee Rights and Responsibilities Under the FMLA

1. Basic Leave Entitlements

School employees are eligible under the FMLA to take up to twelve (12) weeks of job protected, unpaid leave in a twelve (12) month period if they have been employed for at least one year and have actually worked 1,250 hours over the previous twelve (12) months.

2. Job Protection

Employees receive job protected leave for a period of up to twelve (12) weeks. This means that employees who are able to return to work within twelve (12) weeks or less will be reinstated to the same or comparable position with equivalent employment benefits, pay, and other terms and conditions of employment. Computation of FMLA days is on an academic year basis (from July 1 through June 30). If the employee’s position is eliminated during the period of the leave, then the employee’s right to reinstatement under FMLA is also eliminated.

3. Grounds for Leave Related to a Serious Health Condition or New Child

Eligible employees will be entitled to leave under this policy for any of the following reasons:

- a. For incapacity due to pregnancy, prenatal medical care or child birth, or to care for the employee’s child after birth or placement of a child for adoption or foster care.
- b. To care for the employee’s spouse, child, or parent with a serious health condition.
- c. The employee’s own serious health condition which makes the employee unable to perform the duties and functions of the employee’s position.

4. Definition of Serious Health Condition

An illness, injury or impairment, or physical or mental conditions that involves:

- a. Inpatient care in a hospital, hospice, or residential health care facility; or
- b. Continuing treatment or continuing supervision by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three (3) consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

5. Military Family Leave Entitlements

a. Servicemember FMLA leave:

An employee who is the spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on a temporary disability retired list, may take up to twenty-six (26) workweeks of unpaid leave during a single twelve (12) month period to care for that family member.

b. Qualifying Exigency FMLA leave:

An employee whose spouse, son, daughter, or parent is on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation, for which there is a "qualifying exigency" as defined under the federal regulations, may receive up to twelve (12) workweeks of unpaid leave. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

6. Employee Responsibilities for Requesting Leave

Employees are required, when leave is foreseeable, to provide thirty (30) days' advance leave notice. When thirty (30) days' notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the School's regular notification procedures. Employees must provide sufficient information for the School to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider or circumstances supporting the need for military family leave. Employees also must inform the School if the requested leave is for a reason for which FMLA leave was previously taken or certified.

Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

7. Reduced Work Schedule or Intermittent Leave

An employee does not need to use FMLA leave in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the School's operations. Leave due to qualifying exigencies may be taken on an intermittent basis.

B. Employer Responsibilities Under the FMLA

The School will inform employees requesting FMLA leave whether they are eligible under the FMLA. If they are, the notice will specify any additional information required as well as the employee's rights and responsibilities. If they are not eligible, the School will provide a reason for the ineligibility. The School will inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the School determines that the leave is not FMLA-protected, the School will notify the employee.

C. Unpaid Leave and Entitlement to Paid Benefits

Leave under this policy is unpaid. If an employee is eligible for leave under this policy, the School will require the employee to use his or her available FMLA and/or RIFFMLA leave (which is discussed in more detail below), even if the employee has not requested such leave. Employees who are not receiving workers' compensation benefits and/or disability benefits shall be required to discharge their accrued vacation and sick leave, and thereby substitute or use paid leave during their FMLA leave. Employees who are receiving workers' compensation benefits and/or disability benefits, however, will not be required to exhaust their accrued vacation and sick leave.

Use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

D. Health Benefits

With respect to leave under both the FMLA and RIFFMLA, if applicable (and which is discussed in more detail below), the School will continue to provide existing health insurance coverage for the duration of the leave. However, the employee will be expected to pay any portion of the coverage for medical and dental benefits that is normally paid by the employee. To the extent that the employee is being paid as a result of accrued vacation and/or sick leave, those payments will be deducted from the paycheck as normal. If the employee has exhausted accrued vacation and/or sick leave or has exhausted accrued vacation leave and is not entitled to use accrued sick leave given the nature of the FMLA and/or RIFFML absence, the employee's payments must be made at the same time and in the same amount as they would be deducted from his/her paycheck. It is the responsibility of the employee to ensure that a check in the proper amount is received by the

School monthly. The failure to make timely payments as required may result in cancellation of the employee's health insurance. If the employee does not return to work at the end of an FMLA and/or RIFFMLA leave, then the employee must reimburse the School for the cost to the School of continuing the medical and dental coverage during the leave, unless the failure to return is due to the continuation of a serious health condition or other circumstances beyond your control. To the extent that FMLA and/or RIFFMLA leave was covered by paid leave, however, the employee will not be required to reimburse the School for the cost of continuing medical and dental coverage should he or she not return to work.

E. Special Rules for Instructional Personnel

Instructional employees who take FMLA leave are subject to special rules not applicable to other School employees.

These rules affect the ability of instructional employees to take intermittent leave, reduced schedule leave and leave near the end of an academic term. "Instructional employees" are those school employees whose principal function is to teach and instruct students in a class, a small group or individual setting. Instructional employees include not only teachers, but also athletic coaches, driving instructors, and special education assistants. Among other positions, teacher assistants/aides who do not have as their principal job actual teaching or instructing, counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers or bus drivers are not instructional employees and are therefore not covered by these special rules. The following special rules apply to instructional employees:

- Leave taken for a period that ends with the school year and begins the next semester is considered consecutive, not intermittent, leave. The summer period is not counted against the amount of available FMLA leave and Instructional employees on FMLA leave at the end of the school year will receive the same benefits they would normally receive over the summer
- If an Instructional employee needs to take intermittent leave, or reduced schedule leave for planned medical treatment, and the employee would be on leave for more than twenty percent (20%) of the total number of working days over the period the leave would extend, the School may require the employee to (i) take leave for a period(s) of a particular duration, not greater than the duration of the planned treatment; or (ii) 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. A "period of particular duration" means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave. If an instructional employee does not give the required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the School may require the employee to take leave of a particular duration, to transfer temporarily to an alternative position or require the employee to delay taking his/her leave until the notice provisions are met.
- If an instructional employee begins his/her FMLA leave more than five weeks before the

end of an academic term, (“Academic Term” means the school semester, which typically occurs near the end of the calendar year and the end of spring each school year) the School may require the employee to continue taking FMLA leave until the end of the term if the FMLA leave will last at least three weeks and the employee would otherwise return to work during the three week period before the end of the term.

- If an instructional employee begins his/her FMLA leave, which is being taken for a purpose other than the employee’s own serious health condition, during the five-week period before the end of an academic term, the School may require the employee to continue taking FMLA leave until the end of the term if the FMLA leave will last more than two weeks and the employee would otherwise return to work during the two-week period before the end of the term.
- If an instructional employee begins his/her FMLA leave, which is being taken for a purpose other than the employee’s own serious health condition, during the three-week period before the end of an academic term, and the leave will last more than five (5) days, the School may require the employee to continue taking FMLA leave until the end of the term.
- In the event that the School requires an instructional employee to take leave until the end of the academic term, the employee will not be charged FMLA leave for that period of time for which the employee is ready and able to return to work.
- If an instructional employee on intermittent leave, or reduced schedule leave for planned medical treatment, which constitutes more than twenty percent (20%) of the total number of working days over the period the leave would extend, elects to take leave for a particular duration rather than be transferred to an equivalent position, the entire period of leave will count as FMLA leave.
- Upon returning from FMLA leave, instructional employees will be returned to the same or equivalent position. The determination of how an employee is to be restored to an equivalent position will be made upon the basis of established, written, the School policies and practices.

F. Unlawful Acts by Employers

The FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under the FMLA and to discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer. The 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.

G. Rhode Island Parental and Family Medical Leave Act (RIPFMLA)

Full-time employees who work an average of thirty (30) hours a week or more and have been employed continuously for at least twelve (12) months are eligible for thirteen (13) continuous weeks of unpaid, job protected leave in a twenty-four (24) month period for one or more of the following reasons:

1. Birth of a child of an employee;
2. Placement of a child sixteen (16) years of age or less with an employee in connection with the adoption of such child by the employee;
3. Serious illness of the employee or the employee's parent, spouse, child, mother-in-law, or father-in-law. Serious illness is defined to mean a disabling physical or mental illness, injury, impairment or condition that involves in-patient care in a hospital, nursing home, or hospice, or out-patient care requiring continuing treatment or supervision by a health care provider.

In order to be entitled to the leave, the employee must give at least thirty (30) days' notice of the intended date upon which the requested leave is to commence and terminate, unless prevented by medical emergency from doing so. Employees may be requested to provide written certification from a physician caring for the person who is the reason for the leave request, which certification will specify the probable duration of the requested leave.

Employees will be restored to the position held when the leave commenced, or an equivalent position.

To the extent an employee is eligible for both FMLA leave and Rhode Island Parental and Family Medical Leave, both leaves will run concurrently.

Additionally, an employee who has been employed for twelve (12) consecutive months is entitled to ten (10) hours of unpaid leave during any twelve (12) month period to attend school conferences or other school-related activities for a child of whom the employee is the parent, foster parent or guardian. A notice of twenty-four (24) hours prior to the leave must be given to the applicable school administrator.

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