

## **General Personnel**

### **Family and Medical Leave**

#### Leave Description

- A. An eligible employee may use unpaid family and medical leave (FMLA leave), guaranteed by the federal Family and Medical Leave Act, for up to a combined total of 12 work weeks (60 days) during any 12 month period for any one, or more, of the reasons numbered 1 through 5 below. The 12 month period for purposes of calculating FMLA leave shall be July 1 through June 30.

FMLA leave is available in one or more of the following instances:

1. The birth of the employee's son or daughter, and to care for the newborn child during the 12 month period beginning on the date of the birth.
2. The adoption or foster placement of a son or daughter, including absences from work that are necessary for the adoption or foster care to proceed. Such leave expires at the end of the 12 month period beginning on the placement date.
3. The serious health condition of an employee's spouse, son, daughter or parent.
4. The employee's own serious health condition that makes the employee unable to perform the functions of his or her job.
5. The existence of a qualifying exigency arising out of the fact the employee's spouse, son, daughter, or parent is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

If spouses are employed by the Cooperative and both are eligible for FMLA leave, they may together take only 12 work weeks for FMLA leaves when the reason for the leave is 1 or 2 above, or to care for a parent with a serious health condition.

- B. During a "single 12-month period", an eligible employee's FMLA leave entitlement may be extended to a combined total of 26 work weeks of unpaid leave to care for a covered servicemember (defined herein) with a serious injury or illness. The "single 12-month period" is measured forward from the date the employee's first FMLA leave to care for the covered servicemember begins.

This extended FMLA leave is available to care for the employee's spouse, son, daughter, parent, or next of kin who is a covered service member with a serious injury or illness. A "covered service member" is a veteran or current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness as defined by the FMLA regulations.

If spouses are employed by the Cooperative and both are eligible for FMLA leave, they may together take only a combined total of 26 work weeks of FMLA leave.

- C. Any leave, whether paid or unpaid, taken for an FMLA-qualifying reason, shall be deducted from the employee's total FMLA leave entitlement. While FMLA leave is normally unpaid, the KCSEC will substitute an employee's accrued paid leave for unpaid FMLA leave, provided that if paid leave is substituted the reason for the FMLA leave also qualifies for use of paid leave benefits and subject to any applicable collective bargaining agreement. All policies and rules regarding the use of paid leave apply when paid leave is substituted for unpaid FMLA leave. Any substitution of paid leave for unpaid FMLA leave will count against the employee's FMLA leave entitlement. Use of FMLA leave shall not preclude the use of other applicable unpaid leave that

will extend the employee's leave beyond 12 work weeks, provided that the use of FMLA leave shall not serve to extend such other unpaid leave. Any full workweek period during which the employee would not have been required to work, including summer break, winter break and spring break, is not counted against the employee's FMLA leave entitlement.

- D. An employee may be permitted to work on an intermittent or reduced-leave schedule in accordance with FMLA regulations and any applicable collective bargaining agreement.

#### Eligibility

To be eligible for FMLA leave, an employee must:

1. Be employed at a worksite where at least 50 employees are employed within 75 miles.
2. Have been employed by the Cooperative for at least 12 months, and
3. Have been employed for at least 1,250 hours of service during the 12 month period immediately before the beginning of the leave, unless the employee is a full-time classroom teacher. A full-time classroom teacher is presumed to have worked at least 1,250 hours during the 12-month period immediately before the beginning of leave unless the Cooperative can clearly demonstrate otherwise.

The 12 months an employee must have been employed by the Cooperative need not be consecutive. However, the Cooperative will not consider any period of previous employment that occurred more than 7 years before the date of the most recent hiring, except when the service break is due to National Guard or Reserve military service or when a written agreement exists concerning the Cooperative's intention to rehire the employee.

#### Requesting Leave

If the need for the FMLA leave is foreseeable, an employee must provide the Director or designee with at least 30 days' advance notice before the leave is to begin. If 30 days' advance notice is not practicable, the notice must be given as soon as practicable. The employee shall consult with the Director or designee and make a reasonable effort to schedule a planned medical treatment so as not to disrupt the Cooperative's operations, subject to the approval of the health care provider administering the treatment. The employee shall provide at least verbal notice sufficient to make the Director or designee aware that he or she needs FMLA leave, and the anticipated timing and duration of the leave. When the approximate timing of the need for leave is not foreseeable, the employee must provide notice to the Director or designee as soon as practicable under the facts and circumstances of the particular case. Failure to give the required notice for a foreseeable leave may result in a delay in granting the requested leave until at least 30 days after the date the employee provides notice.

#### Certification

Within 15 calendar days after the Director or designee makes a request for certification for a FMLA leave, an employee must provide one of the following, unless it is not practicable to do so under the particular circumstances despite the employee's diligent good faith efforts:

1. When the leave is to care for the employee's covered family member with a serious health condition, the employee must provide a certificate completed by the family member's health care provider.
2. When the leave is due to the employee's own serious health condition that makes him/her unable to perform one or more of the essential functions of the job, the employee must provide a certificate completed by the employee's health care provider.

3. When the leave is to care for a covered servicemember with a serious illness or injury, the employee must provide a certificate completed by an authorized health care provider of the covered servicemember.
4. When the leave is because of a qualified exigency, the employee must provide a copy of the covered service member's active duty orders or other documentation issued by the military or other documentation prescribed by the Secretary of the United States Department of Labor indicating that the covered service member is on active duty or has received notification of an impending call or order to covered active duty, and the dates of the covered service member's covered active duty service.

The Cooperative may require an employee to obtain a second medical opinion at its expense when it has reason to doubt the validity of a medical certification provided pursuant to items 1 and 2 above. Where the first and second medical opinions differ, the Cooperative may require the employer to obtain certification from a third health care provider at the Cooperative's expense. The third opinion shall be final and binding. Failure to furnish a complete and sufficient certification on forms provided by the Cooperative may result in a denial of the leave request.

Where medical certification is provided pursuant to items 1 and 2 above, the Cooperative may require recertification in connection with an absence no more often than once every 30 days. Further, where the medical certification states a minimum duration of the condition that is more than 30 days, the Cooperative may not request a recertification until after the minimum duration expires. In all cases, whether for intermittent or continuous leave, the Cooperative may request a recertification of a medical condition every 6 months in connection with an absence by an employee. Notwithstanding the foregoing, the Cooperative may request recertification in less than 30 days when, (1) the employee requests a leave extension, (2) the circumstances described by the original certification change significantly, or (3) the Cooperative receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the original certification. Recertification is at the employee's expense and must be provided to the Cooperative within 15 calendar days after the request unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

Failure to furnish a complete and sufficient certification on forms provided by the Cooperative may result in a denial of continuation of the FMLA leave protections until the employee produces a sufficient recertification.

#### Continuation of Health Benefits

During FMLA leave, employees are entitled to continuation of health benefits under the same conditions as would have been provided if they were working. Any share of health plan premiums being paid by the employee before taking the leave, must continue to be paid by the employee during the FMLA leave. Unless otherwise agreed to in writing, the Cooperative's obligation to maintain health insurance coverage ceases if an employee's premium payment is more than 30 days late and the Cooperative notifies the employee in writing that his/her payment has not been received and that his/her coverage will cease on a specified date unless payment has been received by then. The date that coverage will cease must be at least 15 days after the date of the letter. If the employee does not return to work after an unpaid FMLA leave, the employee shall repay the cost of the premiums paid by the Board unless the employee's failure to return is due to (1) the continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered service member which would otherwise entitle the employee to FMLA leave, or (2) other circumstances beyond the employee's control.

### Changed Circumstances and Intent to Return

An employee must provide the Director or designee reasonable notice of changed circumstances (i.e., within 2 business days if the changed circumstances are foreseeable) that will alter the duration of the FMLA leave. The Director or designee, taking into consideration all of the relevant facts and circumstances related to an individual's leave situation, may periodically ask an employee who has been on FMLA leave whether he or she intends to return to work.

### Return to Work

If returning from FMLA leave occasioned by the employee's own serious health condition, the employee is required to obtain and present certification from the employee's health care provider that he or she is able to resume work.

An employee returning from FMLA leave is entitled to the same position the employee held when the leave began or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment, subject to: (1) permissible limitations the Cooperative may impose as provided in the FMLA or implementing regulations, and (2) the Cooperative's policies and practices and any collective bargaining agreement, if applicable.

In some circumstances, as set forth in the FMLA regulations, an instructional employee who takes leave on an intermittent or reduced leave schedule may be transferred temporarily to an available alternative position for which he/she is qualified, or, in the case of leave taken near the end of an academic term, the employee may be required by the Board to continue taking leave until the end of the academic term.

### Implementation

The Director or designee shall ensure that: (1) all required notices and responses to leave requests are provided to employees in accordance with the FMLA; and (2) this policy is implemented in accordance with the FMLA. In the event of a conflict between the policy and the FMLA or its regulations, the latter shall control. The terms used in this policy shall be defined as in the FMLA regulations.

**Please also refer to the current Professional Negotiation Agreement between Special Education Association of Kendall County and Kendall County Special Education Cooperative.**

LEGAL REF.: Family and Medical Leave Act, 29 U.S.C. §2601 et seq., 29 C.F.R. Part 825.

CROSS REF.: 5:180 (Temporary Illness or Temporary Incapacity), 5:250 (Leaves of Absence), 5:330 (Sick Days, Vacation, Holidays, and Leaves)

ADOPTED: October 13, 2010