

Tennessee School Boards Association

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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, 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 active duty, 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 servicemember'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 servicemember;
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5 Military events and related activities, such as official ceremonies, programs, or events sponsored
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 servicemember;
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10 Making or updating financial and legal arrangements to address a covered servicemember's ab-
11 sence;
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13 Attending counseling provided by someone other than a health care provider for oneself, the
14 covered servicemember, or the child of the covered servicemember, the need for which arises
15 from the active duty or call to active duty status of the covered servicemember;
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17 Taking up to 15 days of leave to spend time with a covered service member who is on short-term
18 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 servicemember's active duty
23 status, and addressing issues arising from the death of a covered servicemember;
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25 Any other event that the employee and employer agree is a qualifying exigency.
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27 **MILITARY CAREGIVER LEAVE⁸**

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29 An eligible employee who is a spouse, child, parent, or next of kin of a covered servicemember or cov-
30 ered veteran with a serious injury or illness shall be granted up to a total of 26 workweeks of unpaid
31 leave during a "single 12-month period" to care for the covered servicemember or covered veteran. A
32 covered servicemember is a current member of the Armed Forces, including a member of the National
33 Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in out-
34 patient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. A
35 covered veteran is an individual who was a member of the Armed Forces at any time during the period
36 of 5 years preceding the date of the medical treatment, recuperation, or therapy that has a serious injury
37 or illness who is currently receiving medical treatment, recuperation, or therapy. The calculation of this
38 5-year period shall not include the interval of October 28, 2009 through March 8, 2013.
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40 For covered servicemembers, a serious injury or illness is one that was incurred by a servicemember in
41 the line of duty on active duty that may render the servicemember medically unfit to perform the duties
42 of his or her office, grade, rank, or rating. For covered veterans, a serious injury or illness is defined as:
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- 44 (i) A continuation of a serious injury or illness that was incurred or aggravated in the line of
45 duty while on active duty that rendered the veteran unable to perform the duties of the
46 the veteran's office, grade, rank, or rating;
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- 48 (ii) a physical or mental condition for which the veteran has received a U.S. Department of
49 Veterans Affairs Service Related Disability Rating (VASRD) of 50 percent or higher,

1 and such VASRD rating is based, in whole or in part, on the condition precipitating the need
 2 for military caregiver leave;
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4 (iii) a physical or mental condition that substantially impairs the veteran's ability to secure or
 5 follow a substantially gainful occupation by reason of a disability or disabilities related to
 6 military service, or would do so absent treatment; or
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8 (iv) an injury, including a psychological injury, on the basis of which the veteran has been
 9 enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance
 10 for Family Caregivers.
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12 The "single 12-month period" for leave to care for a covered servicemember or covered veteran with
 13 a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12
 14 months later, regardless of the 12 month period established by the employer for other types of FMLA
 15 leave. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-
 16 qualifying reason during the "single 12-month period."
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18 RESTRICTIONS

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- 20 1. For foreseeable leave, the employee shall provide the director of schools with at least thirty (30)
 21 days written notice before the beginning of the anticipated leave.
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- 23 2. The director may require that a request for leave be supported by certification issued by a health
 24 care provider with the following information:
 25
 - 26 a. the date on which the serious health condition commenced;
 - 27 b. the probable duration of the condition;
 - 28 c. the appropriate medical facts within the knowledge of the health care provider regarding the
 29 condition; and
 - 30 d. a statement that the eligible employee is needed to care for the son, daughter, spouse or par-
 31 ent and an estimate of the amount of time that such employee is needed.
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- 33 3. If there is any reason to doubt the validity of the certification provided, the director may require,
 34 at the expense of the school system, an opinion of a second health care provider.
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- 36 4. Once it has been established that the leave requested qualifies for FMLA, the director of schools/
 37 designee shall notify the employee within two (2) business days (absent extenuating circumstances)
 38 that —
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40 Any leave taken pursuant to state leave statutes (paid vacation leave,
 41 personal leave, sick leave or worker's compensation) shall run concurrently
 42 with FMLA leave.⁶
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44 The notice may be given orally or in writing. If the notice is oral, it shall be confirmed in writing,
 45 no later than the following pay day.⁷
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- 47 5. Intermittent Leave - When a licensed employee requests foreseeable leave for planned medi-
 48 cal treatment and the employee would be on leave for greater than 20% of the total number of
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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 or covered veteran 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.
- 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 employe

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 § 825.207
- 7. OP Tenn. Atty Gen 94-006 (Jan 13, 1994);
Plant v. Morton International, Inc 212 F. 3d 929, 6th Cir. (2000)
- 8. 29 CFR § 825.127

Cross References:

- Sick Leave 5.302
- Long Term Leaves 5.304