

# Shelby County Board of Education

4038

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## FAMILY AND MEDICAL LEAVE

### I. PURPOSE

To entitle eligible employees to take reasonable job-protected leave for the birth of a child, adoption or foster care placement of a child and to bond with that child; the serious health condition of the employee or an immediate family member; qualifying circumstances resulting from a service member being on or notified of an impending call to active duty; or to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin.

### II. SCOPE

This policy applies to all eligible employees.

### III. DEFINITION

Spouse - a husband or wife including an individual in a same-sex or common law marriage that either (1) was entered into in a State that recognizes such marriages or, (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

### IV. POLICY STATEMENT

It is the policy of the Shelby County Schools (SCS), in accordance with the Family and Medical Leave Act (FMLA) to grant eligible employees unpaid job-protected leave. At the discretion of the District, paid leave (i.e., vacation and sick) may be substituted for unpaid leave taken under FMLA.

### A. ELIGIBILITY

Anyone who has been employed for at least twelve (12) months by SCS and who has at least 1,250 hours of service during the previous twelve month period.

## GENERAL PRINCIPLES

1. Any employee who has satisfied the eligibility requirement as stated above shall be granted, upon request, up to twelve (12) weeks unpaid leave during a *rolling* twelve (12) month period. A rolling twelve (12) month period shall be measured backwards from the date an employee uses any FMLA. Such leave may be used for the following reasons:
  - a. The birth of a child;
  - b. The placement of a child with the employee for adoption or foster care;
  - c. To bond with a child (leave must be taken within 1 year of the child's birth or placement)
  - d. A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her positions;
  - e. The care of spouse, son, daughter, or parent of the employee who has a serious health condition; and
  - f. Any qualifying circumstances arising out of the fact that the spouse, or a son, daughter, parent or next of kin of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.
2. The eligible spouse, parent, son, daughter, or next of kin of a covered service member with a serious injury or illness shall be granted a total of twenty-six (26) weeks of unpaid leave in a single twelve (12) month period.

### Exceptions for Spouses Employed by the District

- a. Leave for birth, adoption or foster care placement of a child and to bond with that child; or a serious health condition  
Spouses employed by the District shall be entitled to a combined total of twelve (12) work weeks of unpaid leave for the birth of a child, adoption or foster care placement of a child and to bond with that child; to care for the child after the birth; or a serious health condition of the parent of the employee.
- b. Leave to care for a covered injured or ill service member  
Spouses employed by the District shall be entitled to a combined total of twenty (26) work weeks of leave to care for a covered injured or ill service member. The employee must be the spouse, son, daughter, parent, or next of kin of the covered service member.

**B. MATERNITY/PATERNITY LEAVE (birth, adoption, foster care placement and care of a newly born or placed child)**

In accordance with applicable federal and state laws, an eligible employee shall, upon request, be granted leave for the birth, adoption, foster care placement, and bonding with such child.

1. FMLA

Federal law allows an eligible employee up to twelve (12) work weeks of job-protected unpaid leave for the birth, adoption or foster care placement of a child, and bonding with the newly born or newly placed child. At the discretion of the District, an employee may substitute accrued paid leave (i.e., vacation, sick, or personal (teachers)) for unpaid FMLA. Use of accrued paid leave shall run concurrently with and be counted toward the employee's total period of FMLA leave. Granting of leave shall be in accordance with provisions of the Family Medical Leave Act.

2. Tennessee Maternity Leave Law – T.C.A. 4-21-408

State law allows any eligible employee (eligible for leave under Tennessee Maternity Leave Law) leave for a period not to exceed four (4) months for the adoption, pregnancy, childbirth and nursing of a newborn. At the discretion of the District, an employee may substitute accrued paid leave for unpaid time. Use of accrued paid leave shall run concurrently with and be counted toward the employee's total period of job-protected FMLA leave. Granting of leave shall be in accordance with provisions of applicable federal and state laws.

In accordance with the law, the District shall not be liable for failure to reinstate an employee at the end of the leave period if the employee's job position is of the nature that the District, after making reasonable efforts, is unable to temporarily fill the position.

3. Teachers Sick Leave -T.C.A. 49-5-710 (applies only to teachers as defined by law)

Any teacher, in accordance with State law, 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 sick leave pursuant to T.C.A. 49-5-710. Written verification from the adoption agency or other entity handling the adoption shall be required before the leave is granted. A physician's statement may be required by the Superintendent or his/her designee when determining the period of actual physical disability. Requests for leaves and extensions of leaves shall conform to state law governing all leaves of absence.

### **C. ILLNESS - PERSONAL and IMMEDIATE FAMILY**

In accordance with federal law, an eligible employee, upon request, shall be eligible for medical leave when he/she is unable to work because of a serious health condition or to care for an immediate family member with a serious health condition. A serious health condition, as defined by law, is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

#### **1. Personal Illness**

An eligible employee who requests leave because he/she is unable to work due to a serious health condition shall be granted up to twelve (12) weeks of unpaid FMLA leave. At the discretion of the District, an employee may substitute accrued paid leave for unpaid FMLA. Use of accrued paid leave shall run concurrently with and be counted toward the employee's total period of FMLA leave. Granting of leave shall be in accordance with provisions of applicable federal and state laws.

#### **2. Illness of Immediate Family Member (non-military)**

An eligible employee who requests leave to care for an immediate family member (includes spouse, parent, or child) with a serious health condition shall be granted up to twelve (12) weeks of unpaid FMLA leave. At the discretion of the District, an employee may substitute accrued paid leave for unpaid time. Use of accrued paid leave shall run concurrently with and be counted toward the employee's total period of FMLA leave. Granting of leave shall be in accordance with provisions of applicable federal and state laws.

#### ***Certified Employees***

Eligible employees working in a position that requires a valid certificate issued by the Tennessee Department of Education may substitute accrued personal days for unpaid FMLA leave. Use of accrued paid leave shall run concurrently with and be counted toward the employee's total period of FMLA leave. Granting of leave shall be in accordance with provisions of applicable federal and state laws.

#### **3. Covered Service Member**

Special leave provisions for eligible employees to care for a covered service member or veteran are available under FMLA (see Military Leave section of this policy).

## **D. MILITARY LEAVE**

In accordance with applicable federal and state laws, leave shall be granted to qualifying FMLA-eligible employees for qualifying circumstances and for the care of a military family member. At the discretion of the District, an employee may substitute accrued paid leave for unpaid time. Use of accrued paid leave shall run concurrently with and be counted toward the employee's total period of FMLA leave. Granting of leave shall be in accordance with provisions of applicable federal and state laws.

An employee whose position requires a teacher's license who requests a leave to visit a spouse, child or parent deployed for military duty out of the country who has been granted rest and recuperation leave shall be granted such leaves in compliance with the policy on Military Leave (4022).

### **1. Qualifying Circumstances**

Leave may be granted for any qualifying circumstance arising out of the fact that the spouse, or a son, daughter, or parent of the employee, as defined under FMLA, is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. Qualifying circumstances include:

- a. Issues arising from a covered military member's short notice deployment for a period of seven (7) days from the date of notification;
- b. Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
- c. Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
- d. Making or updating financial and legal arrangements to address a covered military member's absence;
- e. Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;

- f. Taking up to five (5) days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
- g. Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of ninety (90) days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member;
- h. Any other event that the employee and employer agree is a qualifying circumstance.

## 2. Military Caregiver Leave

An eligible employee who is a spouse, child, parent or next of kin (nearest blood relative, other than the spouse, parent, son, or daughter) of a covered service member or covered veteran with a serious injury or illness shall be granted up to a total of twenty-six (26) work weeks of unpaid leave during a “single 12 month period” to care for the service member or covered veteran.

- a. A covered service member is a current 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 otherwise on the temporary disability retired list, for a serious injury or illness.
- b. A covered veteran was a member of the Armed Forces (including a member of the National Guard or Reserves); was discharged or released under conditions other than dishonorable; and was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him or her.
- c. A serious injury or illness is one that was incurred by a service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating. The “single 12 month period” for leave to care for a covered service member or covered veteran with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established by the employer for other types of FMLA leave. An eligible employee is limited to a combined total of twenty-six (26) work weeks of leave for any FMLA-qualifying reason during the “single 12-month period.”

## **E. INTERMITTENT LEAVE**

Eligible employees may take FMLA leave intermittently because of the employee's serious health condition, to care for a seriously ill family member, or for the birth, adoption or foster care placement of a child and for bonding with such child. FMLA

requests for intermittent leave for the birth, adoption or foster care placement of a child and for bonding with such child are subject to the approval of the District.

Eligible employees requesting intermittent foreseeable FMLA leave shall be required to comply with guidelines established by the District so as not to unduly disrupt the District's operations. The District reserves the right to temporarily transfer an employee requesting intermittent leave to an alternative job with equivalent pay and benefits that better accommodate recurring periods of leave.

At the discretion of the District, an eligible employee may substitute accrued paid leave for unpaid time. Use of accrued paid leave shall run concurrently with and be counted toward the employee's total period of FMLA leave. Granting of leave shall be in accordance with provisions of applicable federal and state laws.

## **F. RESTRICTIONS**

### **1. Notice Requirement**

- a. Employee Notice (Foreseeable Circumstances for Leave) - In cases of foreseeable circumstances for leave, the employee shall provide the Superintendent or his/her designee with at least thirty (30) days written notice before the beginning of the anticipated leave.
- b. District Notice - Once it has been established by the District that the leave requested qualifies for FMLA, the Superintendent or his/her designee shall notify the employee within five (5) business days (absent extenuating circumstances) that
  - (1) any leave taken pursuant to state leave statutes (paid vacation leave, personal leave, or sick leave) shall run concurrently with FMLA leave.
  - (2) the notice may be given orally or in writing. If the notice is oral, it shall be confirmed in writing no later than the following pay day.

### **2. Healthcare Provider Certification Requirement - The Superintendent or his/her designee may require that a request for leave be supported by certification issued by a health care provider with the following information:**

- a. the date on which the serious health condition commenced;
- b. the probable duration of the condition;
- c. the appropriate medical facts within the knowledge of the health care provider regarding the condition; and
- d. a statement that the eligible employee is needed to care for the son, daughter, spouse or parent and an estimate of the amount of time that such employee is needed.

If there is any reason to doubt the validity of the certification provided, the Superintendent or his/her designee may require, at the expense of the school system, an opinion of a second health care provider.

3. Intermittent Leave - When an instructional employee requests foreseeable leave for planned medical treatment and the employee would be on leave for greater than 20% of the total number of 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.

4. Period Near the End of an Academic Term (Instructional Employees) - If leave is taken more than five (5) weeks prior to the end of the term, the Superintendent or his/her designee 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 Superintendent or his/her designee 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) weeks period before the end of the term.

## **G. REQUIREMENTS OF THE BOARD**

1. The eligible 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, except where otherwise provided by law.
2. The eligible employee shall be kept under any group health plan for the duration of the leave and such coverage shall continue on the same terms as if he/she had continued to work with normal contributions to the cost of the health insurance premiums.
  - a. If paid leave is substituted for FMLA leave, the share of the employee's group health premium shall be through payroll deduction.
  - b. If the leave is unpaid, the employee shall be responsible for payment of the normal employee portion of the insurance premiums in accordance with guidelines established by the District.
3. The Board may recover the group health plan 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.



**Limitations to District Obligation to Maintain Health Benefits and to Restore an Employee**

In accordance with federal law, except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) and for key employees, the District's obligation to maintain health benefits during leave and to restore the employee to the same or equivalent employment under FMLA ceases under specific circumstances in reference to maintenance of employee benefits (29 CFR 825.209) and limitations on an employee's right to reinstatement (29 CFR 825.216). Such limitations include but are not limited to when:

1. the employment relationship would have terminated if the employee had not taken FMLA leave (*e.g.*, if the employee's position is eliminated as part of a nondiscriminatory reduction in force and the employee would not have been transferred to another position);
2. an employee informs the District of his or her intent not to return from leave (including before starting the leave if the employer is so informed before the leave starts); or
3. the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the 12-month period.

**IV. RESPONSIBILITY**

A. The office responsible for human resources is responsible for administering this policy.

B. The office responsible for employee benefits is responsible for establishing a payment schedule for payment of premiums, collecting the premiums and for sending notification of delinquent payments.

C. Any questions concerning this policy should be addressed to the office responsible for human resources.

D. The Superintendent is responsible for ensuring that this policy is followed.

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Legal References:

1. Federal Family and Medical Leave Act 1993
2. T.C.A. 49-5-702
3. T.C.A. 4-21-408
4. T.C.A. 49-5-710
5. T.C.A. 49-5-704
6. 29 CFR 825.08
7. OP Tenn. Atty. Gen. 94-006 (January 13, 1994)

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Cross References: