

DICKSON COUNTY BOARD OF EDUCATION

Monitoring: Review: Annually, in November	Descriptor Term: FAMILY AND MEDICAL LEAVE	Descriptor Code: 5.305 Rescinds 5.305:	Revised Date: 9-19-19 Issued: 10-24-13
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2 **PURPOSE**

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

8
9 Anyone who has been employed for at least twelve (12) months by the School System or anyone
10 who has at least 1,250 hours of service (hours used for leave, even if FMLA leave, shall not be
11 credited for service for the purposes of FMLA eligibility¹) during the previous twelve month
12 period shall be eligible to use FMLA Leave. 1²
13

14 **GENERAL PRINCIPLES**

15 An eligible employee shall be granted, upon request, up to twelve (12) weeks unpaid leave
16 during a fixed calendar year for the following reasons:

- 17 1. The birth of a child;
18 2. The placement of a child with the employee for adoption or foster care;
19 3. A serious health condition of the employee that makes the employee unable to perform
20 the essential functions of his or her job position;
21 4. The care of a spouse, child, parent, or next of kin of the employee who has a serious
22 health condition; or
23 5. Any qualifying circumstances arising out of the fact that a spouse, child or parent of the
24 employee is on covered active duty or has been notified of an impending call or order to
25 covered active duty in the Armed Forces.
26

27 Granting of leave under this policy shall be subject to, and in accordance with, the provisions of
28 applicable federal and state laws. An employee may substitute accrued paid leave for unpaid
29 time. Use of accrued paid leave shall run concurrently with and be counted toward the
30 employee's total period of FMLA leave.
31

32 **MATERNITY/PATERNITY LEAVE**

- 33 1. Relationship between FMLA leave and Tennessee Maternity Leave Act – FMLA leave
34 shall run concurrently with leave provided under the Tennessee Maternity Act, which
35 affords eligible employees leave for a period not to exceed four (4) months for the
36 adoption, pregnancy, childbirth, and nursing of a newborn child³
37 2. Teachers Leave – In accordance with state law, any teacher who goes on maternity or
38 paternity leave shall be allowed to use all or a portion of the teacher's accumulated sick
39 or annual leave for maternity or paternity leave purposes. In order to be eligible to use
40 sick leave, written request of the teacher accompanied by a statement from the teacher's
41 physician verifying pregnancy shall be submitted. Upon verification by a written
42 statement from an adoption agency or other entity handling an adoption, a teacher may
43 also be allowed to use accumulated leave for adoption of a child. If both adoptive parents

DICKSON COUNTY BOARD OF EDUCATION

1 are teacher employed by the district, however, only one (1) parent is entitled to use such
2 leave⁴

3
4 Spouses who are both eligible employees of the school district are limited to a combined
5 total of twelve (12) workweeks of FMLA leave in a single twelve (12) month period if
6 the leave is taken for the birth and care of a newborn child. For the placement of a child
7 for adoption or foster care, or for the care for a parent who has a serious health condition.
8 Under certain circumstances, spouses who share leave for the birth or adoption of a child
9 may be eligible for a limited amounts of additional leave for other qualifying FMLA
10 reasons. ⁵

11 **LEAVE FOR A SERIOUS HEALTH CONDITION⁶**

12 Eligible employees, upon request, shall be granted up to twelve (12) weeks of unpaid leave when
13 he/she is unable to work because of a serious health condition or to care for an immediate family
14 member with a serious health condition. Granting of such leave shall be subject to the provisions
15 of applicable federal and state laws. Employees shall contact Human Resources to determine if
16 the reason for leave qualifies as FMLA leave. If the leave is foreseeable, the employee shall give
17 thirty (30) days' notice. If the leave is not foreseeable, the employee shall notify Human
18 Resources as soon as practicable generally, either the same or next business day.
19

20 **LEAVE FOR MILITARY FAMILY MEMBERS**

21 Qualifying Exigency Leave⁷ - Eligible employees are entitled to up to twelve (12) work weeks of
22 leave because of any "qualifying exigency" arising out of the fact that the spouse, son, daughter,
23 or parent of he employee, as defined under the FMLA, is on active duty, or has been notified of
24 an impending call to active duty, or has been notified of an impended call to active duty status in
25 the Armed Forces,. Qualifying exigencies may include:

- 26 a) Issues arising from the service member's short notice deployment;
- 27 b) Military events and related activities (e.g. official ceremonies, support programs);
- 28 c) Making or updating financial and legal arrangements;
- 29 d) Attending counseling;
- 30 e) Taking up to fifteen (15) days leave to spend time with a covered service member who is
31 on short-term rest and recuperation leave during deployment; or
- 32 f) Attending post-deployment activities

33
34
35 Military Caregiver Leave⁸ - An eligible employee who is the spouse, son, daughter, parent, or
36 next of kin of a covered service member of covered veteran with a serious injury or illness is
37 entitled to up to twenty-six (26) work weeks of leave in a "single twelve (12) month period. "A
38 covered service member is a current member of the Armed Forces, including a member of the
39 National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is
40 otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious
41 injury or illness.

42
43 A covered veteran is an individual who was a member of the Armed Forces at any time during
44 the period for five (5) years preceding the date of the medical treatment, recuperation, or therapy
45 that has a serious injury or illness who is currently receiving medical treatment, recuperation or
46 therapy.

DICKSON COUNTY BOARD OF EDUCATION

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2 The “single twelve (12) month period” for military caregiver leave begins on the first day the
3 employee takes leave for this reason and ends twelve (12) months later. An eligible employee is
4 limited to a combined total of twenty-six (26) work weeks of leave to provide care for a covered
5 service member. The maximum of twenty-six (26) work weeks may include no more than
6 twelve (12) work weeks of leave that is taken for the birth and care of a newborn child, for the
7 placement of a child for adoption or foster care, for care of a parent who has a serious health
8 condition or for the employee’s own serious health condition.
9

10 **INTERMITTENT LEAVE⁹**

11 Eligible employees may take FMLA leave intermittently when medically necessary to care for a
12 seriously ill family member, because of the employee’s own serious health condition, or for the
13 care for a newborn, a newly adopted child or a newly placed foster care child. When a licensed
14 employee request foreseeable leave for planned medical treatment and the employee would be on
15 leave for greater than 20% of the total number of working days in the period during which the
16 leave would extend, the school district may require that such employee elect either to take the
17 leave for periods of a particular duration, not to exceed the duration of the planned medical
18 treatment, or to transfer temporarily to an available alternative position offered by the school
19 district for which the employee is qualified and that has equivalent pay and benefits and better
20 accommodates recurring periods of leave.
21

22 **RESTRICTIONS**

23 1. Notice Requirements

- 24 a. Employee Notice¹⁰ - For foreseeable leave, the employee shall provide the Director of
25 Schools with at least thirty (30) days written notice before the beginning of the
26 anticipated leave.
27 b. District Notice - Once it has been established that the leave requested qualifies for
28 FMLA, the Director of Schools/designee shall notify the employee within three (3)
29 business days (absent extenuating circumstances) that any leave taken pursuant to state
30 leave statutes (paid vacation leave, personal leave, sick leave or workers’ compensation)
31 shall run concurrently with FMLA leave.¹¹ The notice may be given orally or in writing.
32 If the notice is oral, it shall be confirmed in writing, no later than the following pay day.¹²
33

34 2. Certification Requirement¹³

- 35 a. The Director of Schools may require that a request for leave be supported by
36 certification issued by a health care provider with the following information
37 i. The date on which the serious health condition commenced;
38 ii. The probable duration of the condition;
39 iii. The appropriate medical facts within the knowledge of the health care
40 provider regarding the condition; and
41 iv. A statement that the eligible employee is needed to care for the son,
42 daughter, spouse or parent and an estimate of the amount of time that such
43 employee is needed.
44 b. If there is any reason to doubt the validity of the certification provided, the
45 Director of Schools may require, at the expense of the school district an opinion
46 of a second health care provider.

DICKSON COUNTY BOARD OF EDUCATION

3. Period Near the End of an Academic Term (Professional Employees)¹⁴

- a. 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) weeks period before the end of the term.
- b. 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 eth end of the term.

REQUIREMENTS OF THE BOARD¹⁵

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 employee.

¹ Hinson v. Tecumseh Products Co. 2000 U.S. App. LEXIS 26778, at *1—10(6th Cir. Oct 17, 2000)

²Federal Family and Medical Leave Act of 1993, 29 USCA § 2601, 2611-2619

³ TCA 49-5-702; TCA 4-21-408

⁴ TCA 49-5-710(a)(2), Public Acts of 2018, Chapter No. 907

⁵ 29 CFR § 825.120(a)(3)

⁶ 29 CFR § 825.113

⁷29 CFR § 825.126

⁸ 29 CFR § 825.124; 29 CFR § 825.127

⁹ 29 CFR §825.202

¹⁰ 29 CFR §825.302-825.304

¹¹ 29 CFR §825.207

¹² OP Tenn. Atty Gen 94-006 (Jan 13, 1994); Plant v. Morton International, Inc. , 212 F. 3d929, 932 (6th Cir. 2000)

¹³ 29 CFR §825.305-825.313

¹⁴ 29 CFR §825.602

DICKSON COUNTY BOARD OF EDUCATION

¹⁵ 29 USCA § 2614