

FAMILY AND MEDICAL LEAVE

The school unit shall comply with all applicable provisions of the federal Family and Medical Leave Act of 1993 (FMLA), the Maine Family Medical Leave Law, and any other Board policies and collective bargaining agreements regarding family and medical leave.

The Superintendent is responsible for implementing administrative procedures to comply with this policy.

Legal Reference: 26 USC § 2601 et seq.
29 CFR Part 825
26 MRSA § 843 et seq.

Cross-Reference: GBN-R1 - Family and Medical Leave Act Administrative Procedure
GBN-R2 - Maine Family Medical Leave Administrative Procedure

Eastport School Department

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FAMILY AND MEDICAL LEAVE ADMINISTRATIVE PROCEDURE

A. Eligibility

To be eligible under the FMLA, employees must work at a site where 50 or more employees of the same school board are employed within 75 miles of that work site. An employee must have been employed by the school unit for at least twelve months and have worked at least 1250 hours in the previous twelve-month period. According to the law, teachers employed on a full-time basis are presumed to meet the minimum hours requirement.

B. Benefit

Under certain conditions, eligible employees, if qualified, may be entitled to up to 12 weeks or 26 weeks leave in a 12-month period with continuing participation in the school unit's group insurance plan.

The 12-month period for FMLA purposes is designated a rolling 12-month period measured backward from the date an employee uses an FMLA leave.

C. Reasons for Taking Leave

Unpaid leave will be granted to eligible employees for any of the following reasons:

1. The birth and care of a child;
2. The adoption or foster placement of a child with the employee;
3. To care for a spouse, child or parent with a serious health condition; or
4. The employee is unable to perform the functions of his/her position because of a serious health condition.

D. Military Family Leave

1. Military Caregiver Leave

An eligible employee who is a relative of a service member can take up to

26 weeks in a 12-month period in order to care for a covered service member who is seriously ill or injured in the line of duty, or a veteran who is undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment.

2. **Qualified Exigency Leave** (applies to eligible employees with family members who are in the National Guard or Reserves, and Regular Armed Forces)
 - a. An eligible employee can take up to the normal 12 weeks of leave, if a family member who is a member of the National Guard or Reserve is called up to active duty on a contingency mission.
 - b. Qualifying exigencies include:
 - 1) Short-notice deployment;
 - 2) Military events and related activities;
 - 3) Childcare and school activities;
 - 4) Financial and legal arrangements;
 - 5) Counseling;
 - 6) Rest and recuperation;
 - 7) Post-deployment activities; and
 - 8) Additional activities agreed to by the employer and the employee.

E. Substitution of Paid Leave

Any leave taken for FMLA-qualifying purposes (including leave taken under employment policies, bargaining agreements, or contracts) shall also be applied to an employee's annual FMLA entitlement. When paid leave taken for FMLA-qualifying purposes is exhausted, the balance of FMLA leave shall be unpaid.

F. FMLA Leave When Both Parents Are School Unit Employees

If both parents of a child are employed by Eastport School Department, they each are entitled to a total of 12 weeks of leave per year. However, leave may be granted to only one parent at a time and if leave is taken: (1) for the birth of a child or to care for the child after birth; or (2) for placement of a child for adoption or foster care or to care for the child after placement.

If spouses are employed by Eastport School Department, the aggregate number of weeks of leave that can be taken is 26 weeks in a single 12-month period for serviceperson leave or a combination of exigency and serviceperson leave. The aggregate number of weeks of leave that can be taken by a husband and wife who work for the same employer is 12 weeks if for exigency leave only.

G. Employee Notice Requirement

The employee must follow the employer's standard notice and procedural policies for taking FMLA.

Except as provided elsewhere in this policy, an employee must submit an application for leave at least 30 days in advance when the leave is foreseeable or as soon as practicable if it is not foreseeable.

If an employee fails to provide 30 days' notice of foreseeable leave, the leave may be delayed to start 30 days after notice is given, provided the employee had actual notice of the FMLA notice requirements.

When the need for FMLA leave is foreseeable fewer than 30 days in advance, or the need for FMLA leave is not foreseeable, and the employee fails to provide notice as soon as practicable, the extent to which FMLA leave may be delayed depends upon the facts of the particular case.

H. Medical Certification

A sick leave request form is to be completed whenever an employee is absent from work for more than three days or when an employee has need to be absent from work for continuing treatment by (or under the supervision of) a health care provider.

The school unit will require medical certification to support a request for FMLA leave because of a serious health condition (at employee's expense).

If the leave request is due to the employee's serious health condition, the employee is required to provide medical certification stating the date the health condition commenced, the probable duration, the appropriate medical facts concerning the condition, and that the employee cannot perform the functions of his/her job.

If the leave request is due to the serious health condition of a family member, the employee is required to provide medical certification stating the date the health condition commenced, the probable duration, the appropriate medical facts concerning the condition, and an estimate of the time the employee will be needed to care for the family member.

If the leave request is for leave to care for a covered service member, the employee is required to provide certification of the date on which the serious medical condition or injury commenced, the probable duration, the appropriate medical facts within the knowledge of the health care provider regarding the condition or injury, and an estimate of the time the employee will be needed to care for the covered service member.

I. Notice for Leave Due to Active Duty or Call to Active Duty of Family Member

In any case in which the necessity for leave is foreseeable, whether because the spouse or a son, daughter, or parent of the employee is on active duty or because of notification of an impending call or order to active duty in support of a contingency operation, the employee shall provide such notice to the employer as soon as is practicable.

J. Employer Notice Requirement (29 C.F.R. § 825.300)

Employers are required to provide employees with notice explaining the FMLA through a poster and either a handbook or information upon hire. If an employee requests FMLA leave, an employer must provide notice to the employee within five business days of whether the employee meets the FMLA eligibility requirements. If an employee is not eligible to take FMLA, the employer must provide a reason. The employer must also provide a rights and responsibilities notice outlining expectations and obligations relating to FMLA leave. If the employer approves FMLA leave, it must provide the employee with a designation notice stating the amount of leave that will be counted against an employee's FMLA entitlement.

K. Insurance

An employee out on FMLA leave is entitled to continued participation in the appropriate group health plan, provided the employee continues paying the usual premiums throughout the leave period. An employee's eligibility to maintain health insurance coverage will lapse if the premium payment is more than 30 days late.

L. Return

Upon return from FMLA leave, the employee will be restored to his/her previous position or to an equivalent position with equivalent pay, benefits, and other employment terms.

An employee returning from FMLA leave for his/her own serious health condition is required to submit medical certification that indicates fitness to return to work and ability to perform the functions of the job.

If the employee is unable to return to work because of his/her own serious health condition at the end of allowable FMLA leave, the Superintendent may consider a request for extension of unpaid leave and benefits on a case-by case basis. Unless an extension has been granted, failure to return to work upon the expiration of FMLA leave may subject the employee to immediate termination.

M. Special Rules for Instructional Employees

Under federal regulations, certain special rules apply to instructional employees. These rules affect the taking of leave near the end of a semester and the taking of

intermittent leave or leave on a reduced leave schedule.

N. Interaction with Maine Law

When an employee is eligible for leave under both the federal and Maine statutes, the applicable law shall be the one that provides the greater benefit.

An employee who is not eligible for federal FMLA leave may be eligible for leave under the Maine FMLA.

The school unit will analyze each request to determine eligibility for federal and/or Maine FMLA leave.

O. Recordkeeping

Employees, supervisors, and building administrators will forward requests, forms, and other material to payroll to facilitate proper recordkeeping.

Legal Reference: 29 C.F.R. Part 25 (Regulations to Implement the Family and Medical Leave Act of 1993)

Eastport School Department

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MAINE FAMILY MEDICAL LEAVE ADMINISTRATIVE PROCEDURE

This administrative procedure covers the main provisions of the Maine Family Medical Leave Act. The school unit will analyze each employee request for leave to determine whether he/she is eligible under the Federal and/or State statute. When an employee is eligible for leave under both the Federal and State statutes, the applicable law with regard to each benefit shall be the one that provides the greater benefit (usually Federal FMLA).

I. ELIGIBILITY

To be eligible for Maine Family Medical Leave, employees must work at a site where there are 15 or more employees of a school board. An employee must have been employed by the same employer for 12 consecutive months and not taken such leave within the immediately preceding 24-month period or have used less than 10 weeks of family medical leave.

Under the Maine Family Medical Leave Act, an eligible employee is entitled to up to 10 weeks of leave during a 24-month period for the following reasons:

- A. Serious health condition of the employee;
- B. Birth of the employee's child or the employee's domestic partner's child;
- C. Placement of a child 16 years of age or less in connection with the adoption of the child by the employee or the employee's domestic partner;
- D. Serious health condition of a child, domestic partner's child, parent, sibling, domestic partner or spouse;

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility or continuing treatment by a health care provider;

- E. The donation of an organ of the employee for a human organ transplant; or
- F. The death or serious health condition of the employee's spouse, domestic partner, parent, sibling or child if the spouse, domestic partner, parent, sibling or child is a member of the state military forces as defined in Title 37-B, section 102, of the Maine Revised Statutes, or of the United States Armed Services, including the National Guard and Reserves, dies or incurs a serious health condition while on active duty.

For the purpose of this procedure, "sibling" means a sibling of an employee who is jointly responsible with the employee for each other's common welfare as evidenced by joint living arrangements and joint financial arrangements.

II. DOMESTIC PARTNER DEFINED

For the purpose of determining eligibility for Maine Family Medical Leave, “domestic partner” means the partner of an employee who:

- A. Is a mentally competent adult as is the employee;
- B. Has been legally domiciled with the employee for at least 12 months;
- C. Is not legally married to or legally separated from another individual;
- D. Is the sole partner of the employee and expects to remain so;
- E. Is not a sibling of the employee; and
- F. Is jointly responsible with the employee for each other’s common welfare as evidenced by joint living arrangements, joint financial arrangements, or joint ownership of real or personal property.

III. ADMINISTRATION

- A. The school unit may require certification from a physician to verify the amount of leave requested. An employee who in good faith relies on treatment by prayer or spiritual means, in accordance with the tenets and practice of a recognized church or religious denomination, may submit certification from an accredited practitioner of those healing methods.
- B. An employee requesting leave shall provide at least 30 days’ notice of the intended dates upon which the leave will commence and terminate, unless prevented by medical emergency from giving required notice.
- C. Any leave taken for Maine Family Medical Leave qualifying purposes, including leave taken under other applicable statutes, employment policies, and collective bargaining agreements or contracts, shall also be considered leave under Maine Family Medical Leave and shall be applied to an employee’s 10-week Maine Family Medical Leave entitlement every 24-month period. When paid leave taken for Maine Family Medical Leave qualifying purposes is exhausted, the balance of Maine Family Medical Leave shall be unpaid.
- D. During Maine Family Medical Leave, an employee shall be permitted to continue his/her medical insurance plan, providing the employee remits the monthly premium to the Superintendent’s Office no later than the first day of the month for which the premium is due.

- E. Upon an employee's return to work, he/she will be restored to his/her previous position or to a position with equivalent seniority status, benefits, pay, and other conditions and terms of employment.
- F. An employee taking Maine Family Medical Leave for his/her own serious health condition may be required to submit certification that he/she is fit to return to work and is able to perform the functions of the position.
- G. If at the end of the allowable leave under Maine Family Medical Leave the employee is unable to return to work because of his/her own serious health condition, the Superintendent and School Board may consider a request for extension of unpaid leave and benefits on a case-by-case basis. **Failure to return to work upon the expiration of Maine Family Medical Leave may subject the employee to immediate termination unless such an extension is granted.**
- H. An employee who is not eligible for Maine Family Medical Leave may be eligible for federal Family and Medical Leave.

IV. LEAVE TAKEN INTERMITTENTLY OR ON A REDUCED LEAVE SCHEDULE

Subject to the other requirements of this policy, leave taken intermittently or on a reduced leave schedule (i.e., a leave schedule that reduces the usual number of hours per workweek or hours per workday of an employee) may be taken subject to the following:

- A. Leave for birth or placement related to adoption may not be taken intermittently or on a reduced schedule unless agreed to by both employer and employee;
- B. Leave for a serious health condition of the employee or his/her child, domestic partner's child, parent, domestic partner or spouse, or for organ donation by the employee may be taken intermittently or on a reduced leave schedule when medically necessary;
- C. The taking of leave intermittently or on a reduced leave schedule may not result in a reduction in the total amount of Maine Family Medical Leave to which the employee is entitled beyond the amount of leave actually taken; and
- D. If an employee requests intermittent leave or leave on a reduced leave schedule for a serious health condition of the employee or his/her child, domestic partner's child, parent, domestic partner or spouse, or for organ donation by the employee that is foreseeable based on planned medical treatment, the employer may require the employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that 1) has equivalent pay and benefits, and 2)

better accommodates recurring periods of leave than the regular employment position of the employee.

Legal Reference: 26 MRSA § 843 et seq.

Eastport School Department

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