

FAMILY AND MEDICAL LEAVE

Generally

The Essex County School Board recognizes its obligation to provide its eligible employees with unpaid leave pursuant to the Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601 et seq. This policy describes the benefits available to eligible employees under the Act.

Definitions

Covered active duty: The term covered “active duty” means

- in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
- in the case of a member of a reserve component 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 under a provision of law referred to in 10 U.S.C. § 101(a)(13)(B).

Covered servicemember: The term “covered servicemember” means

- a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- a veteran 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.

Eligible employee: To be eligible for leave under this policy the employee must have at least twelve (12) months of service with the Essex County Public Schools Division and have worked at least 1250 hours according to the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., in the twelve (12) months preceding the commencement of the leave. Full-time teachers are deemed to meet the 1250 hour test.

Instructional employee: Employees whose principal function is to teach and instruct students in a class, a small group, or an individual setting such as teachers, athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, or auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

Next of kin: The term “next of kin” used with respect to an individual, means the nearest blood relative of that individual other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as the covered servicemember’s nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members are considered the covered servicemember’s next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual is deemed to be the covered servicemember’s only next of kin.

Outpatient status: The term “outpatient status,” with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to

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

Serious health condition: A serious health condition is an illness, injury, impairment or condition that involves inpatient care or continuing treatment by a health care provider.

Serious injury or illness: The term “serious injury or illness,” in the case of

- a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and
- a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during a period described in 29 U.S.C. § 2611(15)(B), means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

Year: A rolling 12-month period measured backward from the date an employee uses an FMLA leave.

Leave

Any eligible employee is entitled to leave for a combined total of twelve (12) weeks per year for the following situations:

1. the birth and care of a newborn child;
2. the adoption or foster placement of a child;
3. to care for an employee's spouse, parent, or child with a serious health condition;
4. because of a serious health condition that makes the employee unable to perform the essential functions of the employee's job; and
5. because of any qualifying exigency as defined in Department of Labor regulations, arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

However, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember is entitled to a total of 26 workweeks of leave per year to care for the servicemember. Leave under this paragraph is available only during a single year. During that year the employee is entitled to a combined total of 26 workweeks of leave under this policy.

To the extent that an employee is entitled to compensated leave under other policies, such paid leave shall be substituted for unpaid FMLA leave. Otherwise, family and medical leave is unpaid. When paid leave is available, the employee must satisfy any procedural requirements of the Essex County Public Schools Division's paid leave policy.

Employees on FMLA leave must report their status and intention regarding returning to work to the school division at least every four weeks.

Notice to Employees of Their Rights under the FMLA

Posting and General Notice

The Essex County Public Schools Division posts, in conspicuous places, on the premises of the school division where notices to employees and applicants for employment are customarily posted, a notice explaining the FMLA's provisions and providing information about the procedure for filing complaints with the Department of Labor..

A copy of Attachment 1 is also given to each employee by including it in the employee handbook or similar document or by distributing it to each new employee upon hiring.

Eligibility Notice

When an employee requests FMLA leave, or the Essex County Public Schools Division has knowledge that an employee's leave may be for an FMLA-qualifying reason, the Essex County Public Schools Division should notify the employee of the

employee's eligibility to take FMLA leave within five business days. The Eligibility Notice should state whether the employee is eligible for FMLA leave. If the employee is not eligible for FMLA leave, the Notice must state at least one reason why the employee is not eligible (such as, for example, the number of months the employee has worked for the division.) This notification may be accomplished by providing the employee a copy of Attachment 4.

Notice of Rights and Responsibilities

The Essex County Public Schools Division provides written notice detailing the specific expectations and obligations of the employee and explaining the consequences of the failure to meet those obligations each time the employee is given an Eligibility Notice. This Notice includes, as appropriate:

- that the leave may be designated and counted against the employee's annual FMLA leave entitlement and the 12-month period for FMLA entitlement;
- any requirements for the employee to furnish certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status, and the consequences of failing to provide certification;
- that the Essex County Public Schools Division substitutes paid leave for unpaid leave and any conditions related to the substitution and the employee's right to take unpaid FMLA leave if the employee does not meet the conditions for paid leave;
- any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis;

- the employee's rights to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave;¹ and
- the employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after FMLA leave.

The Notice of Rights and Responsibilities should be accompanied by any required certification form.

The Notice of Rights and Responsibilities also includes notice that employees on FMLA leave must report their status and intention regarding returning to work to the Essex County Public Schools Division at least every four weeks

If the information provided by the Notice of Rights and Responsibilities changes, the Essex County Public Schools Division will, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, provide written notice referencing the prior notice and setting forth any of the information in the Notice of Rights and Responsibilities that has changed.

Designation Notice

When the Essex County Public Schools Division has enough information to determine whether the leave is being taken for a FMLA-qualifying reason, the Essex County Public Schools Division should give the employee written notice whether the leave will be designated and will be counted as FMLA leave within five business days. If the Essex County Public Schools Division determines that the leave will not be designated as FMLA-qualifying, the Essex County Division must inform the employee of that determination. The Essex County Public Schools Division will also notify the employee that paid leave must be substituted for unpaid FMLA leave or that paid leave taken under an existing leave plan be counted as FMLA leave at the time of designating the FMLA leave.

If the Essex County Public Schools Division will require the employee to present a fitness-for-duty certification to be restored to employment after taking leave for a continuous period of time, the division will provide notice of the requirement with the Designation Notice. If the division will require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's position, the division so indicates in the Designation Notice and includes a list of the essential functions of the employee's position.

If the Essex County Public Schools Division has reasonable safety concerns regarding the ability of an employee who is returning to work after intermittent or reduced leave schedule to perform the employee's duties based on the serious health

condition for which the employee took leave, it may require the employee to submit a fitness for duty certification unless one has been submitted within the past 30 days.

If the leave is not designated as FMLA leave because it does not meet the requirements of the FMLA, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement.

If the information provided by the division to the employee in the Designation Notice changes, the division will provide, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change.

The Essex County Public Schools Division notifies the employee of the amount of leave counted against the employee's FMLA leave entitlement. If the amount of leave needed is known at the time the employer designates the leave as FMLA-qualifying, the division notifies the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA leave entitlement in the Designation Notice. If it is not possible to provide the hours, days, or weeks that will be counted against the employee's FMLA leave entitlement, then the division provides notice of the amount of leave counted against the employee's FMLA leave entitlement upon request by the employee but no more often than once in a 30-day period and only if leave was taken in that period.

The Essex County Public Schools Division's decision to designate leave as FMLA-qualifying is based only on information received from the employee or the employee's spokesperson. If the division does not have sufficient information about the reason for an employee's use of leave, the division will inquire further of the employee or the spokesperson to ascertain whether leave is potentially FMLA-qualifying. Once the division has knowledge that the leave is being taken for a FMLA-qualifying reason, the division provides the employee the notice described in this subsection.

An employee giving notice of the need for FMLA leave must explain the reasons for the needed leave so as to allow the division to determine whether the leave is FMLA-qualifying. If the employee fails to explain the reasons, leave may be denied.

Leave for the Birth, Adoption or Foster Placement of a Child

The employee's entitlement to leave for a birth, adoption or foster placement of a child expires at the end of the twelve month period beginning on the date of the birth, adoption or foster placement. Leave taken for the birth, adoption or foster placement of a child may be taken intermittently or on a reduced leave schedule if the superintendent or superintendent's designee agrees to such an arrangement.

If the necessity for leave for the birth, adoption or foster placement of a child is foreseeable based on an expected birth or placement, the employee shall provide the Essex County Public Schools Division with not less than 30 days' notice, before the date

the leave is to begin, of the employee's intention to take leave. If the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable. The employee's notice should be sufficient to make the division aware that the employee needs FMLA-qualifying leave and of the anticipated timing and duration of the leave.

Leave Because of a Serious Health Condition of Employee

Employees are entitled, when medically necessary, to take such leave on an intermittent or reduced leave schedule except as provided below.

If the necessity for leave is foreseeable based on planned medical treatment, the employee shall

- (1) make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the Essex County Public Schools Division; and
- (2) provide the division with at least 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave. If the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

The employee's notice should be sufficient to make the division aware that the employee needs FMLA-qualifying leave and of the anticipated timing and duration of the leave.

The Essex County School Board may require that a request for leave because of the employee's own serious health condition be supported by a certification issued by a health care provider of the employee. The Essex County Public Schools Division may use Form WH-380-E (Attachment 2) for this certification. The division should request that the employee furnish certification when the employee gives notice of the need for leave or within five business days thereafter, or, in the case of unforeseen leave, within five business days after the leave begins. The Essex County Public Schools Division may request certification at a later date if it later has reason to question the appropriateness of the leave or its duration. The employee must provide a complete and sufficient certification within 15 calendar days after the Essex County Public Schools Division's request. When the Essex County Public Schools Division requests certification, it advises the employee of the anticipated consequences of the employee's failure to provide adequate certification.

Certification will be sufficient if it states

- (1) the name, address, telephone number and fax number of the health care provider and the type of medical practice/specialization;
- (2) the approximate date on which the serious health condition commenced and its probable duration;
- (3) a statement or description of appropriate medical facts regarding the employee's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave; and

- (4) information sufficient to establish that the employee is unable to perform the essential functions of the employee's position, the nature of any other work restrictions, and the likely duration of such inability.

If an employee requests leave on an intermittent or reduced leave schedule for planned medical treatment of the employee's serious health condition, the certification shall include information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the dates on which such treatment is expected to be given and the duration of such treatment and any period of recovery.

If an employee requests leave on an intermittent or reduced leave schedule because of the employee's own serious health condition that may result in unforeseeable episodes of incapacity, the certification shall include information sufficient to establish the medical necessity for the intermittent leave or leave on a reduced leave schedule, and an estimate of the frequency and duration of the episodes of incapacity.

If the employee submits a complete and sufficient certification signed by the health care provider, the Essex County Public Schools Division may not request additional information from the health care provider. However, the Essex County Public Schools Division may contact the health care provider for purposes of clarification and authentication of the medical certification. To make such contact, the Essex County Public Schools Division must use a health care provider, a human resources professional, a leave administrator, or a management official. The employee's direct supervisor may not contact the employee's health care provider.

If the Essex County Public Schools Division doubts the validity of a certification, it may require, at its own expense, that the employee obtain the opinion of a second health care provider designated or approved by the Essex County Public Schools Division concerning any information certified. The health care provider designated or approved by the Essex County Public Schools Division may not be employed by the Essex County Public Schools Division on a regular basis.

If the second opinion differs from the original certification, the Essex County Public Schools Division may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the Essex County Public Schools Division and the employee concerning information certified. The opinion of the third health care provider will be binding on both the Essex County Public Schools Division and the employee.

Leave Because of a Serious Health Condition of a Child, Spouse, or Parent of Employee

Family and medical leave is provided when the employee is needed to care for the employee's spouse, child or parent with a serious health condition, as defined

above. Employees are entitled, when medically necessary, to take such leave on an intermittent or reduced leave schedule except as provided below.

If the necessity for leave is foreseeable based on planned medical treatment, the employee shall

- (1) make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the division; and
- (2) provide the Essex County Public Schools Division with at least 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave. If the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

The employee's notice should be sufficient to make the Essex County Public Schools Division aware that the employee needs FMLA-qualifying leave and the anticipated timing and duration of the leave.

The Essex County School Board may require that a request for leave to care for an employee's spouse, parent, or child with a serious health condition be supported by a certification issued by a health care provider of the family member in need of care. The Essex County Public Schools Division may use Form WH-380-F (Attachment 3) for this medical certification. The Essex County Public Schools Division should ask the employee to furnish certification when the employee gives notice of the need for leave or within five business days thereafter, or, in the case of unforeseen leave, within five business days after the leave begins. The Essex County Public Schools Division may request certification at some later date if it has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification within 15 calendar days after the division's request. When the Essex County Public Schools Division requests certification, it advises the employee of the anticipated consequences of the employee's failure to provide adequate certification.

Certification will be sufficient if it states

- (1) the name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;
- (2) the approximate date on which the serious health condition commenced and its probable duration;
- (3) a statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave; and
- (4) information sufficient to establish that the family member is in need of care and an estimate of the frequency and duration of the leave required to care for the family member.

If an employee requests leave on an intermittent or reduced leave schedule for planned medical treatment of a family member's serious health condition, the certification shall include information sufficient to establish the medical necessity for

such intermittent or reduced schedule leave and an estimate of the dates and the duration of such treatments and any periods of recovery.

If an employee requests leave on an intermittent reduced leave schedule in order to care for a family member with a serious health condition, the certification shall include a statement that the employee's intermittent leave or leave on a reduced leave schedule is medically necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

If the employee submits a complete and sufficient certification signed by the health care provider, the division may not request additional information from the health care provider. However, the Essex County Public Schools Division may contact the health care provider for purposes of clarification and authentication of the medical certification. To make such contact, the Essex County Public Schools Division must use a health care provider, a human resources professional, a leave administrator, or a management official. The employee's direct supervisor may not contact the employee's health care provider.

If the Essex County Public Schools Division doubts the validity of a certification, it may require, at its own expense, that the employee obtain the opinion of a second health care provider designated or approved by the school division concerning any information certified. The health care provider designated or approved by the school division may not be employed by the Essex County Public Schools Division on a regular basis.

If the second opinion differs from the original certification, the Essex County Public Schools Division may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the Essex County Public Schools Division and the employee concerning information certified. The opinion of the third health care provider will be binding on both the Essex County Public Schools Division and the employee.

Leave to Care for a Covered Servicemember

If the necessity for leave is foreseeable based on planned medical treatment for a serious injury or illness of a covered servicemember, the employee shall

- (1) make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the Essex County Public Schools Division and
- (2) provide the division with at least 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave. If the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

The employee's notice should be sufficient to make the division aware that the employee needs FMLA-qualifying leave and the anticipated timing and duration of the leave.

The Essex County School Board may require that a request for leave to care for a covered servicemember with a serious injury or illness be supported by a certification issued by a health care provider of the covered serviceperson. The certification may be completed by any health care provider listed in 29 C.F.R. 825.310(a). The employee shall provide, in a timely manner, a copy of such certification to the Essex County Public Schools Division.

Certification will be sufficient if it states

- (1) the name, address, and appropriate contact information (telephone number, fax number, and/or email address) of the health care provider, the type of medical practice, the medical specialty, and whether the health care provider is one of the following: a United States Department of Defense (DOD) health care provider, a United States Department of Veterans Affairs (VA) health care provider, a DOD TRICARE network authorized private health care provider, or a DOD non-network TRICARE authorized health care provider or a health care provider as defined in 29 C.F.R. 825.125;
- (2) whether the covered servicemember's injury or illness was incurred in the line of duty on active duty;
- (3) the approximate date on which the serious health condition or serious injury or illness commenced or was aggravated and its probable duration;
- (4) a statement or description of appropriate medical facts regarding the covered servicemember's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave; and
- (5) information sufficient to establish that the covered servicemember is in need of care and whether the covered servicemember will need care for a single continuous period of time, including any time for treatment and recovery, and an estimate as to the beginning and ending dates for this period of time.

If an employee requests FMLA leave on an intermittent or reduced leave schedule for planned medical treatment appointments for the covered servicemember, the certification must state that there is a medical necessity for the covered servicemember to have such periodic care and must contain an estimate of the treatment schedule of such appointments.

If an employee requests FMLA leave on an intermittent or reduced schedule basis to care for a covered servicemember other than for planned medical treatment, the certification must contain a statement that there is a medical necessity for the covered servicemember to have such periodic care, and must contain an estimate of the frequency and duration of the periodic care.

In addition to the information listed above, the division may also request that the certification set forth the information on Form WH-385 (Attachment 7.)

In lieu of Form WH-385, the Essex County Public Schools Division accepts invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill servicemember at the servicemember's bedside. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA. During that time period, the employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis.

The information on the certification must relate only to the serious injury or illness for which the current need for leave exists. The Essex County Public Schools Division may seek authentication or clarification of the certification, ITO, or ITA but may not seek second or third opinions. The Essex County Public Schools Division may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember.

The Essex County Public Schools Division also accepts as sufficient certification of the servicemember's serious injury or illness documentation indicating the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Leave Related to a Qualifying Exigency arising from Covered Active Duty or a Call to Covered Active Duty

If the necessity for leave because of a qualifying exigency arising from the fact that a family member is on covered active duty or has been notified of an impending call to covered active duty is foreseeable, the employee shall give such notice to the Essex County Public Schools Division as is reasonable and practicable. The employee's notice should be sufficient to make the Essex County Public Schools Division aware that the employee needs FMLA-qualifying leave and the anticipated timing and duration of the leave.

The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of a military member, the Essex County Public Schools Division may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status and the dates of the military member's covered active duty service. A copy of new active duty orders or other documentation issued by the military shall be provided to the division if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of the same or a different military member.

A request for leave because of a qualifying exigency must be supported by

- (1) a statement or description signed by the employee of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave;
- (2) the approximate date on which the qualifying exigency commenced or will commence;
- (3) the beginning and ending dates of absence if the employee requests leave because of a qualifying exigency for a single, continuous period of time;
- (4) an estimate of the frequency and duration of the qualifying exigency if the employee requests leave because of a qualifying exigency on an intermittent or reduced schedule basis;
- (5) if the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting and a brief description of the purpose of the meeting; and
- (6) if the qualifying exigency involves Rest and Recuperation leave, a copy of the military member's Rest and Recuperation orders, or other documentation issued by the military which indicates that the military member has been granted Rest and Recuperation leave, and the dates of the military member's Rest and Recuperation leave.

The Essex County Public Schools Division may use Form WH-384 (Attachment 6) for this certification.

Rules for Intermittent and Reduced Schedule Leave

When permitted by the FMLA, intermittent and reduced schedule leave may be used until the aggregate amount of such leave equals twelve weeks or 26 weeks if the leave is taken to care for a covered servicemember in the employee's rolling year. However, when the employee requests intermittent or reduced schedule leave that is foreseeable based on planned medical treatment the Essex County Public Schools Division may temporarily transfer the employee to an available alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced schedule leave.

When an eligible employee employed principally in an instructional capacity requests leave to care for a family member with a serious health condition, leave because of the employee's own serious health condition, or leave to care for a covered servicemember and the leave is foreseeable based on planned medical treatment and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the Essex County Public Schools Division may require the employee to elect either

- (1) to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or
- (2) to transfer temporarily to an available alternative position offered by the Essex County Public Schools Division for which the employee is qualified

and that has equivalent pay and benefits and better accommodates recurring periods of leave than the employee's regular employment position.

The Essex County Public Schools Division may require an employee to make such an election when the employee has

- (1) made a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the Essex County Public Schools Division, subject to the approval of the health care provider; and
- (2) has provided the division with not less than 30 days' notice before the date the leave is to begin, of the employee's intention to take leave, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

Rules for Husband and Wife Employed by Essex County Public Schools Division

A husband and wife who are both eligible for family and medical leave and are employed by the Essex County Public Schools Division shall be granted family and medical leave only for a combined total of twelve weeks per year when the leave is taken for the birth, foster placement, or adoption of a child or to care for the child after birth, adoption, or foster placement or to care for a parent with a serious health condition.

A husband and wife who are both eligible for family and medical leave and are employed by the Essex County Public Schools Division shall be granted family and medical leave only for a combined total of 26 workweeks per year if the leave

- (1) is taken to care for a covered servicemember; or
- (2) is taken as a combination of leave to care for a covered servicemember and leave for the birth, foster placement, or adoption of a child or to care for the child after birth, adoption, or foster placement or to care for a parent with a serious health condition. However, if the leave taken by the husband and wife includes leave for the birth, foster placement, or adoption of a child or to care for the child after birth, adoption, or foster placement or to care for a parent with a serious health condition, the leave for that reason shall be limited to 12 workweeks per year.

Benefits During Family and Medical Leave

Employees on family and medical leave receive group health insurance plan coverage on the same conditions as coverage would have been provided if the employee had been working during the period of leave. Other benefits are provided according to Essex County Public Schools Division policy for paid or unpaid leave, whichever applies.

If the employee fails to return to work when the period of leave to which the employee is entitled expires for any reason other than the continuation, recurrence, or

onset of a serious health condition that entitles the employee to leave, or other circumstances beyond the employee's control, the Essex County Public Schools Division may recover the premium it paid for maintaining the employee's coverage during the period of unpaid leave in accordance with federal law.

Return to Work

An employee on family and medical leave shall provide the Essex County Public Schools Division at least two work days' notice of the intent to return to work. The employee shall be returned to the same or equivalent position at the end of the family and medical leave unless the Essex County Public Schools Division shows that the employee would not otherwise have been employed at the time reinstatement is requested.

The following return to work provisions apply to instructional employees:

1. If an instructional employee begins family and medical leave more than five (5) weeks before the end of an academic term, the employee may be required to continue taking leave until the end of the term if the leave is at least three (3) weeks in duration and the return to work would occur during the last three (3) weeks of the academic term.
2. If an instructional employee begins family and medical leave a) because of the birth, adoption, or foster care placement of a son or daughter of the employee, b) to care for a family member with a serious health condition, or c) to care for a covered servicemember during the five (5) week period before the end of an academic term, the employee may be required to continue taking leave until the end of the academic term if the leave is longer than two (2) weeks in duration and the return to work would occur during the last two (2) weeks of the academic term.
3. If an instructional employee begins family and medical leave a) because of the birth, adoption, or foster care placement of a son or daughter of the employee, b) to care for a family member with a serious health condition, or c) to care for a covered servicemember during the three (3) week period before the end of an academic term, the employee may be required to continue taking leave until the end of an academic term if the leave is longer than five (5) working days in duration.

If an instructional employee is required to continue leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be counted against the family and medical leave entitlement. However, the Essex County Public Schools Division continues the group health insurance coverage under the same conditions as if the employee were working.

Outside Employment

An employee who is on family and medical leave may not engage in employment for any other employer or self-employment while on leave. Falsification of records and failure to correct records known to be false are violations of this policy and will result in discipline which may include termination from employment.

Adopted: April 9, 2012

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April 3, 2017

April 12, 2021

Legal Refs.: 29 U.S.C. §§ 207, 2611, 2612, 2613, 2614, 2618, 2619.

29 C.F.R. 825.110, 825.115, 825.122, 825.124, 825.125, 825.200, 825.203, 825.207, 825.300, 825.301, 825.302, 825.303, 825.305, 825.306, 825.307, 825.309, 825.310, 825.311, 825.312, 825.600, 825.602, 825.603, 825.604, 825.800.

Cross Refs.: GCBD	Staff Leaves and Absences
GCBEA	Leave without Pay
GCQA	Nonschool Employment by Staff Members

ATTACHMENTS

- Attachment 1 **Employee Rights and Responsibilities Under the Family and Medical Leave Act** (WHD Publication 1420) (Revised April 2016)
Please note: a copy of this poster can be downloaded from
<http://www.dol.gov/whd/regs/compliance/posters/fmla.htm>
- Attachment 2 **Certification of Health Care Provider for Employee's Serious Health Condition Under the Family and Medical Leave Act** (Form WH-380-E) (Revised June 2020)
Please note: a copy of the certification form can be downloaded from
<http://www.dol.gov/whd/forms/WH-380-E.pdf>
- Attachment 3 **Certification of Health Care Provider for Family Member's Serious Health Condition Under the Family and Medical Leave Act** (Form WH-380-F) (Revised June 2020)
Please note: a copy of this form may be downloaded from
<http://www.dol.gov/whd/forms/WH-380-F.pdf>
- Attachment 4 **Notice of Eligibility and Rights & Responsibilities Under the Family and Medical Leave Act** (Form WH-381) (Revised June 2020)
Please note: a copy of this form may be downloaded from
<http://www.dol.gov/whd/forms/WH-381.pdf>
- Attachment 5 **Designation Notice Under the Family and Medical Leave Act** (Form WH-382) (Revised June 2020)
Please note: a copy of this form may be downloaded from
<http://www.dol.gov/whd/forms/WH-382.pdf>
- Attachment 6 **Certification for Military Family Leave for Qualifying Exigency under the Family and Medical Leave Act** (Form WH-384) (Revised June 2020)
Please note: a copy of this form may be downloaded from
<http://www.dol.gov/whd/forms/WH-384.pdf>
- Attachment 7 **Certification for Serious Injury or Illness of Current Servicemember for Military Caregiver Leave under the Family and Medical Leave Act** (Form WH-385) (Revised June 2020)

*Please note: a copy of this form may be downloaded from
<http://www.dol.gov/whd/forms/WH-385.pdf>*

Attachment 8

**Certification for Serious Injury or Illness of a Veteran for
Military Caregiver Leave (Family and Medical Leave Act)**
(Form WH-385-V (revised May 2015))
*Please note: a copy of this form may be downloaded from
<http://www.dol.gov/whd/forms/wh385V.pdf>*