

FEDERALLY MANDATED FAMILY AND MEDICAL LEAVE

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This policy entitles an employee to up to 12 weeks unpaid leave per year, except that if an employee is entitled to paid leave under any other policy, the employee shall be required to take any required paid leave, unless a negotiated agreement provides the employee a choice.

- I. Eligibility for leave - to be eligible for leave under this policy, an employee shall have been employed for at least 12 months and shall have worked at least 1,250 hours during the 12-month period preceding the commencement of the leave.
- II. Length of leave - an eligible employee shall be entitled to a combined total of 12 weeks leave per year under the circumstances specified in this policy.
 - A. Spouses, partners in a civil union and/or domestic partners who both are employed by the District in the same school and/or department shall be entitled to a total of 12 weeks of leave, rather than 12 weeks each, per year for reasons (A), (B), (C) and/or (E) specified in the following paragraph.
 - B. An eligible employee who is a spouse, son, daughter, parent or next of kin of a covered service member with a serious injury or illness incurred or aggravated in the line of duty on active duty shall be entitled to a total of 26 weeks of leave during a single 12-month period to care for the covered service member.

The single 12-month period shall begin on the first day the employee takes leave for this reason and shall end 12 months later. During that 12-month period, the eligible employee is entitled to a combined total of 26 weeks of leave under this policy. Only 12 weeks of the 26 week total may be for a FMLA-qualified reason other than to care for a covered service member.

Spouses who are both employed by the District shall be entitled to a total of 26 weeks in a single 12-month period if the leave is to care for a covered service member with a serious injury or illness, or a combination of caring for a covered service member and reasons (A), (B), (C) and/or (E) below.

- III. Reasons for taking leave - leave may be taken in five situations:

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- A. For the birth and for the first-year care of the employee's child;
- B. For the placement of a child with the employee for adoption or foster care;

[Note concerning leave for birth, adoption or foster care: Entitlement for child care leave shall end after the child reaches age one or 12 months after adoption or foster placement. Leave to care for a child shall include leave for a step-parent or person in loco parentis (one acting in the place of the parent).]

- C. When the employee is needed to care for the employee's spouse, partner in a civil union, domestic partner, parent or child who has a serious health condition.
- D. When the employee is unable to perform the functions of the position because of the employee's own serious health condition; or
- E. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is on covered active duty in the Armed Forces or has been notified of an impending call or order to covered active duty in the Armed Forces.

The Superintendent is directed to develop procedures to implement this policy which are consistent with law.

LEGAL REF.: Family Medical Leave Act 29 U.S.C. § 2601 et. seq.
29 C.F.R 825 et. seq.
Colorado Family Care Act C.R.S. 8-13.3-201 et seq.

NOTE: This law provides that the District shall not be in violation of other federal laws such as those governing the District's responsibility to educate children with disabilities solely as a result of an eligible employee taking family medical leave.

CROSS REFS.: GCAB, Staff Personal/Emergency/Legal/Religious Leave
GCCAG, Staff Leave of Absence without Pay
GDC, Support Staff Leaves and Absences

AURORA PUBLIC SCHOOLS

APS Code: GDCCF

Adopted September 1998

Revised November 2007

Revised November 2012

Revised December 2013

Revised August 2014

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GDCC, Support Staff Maternity/Paternity/Parental Leave
Master Agreement

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- I. Calculation of the 12-Month Period - the 12-month period during which the 12-week leave entitlement occurs shall be a "rolling" 12-month period measured backward from the date that the employee uses any leave counted against the leave entitlement under this policy.

- II. Advance Notice
 - A. Leave based upon planned medical treatment of the employee or of the employee's spouse, partner in a civil union, domestic partner, child or parent: The employee is responsible to schedule planned medical treatment so as not to unduly disrupt the operation of the District (subject to approval of the health care provider of the patient). The employee shall provide at least 30 days' notice prior to the date the leave is to begin or if this is not possible, notice as soon as practicable.

 - B. Leave based upon birth, adoption, foster placement: Where the leave is foreseeable, the employee must provide at least 30 days' notice prior to the date that the leave is to begin; if such notice is not capable of being given, then the employee shall give notice as soon as practicable.

 - C. Where good cause exists, the notice requirement may be waived, but otherwise the leave may be denied until the 30-day requirement is fulfilled.

- III. Accrued paid leave should be used first. Under circumstances qualifying for leave under this policy, the District shall have the right, subject to any portion of a negotiated agreement with an association representing a group of employees to the contrary, to require that the employee first use paid leave before taking unpaid FMLA leave, and such paid leave shall count against the employee's 12-week FMLA leave entitlement.

When requesting the leave, the employee will be asked to indicate whether the leave is one which is covered under the FMLA.

- IV. Medical Certifications
 - A. Generally, upon request, employees shall be required to submit, in a timely manner, (15 calendar days unless not practicable to do so) medical certification from the treating health care provider supporting the leave request by an employee where the

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leave is based upon either the employee's own medical condition or that of a qualifying family member.

The District shall advise the employee that such certification will be required when the employee requests the leave and shall also advise the employee of the consequences of failure to provide such a certification.

- B. Content of medical certification: Medical certifications shall be in the form of exhibit GDCCF-1-E, fully completed. Whenever a medical certification is found to be incomplete, the District will notify the employee and provide the employee a reasonable opportunity to ensure completion.
- C. Second and third opinions: If the District has reason to doubt the validity of the medical certification provided by the employee's medical provider, it may require the employee to obtain a second opinion, at the District's expense, from a health care provider selected by the District so long as the doctor is not one employed on a regular basis by the District. If the first and second opinions differ, the District may require that a third medical opinion be obtained by the employee, again at the District's expense, from a doctor selected in good faith by both parties. This third opinion shall control.

The employer may require subsequent recertification on a reasonable basis.

- D. Medical certifications of fitness for duty: If the leave has been taken because of the employee's own serious illness, the District may require that a physician certify that the particular condition for which the leave was taken has been resolved and that the employee is fit to return to work.

V. Maintenance of Benefits While on Leave

- A. Generally, the District shall maintain coverage under any group health or dental insurance plan for any employee who is granted an approved leave of absence under this policy for the duration of the leave. Such coverage shall be maintained at the same level and under the same conditions as coverage would have been provided if the employee were not on leave. The District reserves the right to seek

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reimbursement, as allowed by law, for any portion of this benefit actually paid for by the District in the event that an employee elects not to return to work.

Employees on unpaid leave do not accrue benefits, such as seniority or paid leave while on such leave.

When it becomes known to the District that an employee will not be returning to work, or the period of FMLA leave is exhausted, or the employee terminates employment, (for example, by failing to return from leave) whichever comes first, the District's obligation to provide these benefits shall cease and the employee's right to continue under the District's group health insurance plans will be covered by the Cobra Law.

- B. Payment of premiums while on leave: The employee shall remain responsible for payment of that portion of the health and dental insurance premium that is ordinarily paid by the employee while the employee is not on leave. In the case of paid leave, the employee's share of premiums shall be deducted from paychecks in the usual manner; where the leave is unpaid, the employee's portion of any premium shall be due by the first day of each month during the time of leave.
- C. Failure to make premium payments: If an employee on leave under this policy fails to make timely payment of the employee share of the insurance premiums, the employee's insurance coverages for which payments have not been made will cease when payment is more than 30 days late.
- D. Recovery of premiums paid by the District: Where the employee fails to return to work after taking unpaid leave under this policy, the District shall be entitled to reimbursement for all premiums paid on the employee's behalf, unless the failure to return from leave is due to circumstances beyond the employee's control. Such circumstances shall include the continuation, recurrence or onset of a serious health condition which would entitle the employee to leave under the policy. In such cases, the District may request a medical certification where applicable. To the extent allowable by law, the District may reimburse itself for premiums paid by means of deduction from employee leave payoffs or other sums otherwise due the employee.

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VI. Intermittent Leave and Leave on a Reduced Schedule

Such leave shall be available in the case of medically related leave for the care of a spouse, partner in a civil union, domestic partner, child or parent, or where the employee is unable to perform the functions of the position because of her/his own serious health condition. Such leave shall not be available without District consent for birth, adoption or foster care of children. Calculation of intermittent leave and leave on a reduced schedule shall be by time actually taken, with only portions of a day counted against the leave entitlement where applicable.

- A. Possible temporary job transfer to accommodate intermittent leave or reduced leave schedule.
1. Qualified non-teaching employees: In cases where intermittent or reduced leave is being requested by a non-teaching employee for a leave to care for a spouse, child or parent, or because of the employee's own serious health condition, if the leave is foreseeable based upon planned medical treatment, the District may require that the employee transfer temporarily to an available alternative position. However, the employee must be qualified for the position, the pay and benefits of the position must be equivalent to the employee's usual position and the temporary position must better accommodate recurring periods of leave than the employee's usual position.
 2. Teaching employees: In the case of intermittent or reduced leave requested by an employee whose principal function is to teach and instruct students, (teachers, but not paraprofessionals or counselors) if the leave is foreseeable based on planned medical treatment and if the leave would involve the employee being absent for more than 20 percent of the total working days during the period during which the leave would extend, then the District can require the employee to elect either: 1) to take the leave in a block that is not longer than the duration of the planned treatment rather than taking leave intermittently; or 2) to transfer temporarily to an available alternative position, provided that the employee is qualified for the position, the pay and benefits of the position are equivalent to the employee's usual position and the temporary

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position better accommodates recurring periods of leave than the employee's usual position.

VII. Return from Leave

- A. Generally, upon return from leave, the employee shall be restored to an equivalent position though not necessarily the same position, so long as that position carries with it equal pay, benefits and conditions of employment.
- B. Return near the end of the semester by an employee whose principal function is to teach and instruct students (teachers, but not paraprofessionals or counselors):
 - 1. In the case of a leave of any kind under this policy beginning more than five weeks prior to the end of the academic term the District may require that the leave be taken to the end of the term, if:
 - a. The leave is of at least three weeks' duration; and
 - b. The employee would return during the three weeks prior to the end of the term.
 - 2. In the case of a leave of any kind under this policy other than sick leave based upon the employee's own illness beginning less than five weeks before the end of the term, the District may require that the leave be taken to the end of the term if:
 - a. The leave is greater than two weeks long; and
 - b. The employee would return during the two weeks prior to the end of the term.
 - 3. In the case of a leave of any kind under this policy other than sick leave based upon the employee's own illness beginning less than three weeks before the end of the term, the employer may require that the leave be taken to the end of the term if the leave is greater than five working days.
- C. Return from Leave Resulting in Substantial Economic Injury: If the employee on leave is a salaried employee and is among the highest paid 10 percent of District employees and keeping the job open for the employee would result in substantial

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economic injury to the District, the employee may be denied reinstatement. However, the District must notify the employee of the intent to deny reinstatement at the time economic hardship occurs and allow the employee to elect not to return to work after receiving the notice.

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Definitions

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- A. **SERIOUS HEALTH CONDITION** means an illness, injury, impairment or physical or mental condition that involves:
1. Inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility;
 2. A period of incapacity requiring absence from work of more than three days and involving continuing treatment by a health care provider;
 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; or
 4. Prenatal care.
- B. That **THE EMPLOYEE IS UNABLE TO PERFORM THE FUNCTIONS OF THE POSITION** means that the health care provider finds that the employee either cannot work at all or that the employee is unable to perform one or more of the essential functions of the position.
- C. That **THE EMPLOYEE IS “NEEDED TO CARE” FOR A QUALIFYING FAMILY MEMBER MEANS:**
1. The District believes that on the basis of information provided by the employee the necessary showing has been made; or
 2. A health care provider has certified either that the employee is needed to care for a qualifying family member or that such care would be beneficial to the qualifying family member. It may also include situations in which the qualifying family member's need for care is intermittent and where an employee is required occasionally to fill in for regular care providers, or where a qualifying family member must make arrangements for changes in care.
- D. **INTERMITTENT LEAVE** means sporadic, interrupted or periodic leave for the same condition or situation in which leave days are spread out over a period of time on a non-consecutive basis.

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- E. **LEAVE ON A REDUCED SCHEDULE** means leave taken in which the number of hours worked per day is reduced.
- F. **PARENT** means biological parent of the employee or one who stood *in loco parentis* to an employee whether or not there was a legal relationship; i.e., anyone who took the place of the biological parent.
- G. **SON OR DAUGHTER** means biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing *in loco parentis* who is less than 18 years of age or is 18 or more and incapable of self-care because of physical or mental disability.
- H. **SPOUSE** means husband or wife.
- I. **DOMESTIC PARTNER** or domestic partnership identifies the personal relationship between individuals of the same gender who are living together and sharing a common domestic life together but are not joined in any type of legal partnership, marriage or civil union.
- J. **PARTNERS IN A CIVIL UNION** is defined as a relationship established by two unmarried adults, regardless of gender, that entitles them to receive the benefits and protections and to be subject to the responsibilities of spouses.
- K. **FOSTER CARE** means 24-hour care for children instead of, and away from, the child's parent or guardian, and requires involvement of the State of Colorado or other governmental entity.

**CERTIFICATION OF HEALTH CARE PROVIDER
FAMILY AND MEDICAL LEAVE ACT OF 1993**

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1. Employee's Name _____

2. Patient's Name (if different from employee) _____

3. The attached sheet describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the patient's condition qualify under any of the categories described? If so, please check the applicable category.

(1)____(2)____(3)____(4)____(5)____(6)____ or none of the above_____

4. Describe the medical facts which support your certification, including a brief statement as to how medical facts meet the criteria of one of these categories.

5a. State the approximate date the condition commenced and the probable duration of the condition (and also the probable duration of the patient's present incapacity, if different).

5b. Will it be necessary for the employee to work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in Item 6 below)? If yes, give probable duration.

5c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

6a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments.

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and intervals between such treatments, actual or estimated dates of treatments, if known, and period required for recovery, if any.

6b. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments.

6c. If a regimen of continuing treatment by the patient is required under your supervision, provide a

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general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment).

7a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind?

7b. If unable to perform some work, is the employee unable to perform any one or more essential functions of the employee's job (the employee or the employer should supply you with information about the essential job function)? If yes, please list the essential functions the employee is unable to perform.

7c. If neither a. nor b. applies, is it necessary for the employee to be absent from work for treatment?

8a. If leave is required to care for a family member of the employee, does the patient require assistance for basic medical or personal needs or safety, or for transportation?

8b. If not, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?

8c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need.

Signature of Health Care Provider

Type of Practice

Date

Telephone Number

Address

To be completed by the employee needing family leave to care for a family member:

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State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

Employee Signature

Date

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A "serious health condition" means illness, injury, impairment or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

- a. A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
- i. treatment two or more times by a health care provider, or by a nurse, nurse practitioner, or physician's assistant under direct supervision of a health care provider, or by a provider of health care 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 the health care provider.

3. Pregnancy

Any period of incapacity due to pregnancy, or for prenatal care.

4. Chronic Conditions Requiring Treatments

A chronic condition which:

- a. requires periodic visits for treatment by a health care provider, or by a nurse, nurse practitioner, or physician's assistant under direct supervision of a health care provider;
- b. continues over an extended period of time (including recurring episodes of a single underlying condition); and
- c. may cause episodic rather than a continuing period of incapacity (i.e., asthma, diabetes, epilepsy, etc.).

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5. Permanent/Long-Term Conditions Requiring Supervision

A period of incapacity 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.

6. Multiple Treatment (Non-Chronic Condition)

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 health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), kidney disease (dialysis).

REQUEST FOR FAMILY/MEDICAL LEAVE

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Date: _____

To: (Employee's Name)

From: Director, Employee Relations

Info: (Supervisor)

Subject: Request for Family/Medical Leave

On _____ (date), you notified the District you need to take leave due to (check appropriate item):

___ a. The birth of your child, or the placement of a child with you for adoption or foster care; or

___ b. A serious health condition affecting your (check one): ___ spouse, ___ partner in a civil union, ___ domestic partner, ___ child, ___ parent; or

___ c. A serious health condition that makes you unable to perform the essential functions of your job; or

___ d. A qualifying exigency of a service member on covered active duty in the Armed Forces. (Check one): ___ spouse, ___ son, ___ daughter, ___ parent.

You notified the District that you need this leave beginning on _____ (date) and that

you expect this leave to continue until on or about _____ (date).

Except as explained below, under the Family and Medical Leave Act you have a right to up to 12 weeks of unpaid leave in a 12-month period for the reason listed above. Your health benefits will continue during that leave under the same conditions as if you continued to work, and you will be reinstated to the same or an equivalent position on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond

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your control, you may be required to reimburse the District for its share of health insurance premiums paid on your behalf during your leave.

This is to inform you that (check appropriate items, explain where indicated):

1. You are ___ Eligible ___ Not Eligible for leave under the FMLA;
2. The requested leave ___ Will ___ Will Not be counted against your FMLA leave;
3. You ___ Will ___ Will Not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by _____ (at least 15 days after you were notified of requirement) or we may delay the start of your leave until the certification is submitted.
4. We ___ Will ___ Will Not require that you substitute any accrued paid leave for unpaid FMLA leave.
- 5a. If you normally pay a portion of the premiums for your health insurance, those payments will continue during the period of FMLA leave, as will the District's portion of those premiums. Arrangements for payment of your portion have been discussed with you and it is agreed that you will make premium payments as follows: (i.e., continued deduction from monthly paychecks, last day of each month, etc., whatever specifically covers the agreement with the employee).
- 5b. We ___ Will ___ Will Not do the same with other benefits (i.e., life insurance, disability insurance, if applicable, etc.) while you are on FMLA leave. If we pay your premiums for other benefits, when you return from leave you ___ Will ___ Will Not be required to reimburse the District for those payments.
6. You ___ Will ___ Will Not be required to present a fitness-for-duty certificate before returning to work. If such certification is required but not received, your return to work may be delayed until the certification is provided.
- 7a. You ___ Are ___ Are Not a "key employee" as described in Section 825.218 of the FMLA regulations. If you are a "key employee" your return to employment may be denied following

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FMLA leave on the grounds that such will cause substantial and grievous economic injury to the District.

- 7b. We ___ Have ___ Have Not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to the District. (If applicable, explain 7a and 7b below.)
8. While on FMLA leave, you ___ Will ___ Will Not be required to provide the District with periodic reports every _____ (interval, as appropriate) of your status and intent to return to work. If the circumstances of your leave change and you are able to return to work earlier than the date indicated above, you ___ Will ___ Will Not be required to notify the District at least two work days before the date you intend to return to work.
9. You ___ Will ___ Will Not ___ May be required to furnish recertification relating to a serious health condition. (Explain below, if necessary, including the interval between certifications as prescribed in Section 825.308 of the FMLA regulations.)