

Update to Policy #31: FMLA Policy & Exhibits

(With parallel update to the Employee Handbook, FMLA Policy)

General Provisions

CWC Kansas City will provide Family and Medical Leave ("FMLA") to its eligible employees; ~~this policy is limited to any rights or benefits contained in the Family and Medical Leave Act (FMLA). The mandatory FMLA Notice is posted and provides all new employees with notices required by the U.S. Department of Labor on Employee Rights and Responsibilities under the Family and Medical Leave Act in Missouri.~~

~~The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.~~

~~If you have any questions, concerns, or disputes with this policy, you must contact Ed Ops, Paul Greenwood at paul@ed-ops.com in writing.~~

Eligibility

To qualify to take ~~twelve (12) weeks of~~ unpaid family or medical leave under this policy, employees of CWC Kansas City must meet all of the following conditions:

1. The employee must have worked for the ~~School company for have been employed~~ for at least twelve (12) months and,
2. Worked at least 1,250 hours during the 12 month period immediately prior to requesting leave

Qualifying Events

An employee may request leave for one or more of the following reasons:

1. Birth of a child ~~and to care for the newborn child;~~
2. ~~Adoption or foster placement of a child with the employee; for adoption or foster care;~~
3. ~~To bond with a child (leave must be taken within one (1) year of birth or placement);~~
4. To care for the employee's spouse, son, daughter or parent, if that person has a serious health condition (as defined below);
5. Employee's own serious health condition (as defined below) that prevents the employee from performing the job functions;
6. Because of a qualifying exigency (defined below) arising out of the fact that an employee's spouse, child, or parent is a covered military member on active duty or has been notified of an impending call or order to active duty status in the National Guard or Reserves in support of a contingency operation;
7. To care for a covered service member (defined below) with a serious injury or

illness when the employee is the spouse, son, daughter, parent or next of kin.

Amount and Type of Leave Taken

Except as provided below, an employee may take a total of twelve (12) weeks during any twelve-month period. The twelve-month period shall be measured backward from the date the employee begins using any FMLA leave. In the event of the birth, adoption or foster placement of a son or daughter, all leave must be completed within twelve (12) months after the birth, adoption or foster placement.

If both spouses work at CWC Kansas City and both are eligible for FMLA leave, they are authorized to take only a combined total of twelve (12) weeks during any one twelve-month period to care for a newborn or adopted child, a child placed with the employee for foster care, or a parent with a serious health condition for twelve (12) weeks.

An employee on FMLA leave has the option to use accrued paid sick leave at the beginning of any otherwise unpaid FMLA leave period. If an employee has exhausted his/her PTO leave, leave taken under FMLA shall be unpaid.

The receipt of sick leave pay or state disability insurance benefits will not extend the length of the FMLA leave. Sick pay accrues during any period of unpaid FMLA leave only until the end of the month in which unpaid leave began.

Intermittent or Reduced Leave

An employee may only take leave on an intermittent or reduced leave schedule when medically necessary. CWC Kansas City will require a certification, in the form described in the Required Certification and Reporting section below, to document the medical necessity of such intermittent leave.

Notification of Leave

If the need for FMLA leave is foreseeable, an employee requesting leave must provide at least 30 days advance notice to their supervisor. If such advance notice is not possible, the employee must give said notice as soon as possible, ordinarily within one to two working days of learning of the need for leave. When planning medical treatment, the employee should make a reasonable effort to schedule the treatment so that any corresponding leave will not unduly disrupt the operations of the school or classroom instruction.

Benefits and Return to Work

Employees taking FMLA leave will continue to accrue all benefits for which they are eligible that are provided by the school while on FMLA leave. CWC Kansas City will pay the employer's portion, if any, of such benefits. The employee will pay the same portion, if any, of such benefits as the employee paid before beginning the leave. The employee will be billed for the employee portion of the benefits and shall timely pay required premiums in order to maintain active benefits coverage.

CWC Kansas City may recover any health care benefit premiums paid on behalf of an employee if the employee does not return to work after the leave period has expired.

With the exception of paid vacation, personal, medical or sick leave required to be exhausted prior to taking unpaid leave, the employee's absence during leave will not alter benefits which the employee accrued before taking leave.

Upon return from leave, the employee is entitled to be reinstated to **a position equivalent ~~the same job or one nearly identical~~** to the one the employee held when he/she left on FMLA leave, with equivalent pay, benefits and other terms and conditions of employment. Upon proper notice, however, CWC Kansas City may deny reinstatement under this policy to an employee whose salary is within the highest 10% of the employees employed by the school ("key employee") if such denial is necessary to prevent substantial and grievous economic injury to the school's operation, as determined by the Board. Employees will be notified if they are considered a key employee, if there is an intention to deny reinstatement, and of their rights in such instances.

Required Certification and Reporting

CWC Kansas City requires that a request for leave due to a serious health condition be supported by a certification issued by the appropriate health care provider of the eligible employee or of the son, daughter, spouse or parent of the employee on a form to be provided by CWC Kansas City. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

This certification must include:

1. The date on which the serious health condition commenced;
2. The probable duration of the condition;
3. If the purpose of the leave is to care for a son, daughter, spouse or parent ("family member"), a statement that the employee is needed to care for the family member and the estimated amount of time needed for such care;
4. If the leave is due to the employee's own serious health condition, a statement that the employee is unable to perform his or her job functions, the likely duration of that inability and whether a need for leave is continuous or intermittent. The employer may require that the eligible employee obtain subsequent recertification on a reasonable basis as requested by the Board;
 - ~~a. Appropriate medical facts about the condition (a diagnosis is not required);~~
 - ~~b. Contact information of the health care provider, including name, address, telephone number, fax number, and type of medical practice / specialty.~~

CWC Kansas City, at its own expense, may obtain the opinion of a second health

care provider of CWC Kansas City's choice, if it should choose to do so. If a conflict exists between the opinion in the certification and the second opinion, CWC Kansas City may, at its own expense, obtain a third opinion from a health care provider upon which CWC Kansas City and the employee jointly agree. Such a third opinion as to the necessity for the leave is binding on both CWC Kansas City and the employee.

Upon an employee's return after leave for his/her own serious health condition, CWC Kansas City may require the employee to obtain certification from a health care provider that the employee is able to resume work.

CWC Kansas City may require an employee on FMLA leave to report periodically to their supervisor on the employee's status and intent to return to work.

Special Provisions

When an instructional employee or other key position (as defined below) essential to the function of the school seeks intermittent leave or leave on a reduced schedule in connection with a family or personal illness that would constitute at least 20% of the total number working days in the period during which the leave would extend, CWC Kansas City may require the employee to elect to take leave in a block (not intermittently) for the entire period or to transfer to an available alternative position within the school that is equivalent in pay, for which the employee is qualified, and which better accommodates the intermittent situation.

If the employee begins leave more than five weeks before the end of a semester, CWC Kansas City may require the employee to continue taking leave until the end of the semester if:

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

Definitions

1. Covered service member - is a 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 on the temporary retired list, for a serious injury or illness. A member of the Armed Forces would have a serious injury or illness if he or she has incurred an injury or illness in the line of duty while on active duty in the Armed Forces provided that the injury or illness may render the service member medically unfit to perform duties of the member's office, grade rank or rating.
2. Instructional employee or other key position - is an employee whose school leader function is to instruct or directly support instruction of students in a class, a small group or an individual setting or provide an essential function such as administration which would provide a disruption in the normal operations of the school.

3. Parent - a biological parent or one who acted in place of a parent when the employee was a child. The term "parent" does not include parent "in-law."
4. A qualifying exigency may include:
 - attending certain military events,
 - arranging for alternative childcare,
 - addressing certain financial and legal arrangements,
 - attending certain counseling sessions,
 - attending post-deployment reintegration briefings
5. Serious health condition - an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility or continuing treatment by a health care provider and has been duly documented by a health care provider, ~~as described below:~~
 - ~~a. Hospital Care~~

~~Such as inpatient care (i.e., overnight stay) in a hospital, hospice, or residential medical care facility, includes any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.~~
 - ~~b. Absence Plus Treatment~~ - A period of incapacity of more than three full consecutive days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
 - ~~i. Treatment two or more times (within 30 days of the first day of incapacity, unless extenuating circumstances exist) by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or~~
 - ~~ii. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider.~~
 - ~~c. Pregnancy~~ - Any period of incapacity due to pregnancy, or for prenatal care.
 - ~~d. Chronic Conditions Requiring Treatments~~ - A chronic condition which:
 - ~~i. Requires periodic visits (at least twice a year) for treatment by a healthcare provider, or by a nurse or physician's assistant under direct supervision of a healthcare provider;~~
 - ~~ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and~~
 - ~~iii. May cause episodic rather than continuing period of incapacity (e.g., asthma, diabetes, epilepsy).~~

~~e. Permanent/Long-term Conditions Requiring Supervision—A period of incapacity⁴ which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.~~

~~f. Multiple Treatments (Non-Chronic Conditions)—Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a healthcare provider, either from restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity⁴ of more than three full consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), or kidney disease (dialysis).~~

6. Son or daughter - a biological, adopted or foster child, a step-child, a legal ward or a child for whom the employee acts as a parent. The son or daughter must be under age 18 or, if the son or daughter is age 18 or older, he/she must be incapable of self-care on a daily basis due to a documented mental or physical disability.
7. Spouse - a husband or wife.