

Family and Medical Leave Act (FMLA)-Employee Notice, Procedures and Forms

I. Introduction

The Family and Medical Leave Act Policy Statement (Policy 5328) of the Polson School District has been constructed in accordance with the federal Family Medical Leave Act of 1993 and its accompanying regulations. This procedure applies to all employees of the District.

To the extent that there are conflicts between this procedure and employee collective bargaining agreements (CBA), the CBA will prevail for those represented employees covered by it, provided that the CBA is not in conflict with federal law.

The federal Family and Medical Leave Act of 1993 (FMLA) allows an eligible employee up to twelve weeks of leave in a twelve-month period for the listed reasons. In addition to the leave provided under the FMLA as outlined below, there may be other leave entitlements under state law, Board Policy or collective bargaining agreement to which an employee may be entitled. Employees should seek assistance from the District Human Resource Department to determine eligibility.

II. General Provisions

In accordance with the Family and Medical Leave Act of 1993, the Polson School District will grant up to twelve (12) weeks of FMLA leave during the designated 12-month period to eligible employees for one or more of the following reasons:

General Leave Entitlement:

- A. The birth and care of a newborn child;
- B. The placement for adoption or foster care of a child with the eligible employee and to care for that child;
- C. To care for an employee's family member (spouse, son, daughter or parent) with a serious health condition that requires on-site care or supervision by the employee; or
- D. Due to the employee's own serious health condition that requires the employee's absence from work.

Entitlement to FMLA leave for the care of a newborn child or newly adopted or foster child ends twelve months from the date of the birth or the placement of the foster or adopted child.

Military Family Leave Entitlement:

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. 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.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is 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 the temporary disability retired list.

III. Definitions

"Son or daughter" means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is either under the age of eighteen (18) or age 18 or older and incapable of self care because of a mental or physical disability.

“Family member” includes children, spouse, parents, but not son-in-law, daughter-in-law or parents-in-law.

“Spouse” means a husband or wife as defined or recognized under Montana State law.

“Parent” means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter.

“In loco parentis” means those persons with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child.

“Serious health condition” means an illness, injury, or physical or mental condition that involves:

- A. Any period of incapacity or treatment connected with in-patient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such in-patient care; or
- B. Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:
 - 1. A health condition (including treatment for or recovery from) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:
 - a. Treatment two or more times by or under the supervision of a health care provider, or
 - b. One treatment by a health care provider with a continuing regime of treatment; or c. Pregnancy or prenatal care (a visit to the health care provider is not necessary for each absence); or
 - d. A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to the health care provider is not necessary for each absence. Or,
 - e. A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer’s, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or
 - f. Any absence to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

“Health Care Provider” means:

- A. Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or
- B. Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray or equivalent to exist) authorized to practice, and performing within the scope of their practice, under state law; or
- C. Nurse practitioners, nurse midwives and clinical social workers authorized to practice, and performing within the scope of their practices, as defined under state law; or
- D. Any health care provider recognized by the employer or the employer’s group health plan benefits manager.

“Key Employee” means a salaried employee who is among the highest paid ten percent of employees within 75 miles of the work site.

“Cyclic Year Appointment” refers to a position scheduled to work less than twelve full months each year due to

known, recurring periods in the annual cycle when the position is not needed.

IV. Eligibility

With the exception of employees returning from qualified Military Leave who have protections under the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), an eligible employee must meet all the following conditions:

- A. The employee must have worked for the Polson School District for at least 12 months (need not be consecutive) prior to the commencement of the leave; and
- B. The employee must have been employed for at least 1,250 hours of service in the previous 12 month period immediately preceding the commencement of the leave not counting paid time off such as vacation leave, sick leave, exchange time, personal holiday, compensatory time off or shared leave; and
- C. The employee must have worked at a work site in the United States which employs at least 50 employees within 75 miles.

V. Leave Coverage and 12-Month Period

A. Measuring the 12-Month Period

An eligible employee can take up to 12 weeks of FMLA leave during a 12-month period. The District will measure the 12-month period from July 1st to June 30th as stated in the Board of Trustees Policy 5328.

B. Accounting for Leave

Use of leave will normally be accounted for on an hourly basis. A full-time employee would thus be entitled to 480 hours of FMLA leave during the 12-month period. For employees who normally work less than a full-time schedule, the amount of leave will be determined on a pro-rata basis and will be determined based on the employee's status at the time of the designation of FMLA leave. For example, an eligible employee working .75 full-time equivalency (.75 FTE), would be entitled to 12 weeks or 360 hours of FMLA leave in each 12-month period.

For cyclic year appointments when an employee would not otherwise have been required to report for duty, that time period will not be counted against the employee's FMLA leave entitlement.

VI. Employee Request for Leave Procedures and Employer Designation

Family Medical Leave Act leave designation is the responsibility of the Polson School District. The District will determine FMLA leave eligibility and notify the employee that the leave will be designated as FMLA leave in accordance with the FMLA. The designation may be made either interpersonally, orally or in writing. If given interpersonally or orally, it will be followed up in writing.

The employee will provide the District with not less than thirty (30) calendar days' notice before the FMLA leave is to begin. If the need for the leave is unforeseeable 30 days in advance, then the employee will provide such notice when feasible. It is the employee's responsibility to notify their supervisor of the need for leave, providing the anticipated timing and duration of the leave, and to complete and submit the appropriate forms or paperwork. It is also the employee's responsibility to provide reasons for the leave to the employer to allow the employer to determine if the leave qualifies for FMLA leave.

The Director of Human Resource Services or designee may inquire further regarding the need for leave if the employee does not initially provide adequate information to determine if the leave request qualifies for FMLA leave designation.

The Director of Human Resource Services or designee will provide the employee with FMLA leave information and request forms to be completed by the employee and/or the employee's or family member's health care provider. The employee is to return the FMLA leave forms within 15 calendar days after the employee receives them. Information and FMLA leave forms will also be available through the Human Resource Department office.

VII. Intermittent Leave

Intermittent leave or leave on a reduced schedule will be granted if medically necessary for an eligible employee's own serious health condition, or to care for a family member with a serious health condition. Medical certification or documentation of the need for the leave on an intermittent basis or for leave on a reduced schedule will be required.

Employees needing intermittent leave or leave on a reduced schedule for foreseeable medical treatment must work with their supervisor to schedule the leave, subject to the approval of the health care provider, so as not to unduly disrupt the District's operations.

The District may choose to grant leave on an intermittent basis for the care of a newborn child or a foster or adopted child. Granting of intermittent leave for this purpose is discretionary and will be determined on a case-by-case basis. If such leave is granted, the employee and the District must mutually agree to the schedule to be worked before the employee may take the intermittent FMLA leave.

The District may temporarily transfer an employee using intermittent leave to an alternate position for which the employee is qualified, with equivalent pay and benefits if the alternate position would better accommodate the intermittent schedule.

VIII. Substitution of Paid Leave

The District requires an employee to exhaust all paid leave prior to using any leave without pay. The use of any paid or unpaid leave (excluding leave for a compensable work-related illness or injury, and compensatory time earned under the Fair Labor Standards Act) for a FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA for that event. Employees will not be required to exhaust all paid leave prior to using any leave without pay for a compensable work-related illness or injury.

IX. Medical Certification

Medical certification will be required for any request for use of leave for an employee's own serious health condition or to take care of a family member with a serious health condition. It is the employee's responsibility to provide complete medical certification within 15 calendar days of the request or to provide a reasonable explanation of the delay. Failure to provide the requested certification may result in the denial of continuation of leave. Certification should be provided by using the Medical Certification Form which is available from the Human Resource Department office.

If the District has reason to question the medical certification, they may elect to seek a second opinion from a health care provider of their choosing at the District's expense. If the second opinion conflicts with the first opinion, a third opinion may be obtained at the District's expense from a health care provider mutually chosen by the employee and the District. The third opinion will be controlling. The employee will be considered provisionally entitled to leave pending the second and/or third opinion.

The District may ask for re-certification under the provisions of the FMLA. Re-certifications are provided at the employee's expense.

X. Continuation of Benefits

During approved FMLA leave, the District will continue an eligible employee's health and other benefits at the

same level and under the same conditions as if the employee had continued to work. The eligible employee will be required to pay for their portion of their health care and other benefit premiums during their FMLA leave absence that is in excess of paid leave.

During paid leave, the District will continue to make payroll deductions for the employee's share of the health care and other premiums. During unpaid leave, the employee must continue to make these payments. Arrangement for these payments should be made with the Payroll office. The employee using unpaid FMLA leave will be required to indicate on the FMLA request form how they intend to pay their share of premiums during their unpaid absence.

If the employee on unpaid leave does not pay their share of the premiums, the District may elect to discontinue coverage until payment of the employee's portion of the premium has been made.

XI. Returning to Work

Upon returning to work after the employee's own FMLA leave qualifying illness, the employee will be required to provide a fitness for duty certification from the employee's health care provider. The fitness for duty certificate should be job related and consistent with business necessity. A fitness for duty certificate may or may not be required for intermittent FMLA leave usage, determined by the Human Resource Department on a case-by-case basis.

Following absence granted for an approved FMLA event, an employee shall be returned to the same or an equivalent position as the one held immediately prior to the absence, except, under specific and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, the employer may refuse to reinstate certain highly-paid "key employees" after using FMLA leave during which health coverage was maintained. If such a circumstance were to occur, the District will:

- A. Notify the employee of their status as a "key" employee in response to the employee's notice of intent to take FMLA leave;
- B. Notify the employee as soon as the employer decides it will deny job restoration, and explain the reasons for this decision;
- C. Offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; 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 restoration.

Any employee returning from FMLA leave has no greater entitlement to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave period.

RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT **Use of Leave**

Basic Leave Entitlement

EMPLOYEE RIGHTS AND

FMLA requires covered employers to provide up to 12 weeks of unpaid, job protected leave to eligible employees for the following reasons: • For incapacity due to pregnancy, prenatal medical care or child birth; • 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.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. 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.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is 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 the temporary disability retired list.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees

must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

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

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment 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 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.

An employee does not need to use this leave entitlement 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 employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer 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 employer 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.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA protected, the employer must notify the employee.

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

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

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.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243)
TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division WHD Publication 1420 Revised January 2009

APPENDICES INCLUDED:

- ☐ FMLA Request Form
- ☐ FMLA Combined Form
- ☐ Insurance Premium Recovery Authorization Form
- ☐ Medical Certification Requirements

References:

- 29 U.S.C. § 2601 et seq.
- 29 CFR 825

Request for Family and Medical Leave of Absence Form
--Confidential--

Polson School District #23
111 4th Avenue East
Polson, MT 59860

Request for Family and Medical Leave of Absence

Employees who have worked for at least 1,250 hours during the 12-month period immediately before the request for leave are eligible for leave.

Name: _____

School: _____

Type of Leave Requested (Check only one box)

- ☐ Employee Medical Leave of Absence
- ☐ Extension of Employee Medical Leave of Absence. Dates of prior approved medical leave are:- _____ to _____
- ☐ Family Medical Leave of Absence
- ☐ Extension of Family Medical Leave of Absence. Dates of prior approved family medical leave are:- _____ to _____
- ☐ Leave to care for newborn or adopted child or a child placed for foster care by state procedures.
- ☐ Military Family Leave

The leave or extension requested will begin on _____ and end on _____.

If the request is for multiple days off for recurring medical treatments of a child, parent, or spouse, or for your own medical treatments, specify the dates requested:

_____.

The Reason for Leave

I request a Family and Medical Leave Absence for the following reason: (Check only one box)

- ☐ My personal serious health condition
- ☐ Birth of my child
- ☐ Adoption of a child by me
- ☐ Placement by the state of a child with me for foster care
- ☐ Serious health condition of my child
- ☐ Serious health condition of my parent
- ☐ Serious health condition of my spouse
- ☐ Military Family Leave

Combined Family and Medical Leave of Absence Form

This form is to be completed by any employee who is requesting leave and whose spouse also works for Polson School District.

Type of Leave Requested (Check only one box)

- ☐ Family leave to care for a newly arrived child
- ☐ Family medical leave to care for a parent with a serious health condition

Spouse's Name: _____

School: _____

I certify by my signature that I have read the following statement and agree to abide by it:

In any case in which a husband and wife are both employed by the Polson School District and both are entitled to leave, if the leave is taken for the birth or adoption of a child, the aggregate number of work weeks of leave to which both may be entitled may be limited to 12 work weeks during any 12-month period.

Date: _____

Printed Name: _____

Signature: _____

cc. Confidential File-original
Employee-copy

Insurance Premium Recovery Authorization Form

To: Deb Anderson, Business Manager

I certify by my signature that I have read and understand the following statement:

I acknowledge the Polson School District's legal right to recover the cost of any premium paid by it to maintain my coverage in group health benefits during any period of unpaid leave under the following conditions:

- Fail to return from leave at the expiration of the leave to which I am entitled and •

The reason I fail to return to work **is not** one of the following:

- The continuation, recurrence or onset of a serious health condition that entitles me to leave to care for a child, parent or spouse with a serious health condition, or if I'm unable to perform the functions of my position due to my own serious health condition.
- Other conditions beyond my control prevent me from returning.

Date: _____

Printed Name: _____

Signature: _____

Insurance Premium Reimbursement Agreement

I certify by my signature that I have read and understand the following statement:

If I fail to return from leave for any reason other than excepted above, I agree to coordinate with the District to develop a mutually acceptable schedule to reimburse Polson School District for any premium it paid to maintain my coverage in group health benefits during any period of unpaid leave I took.

Date: _____

Printed Name: _____

Signature: _____

cc. Confidential File-original
Employee-copy

Medical Certification Requirements

Section I

To request leave for the care of a child, or spouse with a serious health condition.

I have attached a certification from the health care provider who is treating my child, parent or spouse. The certification includes the following:

- The date on which the condition began
- The probable duration of the condition
- The appropriate medical facts within the knowledge of the health care provider regarding my condition •
An estimate of the time needed to care for the individual involved, including any recurring medical treatments
- A statement that the condition warrants my participation to provide care

Section II

To request leave for the care of any employee's personal serious health condition.

I have attached a certification from the health care provider who is treating my own serious health condition. The certification includes the following:

- The date on which the condition began
- The probable duration of the condition
- The appropriate medical facts within the knowledge of the health care provider regarding my condition •
A statement that I am unable to perform the functions of my position due to my condition

Section III

Additional certification requirements for intermittent leave or for leave on a reduced leave schedule.

In addition to the foregoing certifications from the health care provider involved, I have attached additional information from the health care provider as stipulated:

- Leave for employee
 - A statement of medical necessity for my intermittent leave or reduced leave schedule and the expected duration of the schedule
 - A listing of the dates of my planned medical treatment and the duration of the treatment
- Leave to care for a son, daughter, spouse or parent
 - A statement attesting to the necessity of intermittent leave or reduced leave for me to provide care or to assist in his or her recovery
 - An estimate of the expected duration and schedule of my intermittent or reduced leave I

certify by my signature that I have read and understand Polson School District's certification procedures.

Date: _____

Printed Name: _____

Signature: _____

cc. Confidential File-original
Employee-copy