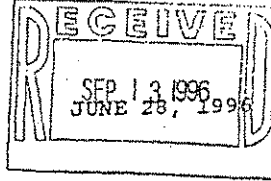


PRIORITY

NEW YORK CITY BOARD OF EDUCATION
DIVISION OF HUMAN RESOURCES
65 COURT STREET
BROOKLYN, NEW YORK 11201



PERSONNEL MEMORANDUM NO. 54 , 1995-96

*REISSUED TO PRINCIPALS ON AUGUST 28, 1996

TO: COMMUNITY SCHOOL BOARD PRESIDENTS, ALL SUPERINTENDENTS, EXECUTIVE DIRECTORS AND HEADS OF OFFICES

FROM: HOWARD S. TAMES *Howard S. Tames*
EXECUTIVE DIRECTOR

SUBJECT: AMENDMENT OF PROCEDURES OUTLINED IN PERSONNEL MEMORANDUM NO. 2, 1993-94 CONCERNING THE FAMILY AND MEDICAL LEAVE ACT OF 1993

Personnel Memorandum No. 2, 1993-94, outlined the benefits and eligibility requirements for leaves of absence under the Family and Medical Leave Act (FMLA) of 1993. This Act became effective on August 5, 1993, for employees not covered by collective bargaining and expanded to include pedagogical and administrative employees covered by collective bargaining on February 5, 1994. The purpose of this memorandum is to describe the benefits and eligibility requirements of the Act and provide instructions on how central responsibility centers and community school districts are required to review and approve, where appropriate, employee leave application requests.

Employees who are eligible for a greater benefit in any of the categories outlined in this memorandum, as provided for by collective bargaining agreement or Board of Education policy, will continue to be eligible for such benefit. However, FMLA leave runs concurrently with an employee's regular leave entitlement. It is not intended as a benefit to be added on to an employee's leave entitlement.

FMLA Leave

An eligible employee is entitled to up to twelve (12) weeks (i.e., 60 work days, not including weekends, holidays or scheduled work closings) in a twelve month period. The twelve week period includes both paid and unpaid leave. Payroll secretaries/timekeepers will be responsible for monitoring FMLA usages and ensuring that entitlements are not exceeded. The 12-month period in which the 12 weeks of leave entitlement occurs is a "rolling" 12-month period measured backward from the date any FMLA leave is to be used. Under this method of leave calculation, each time the employee is to take FMLA leave the leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee used four weeks beginning February 1, 1995, four weeks beginning June 1, 1995 and four weeks beginning December 1, 1995, the employee would not be entitled to any additional leave until February 1, 1996. However, on February 1, 1996 the employee would be entitled to four weeks of leave, on June 1, 1996 the employee would be entitled to an additional four weeks, etc.

FMLA Categories and Definitions

Serious Personal Health Condition

Leave to receive care for the employee's own serious health condition is covered under FMLA. A serious health condition is a physical or mental condition that involves inpatient care; or involves a period of incapacity resulting in absence from work, school, or other regular daily activities for more than three (3) calendar days and also includes continuing treatment by or under the supervision of a health care provider; or continuing treatment by or under the supervision of a health care provider for a chronic condition that is so serious that if untreated, would likely result in a period of incapacity of more than three (3) calendar days. Examples of a serious health condition include heart attacks, most cancers, strokes, chronic conditions such as asthma, other severe respiratory conditions, serious injuries, etc. Prenatal care is also included.

A health care provider includes doctors of medicine or osteopathy authorized to practice medicine or surgery, podiatrists, dentists, clinical psychologists, optometrists, chiropractors in certain instances, nurse practitioners, nurse midwives, clinical social workers and Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts.

Maternity/Child Care, Adoption, Foster Care

Leave may be granted before the actual date of the birth of a child. An expectant mother may take FMLA leave for prenatal care or if her condition makes her unable to work. Care for a newborn child or a child who has been adopted or received into foster care is also covered, but must be taken within one (1) year of the birth or placement of the child.

Care of Ill Family Member

Leave may be granted for the care of an employee's seriously ill spouse, parent or child who is either under age 18 or who is age 18 or older and incapable of self care because of a mental or physical disability. Leave taken for the serious health condition of a spouse, child or parent also covers a common law spouse (but not a domestic partner), adopted or foster child, legal ward, stepchild, child for whom the employee stands in loco parentis or person who stood in loco parentis for the employee.

Eligibility Requirements

Categories of Staff Covered

- Instructional staff (including PPT's), UFT paraprofessionals, supervisors, education administrators, school psychologists, curriculum specialists and counselors. Per diem substitute teachers and substitute special education paraprofessionals are not normally eligible for FMLA leave unless they satisfy the hours requirement listed below.
- Administrative staff regardless of civil service status (i.e., permanent, provisional, non-competitive) or pay status (annual or hourly). Section 220 mechanics (e.g. carpenters) are also covered.
- Hourly non-competitive staff including DC 37 paraprofessionals, school lunch and school security staff provided they satisfy the service and hours requirements listed below.

Length of Service and Hours Requirements

All categories of staff listed above must have worked for a total of at least twelve (12) months as of the date the leave commences. The twelve months need not be consecutive. For purposes of determining whether intermittent/occasional/casual employment qualifies as "at least 12 months" 52 weeks is deemed to equal 12 months. If an employee is maintained on payroll for any part of a week, the week counts as a week of employment. This would also include an employee using sick leave or who is out on workers' compensation.

Employees must have worked at least 1,250 hours over the twelve (12) month period immediately preceding the start of the leave. Full-time instructional staff meet this requirement under special provisions of the Act covering local school districts. Part-time staff, including hourly paraprofessionals, school lunch staff and administrative hourly employees must, as a minimum eligibility requirement, meet this hours requirement to be eligible for FMLA leave.

Documentation to Support FMLA Leave

Serious Personal Health Condition

An employee is required to present medical documentation to support request for FMLA leave when a serious personal health condition is involved. Such documentation must include the date the serious health condition commenced, the probable duration of the condition, the diagnosis, the regimen of treatment prescribed, a statement that the

employee is unable to perform any of the essential functions of the position.

Documentation should be requested at the time the employee requests leave or in the case of unforeseen leave, soon after the leave commences. Documentation must be provided within fifteen (15) calendar days from the date of the request. Failure to provide such documentation may result in the denial of the leave until certification is provided.

Maternity/Child Care, Adoption, Foster Care

An employee is required to present documentation to support a request for maternity/child care, adoption or foster care. In the case of maternity leave, a doctor's note is required documenting the individual's condition. Individuals requesting childcare must provide appropriate documentation attesting to the birth, adoption or foster care of the child. Time off in connection with adoption or foster care, such as court appearances, is also covered under FMLA.

Care of Ill Family Member

Medical documentation must be provided indicating the relationship to the employee, the family member's physical or mental health condition and that the individual is incapable of self care. Incapable of self care means that the individual requires active assistance or supervision to provide daily self care in three or more "activities of daily living" (ADL) or "instrumental activities of daily living" (IADL). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, etc.

Intermittent FMLA Leave

Intermittent Leave for Personal or Relative's Health Condition

Leave taken for the employee's own serious health condition or to care for a covered relative's serious health condition may be taken on an intermittent or reduced leave schedule when medically necessary and when the duration and schedule of the leave satisfies the medical necessity requirement. However, the employee must attempt to schedule leave so as not to disrupt a school or organization's operations.

If an employee requests intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment, including a period of recovery from a serious health condition, the responsibility center can require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position shall require compliance with any applicable collective bargaining agreement, federal law (such as the Americans with Disabilities Act), and State law.

Special Provisions for Intermittent Leave for Instructional Staff

Special rules also apply to leaves requested by individuals employed in an instructional capacity where leaves are foreseeable based on a planned medical treatment and the employee would be on leave for greater than twenty percent (20%) of the total number of working days in the school term during which the FMLA leave would extend. In such cases, the community school district or equivalent organization may require the employee to take leave for periods of a particular duration or may transfer the employee temporarily to an alternate position which would better accommodate recurring periods of leave and which has equivalent pay and benefits.

Utilization of Annual Leave (Administrative Staff) and Cumulative Absence Reserve (Instructional Staff) as Part of FMLA Leave

Administrative (Non-Pedagogical) Staff

Appropriate paid annual leave and sick leave balances must be used concurrently with FMLA leave and counted against the twelve (12) week FMLA entitlement. For instance, all paid sick leave must be used and counted against the 12-week FMLA leave entitlement if absence is due to the employee's own serious health condition. If all sick leave balances have been exhausted and annual leave is used due to the employee's own serious health condition, the annual leave used shall also be counted against the FMLA entitlement.

Compensatory time balances of administrative employees must also be used and counted against the FMLA entitlement. Similarly, all paid annual leave and compensatory time must be used and counted as FMLA leave if the absence is for any other FMLA qualifying purpose. After all leave balances have been exhausted, any leave that is advanced (i.e., borrowing of annual/sick leave) for either the employee's own serious health condition or other FMLA reasons will be counted against the employee's FMLA entitlement.

Instructional Staff and Use of Cumulative Absence Reserve Time

Cumulative Absence Reserve (CAR) must be applied against the FMLA entitlement as appropriate and in accordance with existing policy and procedure governing the use of CAR time. For example, a teacher requesting FMLA for maternity and subsequent childcare can draw down on CAR balances in accordance with existing regulations. For regular substitutes, appropriate CAR time must also be counted as part of the leave request.

Special Provisions for Instructional Staff

The FMLA makes special provisions for leaves which would be taken near the conclusion of a school term by employees serving in an instructional capacity for a purpose other than their own serious health condition. If an eligible employee begins leave more than five (5) weeks prior to the end of a school term, the community school district or equivalent organization may require the employee to continue taking leave until the end of the term if the leave is of at least three (3) weeks duration and the return to employment would occur during the three (3) week period before the end of the term.

A community school district or equivalent organization may similarly require an employee whose leave commences less than five (5) weeks prior to the end of the term to continue taking leave if the leave is greater than two (2) weeks duration and the return to employment would occur during the two (2) week period before the end of such school term. Similarly, if the leave would commence less than three (3) weeks prior to the end of the term and is greater than five (5) working days, the community school district or equivalent organization may require the employee to take leave until the end of such term.

Continued Health Insurance Coverage

Group health insurance coverage must be maintained for an employee on FMLA leave on the same terms as if the employee had continued to work. Prior to the expiration of regular health coverage, responsibility centers, community school districts and schools must follow existing procedures for maintaining health coverage for the balance of unpaid leave of absence as SLOAC coverage by completing and filing Form EB1054, Health Benefits Report/Inquiry, with the Bureau of Health and Welfare, 65 Court Street, Room 301, Brooklyn, New York 11201.

The Reason(s) for Submission section dealing with "FMLA Leave Coverage" on the EB1054 form must be used for this purpose. The start and end dates of the unpaid portion of the leave must be noted. Copies of appropriate documentation attesting to the approval of the leave must be attached. Health plan premiums paid by the City during the period of unpaid leave may be recovered from the individual if the employee fails to return to work. In connection with FMLA, responsibility centers, community school districts and schools must similarly complete an EB-1054 to restore regular coverage when the employee returns to active status.

Notification Requirements

Responsibility of Employee

When the need for FMLA leave is foreseeable, an employee must give at least 30 days advance notice before the leave begins. If such notice is not practicable, or if the need for leave is unforeseen, the employee is ordinarily required to give notice of at least one or two work days when the need for leave becomes known to the employee. Such notice may be oral.

Responsibility of Financial Management Center

Once an individual has requested that leave be taken under FMLA, the Financial Management Center (FMC), district office or school is responsible for providing written notice to the employee that the leave has been designated as FMLA leave. If the employee does not indicate that leave is being taken under FMLA but the leave requested falls under an eligible category, the employee must be informed that it is being designated as FMLA. The attached sample letter (Attachment A) may be used for this purpose.

Processing FMLA Leaves and Intermittent Absences for Employees Covered by the Employee Information System (EIS)

Long Term FMLA Leave (More than 20 Days)

Long term absences of 20 days or more for eligible employees utilizing FMLA should be processed as leaves of absence. Approved leaves of absence are entered by the FMC or district office through the Table Organization option in the Employee Information System.

For annualized pedagogues, UFT paraprofessionals, family paraprofessionals, and hourly non-competitive employees FMLA leave codes have been established as follows:

2FJ	--	Maternity
2FD	--	Child Care
2FF	--	Care of Sick Family Member
2FH	--	Health Restoration

For annualized substitute pedagogues, FMLA leave codes for long term absences of more than 20 days have been established as follows:

6FJ	--	Maternity
6FD	--	Child Care
6FF	--	Care of Sick Family Member
6FH	--	Health Restoration

Short Term FMLA Absences (Less than 20 Days)

Short term FMLA absences are processed at the school. Based on existing leave policy, this may be with or without charge to CAR sick leave. Depending upon the type of absence (e.g., related to maternity/childcare, care of sick family member, or health), the payroll secretary or timekeeper will identify the absence as chargeable to an existing appropriate CAR or sick leave event code or as absence without pay. This code must be entered into the EIS timekeeping system.

When the timekeeping option is expanded to include FMLA processing, specific FMLA codes will be circulated as part of general instructions to the field. Intermittent FMLA absences for eligible employees should be charged to the employee's leave balance, where appropriate.

Return to Work from FMLA Leave

An employee who returns from FMLA leave is entitled to be restored to the same or equivalent position, with the same pay, benefits, and working conditions as he/she had prior to the leave. FMLA leave is not considered a break in service for the purpose of pay and benefits.

Role of Responsibility Centers in Reviewing FMLA Leaves

Responsibility centers are accountable for reviewing and, where necessary, forwarding FMLA leave requests in accordance with the attached chart.

(Attachment B). Responsibility centers, community school districts and schools must also insure that the following actions have taken place:

- Eligibility requirements have been met for requests approved at the local level.
- Appropriate supporting documentation attesting to the validity of the leave is attached to the Family and Medical Leave Act form.
- Written notification of FMLA leave approval has been sent to the employee. The employee requesting the leave has properly completed the appropriate Request for Leave under the Family and Medical Leave Act form (Attachment C, D, or E). If the employee did not request the leave under FMLA but the reason for the leave is covered under FMLA, the employee must be notified that it is being included under FMLA.
- Once the leave has been approved, an EB 1054 form must be completed and forwarded to the Bureau of Health and Welfare, as described above, to continue health coverage. A second EB 1054 must be submitted to restore regular coverage upon an employee's return to active service.
- A 9902 has been completed and attached to the leave form for all H-Bank staff.
- Verification that the FMLA portion of the leave does not exceed the amount of days that can be taken in a 12 month period.
- A Confidential Medical Report and Medical Evaluation form has been submitted to the Medical Bureau, where appropriate.

Mandatory Posting of Notice

Attached is a notice entitled "Your Rights under the Family and Medical Leave Act of 1993" published by the United States Department of Labor (Attachment F). The FMLA requires that this document be posted conspicuously where it can be seen by employees and applicants for employment.

Questions on FMLA Leave

Any questions regarding FMLA leave may be referred to:

Pedagogical Employees

Division of Human Resources
Office of Pedagogical Personnel
65 Court Street, Room 605
Brooklyn, New York 11201
1-718-935-2835

Administrative Employees

Division of Human Resources
Office of Support Services
65 Court Street, Room 505
Brooklyn, New York 11201
1-718-935-2282

Health and Welfare Coverage

Division of Human Resources
Office of Support Services
Bureau of Health and Welfare
65 Court Street, Room 301
Brooklyn, New York 11201
1-718-935-2828

Your cooperation is greatly appreciated.

HST/SDH/sdh

Attachments

SAMPLE FMLA NOTIFICATION TO EMPLOYEE

TO: (employee)
 (title) (Soc. Sec. #)

FROM: (Name of appropriate office representative)

SUBJECT: Request for Leave Counted Under the Family and Medical Leave Act

DATE: _____

On (date) , you notified us of your need to take leave of absence due to the following:

- The birth of your child or the placement of a child with you for adoption or foster care.
- Maternity related disability.
- A serious health condition that makes you unable to perform the essential functions of your job.
- A serious health condition affecting your (spouse, parent, child) for whom you are needed to provide care.

You notified us that you require this leave beginning on (date) and that you expect the leave to continue until (date) . If the request is approved, it will be counted against your annual Family and Medical Leave Act leave entitlement. Where necessary, you will be required to provide appropriate documentation to validate the leave request within 15 days, if you have not already done so.

You have the right under FMLA to apply for up to 12 weeks of leave for the reasons listed above. During the period of approved leave, your health benefits will continue under the same conditions as if you continued to work and you must be reinstated to the same or an equivalent job with the same pay and benefits on your return from leave. However, if you fail to return to work for a reason other than a serious personal health condition or due to circumstances beyond your control, you may be required to reimburse the Board of Education for the health insurance premiums paid on your behalf during your FMLA leave.

You may be required to present a fitness for duty certificate prior to being restored to active service. If such certification is required but not received, it may delay your return to work.

Your cooperation is greatly appreciated.

c: Employee FMLA Leave File

JUNE 28, 1996

Family and Medical Leave Act of 1993

Application Chart

Staff Category

Approval Level

Pedagogical Staff

Community School District or
Equivalent Organization

UFT District Paraprofessionals

Community School District or
Equivalent Organization

Annual Administrative Employees
Hourly Administrative Employees
DC 37 Paraprofessionals
UFT High School Paraprofessionals
Hourly School Lunch Employees
Hourly School Security Employees
Section 220 Mechanics

Division of Human Resources
Attn: Sheldon D. Hychman
65 Court Street, Room 504
Brooklyn, New York 11201

UFT Citywide Paraprofessionals

Citywide Special Education