

## **R 8-16-10 Special Rules for School Employees**

- ❖ In order to minimize the impact on instruction, employees may not be able to schedule 12 weeks of leave if it coincides with the end of the school term.
- ❖ FMLA leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not be required to report for duty is not counted against the employee's FMLA leave entitlement.
- ❖ Instructional employees who are on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.
- ❖ When an instructional employee requests intermittent leave or 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 20% of the total number of working days in the period during which the leave will be taken, the Board may require the employee to choose one of the following:
  - Take leave for a "period of particular duration" of time (i.e., blocks of time) which does not exceed the duration of the planned treatment; or
  - Be transferred to an alternative position.
- ❖ If an instructional employee fails to give the required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the employer may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the employer may require the employee to delay the taking of leave until the notice provision is met.
- ❖ Near the end of an "academic term", there are several different scenarios adopted by Congress to minimize disruption of the classroom where the Board may require an instructional employee to continue taking leave until the school term ends.
  - When an instructional employee begins leave more than five weeks before the end of the term and the leave will last at least three weeks and the employee would otherwise return to work during the last three weeks of the term;
  - When an instructional employee takes leave for a reason other than the employee's own serious health condition and the leave begins during the five weeks before the end of the term, and will last two weeks and the employee would otherwise return to work during the two-week period before the end of the term;
  - When an instructional employee takes leave for a reason other than the employee's own serious health condition and the leave begins during the last three weeks of the term, and if the leave will last more than five working days.

If an employee is required to take leave until the end of an academic term as set forth above, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's 12-week FMLA leave entitlement. The Board has the option not to require the employee to stay on leave until the end of the term. Therefore, any additional leave required by the employee to the end of the school term is not counted as FMLA leave: however, the Board is required to maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave,

**(WVC §18A-2-2a, §21-5D-4 and Family and Medical Leave Act of 1993)**