

December 6, 2017

AMEND BOARD REPORT 02-0724-PO02
POLICY ON THE FAMILY AND MEDICAL LEAVE ACT (FMLA)

THE CHIEF EXECUTIVE OFFICER RECOMMENDS:

That the Board amend Board Report 02-0724-PO02 Policy on the Family and Medical Leave Act (FMLA).

Subject: ~~Policy on the Family and Medical Leave Act (FMLA).~~

Issues PURPOSE: ~~The Board of Education of the City of Chicago (Board) and the Chicago Public Schools are is committed to compliance with the Family Medical Leave Act of 1993, 29 C.F.R. Part 825 et seq. The Family and Medical Leave Act guarantees certain leave rights to eligible employees, as outlined below. CPS administrators and attorneys from the Law Department have examined CPS' current leave benefits granted by Board Rule, collective bargaining agreements, and state and federal law to ensure that this FMLA policy does not conflict with or contradict current employee leave benefits.~~

HISTORY OF BOARD ACTION: December 17, 1997 adoption of Family and Medical Leave Act policy, Board Report 97-1217-PO3. In July 2002 this policy was amended to clarify FMLA eligibility requirements, Board Report 02-0724-PO02.

Recommendation: ~~Revise the current policy as set forth below.~~

POLICY ON FAMILY AND MEDICAL LEAVE

I. ELIGIBILITY

- A) Any CPS Board employee who has been employed for at least 12 months and who has worked a minimum of 1,250 hours in the preceding twelve months ("eligible employee") may take an unpaid leave of absence for the following reasons:
- (1) In order to provide care for a son or daughter during the 12-month period after the birth of that child;
 - (2) In order to provide care for a son or daughter during the 12-month period after the child is adopted by or placed in the foster care of the employee;
 - (3) In order to provide care for a son, daughter, spouse or parent with a serious health condition; or
 - (4) In order to recover from or treat the serious health condition of the employee; or
 - (5) In order to address a "qualifying exigency."
- B) A CPS Board employee is entitled to a total of 12 work weeks of unpaid leave for the above-stated reasons during a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave. Additionally, leave may be taken in increments of less than 12 weeks. Any leave taken for the above-stated purposes will be counted towards the 12 weeks of allowed FMLA leave.
- C) ~~A husband and wife~~ Spouses and Civil Union Partners who are eligible for FMLA leave and who are both employed by Board of Education of the City of Chicago will be limited to a combined total of 12 weeks of unpaid FMLA leave during any 12 month period if the leave is taken:
- (1) for birth of the employee's ~~son or daughter~~ child or to care for the child after birth;

- (2) for placement of a ~~son or daughter~~ child with the employee for adoption or foster care, or to care for the child after placement;
 - (3) to care for the employee's parent with a serious health condition.
- D) An eligible employee who is the spouse, son, daughter, parent, or nearest blood relative ("next of kin") of a "covered service member" with a "serious illness or injury," as described further below, may take up to 26 work weeks in a single 12 month period for this qualifying reason. The single 12 month period is measured from the first day the employee takes this form of leave for a specific service member. This form of leave may also be taken in increments of less than 26 weeks. Leave taken for any other purpose stated above will count toward the 26 weeks of allowed FMLA leave to care for a covered service member and leave to care for a covered service member will count toward the 12 weeks of leave provided for any of the above-stated purposes.

II. "SERIOUS HEALTH CONDITION"

- A) A "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition which involves inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity, or any subsequent treatment in connection with such inpatient care; or
- B) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes:
 - (1) Incapacity for more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:
 - (a) treatment two or more times by a health care provider, or a nurse or physician's assistant under the direct supervision of a health care provider, or a provider of health care services (e.g., a physical therapist) under orders of, or referral by, a health care provider (with the first treatment occurring within seven days of the onset of the condition); or
 - (b) treatment by a health care provider on one occasion within seven days of the onset of the condition which results in a regimen of continuing treatment under the supervision of the health care provider.
 - (2) Any period of incapacity due to pregnancy, or for prenatal care.
 - (3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A "chronic serious health condition" is one which requires at least two periodic visits per year to a health care provider (or other health care professional under the supervision of a health care provider); continues over an extended period of time; and may cause episodic rather than continuing periods of incapacity (e.g., asthma, diabetes, or epilepsy).
 - (4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's disease, stroke, or a terminal disease). In such instances the individual must be under the supervision of, but need not be receiving active treatment from, a health care provider.
 - (5) A period of absence to receive or recover from multiple treatments by, or as prescribed by, a health care provider either for restorative surgery after an accident or other injury or for a condition (including but not limited to cancer, severe arthritis or kidney disease) that would likely result in a period of incapacity of more than three consecutive days in the absence of medical intervention or treatment.

- C) The term "treatment," as used in this policy, includes: examinations to determine if a serious health condition exists and evaluations of the condition; a regimen of therapy requiring special equipment to resolve or alleviate a health condition (e.g., oxygen); or a course of prescription medication. The term "treatment", however, does not include routine physical, eye, or dental examinations; conditions for which cosmetic treatments are administered (unless treatment involves inpatient hospital care or complications arise); or a regimen of treatment that consists of taking over-the-counter medications, bed-rest, drinking fluids, exercise, or other similar activities that can be initiated without a visit to a health care provider.
- D) Substance abuse may constitute a serious health condition under this policy if the condition satisfies the definition set forth in sections II (A) or II (B) above. FMLA leave may only be taken for treatment for substance abuse by a health care provider or a provider of health care services on referral by a health care provider. Absence resulting from the employee's substance use, but unrelated to treatment, does not qualify for FMLA leave.

II. SERVICE MEMBER CAREGIVER LEAVE – SERIOUS INJURY OR ILLNESS OF FAMILY MEMBER IN THE MILITARY

A) "Covered service member" means:

- (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is: (a) undergoing medical treatment, recuperation, or therapy; (b) is otherwise in "outpatient status" (see definition below); or (c) is otherwise on the temporary disability retired list, for a "serious injury or illness" (see definition below);
or
- (2) a "veteran" (see definition below) who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy (excluding the period between October 28, 2009 and March 8, 2013).

B) "Outpatient status" means that a covered service member is assigned to:

- (1) a military medical treatment facility as an outpatient; or
- (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

C) "Veteran" means a person who served in the active military, naval, or air service and who was released or discharged under conditions that were not dishonorable.

D) "Serious injury or illness" means:

- (1) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness incurred by the covered service member in the line of duty while on active duty (or that existed before the beginning of the service member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) that may render the covered service member medically unfit to perform the duties of his or her office, grade, rank, or rating; and

- (2) in the case of a veteran, an injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is:
- (a) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank, or rating;
 - (b) a physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for service member caregiver leave;
 - (c) a physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or
 - (d) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
- E) If an employee takes this form of leave, any leave taken under applicable state military family leave law will run concurrently with the above leave.

III. QUALIFYING EXIGENCY LEAVE

- A) An eligible employee who is the spouse, son, daughter, or parent of a "military member" (defined below) will be granted FMLA leave on account of the qualifying exigencies defined below. Unless otherwise stated, leave for these reasons may only be taken when the military member has been called to covered active duty or is on covered active duty.
- (1) **Short notice deployment.** If a military member is given less than seven days notice of deployment to covered active duty, an eligible employee may take FMLA leave within the seven (7) days after the notice to address any issue that arises from such notice;
 - (2) **Military events and related activities.** An eligible employee may take FMLA leave to attend any official ceremony, program, or event sponsored by the military member's military entity, or to attend family support or assistance programs and informational briefings sponsored or promoted by the military member's military entity or the American Red Cross;
 - (3) **Childcare and school activities.** An eligible employee may take FMLA leave in order to arrange for alternative childcare for a military member's child's existing childcare arrangement; to provide childcare on an urgent, immediate need basis arising from a military member's covered active duty or call to covered active duty status; to enroll or transfer a military member's child into a new school; or to attend meetings at a military member's child's school or daycare facility that are required due to a military member's call to covered active duty or covered active duty;
 - (4) **Parental Care.** An eligible employee may take FMLA leave to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty. Such care may include arranging for alternative care.

providing care on an immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility.

- (5) **Financial and legal arrangements.** An eligible employee may take FMLA leave in order to make or update financial or legal arrangements associated with a military member's absence or call to covered active duty status, or to act as a military member's representative during covered active duty or within 90 days after covered active duty before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits;
 - (6) **Counseling.** An eligible employee may take FMLA leave in order to attend counseling for the employee, the military member or the military member's child provided that the need for counseling arises from the military member's covered active duty or call to covered active duty status;
 - (7) **Rest and recuperation.** An eligible employee may take up to fifteen (15) days of leave for each instance that he or she desires to spend time with a military member who is on short-term, temporary, rest and recuperation leave during the period of deployment for covered active duty;
 - (8) **Post-deployment activities.** An eligible employee may take FMLA leave to attend any official ceremony or program sponsored by the military for a period of ninety (90) days following the termination of a military member's covered active duty status, or to address issues arising from a military member's death while on covered active duty status; and
 - (9) **Additional activities.** An eligible employee may take FMLA leave in order to address any other issue arising out of a military member's covered active duty or call to covered active duty status, provided that the employer and employee mutually agree to both the timing and duration of such leave.
- B) "Military member" means an employee's spouse, son, daughter, or parent on covered active duty or call to covered active duty status (or who has been notified of an impending call to covered active duty). "Covered Active duty or call to covered active duty status" means (1) for members of the regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and (2) for members of the reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation under certain statutes that authorize ordering certain retired members of the Regular Armed Forces and Reserve to active duty, ordering certain reserve component members to active duty, and calling the National Guard into federal service.
- C) If an employee takes this form of leave, any leave taken under applicable state military family leave law will run concurrently with the above leave.

IV. NOTICE

- A) Employees must provide 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member, or planned treatment for the serious illness or injury of a covered service member. If 30 days' notice is not practicable because of a lack of knowledge of approximately when a leave will be required to begin, due to a change of circumstances or a medical emergency, notice must be given as soon as practicable. Medical certification or other documentation will be required by CPS to support the request for leave. Further, CPS

may require and/or initiate periodic status reports on the condition of an employee on an approved leave.

- B) When the approximate timing of, or the need for, leave is not foreseeable, an employee should give notice as soon as practicable under the facts and circumstances. It is expected that an employee will give notice within two working days of on the same day or the following business day after learning of the need for leave, except in extraordinary circumstances where such notice is not feasible.
- C) The employee should provide notice in writing by submitting the appropriate CPS request for leave of absence form. However, notice may be provided in person, by telephone, telegraph, fax transmittal or other electronic means. If the employee is unable to personally provide notice, notice may be given by the employee's spokesperson (e.g., spouse, adult family member or other responsible person). If the initial notice is not on the appropriate CPS request for leave of absence form, the employee should complete the form and submit it within a reasonable period of time after giving oral notice.

V. RETURN FROM LEAVE

- A) An employee returning from a leave of twelve weeks or less (or 26 weeks or less, as applicable) under this policy will be restored to his or her former position or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment.
- B) An employee's position will not be held beyond twelve weeks (or 26 weeks, if applicable) unless required pursuant to a collective bargaining agreement or required by applicable law. An employee who fails to return to work at the expiration of his or her leave without obtaining an extension or other authorized leave before the expiration of his or her FMLA leave will be considered to have abandoned his or her position. The employee will not accrue seniority or benefits during the leave. An employee returning from a leave of absence for the employee's own serious health condition will be required to submit documentation of his or her current health status ability to return to work in order to be reinstated.

VI. CONCURRENT USE OF BENEFIT DAYS

- A) Employees are required to use accrued vacation, personal and/or sick days concurrently with any leave taken pursuant to this policy, subject to applicable restrictions in the Board rules and/or collective bargaining agreements. Additionally, leaves of absences provided for by collective bargaining agreements, Board Rules, or other Board policies may be taken for the above-stated reasons, and will be counted towards the employee's 12 weeks of allowed FMLA leave. To the extent an employee is covered by a collective bargaining agreement with a provision that provides leaves of absence benefits which are greater than those described in this policy, the provision of the collective bargaining agreement shall govern.
- B) All approved worker's compensation time greater than three working days shall run concurrently with eligible FMLA time.

VI. HEALTHCARE BENEFITS

During the 12-week period of approved FMLA leave, an employee's health care benefits will be maintained, so long as the employee continues to make his or her employee contribution as appropriate. An employee who does not return to work after FMLA leave may be required to reimburse CPS for any health care benefit expenses associated with insuring the employee during said leave.

VII. INSTRUCTIONAL EMPLOYEES

- A) Instructional Employees, defined as those whose principal function is to teach and instruct students in a class, a small group, or an individual setting, are subject to special FMLA leave rules:
- (1) Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently and any period during the summer vacation when the employee would not have been required to report for work is not counted against the employee's FMLA leave entitlement.
 - (2) If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employee will be required to either take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment or temporarily transfer to an alternative position for which the employee is qualified with equivalent pay and benefits and which better accommodates the recurring periods of leave better than the employee's regular position.
 - (3) If an instructional employee does not give required notice of foreseeable FMLA leave (see section III above) to be taken intermittently or on a reduced leave schedule, the employee may be required to take an FMLA leave of a particular duration, transfer to an alternative position, or to delay taking the leave until the notice provision has been met.
 - (4) If an instructional employee begins a leave more than five weeks before the end of a semester, the leave ~~would~~ will last at least three weeks, and the employee would return to work during the three-week period before the end of the semester, the employee may be required to continue taking the leave until the end of the semester.
 - (5) If an instructional employee begins a leave for a purpose other than the employee's own serious health condition or a qualifying exigency during the five-week period before the end of a semester, the leave ~~would~~ will last more than two weeks, and the employee would return to work during the two week period before the end of the semester, the employee may be required to continue taking the leave until the end of the semester.
 - (6) If an instructional employee begins a leave for a purpose other than the employee's own serious health condition or a qualifying exigency during the three-week period before the end of a semester, and the leave ~~would~~ will last more than five working days, the employee may be required to continue taking the leave until the end of the semester.
- B) For purposes of this policy "semester" means the period beginning at the start of the first quarter marking period and ending at the end of the second quarter marking period and the period beginning at the start of the third quarter marking period and ending at the end of the fourth quarter marking period.

VIII. KEY EMPLOYEES


- A) Key Employees are defined as those salaried FMLA-eligible employees who are among the highest paid ten percent of all CPS employees. A key employee may be denied reinstatement after an FMLA leave if the Board determines that reinstatement will cause substantial and grievous economic injury to CPS operations.

- B) If the Board believes that reinstatement may be denied to a key employee, the Board will give the employee written notice that she or he qualifies as a key employee, and will fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the Board determines that the employee will not be reinstated from FMLA leave. The Board will provide said notice and information at the time the employee gives notice of the need for FMLA leave, or when FMLA leave begins, if earlier. If the notice cannot be given immediately because of the need to determine whether the employee qualifies as a key employee, the notice will be given as soon as practicable.
- C) As soon as practicable after the Board determines that reinstatement of a key employee will cause substantial and grievous economic injury to CPS operations, the Board will notify the employee in writing, by certified mail, of its intent to deny the employee reinstatement on completion of the FMLA leave. It is anticipated that such notice will be given to the employee prior to the commencement of an FMLA leave. However, if the leave has commenced the employee will be given a reasonable time after receiving the notice to return to work.
- D) If a key employee fails to return to work within a reasonable time after receiving the notice, CPS will continue to provide health insurance benefits until the end of the FMLA leave period.

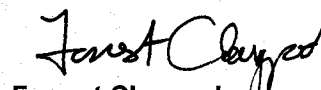
IX. STATUTORY GUIDELINES

The terms of this policy are to be construed according to the definitions and guidelines of the Family and Medical Leave Act of 1993, 29 C. F. R. Part 825 et seq.

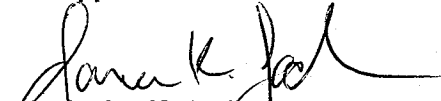
Approved for Consideration:


Matthew Lyons
Chief Talent Officer

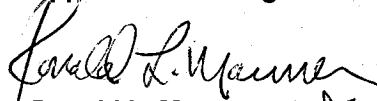
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