

FAMILY AND MEDICAL LEAVE

East Dakota Educational Cooperative (the “Cooperative”) will comply with all applicable requirements of the Family and Medical Leave Act (FMLA), as amended by the National Defense Authorization Act. The FMLA requires employers with 50 or more employees to provide eligible employees up to 12 weeks (26 weeks for certain military leave as described below) of unpaid, job-protected leave in any 12-month period for certain family and medical reasons. The 12-month period is a rolling period measured backward from the date an employee uses any FMLA leave.

Employee Eligibility

The FMLA defines eligible employees as employees who: (1) have worked for the Cooperative for at least 12 months; (2) have worked for the Cooperative for at least 1,250 hours in the previous 12 months; and (3) work at or report to a worksite which has 50 or more employees or is within 75 miles of Cooperative worksites that taken together have a total of 50 or more employees.

In determining whether the employee has worked 1,250 hours in the 12 months preceding the leave request, the employee is credited with hours of service that would have been performed but for the employee’s fulfilling of a National Guard or reserve military obligation.

Leave Entitlement

Eligible employees may take leave for the following reasons: (1) to care for the employee’s child upon birth or in connection with a child’s placement with the employee for adoption or foster care; (2) to care for a parent, spouse, or child with a serious health condition; (3) when the employee is unable to work because of the employee’s own serious health condition; or (4) certain circumstances related to service in the armed forces.

Serious Health Condition. According to the FMLA, a “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves: (1) inpatient care (i.e., an overnight stay), including any period of incapacity or any subsequent treatment in connection with the inpatient care; or (2) “continuing treatment” by a health care provider which includes any period of incapacity as a result of:

- (a) a health condition lasting more than three consecutive days and any subsequent treatment or period of incapacity relating to the same condition that also includes (i) treatment two or more times by or under the supervision of a health care provider; or (ii) one treatment by a health care provider with a continuing regimen of treatment;
- (b) pregnancy or prenatal care, including severe morning sickness;
- (c) a chronic serious health condition that continues over an extended period of time, requires periodic visits to a health care provider (at least two annually), and may involve occasional episodes of incapacity;

- (d) a permanent or long-term condition for which treatment may not be effective, if the employee is under the supervision of a health care provider (but not necessarily receiving active treatment); or
- (e) any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

In the absence of extenuating circumstances, the first (or only) visit to a health care provider must occur within seven days of the start of the incapacity, and the second visit must occur within 30 days of the start of the incapacity.

Spouses employed by the same employer are jointly entitled to a combined leave of 12 workweeks of family leave in the 12-month period to care for a parent who has a serious health condition. However, each spouse may take up to 12 workweeks of leave to care for a child or spouse with a serious health condition.

Birth, Adoption or Foster Care of Children. FMLA leave for birth or placement for adoption or foster care must conclude within 12 months of the birth or placement. In addition, spouses employed by the same employer are jointly entitled to a combined leave of 12 workweeks of parental leave in the 12-month period for the birth or placement of a child for adoption or foster care.

Intermittent or Reduced Work Schedule Leave. In certain circumstances, eligible employees may take FMLA leave intermittently (for example, in blocks of time) or by reducing their work schedule. If FMLA leave is to care for a child after the birth or placement for adoption or foster care, employees may take their FMLA leave intermittently or on a reduced work schedule only with the Cooperative's permission. If the FMLA leave is because of the employee's serious illness or to care for a seriously ill family member, the employee may take the leave intermittently or on a reduced work schedule if it is medically necessary.

Special Rules for Instructional Employees

If an employee who is employed principally in an instructional capacity requests intermittent leave or leave on a reduced schedule that is foreseeable based on a planned medical treatment, and the employee would be on leave for greater than 20 percent of the total number of working days during the foreseeable leave, the Cooperative may require the employee to elect either:

- (a) To transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave than does the employee's regular position; or
- (b) To take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment.

If an instructional employee begins leave more than five weeks before the end of a school term, the Cooperative may require the employee 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 immediately preceding the end of the term.

If an instructional employee begins leave during the five-week period before the end of a term, the Cooperative 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 immediately preceding the end of the term.

If an instructional employee begins leave during the three-week period before the end of a term, the Cooperative may require the employee to continue taking leave until the end of the term if the leave will last more than five working days.

If an instructional employee does not give required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule (see notice requirements below), the Cooperative may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the Cooperative may require the employee to delay taking of leave until the notice provision is met.

Military Family Leave

Leave During a Qualifying Exigency. Eligible employees may take up to a total of 12 weeks of FMLA leave during any 12-month period for “any qualifying exigency” for the spouse, child or parent of a family member who is notified of an impending federal call or order to active duty in the armed forces (including the reserves, National Guard and certain retired military) for reasons related to or affected by the family member’s call-up or service. Military leave does not extend to family of members of the regular armed forces on active duty status. This type of leave counts toward the employee’s 12 week maximum of FMLA leave in a 12 month period.

Military leave may be taken for one or more of the following qualifying exigencies, as set forth in the FMLA:

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
8. Additional Activities as Agreed Upon by the Employer and Employee

Leave for a qualifying exigency may be taken on an intermittent or reduced leave schedule. The Cooperative may require certification of the need for leave, which may include a copy of the call or order to active duty upon the employee's first request for such leave.

Military Caregiver Leave. Eligible employees may take up to 26 weeks of total FMLA leave during a single 12-month period for the employee to care for a spouse, child, parent, or next of kin who is a covered armed forces member undergoing medical treatment, recuperation or therapy, is on out-patient status, or is on the temporary disabled retired list for a serious injury or illness incurred in the line of duty which prevents the service member from performing the duties of the service member's office, grade, rank or rating. Leave is not available to a former member of the military on the permanent disability list. Next of kin is defined as the closest blood relative of the injured or recovering service member.

This is the only type of FMLA leave that may extend an employee's leave entitlement beyond 12 weeks to 26 weeks. The 26 week leave limit includes all types of FMLA taken in the applicable 12 month period. Thus, the total leave taken for any purpose during the single 12-month period may not exceed 26 workweeks overall. The 12-month period in which military caregiver leave may be taken begins on the first day the employee takes leave to care for the covered servicemember and ends 12 months after that date, regardless of the method used by the employer to determine the 12-month period for any other FMLA-qualifying reason.

Military caregiver leave may be taken on an intermittent or reduced leave schedule if medically necessary. The employer may require the employee to obtain a certification from an authorized health care provider of the covered servicemember.

Notice and Certification

Employees who want to take FMLA leave ordinarily must provide the Cooperative at least 30 days notice of the need for leave, if the need for leave is foreseeable. Foreseeable leave includes expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of an employee or family member, or planned medical treatment for a serious injury or illness of a covered servicemember. If the employee's need is not foreseeable, the employee should give as much notice as is practicable.

If the employee is seeking FMLA leave due to a FMLA-qualifying reason for which the Cooperative already provided FMLA leave, the employee must specifically refer to the qualifying reason for leave or the need for FMLA leave. The employee must provide the Cooperative with enough information to allow the employer to determine whether FMLA leave applies.

When leave is needed to care for an immediate family member or for the employee's own illness and is for planned medical treatment, the employee must try to schedule treatment in order to minimize disruptions of the Cooperative's operations.

In addition, employees who need leave for their own or a family member's serious health condition must provide medical certification from a health care provider. The Cooperative also may require

a second, and if necessary, a third opinion (at the Cooperative's expense), periodic recertifications of the serious health condition, and, when the leave is a result of the employee's own serious health condition, a fitness for duty report to return to work.

The Cooperative may delay leave to employees who do not provide proper advance notice of the foreseeable need for leave. The Cooperative also may delay or deny approval of leave for lack of proper medical certification.

Benefits During FMLA Leave

Employees taking leave under the FMLA are entitled to receive health benefits during the leave at the same level and terms of coverage as if they had been working throughout the leave. If applicable, arrangements will be made for employees to pay their share of health insurance premiums while on leave. If an employee chooses not to return to work from FMLA leave, the Cooperative may be entitled to recover premiums it paid to maintain health coverage during the leave.

The employee's use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of the employee's leave. However, the employee must use any accrued paid leave during an unpaid FMLA leave taken because of the employee's own serious health condition, the serious health condition of a family member, or to care for a newborn or newly placed child.

Job Restoration After FMLA Leave

The Cooperative will reinstate an employee returning from FMLA leave to the same or equivalent position with equivalent pay, benefits, and other employment terms and conditions. However, an employee on FMLA leave does not have any greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. Employees returning from a medical leave must provide certification of their ability to perform the functions of their positions.

Certain highly compensated key employees also may be denied reinstatement when necessary to prevent "substantial and grievous economic injury" to the Cooperative's operations. A "key" employee is an eligible salaried employee who is among the highest paid ten percent of employees within 75 miles of the worksite. Employees will be notified of their status as a key employee, when applicable, after they request FMLA leave.

Unlawful Acts by Employers

The FMLA makes it unlawful for any employer (1) to interfere with, restrain, or deny the exercise of any right provided under the FMLA; or (2) discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or related to the FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

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