

Family and Medical Leave Of Absence

Statement

To define the policy and procedure of the Torrington Board of Education with regard to family and medical leave required by the Family and Medical Leave Act of 1993 (FMLA).

This policy has been modeled after the interim regulations implementing the Family and Medical Leave Act of 1993 issued by the U. S. Department of Labor's Wage and Hour Division on June 4, 1993 (58 FR 31794, codified at 29 CFR Part 825). A final rule effective on January 16, 2009, updates the FMLA regulations to implement new military family leave entitlements enacted under National Defense Authorization Act for FY 2008.

Policy Eligibility

Employees who have worked for the Board for at least twelve (12) months and at least 1,250 hours during the twelve (12) months preceding commencement of the leave may take up to twelve (12) weeks of unpaid leave (FMLA leave) for the following reasons:

- A. Birth and/or care of a child of the employee.
- B. Placement of a child into the employee's family by adoption or by a foster care arrangement.
- C. Care of the employee's spouse, child or parent who has a serious health condition.
- D. Inability of the employee to perform the functions of the employee's position due to a serious health condition.

Any FMLA leave taken by an employee during the applicable twelve (12) month period will be used to determine the amount of available leave pursuant to the Family and Medical Leave Act. See "Method for Calculating Twelve Month Period", set forth below.

The right to family leave for the birth and/or placement of the child into an employee's family may only be taken within the twelve (12) months after the date of birth or placement of the child. In the case of unpaid leave for the birth or placement of a child, intermittent leave or working a reduced number of hours is not permitted, unless both the employee and the Board agree. If both spouses are employed by the Board, the combined leave shall not exceed twelve (12) weeks.

For purposes of this policy, a serious health condition means an illness, injury, impairment or physical or mental condition that involves:

- Any period of incapacity or treatment in connection with or consequent to in-patient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility.
- Any period or incapacity requiring absence from work, school or other regular daily activities of more than three (3) calendar days, that also involves continuous treatment by (or under the supervision of) a health care provider.
- Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three (3) calendar days.
- Prenatal care.

Intermittent Leave/Reduced Hours

In the case of unpaid leave for serious health conditions, the leave may be taken intermittently or on a reduced hour's basis only if such leave is medically necessary. Where an employee requests intermittent leave or leave on a reduced hours basis due to a family member's or the employee's own serious health condition, the Board has the option, in its sole discretion, to require the employee to transfer to a temporary alternative job for which the employee is qualified and which better accommodates the intermittent leave or reduced hours leave than the employee's regular job. The temporary position will have pay and benefits equivalent to the employee's regular job. The shortest period of time (one hour or less) that the payroll system uses to account for absences or leave shall constitute the minimum intermittent or reduced leave increment.

Substitution of Accrued Leave

Employees may be required to use their available accrued leave time, such as personal leave and/or vacation time, during the twelve (12) week FMLA leave period, and available sick days when the FMLA leave is taken because of a serious health condition of the employee. The Board's policies, practice(s) and/or collective bargaining agreement(s) regarding vacation time, personal days, sick days or other leave time will determine if an employee is eligible to receive accrued paid or unpaid leave. The employee will be notified immediately, in writing, which accrued leave, if any, will be counted towards the twelve (12) weeks of FMLA leave. If written notice is not given to the employee by the date of expiration of the leave, the accrued leave will not be counted towards the employee's available twelve (12) weeks of FMLA leave.

Employee Notice - Foreseeable/Unforeseeable Need

When the necessity of leave is foreseeable due to the expected birth or placement of a child, the employee must provide the Board at least thirty (30) days notice of the employee's intention to take leave. If the date of birth or placement of a child requires the employee's leave to begin in less than thirty (30) days from the date of notice to the Board, the employee must provide such notice as soon as practical. Where the necessity for leave is due to a family members or an employee's own serious health condition and is foreseeable based on planned medical treatment, the employee must:

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 - Adopted December 7, 1994; Revised November 17, 2010.

- give at least thirty (30) days notice, or as soon as practical if treatment starts in less than thirty (30) days; and
- make a reasonable effort to schedule the treatment so as not to unduly disrupt the operation of the Board, subject to the approval of the health care provider.

Where the need for leave is unforeseeable, the employee must give notice as soon as practical.

Certification of Physician/Practitioner

Any leave request based on a family member's or employees own serious health condition may have to be supported by certification from a health care provider. The employee must provide a copy of the certification to the Board in a timely manner (fifteen calendar days will be allowed to provide the certification). Certification from the health care provider must contain:

- the date the serious health condition began.
- the possible duration of the conditions.
- if the leave is based on the care of a spouse, child or parent, a statement that the employee is needed to provide the care and an estimate of the amount of time that need will continue.
- in the case of intermittent leave or leave on a reduced hours basis for planned medical treatment, the date the treatment is expected to be given and the duration of the treatment.

Health Insurance

During FMLA leaves of absence, the Board will continue to pay its portion of the health insurance premiums and the employee must continue to pay his/her share of the premiums. Failure of the employee to pay his/her share of the health insurance premiums may result in loss of coverage. If the employee does not return to work after the expiration of the leave, the employee will be required to reimburse the Board for payment of health insurance premiums during the FMLA leave, unless the employee does not return to work because of the presence of a serious health condition which prevents that employee from performing his/her job, or circumstances beyond the control of the employee.

Other Benefits

During FMLA leave, when no other leave is substituted, the employee shall not accrue any additional benefits. Employment benefits accrued by the employee up to the day on which the FMLA leave of absence begins will be available upon return from leave.

With respect to pension and retirement plans, FMLA leave will be treated as continued service for purposes of vesting and eligibility to participate.

Return to Work

The Board may require an employee on FMLA leave to report periodically on his/her status, and intention to return to work. Also, periodic recertification of the medical condition may be required.

An employee taking leave due to the employee's serious health condition may be required to obtain certification that the employee is able to resume work prior to returning from any FMLA leave. The Board will consider the nature of the employee's serious health condition, and the demands of the employee's position, when deciding whether to require certification of ability to resume work.

Employees who return to work from FMLA leave of absence within or on the business day following the expiration of the twelve (12) weeks are entitled to return to their job or an equivalent position without the loss of benefits or pay.

Method for Calculating Twelve Month Period

For purposes of this policy, the following twelve month period shall apply: A "rolling" twelve month period measured backward from the date the employee uses any FMLA leave.

If any employee takes leave on an intermittent or reduced leave schedule only the amount of leave actually taken may be counted toward the twelve weeks of leave to which an employee is entitled. Where an employee normally works a part time schedule, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis. If any employee's schedule varies from week to week, a weekly average of the hours worked over the twelve weeks prior to the beginning of the leave period is used for calculating the employee's normal work week.

Instructional Employees

Instructional employees are those employees whose principle function is to teach and instruct students in a class, a small group, or an individual setting, such as teachers, athletic coaches, and certain special education assistants.

Teacher assistants or aides who do not have as their principal job actual teaching or instructing are not considered instructional employees for purposes of this policy. Auxiliary personnel such as counselors, psychologists or curriculum specialists, whose principle function is not teaching or instructing students in a class, small group or individual setting are not considered instructional employees. Bus drivers, cafeteria workers, maintenance workers, and similar employees also are not instructional employees.

Intermittent Leave/Reduced Leave - Instructional Employees

If an eligible instructional employee requests intermittent leave or leave on a reduced leave schedule to care for a family member, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than twenty-percent

(20%) of the total number of working days over the period the leave would extend, The Board of Education, at its option, may require the employee to choose either to:

- A. Take leave for a period or periods of particular duration, not greater than the duration of the planned treatment; or
- B. Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and better accommodates recurring periods of leave than does the employee's regular position.

An instructional employee who does not give required notice of foreseeable leave to be taken intermittently or on a reduced leave schedule, may be required by the Board to take a leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the Board may require the employee to delay the taking of the leave until the notice provision is met. This notice provision, however, shall not be interpreted to be stricter for purposes of FMLA leave than the Board requires from its employees otherwise taking comparable paid or unpaid leave.

Academic Term

The school year is divided into two academic terms. Academic term means the school semester which typically ends near the end of the calendar year or the end of spring each school year. An instructional employee who begins leave more than five weeks before the end of a term may be required by the Board to continue taking leave until the end of the term if:

- A. The leave will last at least three weeks, and
- B. The employee would return to work during the three week period before the end of the term.

If an instructional employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of the term, the Board may require the employee to continue taking leave until the end of the term if:

- A. The leave will last more than two weeks, and
- B. The employee would return to work during the two-week period before the end of the term.

If the instructional employee begins leave for a purpose other than the employee's own serious health condition, during the three week period before the end of the term, and the leave will last more than five working days, the Board may require the employee to continue taking leave until the end of the term.

Procedure

Notice by the employee of the need for a leave of absence under FMLA must be given to an appropriate supervisor at least thirty (30) days before the leave is to commence, or as soon as possible if thirty (30) days notice is not

possible. The Board may waive such notice requirement and designate accrued leave as FMLA leave if it would qualify, except for lack of the required notice.

Each employee taking leave which meets the requirements for FMLA leave will be provided a copy of this policy, the "Request For and/or Response To Leave Under The Family And Medical Leave Act of 1993" form and the "Certification of Physician or Practitioner" form (if appropriate). Such forms are incorporated in, and made part of, this policy.

Records

The FMLA requires employers to maintain records in accordance with the record keeping requirements of Section 11 (c) of the Fair Labor Standards Act and in accordance with FMLA regulations. FMLA regulations require that such records disclose the following:

- A. Name, address and occupation of the employee; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.
- B. Dates FMLA leave is taken by employees. Leave must be designated in records as FMLA leave
- C. If FMLA leave is taken in increments of less than one full day, the hours of the leave.
- D. Any written notice of FMLA leave given by the employee, and copies of all notices given to employees as required by law and by this policy.
- E. Any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves.
- F. Payment of any employee benefits premiums.
- G. Records of any dispute regarding designation of leave as FMLA leave, including any written statement from the Board or an employee of the reasons for the designation and for the disagreement.

Medical Records

Records and documents relating to medical certifications, recertification or medical histories of employees or employees' family members, shall be maintained in separate files/records and treated as confidential medical records.