

FAMILY MEDICAL LEAVE

Procedures for Bethel School District #52

Federal vs. State Law

Both Federal and State laws contain provisions regarding leave for family illness. Federal regulations state an employer must comply with both laws; that the federal law does not supersede any provision of state law that provides greater family medical leave rights than those established pursuant to federal law and that state and federal leave entitlements run concurrently. Generally, employees will be deemed to be using leave pursuant to state law except in such cases where federal law provides greater benefits, for example, where an employee has exhausted the 12 weeks of leave, granted pursuant to state law, within the 12 month period.

Coverage

Federal law covers all public agencies, including school districts. State law covers school districts that employ 25 or more employees.

Eligibility

FMLA-Eligible Employee:

- Worked for Bethel the past 12 months; and
- Worked at least 1250 hours in the past 12 months.

OFLA-Eligible Employee:

- Worked for Bethel for at least 180 days immediately preceding the date leave begins; AND
- For qualifying event other than parental leave, worked an average of 25 hours per week during the 180 days.

In determining 25 hours average workweek, the district must count the actual hours worked using guidelines set out pursuant to the Fair Labor Standards Act.

Covered Family Members

FMLA-Eligible:

- Spouse, child, parent

OFLA-Eligible:

- Spouse, child, parent, parent-in-law, grandchild, grandparent, same-sex domestic partner.

“Child” means a biological, adopted or foster child, a stepchild, or a child for whom the employee has parental rights and duties defined by law or a child with whom the employee is or was in a relationship of “in loco parentis.” If over 18, the child must be “incapable of self-care due to mental or physical impairment as defined by ORS 659A.100(2)(d)”. For purposes of sick child leave only, child also includes child of employee’s same-sex domestic partner.

“Parent” includes the biological, adoptive or foster parent, or stepparent of the employee. Parent-in-law includes the biological, adoptive, or stepparent of the employee’s spouse or same-sex domestic partner or a person with whom the employee is or was in a relationship of “in loco parentis.”

Amount of Leave

FMLA

- 12 weeks per leave year for parental, medical and “qualifying exigency” leave.
- 26 weeks for Military Caregiver/Covered service member leave.

OFLA – 12 weeks per leave year, unless:

- Pregnancy-related disability exception;
- Parental/Sick-child exception

Serious Health Condition

“Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves:

1. Any period of incapacity of treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;
2. Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or
3. Continuing treatment by (or under the supervision of) a health care provider for a chronic or long term health condition that is incurable or so serious that if not treated would likely result in a period of incapacity of more than three calendar days;
4. Illness, disease or condition is terminal, requires constant care, and poses an imminent danger of death; or
5. Disability due to pregnancy, childbirth or prenatal care.

Purpose of Leave

Federal and state laws allow eligible employees to take leave for the following purposes:

1. Birth of the employee’s child (eligibility expires 12 months after the birth);
2. Placement of a child for adoption or foster care when the child is under 18 years of age or older than 18 if incapable of self-care (eligibility expires 12 months after placement);
3. Care of a family member with a serious health condition;

4. Employee's own serious health condition;
5. Qualifying Exigency Leave: Allowing family members time to deal with any qualifying exigency arising out of the fact that the spouse, son, daughter or parent of the employee is a covered military member on covered active duty, or has been notified of an impending call to covered active duty status in support of a contingency operation;
6. Injured Service Member Leave: Allowing an employee leave to care for a covered servicemember who is the employee's spouse, son, daughter, parent, or next of kin, who has been injured in the line of duty as a member of the Armed Forces;
7. Military Family Leave: Allowing leave for a spouse or domestic partner of a military personnel per each deployment of the spouse or domestic partner when the spouse or domestic partner has either been notified of an impending call to active duty, has been ordered to active duty, or has been deployed or on leave from deployment;
8. Additionally, state law allows employees to take leave for the care of a sick or injured child who requires home care but is not suffering from a serious health condition. The district is not required to grant leave for routine medical or dental appointments;

Paid/Unpaid Leave

Family leave under federal and state law is generally unpaid. For more information regarding using available paid leave please contact Nathan Voelsch in Human Resources.

Benefits such as sick leave and vacation will accrue while the employee is utilizing paid leave. However, when unpaid leave begins, accrual ceases.

Length of Leave

An eligible employee is entitled to a total of 12 workweeks of leave during a 12-month fiscal period. (The district's fiscal calendar is July 1 through June 30.) A husband and wife who are eligible and who both work for the district may only take a combined total of 12 weeks of leave if the leave is taken to care for a parent with a serious health condition or if the leave is for the birth of a child or the placement of a child for adoption or foster care.

In addition to the 12 workweeks of leave authorized, under state law a female employee may take an additional 12 workweeks of leave within any one-year period for an illness, injury or condition related to pregnancy or childbirth that disables the employee from performing her work duties. An employee who takes 12 workweeks of OFLA leave for parental leave may also take up to an additional 12 workweeks of sick child leave within the same year.

Parental leave must be taken in one interrupted period – unless the employer approves otherwise – and must be completed within 12 months of the birth, adoption or placement of the child. An exception

must be made to allow parental leave to effectuate adoption or foster placement of the child. Such leave need not be taken in one, uninterrupted period with any additional parental leave. The birth, adoption or foster placement of multiple children at one time entitles the employee to take only one 12-week period of parental leave.

An employee eligible for Military Caregiver Leave is entitled to a total of 26 work weeks of leave to care for a covered servicemember during a single 12-month period. The 12-month period begins when the Military Caregiver Leave begins.

Intermittent Leave and Alternate Duty

An employee may take leave intermittently or on a reduced leave schedule if the district and employee agree or when medically necessary. The district may require certification.

Intermittent leave or leave on a reduced schedule may be taken in increments of less than one full workday. An employee may take leave in increments of a day or more in one continuous block of time, as the family member's condition requires. Hourly employees may take leave in hourly increments under certain conditions.

Intermittent leave for school teachers is subject to special rules.

Continuation of Health Insurance Benefits

Under federal law, group health insurance benefits and premium payments must be continued on the same basis as coverage would have been provided and premiums paid if the employee had been continuously employed during the leave period. The district will continue to pay the district's contribution toward the employee's premiums. The employee will continue to pay the employee portion of premiums, if any. A 30-day grace period will be allowed for receipt of employee contributions. The district's obligation to maintain the employee's benefits will cease if the employee's contribution is more than 30 days late. The district will provide written notice that the premium payment is more than 30 calendar days late. Such notice will be provided within 15 calendar days before coverage is to cease. Coverage ends at the end of the 3-day grace period after the payment was due provided the 15-day notice has been provided.

Return to Work

After leave, granted under federal and state law, an employee generally is entitled to be returned to the same position the employee held when leave commenced or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment unless otherwise excepted by law.

If the leave was required for the employee's serious health condition, the district may require the employee to obtain and present certification from the health care provider that the employee is able to resume work.

Application

Under federal and state law, an employee shall provide the district at least 30 days notice prior to the leave date, if the need for leave is foreseeable based on planned medical treatment. The notice shall be written and include the anticipated start, duration and reasons for the requested leave. The employee must make a reasonable effort to schedule treatment, including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the district.

When an employee is able to give advance notice and requests leave, the district may request additional information to determine that the leave qualifies for designation as FMLA/OFLA leave. The district may designate the employee as provisionally on FMLA/OFLA leave until sufficient information is received to make a determination.

If advance notice is not possible, for example due to a change in circumstances or medical emergency, an employee is required to provide oral or written notice within 24 hours of commencement of the leave. The employee may designate a family member or friend to notify the district during that period of time. In either case, proper documentation must be submitted no later than three working days following the employee's return to work.

In cases where the serious health condition is not anticipated, an oral request confirmed in writing to the employer within three working days constitutes a written request.

Medical Certification

When the employee provides 30 or more days notice when applying for leave, the district may require the employee to provide medical documentation from the treating physician to support the request for the leave. The district will provide written notification to the employee within five working days of the leave request.

If the employee provides less than 30 days notice, the employee is required to submit such medical certification no later than 15 calendar days after receipt of the district's notification that medical certification is required.

The district shall notify the employee in writing that all requirements have been met and that leave is granted for the requested amount of time.

Fitness-for-Duty Certification

If the leave was required for the employee's own serious health condition, including intermittent leave, the district may require the employee to obtain and present a fitness-for-duty certification from the health-care provider that the employee is able to resume work. The certification will specifically address the employee's ability to perform the essential functions of the employee's job as they relate to the health condition that was the reason for the leave. If the district is going to require a fitness-for-duty certification upon return to work, the district must notify the employee of such requirement when the leave is designated as FMLA leave. The district is responsible for any co-pay or other out-of-pocket costs

incurred by the employee in providing certification. Failure to provide the fitness-for-duty certification may result in a delay or denial of reinstatement.

Notification

Any notice required by federal and state laws explaining employee rights and responsibilities will be posted in all staff rooms and the district office. Additional information may be obtained by contacting Human Resources.

Record Keeping

The district will maintain all records as required by federal and state laws including dates leave is taken by employees, identified separately from other leave; hours/days of leave; copies of general and specific notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave.

Medical documentation will be maintained separately from personnel files as confidential medical records.

Workers' Compensation Coordination

An employee who qualifies for leave for both worker's compensation and FMLA purposes cannot be required by the employer to return to a light duty position as long as the employee still has FMLA leave time remaining. Alternatively, the employee can accept the light duty assignment, but retain the right to return to his or her former position (or an equivalent position) for the balance of the 12-week FMLA leave entitlement.

The fact that workers' compensation leave may qualify as FMLA leave does not allow an employee to choose to receive employer paid leave benefits in lieu of or in addition to workers' compensation benefits.

Leave related to Victims of Domestic Violence/Sexual Assault/Stalking

The district shall allow an eligible employee to take reasonable leave for any of the following reasons:

1. To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, sexual assault or stalking.
2. To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or stalking of the eligible employee or the employee's minor child or dependent.
3. To obtain or assist a minor child or dependent in obtaining counseling from a licensed mental health professional related to an experience of domestic violence, sexual assault or stalking.

4. To obtain services from victims services provider for the eligible employee or the employees minor child or dependent.
5. To relocate or take steps to secure an existing home to ensure health and safety of the eligible employee or the employee's minor child/dependent.

"Eligible employee" means an employee worked an average of more than 25 hours per week for a covered employer for at least 180 days immediately before the date the employee takes/requests the leave.

The district may limit the amount of leave, if the employee's leave creates an undo hardship on the district.

The employee shall give the district reasonable advanced notice of their intent to take leave unless giving advance notice is not feasible.

The district may require the employee to provide certification that:

1. The employee or minor child/dependent is a victim of domestic violence, sexual assault or stalking; and
2. The leave is taken for one of the identified purposes identified in ORS 659A.272.

All records and information kept by the district regarding an eligible employee's leave including the fact that the employee has requested or obtained leave are confidential and may not be released without the express permission of the employee, unless otherwise required by law.