

SCIOTO COUNTY BOARD OF DEVELOPMENTAL DISABILITIES

POLICY 3.05.20 FAMILY AND MEDICAL LEAVE

A. Introduction

The Board will comply with *Public Law 103-3*, known as the Family and Medical Leave Act (FMLA) of 1993, and *Public Law 110-181 the National Defense Authorization Act for Fiscal Year 2008, and as amended*, to provide family and medical leave as specified in the legislation. Eligible employees will be provided up to 12 workweeks of unpaid leave in connection with specific qualifying events. Eligible employees may take up to 26 workweeks of unpaid leave to care for a covered service member.

Generally, employees will be provided employment in an equivalent position with equivalent conditions of employment upon return from family or medical leave (FML). The agency will maintain records of utilization of family or medical leave per the requirements of the Department of Labor and adhere to notification requirements of the FMLA.

B. Eligible Employee

To be eligible for Family and Medical Leave and employee must meet two criteria:

1. Have been employed by the Board for at least 12 months, though the months need not be consecutive; and
2. Have actually worked at least 1,250 hours within the 12 month period immediately previous to the commencement of leave.

C. Qualifying Reasons for FML, Generally

1. For either parent at birth of a son or daughter and to care for a newborn child.
2. For the placement with the employee of a son or daughter for adoption or foster care. Eligible employees may take FML before the actual placement or adoption of a child, if an absence from work is required for the adoption or foster care placement to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with an attorney or the doctor(s) representing the birth parent, submit to a physical examination, or travel to complete an adoption.
3. To care for the employee's spouse, son, daughter or parent with a serious health condition as defined in the FMLA;

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4. Because of the employee's own serious health condition as defined by the FMLA that makes the employee unable to perform the essential functions of the employee's job.
5. To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the covered service member. For this reason, an employee is entitled to a maximum of 26 workweeks of FML.
6. Because of any qualifying exigency rising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status).

D. Definitions

1. The FMLA provides specific definitions for terms such as serious health condition, health care provider, parent, son, daughter, and covered service member to which the Board will adhere.
2. For efficiency in tracking the use of FML, the Human Resources office will define a "year" as the 12-month period measured forward from the date of an employee's first day of FML.

E. Requirements for Use of FML

1. Before an employee may use FML, he/she must be determined eligible by the Human Resources Office.
2. An employee must provide the Human Resources Office with at least 30 days advance notice before FML is to commence, if the need for leave is foreseeable. If the need for leave is not foreseeable, then notice must be given as soon as practicable. Notice of the need for leave may be given to a supervisor, who is then responsible for notifying the HR office. Notice need not be in writing and needs to be given only once.
3. Before the Superintendent will approve the use of FML, the eligible employee must provide sufficient information for the use of leave to be certified. If sufficient information is not provided within specified timelines, the Superintendent has the authority to deny the use of FML. The Superintendent also reserves the right to require a second or third opinion from a health care provider chosen and paid for by the agency. Employees may also be required to provide recertification supporting the continued need for leave.

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4. The County Board requires employees using FML to use paid leave simultaneously to FML. The type of leave used and the order in which types of leave are used may be determined by the employee through the use of leave request forms.

Employees, who do not have sufficient paid leave for the extent of FML, may apply for permission to request donated leave. Also, the Superintendent has the authority to approve leave without pay. However, the conditions for the use FML must continue to be met in both situations.

5. For purposes of this policy, a spouse does not need to establish an "*in loco parentis*" relationship with a child to exercise his/her rights. In the absence of a marriage, as defined by the FMLA, an employee may exercise his/her rights pursuant to the FMLA to care for a child when that employee stands *in loco parentis* to that child. Persons who are "*in loco parentis*" include those with day-to-day responsibilities to care for or financially support a child. A biological or legal relationship is not necessary.

In the absence of a biological or legal relationship, the Superintendent may require the employee giving notice of the need for leave to provide reasonable documentation of a family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, etc. The Superintendent is entitled to examine documentation such as a birth certificate, etc., but the employee is entitled to the return of the official document submitted for this purpose.

6. Employees who are unable to apply for FML personally may have a representative undertake the approval process on their behalf.
7. The Superintendent is responsible in all circumstances for designating leave as FMLA-qualifying and for giving notice of the designation to the employee after certification as required by the law.

Eligible employees who have not applied for FML, but miss work due to their own serious health condition or because they are needed to care for a family member with a serious health condition, so that their absence meets the definition of continuing care by a health care provider, may have their leave designated as FML.

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Continuing care by a health care provider means any one of the following:

- a. Incapacity and treatment – a period of incapacity of more than three consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition;
- b. Pregnancy or prenatal care – any period of incapacity due to pregnancy or for prenatal care;
- c. Chronic conditions – any period of incapacity or treatment for such incapacity due to a chronic serious health condition as defined by FLMA;
- d. Permanent or long-term incapacity due to a condition for which treatment may not be effective; or
- e. Conditions requiring multiple treatments.

E. Limitations of FML

1. The entitlement of using leave for childcare after the birth, adoption, or foster care placement of a child ends at the 12-month period beginning on the date of the child's birth or first date of placement.
2. The use of an intermittent leave or reduced work schedule for the birth, adoption or foster care placement of a child will be permitted if the use of such a schedule benefits the services provided by the employee to service recipients and does not cause a hardship for the agency.
3. When both spouses work for the Board the two employees are entitled to a combined total of up to 12 weeks for the same qualifying reason for leave, care for a parent or child with a serious health condition. Each spouse is eligible to use the remainder of 12 weeks not used for the first qualifying reason for another qualifying reason, such as their own serious health condition.

Parents who both work for the Board are entitled to up to a combined 12 weeks for the care of a healthy child upon the birth, adoption or foster care placement. If both parents work for the Board and the child who is born, adopted or placed through foster care has a serious health condition, each parent is entitled to up to 12 weeks of FML to care for the child.

4. When an employee requests use of intermittent leave or a reduced work schedule, the Superintendent may reassign the employee temporarily to an available alternative position 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 position. Employees must

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make reasonable efforts to schedule leave for planned medical treatment so as to limit the disruption to the agency's operations.

F. Employee Benefits

1. While using FML, an employee is entitled to maintain the insurance coverage as if he/she were not on leave. For an employee using paid leave while on FML, contributions to the cost of health, dental, vision and any optional supplemental insurance will continue to be deducted as before taking FML. Also, while the employee is using paid leave, he/she is considered to be in active pay status and contributions to the appropriate state retirement system will be made and retention points are awarded.
2. Employees on FML who are in a leave without pay situation will be billed for the employee's share of the group health, dental, and vision insurance premiums. Supplemental insurances and contributions to retirement systems will cease. Seniority markers, such as retention points, are not awarded for employees in no-pay status. In order to continue supplemental insurance and deferred compensation plans, employees must arrange to pay directly to the companies offering those services.

G. Reinstatement after Leave

Before returning to work, an employee who has been on FML for his/her own serious medical condition must submit a fitness-for-duty certification that addresses the employee's ability to perform the essential functions of his/her job with or without reasonable accommodation as defined by the Americans with Disabilities Act. For more information on reasonable accommodations, refer to the employment non-discrimination policy in this manual.

Upon return from leave under this policy, the employee shall be restored to his/her former position or an equivalent position with equivalent pay, benefits, and other terms and conditions of employment, to the extent required by law. However, no employee is entitled under this policy to any right, benefit, or position other than that to which the employee would have been entitled had he/she not taken leave.

The FMLA contains a limited exception to the restoration provision for certain highly compensated employees ("key employees") under certain conditions. Employees determined to be key employees and who will be denied restoration will be notified in writing at the time the employee gives notice of the need for FML or as soon thereafter as the Superintendent or the Board, as appropriate, makes such determination.