

PRESTON COUNTY BOARD OF EDUCATION**FILE: 8 – PERSONNEL MANAGEMENT****File: 8-16 Family Medical Leave Benefits****Last Reviewed: 6-28-10****Next Review: 7-01-12**

The federal Family and Medical Leave Act of 1993, the West Virginia Parental Leave Act, and West Virginia case law regulate family and Medical Leave benefits for Preston County employees. The FMLA was enacted for the purpose of helping employees balance the demands of the workplace with the needs of promoting the stability and economic security of families and preserving family integrity. To that end, the Preston County Board of Education shall make such leave available to all employees for medical reasons and for compelling family reasons on a gender-neutral basis. Because leave time is regulated by more than one agency, the employee is always entitled to the greater benefits when leave time is requested.

The following regulations are intended to guide employees and county administrators through the FMLA process.

R 8-16-1 Definitions

- ❖ Dependent means any person who is living with or dependent upon the income of any employee whether related by blood or not.
- ❖ Employee means any individual, hired for permanent employment, full or part-time, who has worked for at least 12 consecutive weeks performing services for remuneration within this state for any department, division, board, bureau, agency, commission or other unit of state government, or any county board of education in the state.
- ❖ Employee does not include the principal administrative officers of the county board of education.
- ❖ Employer includes any department, division, board, bureau, agency, commission or other unit of state government and any county board of education in the state.
- ❖ Employment benefits means all benefits, other than salary or wages, provided or made available to employees by the Board, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits and pensions, regardless of whether such benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974.
- ❖ The term "health care" or "health care services" means clinically related preventive, diagnostic, treatment or rehabilitative services whether provided in the home, office, hospital, clinic or any other suitable place, provided or prescribed by any health care provider or providers
- ❖ Health care provider means:
 - Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state of West Virginia.
 - Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice under state law.

- Nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law.
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.
- Any health care provider recognized by the employer or the employer's group health plan benefits manager.
- ❖ Parent means a biological, foster or adoptive parent, a stepparent or a legal guardian.
- ❖ Serious health condition means an illness, injury, impairment, or physical or mental condition that involves either:
 - Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care-facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or
 - Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:
 - A health condition (including treatment therefore, or recovery there from) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that also includes (1) treatment two or more times by or under the supervision of a health care provider, or (2) one treatment by a health care provider with a continuing regimen of treatment.
 - Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence.
 - A chronic serious health condition that continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence.
 - A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a sever stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment.
 - Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).
 - Common ailments such as the common cold, flu, migraine, minor ulcers, routine dental treatment, etc. do not qualify for leave.
 - Restorative dental or plastic surgery, mental illness resulting from stress or allergies and treatment for substance abuse may qualify as serious health conditions if all other FMLA requirements are met.

- ❖ Son or daughter means an individual who is a biological, adopted or foster child, a stepchild or a legal ward, and is (1) under 18 years of age; or (2) 18 years of age or older and incapable of self-care because of mental or physical disability.
- ❖ Spouse as defined includes common law marriages if recognized by the state. Unmarried domestic partners or “significant others” are not intended by the FMLA to qualify for family leave care for their partner.

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R 8-16-2 Employees Eligible for FMLA

Under the guidelines of the federal and state codes, employees who have worked for the Board for a total of 12 months and who have worked at least 1,250 hours over the previous 12 months are eligible for family leave. Eligible employees who so request must be granted up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- ❖ For the birth and care (bonding) of a newborn child; or
- ❖ For placement with the employee of a son or daughter for adoption or foster care; or
- ❖ To care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- ❖ For medical leave when the employee is unable to work because of a serious health condition.

The Preston County Family Medical Leave Act year shall be from July 1 through June 30.

The *Hudok v. BOE of Randolph County* case requires the application of the “greater benefit” rule which allows Preston County employees to have 12 weeks of family leave following the exhaustion of all annual and personal leave, during any twelve-month period.

Spouses employed by the Preston County Board of Education are jointly entitled to a combined total of 12 workweeks of family leave for the first three reasons stated above.

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R 8-16-3 Intermittent or Reduced Leave Schedule

Under some circumstances, employees may take Family Medical Leave intermittently, which means taking leave in blocks of time or by reducing their normal weekly or daily work schedule.

- ❖ An employee taking leave for the birth and care or placement for adoption or foster care may take such leave intermittently or on a reduced leave schedule only if both the Board and the employee agree on the conditions.

- ❖ An employee taking leave to care for a sick family member or to deal with the employee's own personal illness may take such leave intermittently or on a reduced leave schedule but only where medically necessary for:
 - A planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider;
 - Recovery from treatment; or
 - Recovery from a serious health condition.
- ❖ An employee may take leave intermittently or on a reduced leave schedule to provide care or psychological comfort to an immediate family member with a serious health condition.
- ❖ An employee may take leave intermittently or on a reduced leave schedule for absences where the employee or family member is incapacitated or unable to perform the essential functions of his/her position because of a chronic serious health condition, even if s/he does not receive treatment by a health care provider.
- ❖ An employee may take family leave on a part-time basis and on a part-time leave schedule, but the period during which the number of workweeks of leave may be taken may not exceed 12 consecutive months, and such leave shall be scheduled so as not to disrupt unduly the operations of the Board.

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R 8-16-4 Notice Requirements for the Board

- ❖ Notice explaining the provisions of the FMLA and procedures for filing complaints of violations of the FMLA, shall be posted in conspicuous areas of the premises that are occupied by employees. This notice shall consist of the entire contents of *R 8-16 Family Medical Leave Benefits*.
- ❖ The Board shall also furnish to each employee a copy of the FMLA fact sheet, available from the Department of Labor, which explains the employee's entitlements and obligations under the FMLA.
- ❖ Once an employee notifies the Board of the need or the intent to take FMLA leave, the Board must provide him/her with information in writing regarding the particular expectations and obligations of the employee. The contents of such notice must include all of the following, if they apply:
 - The leave will be counted against their annual 12-week FMLA entitlement;
 - The requirement that the employee provide medical certification of a serious health condition, if that requirement exists;
 - The employee's right to exhaust his/her annual and personal leave prior to beginning 12 weeks of family leave;
 - Any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments;

- Any requirement for the employee to present a fitness-for-duty certificate to be restored to employment (any such requirement must be job-related and consistent with business necessity);
 - Status as a 'key employee' and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial;
 - The employee's right to restoration to the same or an equivalent job upon return from leave; and
 - The employee's potential liability for payment of health insurance premiums paid by the employer during the employees unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.
- ❖ The Board may also designate in the specific notice whether it will require the employee to periodically report back on status and intent to return to work or whether the employer will demand recertification of a serious health condition.

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R 8-16-5 Notice Requirements for Employees

- ❖ An employee is required to give the Board 30 days notice of intended leave, except if the date of the treatment requires that the leave begin in less than 30 days. If a 30-day notice is impracticable, the employee must give notice as soon as is practicable.
- ❖ The Board may also require the employee to provide certification form a health care provider to verify that leave is justified under the FMLA.
- ❖ The Board has the right to require an employee on leave to report periodically about the employee's status and the intent to return to work, and to request recertification of a serious medical condition no more often than every 30 days under most circumstances.
- ❖ If a leave under this section is foreseeable because of planned medical treatment or supervision, the employee:
 - Shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee's son, daughter, parent or dependent; and
 - Shall provide the Board with two weeks written notice of the treatment or supervision.
- ❖ To preserve instructional continuity, foreseeable medical leave may be limited to the time for medical treatment only. The employee shall provide a two-week written notice when the leave is foreseeable.
- ❖ If a leave because of birth or adoption is foreseeable, the employee shall provide the Board with two weeks written notice of such expected birth or adoption.

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R 8-16-6 Certification of Need for Family Leave

- ❖ If an employee requests family leave to care for a family member with a serious health condition as authorized in the code, the employer may require the employee to provide certification by a health care provider of the health condition.
- ❖ The certification shall be sufficient if it contains the following:
 - That the child, dependent, parent or employee has a serious health condition;
 - The date the serious health condition commenced and its probable duration; and
 - The medical facts regarding the serious health condition.

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R 8-16-7 Restoration to Position upon Return from leave

The position held by the employee immediately before the leave is commenced shall be held for a period not to exceed the twelve-week period of the parental leave and the employee shall be returned to that position: Provided that the Board may employ a temporary employee to fill said position for the period of the parental leave.

An employee returning from a leave who is unable to perform an essential function of the position due to a mental or physical condition is not entitled to be reinstated into another position under the FMLA. However, if such an employee is a qualified individual with a disability under the ADA, the Board may be required to place the employee in another vacancy as a reasonable accommodation.

The Board may not, because an employee received family leave or medical leave, reduce or deny any employment benefit or seniority that accrued to the employee before his/her leave commenced.

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R 8-16-8 Seniority and Employment Benefits

Employees who are granted leave shall continue to accrue seniority during the period of family leave. During any family leave by an employee, the Board shall continue group health insurance coverage for such employee: Provided that the employee shall pay the Board the premium costs of such group health insurance coverage if the employee fails to return to work following a family medical leave. The employee shall also be required to pay any employee's usual share of the premium cost.

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R 8-16-9 Denial of FMLA Leave or Reinstatement to Former Position

Under certain circumstances, the following may justify the Board refusing to allow or delaying FMLA leave to an otherwise eligible employee:

- ❖ The employee fails to provide timely notice; or
- ❖ The employee fails to timely provide medical certification.

Under certain circumstances, the following may justify an employer refusing to reinstate or delaying reinstatement of an employee on FMLA leave:

- ❖ Employee fails to provide a requested fitness-for-duty certification to return to work;
- ❖ Employee would not be employed had leave not been taken;
- ❖ Employee fails to give notice of intent to return to work;
- ❖ Reinstatement of key employee would cause substantial and grievous economic injury;
- ❖ Leave obtained by fraudulent means; and
- ❖ Employee's outside or supplemental employment violates uniformly applied policy.

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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)

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Amended/Revised: