## 435. FAMILY AND MEDICAL LEAVES OF ABSENCE

1. **Authority**
   29 U.S.C.
   Sec. 2601 et seq
   29 CFR Part 825
   Pol. 434, 436, 439

   It is the policy of the Spring-Ford Area School District to grant up to twelve (12) weeks of family and medical leave during any twelve-month period to eligible employees, or twenty-six (26) weeks in the event that the leave is to be taken for a covered servicemember in accordance with the Family and Medical Leave Act of 1993 (FMLA).

   The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances and as specified in this policy. (Additional guidelines are under Sick Leave, Personal Leave, Uncompensated Leave in Spring-Ford Area School District Policy Manual).

2. **Guidelines**

   **A. Eligibility**

   In order to qualify to take family and medical leave under this policy, the employee must meet all of the following conditions:

   1. The employee must have worked for the employer at least twelve (12) months, or fifty-two (52) weeks. The twelve (12) months, or fifty-two (52) weeks, need not have been consecutive. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week.

   2. The employee must have worked at least 1250 hours during the twelve-month period immediately before the date when the leave would begin.

   **B. Type Of Leave Covered**

   In order to qualify as FMLA leave under this policy, the employee must be taking the leave for one (1) of the reasons listed below:

   1. *Birth Leave* - the birth of a child and in order to care for that child.

   2. *Placement Leave* - the placement of a child for adoption or foster care.
The eligibility for either Birth or Placement Leave expires at the end of the twelve-month period beginning on the date of the applicable birth or placement.

3. **Care Leave** - to care for a spouse, child, or parent (excepting parent-in-law) with a serious health condition.


5. **Covered Servicemember Leave** - the care of a covered servicemember which is defined as a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary retired list, for a serious injury or illness, when the eligible employee is the spouse, son, daughter, parent, or next of kin (i.e., nearest blood relative) of the covered service member.

6. **Qualifying Exigency Leave** - for any qualifying exigency (as defined by the Department of Labor) arising out of the fact that the employee’s parent, child, or spouse is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of contingency operation.

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee’s position.

A **serious health condition** is defined as a condition (a) which requires inpatient care at a hospital, hospice, or residential medical care facility; (b) which involves incapacity requiring absence of more than three (3) calendar days and involves continuing care by a licensed health care provider; or (c) which involves continuing treatment by (or under the supervision of) a health care provider for a chronic or long term health condition which is incurable or so severe that, if not treated, would likely result in a period of incapacity of more than three (3) calendar days or for prenatal care.

The following is a list of conditions or illnesses that are considered by the district to be generally serious health conditions for the purposes of this policy that will entitle an eligible employee to leave under the law. This list is not meant to be inclusive:

1. **A serious injury or illness** in the case of a covered servicemember means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.
2. Heart attacks or heart conditions requiring bypass surgery.
3. Most cancers.
4. Back conditions requiring extensive therapy or surgery.
5. Spinal injuries.
6. Appendicitis.
7. Pneumonia.
8. Severe arthritis.
9. Severe nervous disorders.
10. Pregnancy, miscarriages, complications, or illnesses relating to pregnancy (e.g., severe morning sickness), and need for parental care.
11. Childbirth and recovery from childbirth.
12. A parent or spouse suffering from Alzheimer’s Disease or clinical depression.

A health care provider is defined as a doctor of medicine, doctor of osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse midwife, and Christian Science practitioner.

Employees with questions about what illnesses are covered under this FMLA policy or under the district’s sick leave policy are encouraged to consult with the Human Resources Department.

The Spring-Ford Area School District may require an employee to provide a doctor's certification of the serious health condition. The certification process and application for leave process are outlined in sections G and H.

An eligible employee can take up to twelve (12) weeks of leave, or up to twenty-six (26) weeks in the event the leave is taken to care for a covered servicemember under this policy during any twelve-month period. The district will measure the twelve-month period from July 1 to June 30. Each time an employee takes leave, the district will compute the amount of leave the employee has taken under this policy and subtract it from the twelve (12) weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.
If a husband and wife both work for the district and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the husband and wife may only take a total of twelve (12) weeks of leave or twenty-six (26) weeks in the event the leave is to be taken for a covered servicemember.

C. Employee Status And Benefits During Leave

While an employee is on leave, the district will continue the employee’s health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition, the district will require the employee to reimburse the district the amount it paid for the employee’s health insurance premium during the leave period.

Under current district policy, the employee may pay a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee’s share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Accounting Department by the 1st day of the month. If the payment is more than thirty (30) days late, the employee's health care coverage may be dropped for the duration of the leave.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee must continue to make those payments, along with the health care payments. If the employee does not continue these payments, the district may discontinue coverage during the leave period, or will recover the payments at the end of the leave, in a manner consistent with the law.

D. Employee Status After Leave

An employee who takes leave under this policy will be able to return to the same job or a job with equivalent status, pay, benefits and other employment terms. The position will be the same or one which entails substantially equivalent skill, effort, responsibility and authority.
The district may choose to exempt certain highly compensated employees from this requirement and not return them to the same or similar position. Further, employees would have been furloughed or transferred notwithstanding the Family and Medical Leave of absence provisions would not necessarily be required to return to the same job with equivalent status, pay, benefits, and other employment terms consistent with the Family and Medical Leave Act regulations.

An employee who fails to return to the employee’s job without prior approval from the Human Resources Department upon the expiration of FMLA leave shall be deemed to be a resignation of the employee.

E. Use Of Paid And Unpaid Leave

If the employee has accrued paid leave, the employee must use paid leave first as set forth in this policy and take the remainder of the twelve (12) weeks as unpaid leave. Therefore, under the policy, paid leave will always be substituted for FMLA leave when permitted by the FMLA.

An employee who is taking Illness Leave or Care Leave must use all paid vacation, personal or sick leave (illness leave only) prior to being eligible for such unpaid leave.

An employee who is taking Birth, Placement or Care Leave must use all paid vacation and personal leave prior to being eligible for such unpaid leave.

An employee taking leave for the birth of a child must use paid sick leave for physical recovery following child birth. Pregnancy disability or other leave taken under the district’s temporary disability plan is considered paid sick leave for purposes of FMLA substitution. The employee may then use all paid vacation, personal leave, and then will be eligible for unpaid leave for the remainder of the twelve (12) weeks.

When an employee using paid vacation or other paid leave seeks an extension of paid leave with FMLA leave for a FMLA qualifying purpose due to an event which occurred during the period of paid leave, such paid leave used after the FMLA qualifying event will be credited against the employee’s twelve-week entitlement.
F. Intermittent Leave Or A Reduced Work Schedule

Subject to the provisions of this policy, the employee may take FMLA leave in twelve (12) consecutive weeks, or twenty-six (26) consecutive weeks in the event that the leave is to be taken for a covered servicemember, may use the leave intermittently (take a day periodically when needed over the year), or under certain circumstances may use the leave to reduce the work week or work day, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of twelve (12) weeks or twenty-six (26) weeks in the event that the leave is to be taken for a covered servicemember over a twelve-month period.

The district may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

For Birth Leave and Placement Leave, the district and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the district before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary. The district may require certification of the medical necessity, discussed in Section G.

G. Certification Of Serious Health Condition

The Spring-Ford Area School District may ask for certification of the serious health condition. The employee should try to respond to such a request within fifteen (15) days of the request, or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification may be provided by using the Medical Certification Form contained in Appendix A to this policy.

Certification of the serious health condition (see form attached) shall include: the date when the condition began, its expected duration, diagnosis, and a brief statement of treatment. For medical leave for the employee’s own medical condition, the certification must also include a statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of the employee’s position. For a seriously ill family member, the certification must include a statement that the patient requires assistance and that the employee’s presence would be beneficial or desirable.
If the employee plans to take intermittent leave or work a reduced schedule, the certification must also include dates and the duration of treatment and a statement of medical necessity for taking intermittent leave or working a reduced schedule.

The district has the right to ask for a second opinion if it has reason to doubt the certification. The district will pay for the employee to get a certification from a second doctor, which the district will select.

If necessary to resolve a conflict between the original certification and the second opinion, the district will require the opinion of a third doctor. The district and the employee will jointly select the third doctor, and the district will pay for the opinion. This third opinion will be considered final.

Employees who take Illness Leave shall be required to provide a certification from the health care provider that the employee is able to resume work. Restoration to active employment will be denied until the certification is provided.

H. Procedure For Requesting Leave

Except where leave is not foreseeable, all employees requesting leave under this policy must submit the request in writing to their immediate supervisor, with a copy to the Human Resources Department.

Employees requesting FMLA leave must give thirty (30) days written notice if the need for the leave is foreseeable or, where the need for leave is foreseeable due to the active duty or impending call or order to active duty of a parent, child, or spouse in support of a contingency operation, employees must give such notice as is reasonable and practicable.

If an employee fails to provide thirty (30) days’ notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least thirty (30) days from the date the employer receives notice.

While on leave, employees are requested to report periodically to the district regarding the status of the medical condition and their intent to return to work. Employees giving unequivocal notice of intent not to return to work will cause an immediate termination of the employee’s rights under this policy and the FMLA.
### Special Limitations Of FMLA For Instructional Employees

When leave is taken near the end of the academic term or half-year, the district may require the instructional employee to continue his/her FMLA leave to the end of the term if:

1. The leave begins more than five (5) weeks before the term’s end, will last at least three (3) weeks, and the employee would return to work within three (3) weeks of the end of the term.

2. The leave is for a purpose other than the employee’s serious health condition, begins during the five (5) week period before semester’s end, will last more than two (2) weeks, and the employee would return during the two (2) week period before the end of the term.

3. The leave is for a purpose other than the employee’s own serious health condition, begins during the three (3) week period before the end of a term, and will last more than five (5) days.

The entire period of leave taken counts as FMLA leave. However, if the annual FMLA leave entitlement of an employee who is required to take leave until the end of an academic year ends before the leave is completed, the district will still maintain health benefits, reinstate the employee, and provide all other Family and Medical Leave Act entitlements when the leave ends.

If an eligible instructional employee requests intermittent leave or leave on a reduced leave schedule based on foreseeable planned medical treatment, and if the employee would be on leave for more than twenty percent (20%) of the total number of working days over the period of the leave, then the district may require the employee to choose either:

1. To take leave for a period or periods not greater than the duration of the planned treatment.

2. To transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits, and which better accommodates recurring periods of leave than does the employee’s regular position.
References:
School Code – 24 P.S. Sec. 1154, 1418
Family and Medical Leave Act – 29 U.S.C. Sec. 2601 et seq.
Family and Medical Leave, Title 29, Code of Federal Regulations – 29 CFR, Part 825
Board Policy – 434, 436, 439, 813