

Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act became effective on August 5, 1993 and final revisions were published in the Federal Register on January 6, 1995. This legislation provides for eligible employees to take up to 12 weeks (or 60 workdays) of unpaid, job-protected leave for serious illness within a family or the birth of a child. The purpose of FMLA is to balance the needs of families with the demands of the workplace and to promote our country's interest in preserving family unity while accommodating the legitimate interests of employers.

CONTENTS OF THE FMLA

The law clearly defines which employers are covered, which employees are eligible and entitled to FMLA leave, the maintenance of health benefits during the leave and the restoration of the employee's job after the leave. It provides for notice of leave, certification of need of the leave, protection of employees who request leave and record-keeping requirements for the employer.

Administration and enforcement of the law is by the United States Department of Labor Employment Standards Administration, Wage and Hour Division. Covered employers are prohibited from interfering with, restraining, or denying any right provided by FMLA. It also prohibits an employer from discharging or discriminating against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

The U.S. Department of Labor attempts to satisfactorily resolve any violations; however, action may be brought in court to compel compliance when this is not possible. The individual employee may also seek private civil action against an employer for violations.

FMLA does not affect any other federal or state law which prohibits discrimination, nor supersede any state or local law which provides greater family or medical leave protection. It does not affect an employer's obligation to provide greater leave rights under collective bargaining agreements or employment benefit plans.

FMLA AND IRVING ISD AS AN EMPLOYER

Employers who have 50 or more employees working 20 or more workweeks in the current or preceding calendar year and who are engaged in commerce (or an activity affecting commerce) are covered under FMLA. Also included are public agencies, including governmental agencies and schools. Special rules apply to schools. Generally, they provide for FMLA leave to be taken in blocks of time when intermittent leave is needed or the leave is required near the end of the school term.

A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period. The employer can choose to use a 12-month fiscal or fixed "leave year," or the calendar year, or the 12 months before or after the start of a leave to define the 12-month period.

Irving ISD is a covered employer under FMLA. The FMLA 12-month calendar is from July 1 through June 30.

EMPLOYEE'S ELIGIBILITY FOR FMLA BENEFITS

To be eligible, you must:

- work for a covered employer for at least 12 months,
- have worked at least 1,250 hours during the past 12 months, and

- work at a location where at least 50 employees of your employer are working within 75 miles.

ENTITLEMENT TO FMLA LEAVE

Eligible employees are entitled to leave for the following reasons:

- For the birth and care of a newborn child of the employee;
- For the placement of a son or daughter with the employee for adoption or foster care;
- To care for a spouse, parent, or child with a serious health condition; or
- When the employee is unable to work because of a serious health condition.

Spouses who work for the same employer are jointly entitled to a combined total of 12 weeks when leave is taken for reasons other than his or her own serious health condition.

Leave for birth or placement of a child must be taken within one year of birth or placement.

If both spouses are employed by the district, **Irving ISD** limits the combined FMLA leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition to a combined total of 12 weeks as determined by the need of the district.

DEFINING "SERIOUS HEALTH CONDITION"

A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either

- a) any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical-care facility, and any additional treatment in connection with that inpatient care, or
- b) continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:
 - A health condition (including treatment or recovery) lasting more than three consecutive days and any later treatment or incapacity (absence from work) relating to the same condition that also includes treatment two or more times by a health care provider or treatment one time by a health care provider with a continuing regimen of treatment.
 - Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence.
 - A chronic serious health condition which continues over time, requires periodic visits to a health care provider and may involve occasional absences from work (for example, asthma or diabetes). A visit to the health care provider is not necessary for each absence.
 - A permanent or long-term condition for which treatment may not be effective (for example, a severe stroke or cancer). Only supervision by a health care provider is required, rather than active treatment. Or,
 - Any absences to receive treatments for restorative surgery or for a condition which would likely result in a period of incapacity if not treated (for example, chemotherapy or radiation treatments for cancer).

DEFINING “INTERMITTENT LEAVE”

Intermittent leave means taking leave in blocks of time rather than a continuous leave. It also means reducing a normal daily or weekly work schedule. The employer can choose whether to grant intermittent leave for birth or placement. It can be taken whenever medically necessary for a serious health condition.

When leave is needed for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employer’s workplace.

Irving ISD does not permit intermittent leave for birth or placement of a child.

DEFINING “HEALTH CARE PROVIDER”

The term for FMLA purposes includes doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which they practice. Also podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation found by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law. Also nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law or Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA.

CONCURRENT USE OF LEAVE

Except for employees who are receiving workers’ compensation wage benefits, **Irving ISD** shall require the use of all applicable accumulated sick leave in the order determined by Board Policy, followed by temporary disability leave when applicable, concurrently with FMLA.

CONTINUATION OF HEALTH BENEFITS

The employer is required to maintain group health insurance coverage whenever such insurance was provided before the leave, and on the same terms as if the employee were still working. If applicable, your employer will make arrangements with you for payment of your share of health insurance premiums during leave. In some cases, the employer may recover premiums paid for an employee who fails to return to work from FMLA leave.

Irving ISD will maintain the employee’s health premiums during FMLA. The employee has the responsibility for maintaining other optional premiums during FMLA. If, at the expiration of FMLA, the employee is able to return to work but chooses not to do so, the District shall require reimbursement of the employee benefits contribution made by the district during the period in which such leave was taken as unpaid leave. This includes health benefits as well as any pay for unearned leave days. Employees earn one-half day of State leave and one-half day of Local leave for each 18 days they work in one school year.

Irving ISD will provide a leave of absence for temporary disability in accordance with statutory and regulatory requirements at any time a full-time educator’s condition interferes with the performance of regularly assigned duties for longer than a 12 week period.

REQUIRED NOTICE AND CERTIFICATION

Employees seeking FMLA leave are required to provide 30-day advance notice when the need is foreseeable and such

notice is practicable. Employers may also require employees to provide:

- Medical certification of the need for leave due to a serious health condition (employee’s or family member’s).
- Second or third medical opinions (at the employer’s expense) and periodic recertification.
- Periodic reports during FMLA leave regarding the employee’s status and intent to return to work.

Employers must also inform employees of their rights and responsibilities under FMLA, including specific written information on what is required of the employee and what might happen in certain circumstances, such as if the employee does not return to work after FMLA leave.

Upon request for FMLA leave for an **Irving ISD** employee’s serious health condition or that of a spouse, parent, or child, and at 30-day intervals thereafter, the employee may be required to provide medical certification of the illness or disability.

RETURNING FROM FMLA LEAVE

Generally, an employee must be restored to his or her original job, or to an equivalent job with equivalent pay, benefits and other terms and conditions of employment.

In addition, taking of FMLA leave cannot result in the loss of benefits that the employee earned or was entitled to before using FMLA leave, and the leave cannot be counted against the employee under a “no fault” attendance policy.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid “key” employees after using FMLA leave (during which health coverage was maintained). A “key” employee is a salaried, eligible employee who is among the highest paid 10% of employees within 75 miles of the work site.

In order to refuse reinstatement, an employer must notify the employee of his or her status as a key employee in response to the employee’s notice of intent to take FMLA leave, notify the employee as soon as the decision is made to deny job restoration and explain the reasons for the decision, then offer the employee a reasonable opportunity to return to work. Also, the employer must make a final determination as to whether reinstatement will be denied at the end of the leave, if the employee then requests restoration.

Irving ISD employee’s request for reinstatement shall be accompanied by medical certification of the employee’s ability to perform essential job functions.

Reinstatement of a teacher desiring to return to work at or near the conclusion of a semester shall be in accordance with the END-OF-TERM LEAVE section in **Irving ISD** Board Policy DEC(LOCAL).

NEED MORE INFORMATION?

Contact your **Irving ISD** Personnel Department if you have any questions, or if you would like to request leave under FMLA. Professional, paraprofessional and classified employees should call 972/215-5209. Data Sheets for Anticipated Lengthy Leave from Duty are also available from your school secretary.

