

SMYRNA SCHOOL DISTRICT

POLICY

Section:	4000 Personnel	Office Responsible:	Human Resources
Policy:	4152 Family and Medical Leave/Paid Parental Leave		
Related Policies:			

I. Purpose

This Policy is intended to comply with the National Defense Authorization Act (NDAA) for FY 2008, the Family and Medical Leave Act of 1993 (the “FMLA”) as amended, the Healthy Delaware Families Act, the Department of Labor’s regulations implementing FMLA, and any applicable collective bargaining agreements, and shall be construed consistently with NDAA, FMLA and any applicable regulations.

II. Authority

Delaware Code, *Title 19 § 3701*

Delaware Code, *Title 14 § 1333*

III. Definitions

District: refers to the Smyrna School District.

12-Month Period: "a 'rolling' 12-month period measured backward" is 12-month period measured backward from the date an employee uses any family and medical leave. Under the "rolling" 12-month period, each time an employee takes family and medical leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12-months. The district shall uniformly apply this “rolling 12-month period measured backward” to all employees. Any change to the district’s selected application year shall be made consistently with FMLA standards.

Serious health condition: an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider as defined in the FMLA. Employees with questions about what illnesses are covered under this FMLA policy are encouraged to consult with the Superintendent’s office.

Academic term or term: the end of the 2nd marking period and the end of the school year. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employer could require the employee to stay out on leave until the end of the term.

Covered active duty:

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- a. duty during deployment of a member with the Armed Forces to a foreign country.
- b. duty during deployment of a reserve member of the Armed Forces to a foreign country or under a call or order to active duty in support of a contingency operation.

In loco parentis: an individual has day-to-day responsibilities to care for or financially support a child. The person standing in loco parentis is not required to have a biological or legal relationship with the child.

Parent: a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents-in-law.

Son or daughter: a biological, adoptive, step, or foster child, a legal ward, or a child of a person standing "in loco parentis" under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability. For Military Caregiver Leave-for Family Member's Serious Health Condition, "son" or "daughter" mean son or daughter on active duty or call to active duty status" as an employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or called to active duty status, and who is of any age.

Spouse: a husband or wife as defined in the state where the individual was married or including common law marriage or same sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States, if the marriage could have been entered into in at least one state.

Full-time employee: a full-time State pension eligible employee employed by a reorganized school district, charter school, or vocational school district for at least 12 consecutive months in a 9 month, 10 month, 11 month, or 12 month position requiring that the employee work 30 or more hours of work during a standard workweek.

Intermittent leave: leave taken in separate blocks of time due to a single qualifying reason. If an employee works less than 12 months in a year, and 60 workdays of paid parental leave cannot be taken due to the end of the school year, paid parental leave shall end on the last scheduled workday and resume on the first scheduled workday of the next school year. All other paid parental leave must be taken for 60 workdays.

Reduced Leave Schedule: a leave schedule that reduces the usual number of hours per workweek or hours per workday.

Multiple births/adoptions: more than one child is born from the same pregnancy, or more than one child who is 6 years old or younger is adopted through the same adoption process, or on the same date.

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Written notice: means written notice to the District's Director of Human Resources.

IV. Policy

A. Eligibility

Employees are eligible for unpaid family and medical leave ("FMLA leave") under this Policy if they have been employed by the Smyrna School District ("the district") for at least 12 months and have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the FMLA leave, which may or may not be consecutive, but only to the extent required by law.

Eligible employees are entitled to FMLA leave for one or more of the following reasons:

- For birth of a son or daughter of the employee, and to care for such newborn child.
- For placement with the employee of a son or daughter for adoption or foster care.
- To care for the employee's spouse, son or daughter, or parent with a serious health condition.
- Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.
- Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in the U.S. Armed Forces in support of a contingency operation; and
- To care for a covered service member with a serious injury or illness sustained in the line of duty if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

B. Amount of Leave

Unless otherwise required by law, the district will grant up to 12 weeks (60 working days) (26 weeks for certain service member family leave) of family and medical leave during any 12-month period to eligible employees. Except in the case of leave to care for a covered service member with a serious injury or illness, the district will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes FMLA leave, the district will compute the amount of FMLA leave the employee has taken during the prior 12 months and subtract such leave from the 12 weeks of available leave time. The balance remaining is the amount the employee is entitled to take at that time.

An eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a single 12-month period to care for a covered service member with a

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serious injury or illness. The "single 12-month period" in which the 26-weeks-of-leave-entitlement occurs is determined measured forward from the date an employee's first FMLA leave to care for the covered service member begins.

C. Notice by Employee

Eligible employees must provide no fewer than 30 days' notice before the date the FMLA leave is to begin where the need for the leave is foreseeable. However, if circumstances require leave to begin in fewer than 30 days, the employee must provide such notice as is practicable. If an employee fails to provide reason for the leave, the leave may be denied. While on leave, employees are requested to report periodically to the district regarding the status of the medical condition and their intent and expected date to return to work.

If an employee anticipates that leave will be needed based on planned medical treatment, the employee must make a reasonable effort to schedule the medical treatment, subject to approval of the employee's health-care provider, in a manner that does not unduly disrupt the district's operations.

If an instructional employee does not give required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the district may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the District may require the employee to delay the taking of leave until appropriate notice is provided.

D. Temporary Transfer

In the situation of a request for intermittent leave or leave on a reduced schedule, the district may temporarily transfer the employee to an alternate job with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job.

E. Notice by District

Upon receipt of notice form the employee of a need for an FMLA leave, the district will notify the employee of his or her obligations, including any certification requirement.

F. Certification

A request for medical leave must be supported by a written certification issued by the employee's health-care provider. Likewise, a request for family care leave must be supported by a written certification issued by the health-care provider of the family member.

The district may ask for certification of the serious health condition. The district will use the U.S. Department of Labor Form WH-380, the *Certification of Health Care Provider*, to obtain this certification. The employee should respond to this request within 15 days or provide reasonable explanation for the delay. Failure to provide

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certification may result in a denial of continuation of leave. The district will request medical certification in writing as part of the employer's response to an employee's request for leave.

The district reserves the right, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. A sufficient medical certification must specify what functions of the employee's position the employee is unable to perform so that the district can then determine whether the employee is unable to perform one or more essential functions of the position.

The district reserves the right to ask for a second opinion from a physician or facility of their choice. If the District requests a second opinion, the cost of the second opinion will be paid for by the district. To resolve a discrepancy between the first and second opinions, a third opinion will be required which will be mutually agreed upon by the employee and the district. The cost of a third opinion will be paid by the district and will be the final determination of the employee's condition. The district reserves its right to require subsequent re-certifications on a reasonable basis.

With respect to family leaves involving care for a covered family member or service member, the certification must include a statement that the employee is needed to care for the family member and an estimate as to the amount of time the employee is needed to care for the family member.

For requests for intermittent or reduced leave schedules, the certification shall also include the expected duration and schedule of the intermittent or reduced leave schedule.

G. Substitution of Paid Leave Time

FMLA leave is without pay except as set forth in the following paragraph. When permitted by the Act, an employee may elect to substitute available paid leave or disability leave to which he or she is entitled for all or any portion of the FMLA leave, provided also that the eligibility requirements for each form of such paid days off or leave are satisfied. In such a situation, whatever paid leave is taken will count against the allowable FMLA leave.

H. Group Health Coverage

Coverage under the applicable group health plan in effect on the day before the FMLA leave begins will be continued for the duration of allowed leave at the same level and under the same conditions that coverage would have been provided if the employee had not taken FMLA leave. If an employee is normally required to pay a

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portion of the group health benefit premiums, such an employee on FMLA leave is required to continue paying his or her portion of group health benefit premiums based upon a payment arrangement specified by the district. If an employee does not return to work after the employee's leave expires, for reasons other than the continuation, recurrence, or onset of a serious health condition of the employee or the employee's family, or any other circumstance beyond the control of the employee, the district will be entitled to seek reimbursement from the employee for any premiums it paid for maintaining coverage during the leave.

I. Instructional Employees

If an instructional employee begins leave more than five weeks before the end of an academic term, the district may require the employee to continue taking leave until the end of the term if:

- The leave will last at least three weeks, and
- The employee would return to work during the three-week period before the end of the term.

If an instructional employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of an academic term, the district may require the employee to continue taking leave until the end of the term if:

- The leave will last more than two weeks, and
- The employee would return to work during the two-week period before the end of the term.

If an instructional employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of an academic term, and the leave will last more than five working days, the district may require the employee to continue taking leave until the end of the term.

J. Return from Leave

When an employee returns from FMLA leave, the district will restore the employee to the position of employment held when the FMLA leave commenced, or to an equivalent position that includes equivalent employment benefits, pay, seniority, and other terms and conditions of employment. However, the District reserves the right to withhold restoration of employment when allowed by law. This may occur when, for example, an employee would not have otherwise been employed at the time reinstatement is requested. An employee's failure to notify the district of availability for work, an employee's failure to return to work when called by the district, or an

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employee's continued absence from work after leave expires may be deemed a voluntary termination of employment with the district.

K. Leave Requests

FMLA leave requests should be directed to the Human Resources office. The district will comply with applicable state law to the extent that such law provides greater family or medical leave rights than those of the Act. If a particular leave qualifies for both FMLA leave and leave under state law, the leave used counts against the employee's entitlement under both laws.

Paid Parental Leave for Birth or Adoption of a Child (Current Policy #4153)

***This will remain in effect until January 1, 2026**

Entitlement

- A full-time employee employed by a reorganized school district, charter school, or vocational school district for at least 12 months immediately prior to the date of the birth or adoption shall be entitled to 60 workdays of paid parental leave upon the date of the birth of a child of the employee, or upon the date of adoption by the employee of a child who is 6 years old or younger. The birth of a child, or adoption of a child, must have occurred on or after April 1, 2019. Multiple births/adoptions do not increase the length of paid parental leave.
- Paid parental leave is for the purpose of caring for and bonding with the child. If the employee is not caring for and bonding with the child, the employee is not eligible for paid parental leave. If, for whatever reason, the child is no longer in the care of the employee, the paid parental leave shall terminate.
- The entitlement to paid parental leave shall expire at the end of the 12-month period beginning on the date of the birth or adoption creating the entitlement to paid parental leave. If, for example, an employee entitled to paid parental leave takes 30 workdays of paid parental leave during this 12-month period, there will be no entitlement to take the remaining 30 workdays of paid parental leave subsequent to the expiration of the 12-month period following the birth or adoption creating the entitlement to paid parental leave. If an employee receiving paid leave terminates employment prior to the end of the 12-month period, there shall be no payment for unused paid parental leave.
- Paid parental leave cannot be taken on an intermittent basis (unless taken at the end of the school year) or be used to create a reduced leave schedule. Paid parental leave must be taken for a continuous block of time up to a maximum of 60 workdays.
- If two District employees are eligible for paid parental leave for the same birth or adoption, each of the employees is eligible for 60 workdays of paid parental leave. Paid parental leave for both employees ends at the expiration of the 12-month period beginning on the date of the birth or adoption.

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- Employees eligible for paid parental leave cannot use accumulated sick leave to extend paid parental leave upon the birth or adoption of a child beyond the 60 workdays of paid parental leave provided by Section 1333.

Non-Eligible Employees: Employees who are not eligible for paid parental leave may use accumulated sick leave upon the birth or adoption of a child pursuant to Section 1333(c).

Impact on FMLA Leave: Entitlement and STD: The use of paid parental leave, or the use of accumulated sick leave under § 1333(c), shall run concurrently with FMLA leave, and STD. If, for example, a full-time employee uses 60 workdays of paid parental leave, the use of the 60 workdays of paid parental leave will also result in the use of 60 workdays of FMLA leave. When the use of paid parental leave runs concurrently with STD, STD shall pay 75% of the employee's daily salary, and paid parental leave shall pay 25% of the employee's daily salary to equal 100% of pay. Utilization of STD does not extend an employee's paid parental leave.

Notice and Certification

- If an employee intends to take paid parental leave upon the birth of the employee's child, the employee shall provide the District written notice of intent to take paid parental leave at least 30 days' in advance of the expected date of birth. If an employee intends to take paid parental leave based upon the adoption of a child, the employee must provide written notice of intent to take paid parental leave at least 30 days in advance of the adoption, if the date of the adoption is foreseeable. If the date of the adoption is not foreseeable, the employee shall provide the District written notice of the date of adoption as soon as is practicable.
- If an employee requests paid parental leave based upon the birth or adoption of a child, the employee shall provide documentation of the birth or adoption within 30 days of the birth or adoption event, or as soon as documentation is available. The name of a legal parent must appear on the birth certificate, a legal document establishing paternity, or a legal document establishing adoption. Situations where a legal document cannot be provided at the time of birth or adoption, or within a reasonable time thereafter, will be considered on a case-by-case basis. Legal documents considered include a report of birth, a birth certificate, and an adoption order. The documents provided shall show the date of the birth or adoption age of the adopted child, and name of the parent(s). An employee's stepchild is not legally considered the child of the employee, unless the employee adopts the stepchild.

Unpaid Extended Leave of Absence: An employee may request an extended leave of absence without pay and without credit for experience toward tenure, salary computation, or pension eligibility or computation of up to one year.

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Additional Duties/Additional Leave: If an employee has accrued time for snow hours or the summer schedule bank prior to the start of paid parental leave, the employee may utilize such time as permitted by board policy. This time will not be counted as part of the employees 60 workdays of paid parental leave and the employee will receive one additional day of paid leave at the end of their scheduled leave for each day of snow hours or the summer schedule bank utilized.

Delaware Paid Leave – This section of the policy shall take effect on January 1, 2026

An employee is eligible if that employee works at least 1,250 hours in the most recent 12 months. The time period for eligibility does not have to be continuous. Those excluded are substitutes and regular part-time employees not expected to work at least 1,250 hours in a year.

The district complies with all applicable statutes and regulations governing leaves of absence. In addition to the Family Medical Leave Act, 29 U.S.C. § 2601 et seq., its implementing regulations, 29 C.F.R. Part 825, 14 Del. Code §1333 and any applicable Collective Bargaining Agreement, the District shall comply with the regulations set forth by the Delaware Department of Labor, Division of Paid Leave, in 19 Del. Admin. Code §1401 et. seq. regarding paid leaves of absence. The district reserves the right to deny any leave of absence which is not otherwise protected by law.

The district reserves all rights to revise or rescind this Section of the Policy if the Department of Labor, Division of Paid Leave, amends its regulations or if 19 Del. Admin Code §1401 et. Seq. is repealed.

Board Approval Acknowledged by:



Jonathan Snow, President
Smyrna School District Board of Education

Policy Actions

Adopted:

Revised: 8/19/2009

1/15/2025

11/12/2025