

Tennessee School Boards Association

Monitoring: Review: Annually, in February	Descriptor Term: Family and Medical Leave	Descriptor Code: 5.305	Issued Date:
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PURPOSE

To entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition.

ELIGIBILITY

Anyone who has been employed for at least twelve (12) months by the school system or anyone who has at least 1,250 hours of service (Hours used for leave, even FMLA leave, shall not be credited for service for purposes of FMLA eligibility¹) during the previous twelve month period.²

GENERAL PRINCIPLES

1. Any employee shall be granted, upon request, up to twelve (12) weeks unpaid leave for the birth or adoption of a child, ~~or the care of a child, spouse, or parent who has a serious health condition~~ or for qualifying exigencies arising out of the fact that the employee's spouse, child, or parent is on activduty, or has been notified of an impending call or order to active duty, in support of a contingency operation. (Any employee requesting leave due to pregnancy, childbirth, or adoption shall be granted up to four (4) months leave.)³
2. Any employee on maternity leave shall be permitted to use accumulated sick leave during the period of actual physical disability only. Otherwise, the maternity leave shall be unpaid leave. A teacher may use up to thirty (30) days of accumulated sick leave for the adoption of a child. If both adoptive parents are teachers, only one parent may request leave. Written verification from the adoption agency or other entity handling the adoption shall be required before the leave is granted.⁴
3. A physician's statement may be required by the director of schools when determining the period of actual physical disability.⁵
4. Request for leaves and extension of leaves shall conform to state law governing all leaves of absence.

QUALIFYING EXIGENCIES

Qualifying exigencies include:

Issues arising from a covered military member's short notice deployment (i.e., 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

1 by the military or family support or assistance programs and informational briefings sponsored
 2 or promoted by the military, military service organizations, or the American Red Cross that are
 3 related to the active duty or call to active duty status of a covered military member;

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 6 by the military or family support or assistance programs and informational briefings sponsored
 7 or promoted by the military, military service organizations, or the American Red Cross that are
 8 related to the active duty or call to active duty status of a covered military member;

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 10 Making or updating financial and legal arrangements to address a covered military member's
 11 absence;

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 13 Attending counseling provided by someone other than a health care provider for oneself, the
 14 covered military member, or the child of the covered military member, the need for which arises
 15 from the active duty or call to active duty status of the covered military member;

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 17 Taking up to five days of leave to spend time with a covered military member who is on short-
 18 term temporary, rest and recuperation leave during deployment;

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 20 Attending to certain post-deployment activities, including attending arrival ceremonies, reintegra-
 21 tion briefings and events, and other official ceremonies or programs sponsored by the military
 22 for a period of 90 days following the termination of the covered military member's active duty
 23 status, and addressing issues arising from the death of a covered military member;

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 25 Any other event that the employee and employer agree is a qualifying exigency.

26 **MILITARY CAREGIVER LEAVE**

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 29 An eligible employee who is a spouse, child, parent, or next of kin of a covered servicemember with a
 30 serious injury or illness shall be granted up to a total of 26 workweeks of unpaid leave during a "single
 31 12-month period" to care for the servicemember. A covered servicemember is a current member of the
 32 Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical
 33 treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary
 34 disability retired list, for a serious injury or illness. A serious injury or illness is one that was incurred by
 35 a servicemember in the line of duty on active duty that may render the servicemember medically unfit
 36 to perform the duties of his or her office, grade, rank, or rating. The "single 12-month period" for leave
 37 to care for a covered servicemember with a serious injury or illness begins on the first day the employee
 38 takes leave for this reason and ends 12 months later, regardless of the 12 month period established by
 39 the employer for other types of FMLA leave. An eligible employee is limited to a combined total of 26
 40 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period."

41 **RESTRICTIONS**

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 44 1. For foreseeable leave, the employee shall provide the director of schools with at least thirty (30)
 45 days written notice before the beginning of the anticipated leave.
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 47 2. The director may require that a request for leave be supported by certification issued by a health
 48 care provider with the following information:
 49 a. the date on which the serious health condition commenced;

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- b. the probable duration of the condition;
- c. the appropriate medical facts within the knowledge of the health care provider regarding the condition; and
- d. a statement that the eligible employee is needed to care for the son, daughter, spouse or parent and an estimate of the amount of time that such employee is needed.

3. If there is any reason to doubt the validity of the certification provided, the director may require, at the expense of the school system, an opinion of a second health care provider.

4. Once it has been established that the leave requested qualifies for FMLA, the director of schools/designee shall notify the employee within two (2) business days (absent extenuating circumstances) that —

Any leave taken pursuant to state leave statutes (paid vacation leave, personal leave, sick leave or worker's compensation) shall run concurrently with FMLA leave.⁶

The notice may be given orally or in writing. If the notice is oral, it shall be confirmed in writing, no later than the following pay day.⁷

5. Intermittent Leave - When a licensed employee requests foreseeable leave for planned medical treatment and the employee would be on leave for greater than 20% of the total number of working days in the period during which the leave would extend, the school may require that such employee elect either to take the leave for periods of a particular duration, not to exceed the duration of the planned medical treatment or to transfer temporarily to an available alternative position offered by the school system for which the employee is qualified, and that has equivalent pay and benefits and better accommodates recurring periods of leave.

6. Period Near the End of an Academic Term (*Professional employees*) - If leave is taken more than five (5) weeks prior to the end of the term, the director of schools may require the employee to continue taking leave until the end of the term if the leave is at least three (3) weeks of duration and the return of employment would occur during the three (3) week period before the end of the term.

If the leave is taken five (5) weeks prior to the end of the term, the director of schools may require the employee to continue taking leave until the end of the term if the leave is greater than two (2) weeks duration and the return to employment would occur during the two (2) week period before the end of the term.

7. Spouses employed by the same employer are limited to a combined total of 26 workweeks in a "single 12-month period" if the leave is to care for a covered servicemember with a serious injury or illness, and for the birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.

REQUIREMENTS OF THE BOARD

1. The employee shall be restored to the same position of employment or an equivalent position with no loss of benefits, pay or other terms of employment.

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2. The employee shall be kept under any group health plan for the duration of the leave.

3. The Board may recover the premium paid under the following conditions:

- a. the employee fails to return from leave after the period of leave has expired.
- b. the employee fails to return to work for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the control of the employee.

Legal References:

- 1. *Hinson v. Tecumseh Products Co.* 234 F.3d 1268, 6th Cir.(2000)
- 2. Federal Family and Medical Leave Act 1993
- 3. TCA 49-5-702; TCA 4-21-408
- 4. TCA 49-5-710
- 5. TCA 49-5-704
- 6. 29 CFR § 825.208
- 7. OP Tenn. Atty Gen 94-006 (Jan 13, 1994);
Plant v. Morton International, Inc 212 F. 3d 929, 6th Cir. (2000)

Cross References:

- Sick Leave 5.302
- Long Term Leaves 5.304