

Stark County Board of Developmental Disabilities

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FAMILY MEDICAL LEAVE

POLICY

The Board shall comply with the Family and Medical Leave Act of 1993 and subsequent amendments, to provide family and medical leave as specified in the legislation. It is an employer's obligation to designate all leaves that meet the qualifying definitions, and as such all leaves of absence taken by Board employees will be assessed for concurrent application. Required notices are posted at each worksite and in the Human Resources Department.

Basic Provisions/Requirements:

The FMLA entitles eligible employees to take job-protected, unpaid leave for specified family and medical reasons. Eligible employees are entitled to twelve workweeks of leave in any 12-month period for:

- Birth and care of the employee's child, within one year of birth
- Placement with the employee a child for adoption or foster care, within one year of the placement
- Care of an immediate family member (spouse, child, parent) who has a serious health condition
- For the employee's own serious health condition that makes the employee unable to perform the essential functions of his or her job
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or has been notified of an impending call or order to active duty in the U.S. National Guard or Reserves in support of a contingency operation

Military Caregiver Leave may provide 26 workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

Eligible Staff:

A Board staff member must meet the following criteria to be eligible for family and medical leave under the Family and Medical Leave Act (FMLA):

1. Must have been employed by the Board for more than twelve (12) months of active service; AND
2. Must have an active work status of at least 1,250 hours in the previous twelve (12) months.

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For purposes of administering the Board’s Family and Medical Leave Act policy, a “year” means a “rolling twelve month period measured backward from the date an employee uses any FMLA leave. This rolling 12-month period means that each time an employee takes FMLA leave; the remaining leave balance would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. This definition will be applied to all employees beginning July 1, 2012.

Language specific to employees represented by a collective bargaining agreement will be found within said contracts. The positions of Bus Driver, Bus Rider, and 9-month Intervention Specialist Assistants meet eligibility for Family Medical Leave by working 1025 hours in the previous 12 months prior to application.

Should there be any conflict with this policy, its procedures, and the applicable regulations, the regulations will be applied. The Superintendent shall develop procedures to implement this policy.

Historical Resolution Information		Reviewer(s):
Date	Resolution Number	Superintendent
6/20/15	06-34-15	Director of Human Resources
8/28/18	08-40-18	
9/28/21	09-34-21	

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PROCEDURES

Requests for Family Medical Leave (FML)

1. Employees must process all leave requests in the Human Resources Department. A standard agency Time Off form will be used in the processing of the request. The agency utilizes the forms provided by the Department of Labor for notification, eligibility and certification of medical providers.
2. If the need for leave is foreseeable, employee requests must be submitted at least thirty days prior to taking leave. If the need for leave is unforeseeable, employee requests must be made as soon as practicable and must comply with the agency's normal call-in procedures.
3. When an employee seeks leave for a FMLA-qualifying reason for the first time, the Human Resources Department staff will notify the employee of those leaves which must be designated as FML. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the employer has previously provided the employee FMLA-protected leave, the employee must specifically reference either the qualifying reason for leave or the need for FML leave.
4. When a request is made for a foreseeable Family Medical Leave due to a serious health condition of either the employee or a member of the employee's family, which involves planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to unreasonably interfere with their normal work schedule.
5. After the initial request is made, a Notice of Eligibility will be provided to the employee informing him/her whether the leave qualifies as Family Medical Leave and their rights and responsibilities.
6. The Board will require a certification furnished by the health care provider supporting the employee or family member's serious health condition. A specific form is used to certify qualifying exigency. The employee must comply with the requirements of submitting the certification in a timely manner, generally within 15 days. To the extent that the regulations allow, the Board may seek additional information to verify the accuracy of a certification or seek a second opinion as to a medical condition.
7. It is the employee's responsibility to provide sufficient information during the determination process. Leave may be delayed or denied if communication and information procedures are not followed.
8. For chronic or long-term conditions, the Board may request recertification of a serious health care condition. This can be for no more often than every 30 days and no less than one year.
9. Special rules apply to employees of education agencies; generally these are relative to intermittent leave or when leave is required near the end of a school term. These rules will be considered when applicable to instructional staff.

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10. If an employee or his/her family member has multiple health conditions for which FML is being requested, a separate medical certification must be submitted for each individual condition.
11. It is the employee's responsibility for any charges incurred by a physician for completing a medical certification.
12. An employee requesting Family Medical Leave (FML) due to a qualifying exigency for military leave or serious injury or illness of a covered service member for military family leave must provide complete and sufficient certification of the exigency or serious injury or illness.
13. Once the employee has provided the required information, a determination will be made for eligibility, approval, and designation of the leave. The Designation Notice will be provided to the employee with the final designation facts. Generally the leave will be designated with the first day of request from the employee. Retroactive designation will only be made in cases where both the Board and the employee agree.
14. The employee's supervisor will also be informed as to the designation and time authorized for the leave.

Use of Leave

1. The Board will comply with Family Medical Leave regulations that make it the employer's obligation in all circumstances to designate a leave as FML qualifying even though the employee does not request or desire the leave. In many cases, the FML leave designation will run concurrently with other types of Board approved leaves, including but not limited to sick leave, workers' compensation and injury leave.
2. A qualified staff member is entitled to take up to a total of twelve (12) weeks of unpaid leave during any 12 month period for qualifying circumstances. The Board chooses a rolling 12 month period measured backward from the date a staff member uses any family and medical leave.
3. Leave taken for the birth or placement of a child must be taken within one year of the date of birth or placement of the child. Such leaves may not be taken intermittently or on a reduced leave schedule unless the staff member and the Board agree otherwise. If both parents are employed by the Board, the combined amount of leave for this reason for both persons shall be limited to twelve (12) weeks.
4. Leaves taken under qualifying events related to serious health conditions of the employee or a family member may be taken intermittently or on a reduced leave schedule when medically necessary. If the need for intermittent leave is for foreseeable medical treatment, employees must work to schedule the leave so as not to unduly disrupt the Board's operations. For staff that request intermittent leave or leave on a reduced schedule, the Board may require such staff to transfer temporarily to an alternative position for which the staff is qualified and that has equivalent pay and benefits. This transfer may be made permanent if the requested intermittent leave continues to be recertified.

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5. The employee must respond to periodic contact by the Human Resources Department staff to give updates of the leave status and expected date of return.
6. The Board may pursue disciplinary action for fraudulent obtainment and use of Family Medical Leave, or performing any outside work during the time they are certified unable to perform the essential functions of their position at SCBDD. If there are any extenuating circumstances anticipated by the employee during a leave, prior notice must be received and approved.

Employee Pay and Benefits

1. All employees will be required to substitute any vacation leave, personal leave, or if applicable, sick leave, for any part of the twelve (12)-week period. The employee shall notify the Human Resources Department what order he or she wishes to utilize the designated leave. If the employee fails to notify the Human Resources Department, the accumulated leaves shall be utilized in the following order: sick leave, if applicable, vacation leave, and personal leave. Employees, at their discretion, shall be permitted to maintain a balance of forty (40) hours of paid leave prior to making the transition to unpaid status during an authorized paid family medical leave.
2. The employee will continue to receive their health insurance benefits in the same manner as prior to their leave. It is the responsibility of the employee to pay their share of any health, dental, and supplemental insurance premiums. If the premiums are not deducted through the payroll process, the employee shall pay the Board directly by submitting the amount to the Human Resources Department. The Board will seek to recover any unpaid premiums.
3. Employees are not entitled to accrue employment benefits while on unpaid family medical leave. The leave will be treated as continuous service for the purpose of calculating any benefits that are based on length of service.
4. Paid leave benefits taken during a family medical leave will be included in the calculation of total time off as applied to the annual Attendance Incentive.
5. An employee on FML has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed.

Job Restoration

1. Before reinstatement, employees who take leave due to their own serious health condition will be required to provide certified information from the health care provider of his/her ability to perform the essential functions of their position with or without accommodation. Restoration to full duty may be delayed pending certification results and the interactive ADA process. The Board may, at its expense, request a second or third opinion from a health care provider.

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2. The employee who returns to work after a Family Medical Leave will be reinstated to the same or similar position. If however, a layoff of their position has taken place while on the leave; their reinstatement request will be denied.
3. The Board may refuse to restore an employee to a position if the “wheels of termination” had already been set into motion prior to the employee using Family Medical Leave.

Records

1. All records relative to FML will be maintained by the Human Resources Department. Any medical information accompanying the request and subsequent leave will be kept separate in a confidential file.
2. To the extent permitted by law, these medical records shall be kept confidential.

Unlawful Acts

1. The Board will not interfere with, restrain, or deny the exercise of any right provided by this law.
2. The Board cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions.

Definitions

The Board will use the Department of Labor regulations and definitions in its application of the Family Medical Leave Act. As used in this Policy and Procedures, the following terms and phrases shall be defined as follows:

Active Work Status: includes overtime hours worked and is defined as "the conditions under which an employee is actually in a work status and is eligible to receive pay, but does not include vacation pay, sick leave, bereavement leave, compensatory time, holidays, personal leave, and disability leave.

Covered Service Member: A current 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 disability retired list, or a serious injury or illness.

Exigency: Urgency; a situation calling for immediate action.

Family Member: An employee's spouse, children (son or daughter), and parents are immediate family members for purposes of FMLA. The term "parent" does not include a parent "in-law." The terms son or daughter do not include individuals age 18 or over unless they are "incapable of self-care".

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Incapable of self-care: Because of a mental or physical disability that limits one or more of the "major life activities" as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans with Disabilities Act (ADA).

Intermittent Leave: Taking leave in separate blocks of time for a single qualifying reason, or on a reduced leave schedule, reducing the employee's usual weekly or daily work schedule.

In Loco Parentis: Include those with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

Health Care Provider: Health care providers who may provide certification of a serious health condition include:

- Doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
- Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice under State law;
- Nurse practitioners, nurse-midwives, and clinical social workers authorized to practice under State law 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's benefits manager; and,
- A health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

Next of Kin of Service Member: In order to be eligible for military caregiver leave, an employee must be the spouse, adult son or daughter, parent, or loco parentis, but not parents-in-law. Also considered can be: blood relative with legal custody, siblings, grandparents, aunts and uncles, first cousins or a written designee by the service member.

Rolling Year: A rolling twelve (12) month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the Board will compute the amount of leave the employee has taken under this policy and subtract it from the twelve (12) workweeks of available leave. The balance remaining is the amount the employee is entitled to take at the time.

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Qualifying Exigencies: Available to a family member of a military member in the National Guard or Reserves. It does not extend to family members of military members in the regular Armed Forces.

Qualifying exigencies include:

- Issue arising from a covered military member's short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification;
- Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
- Making or updating financial and legal arrangements to address a covered military member's absence;
- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
- Taking up to five days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member;
- Any other event that the employee and employer agree is a qualifying exigency.

Serious Health Condition: means an illness, injury, impairment, or physical or mental condition that involves either:

1. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; **or**

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2. Continuing treatment by a health care provider, which includes:
 - a. A period of incapacity lasting more than three consecutive, full calendar 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 (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); **or**
 - ii. one treatment by a health care provider (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); **or**
3. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; **or**
4. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; **or**
5. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; **or**
6. 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.

Serious Injury or Illness: One that was incurred by a service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating.

Spouse: A husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides.