

KANAWHA COUNTY BOARD OF EDUCATION POLICY

Family and Medical Leave Act Leave

Series: G27

Reference: W.Va. Code §21-5D-1 et seq.

Issued: 07.13.1989

Revised: 12.05.2011

Revision Number: 1

27.01**Summary of the Family and Medical Leave Act.** Employees may be entitled to a leave of absence under the Family and Medical Leave Act (FMLA). This policy provides employees with information concerning their rights and responsibilities during such leave. If employees have any questions regarding FMLA leave, they should contact the Administrative Assistant for Human Resources.

27.02**Eligibility.** Employees are eligible for FMLA leave if they:

27.02.1 Have worked for Kanawha County Schools for at least 12 months;

27.02.2 Have worked at least 1,250 hours during the 12 months prior to the time FMLA is to begin ("hours" means actual hours worked, and does not include paid or unpaid time off).

27.03**Covered Reasons for FMLA Leave**

27.03.1 **Basic FMLA Leave.** The Family and Medical Leave Act provides eligible employees with up to 12 weeks of unpaid leave for certain family and medical reasons. The 12-month period is determined based on a school year basis (July 1 – June 30). Leave may be taken for any one, or for a combination, of the following reasons:

27.03.1.1 For the birth of the employee's son or daughter, and to care for the newborn child;

27.03.1.2 The placement of a son or daughter with the employee through adoption or foster care, and to care for the newly placed child;

27.03.1.3 For incapacity due to pregnancy, prenatal medical care or child birth;

27.03.1.4 To care for the employee's spouse, son, daughter, or parent (but not in-law) with a "serious health condition";

27.03.1.5 Because of a "serious health condition" that makes the employee unable to perform one or more of the essential functions of his or her job;

27.03.1.6 Because of a "qualifying exigency" arising out of the fact that an employee's spouse, son, daughter, or parent is a covered military member on active duty or has been notified of an impending call or order to active duty status in the National Guard or Reserves in support of contingency operation.

For purposes of this policy, a "serious health condition" 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 (1) prevents the employee from performing the functions of the employee's job, or (2) prevents family members from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days, combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may also meet the definition of continuing treatment.

For purposes of this policy, a "qualifying exigency" arises out of the fact that an employee's spouse, parent, or child is on active duty, or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation as a member of the National Guard or Reserves. A "qualifying exigency" may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, attending post-deployment reintegration briefings, and other activities associated with the family member's call or order to service. An employee whose spouse, parent, or child is a member of the Regular Armed Forces is not eligible for FMLA leave based upon a "qualifying exigency."

27.03.2 "Injured Servicemember" Military Family Leave. In addition to the basic types of FMLA leave discussed above, an eligible employee who is the parent, child, spouse or next of kin (nearest blood relative other than the servicemember's parent, spouse or child) of a "covered servicemember" is entitled to take up to 26 weeks of leave during a single 12-month period to care for the servicemember with a serious injury or illness. Leave to care for a covered servicemember shall only be available during a single 12-month period and, when combined with other FMLA-qualifying leave, may not exceed 26 weeks during the single 12-month period. The single 12-month period begins on the first day an eligible employee takes leave to care for the covered servicemember.

27.04 Spouses. If both an employee and his/her spouse work for Kanawha County Schools, the employee and spouse may be limited to a combined 12 weeks (or a combined 26 weeks to care for an injured or ill service member).

27.05 Intermittent Leave and Reduced Leave Schedule. FMLA leave usually will be taken for a period of consecutive days, weeks, or months. However, under certain circumstances, an employee may take FMLA leave intermittently or on a reduced leave schedule when medically necessary due to a serious health condition of the employee or covered family member or the serious injury or illness of a covered servicemember. Intermittent leave is taken in separate blocks of time due to a *single* qualifying reason. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

If an employee needs leave intermittently or on a reduced leave schedule for a planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt Kanawha County Schools' operations. When calling off from work for a FMLA related absence or tardy, employees are expected to follow Kanawha County Schools' call-in procedures.

If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee, a family member, or a covered servicemember (including during the period of recovery), Kanawha County Schools may transfer the employee to an alternative position for which the employee is qualified and which better accommodates the recurring periods of leave than does the employee's regular position. Following the conclusion of the intermittent leave or reduced leave schedule, employees will be moved back to the same or equivalent job.

Note that leave taken for a period that ends with the school year and begins with the next semester is considered consecutive rather than intermittent leave. The time during which the employee would otherwise not be required to return to work is not counted against the employees total leave requirement.

[NOTE THAT THE FOLLOWING BOLD-TYPE LANGUAGE APPLIES ONLY TO INSTRUCTIONAL EMPLOYEES. "Instructional employees are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. The term includes teachers, athletic coaches, driving instructors, and special education assistants, but does not include teacher assistants, aides, or counselors. If you have any question about whether you are an "instructional" employee, please contact your immediate supervisor.]

***** *Leave that Exceeds 20 percent of Working Days*** – If an employee needs to take intermittent leave, and the leave will foreseeably require the employee to miss *more than twenty (20%) percent* of the total number of working days over the period of anticipated leave, Kanawha County Schools may require the employee to elect either:

- 1) To take leave for a period, or periods, of particular duration, not greater than the duration of the planned treatment; or
- 2) To temporarily transfer to an available alternative position offered by the Superintendent for which the employee is qualified, and that had equivalent pay and benefits, and that better accommodates the recurring period of leave than does the employee's regular position.

As discussed above, employees must give timely notice of foreseeable leave. If the employee fails to timely give notice of foreseeable leave, then Kanawha County Schools has the right to choose which, if any, of the above discussed options the employee must take.

***** 27.06. Special Rules for Leave Beginning at the End of the Term.** The following special rules apply whenever an employee takes leave at or near the end of a term:

More than Five (5) Weeks Before the End of the Term – If an employee begins leave more than five weeks before the end of the term, Kanawha County Schools may require the employee to continue taking leave until the end of the term, if: (1) the leave will last at least three weeks, and (2) the employee would return to work during the three-week period before the end of the term.

During the Five Week Period Before the End of the Term – If an employee begins leave during the five week period before the end of the term *because* of the birth of a child, the placement of a child for adoption or foster care, to care for a family member with a serious health condition, or to care for a servicemember, Kanawha County Schools may require that the employee continue taking leave until the end of the term, if: (1) the leave will last more than two weeks, and (2) the employee would return during the two week period before the end of the term.

During the Three Week Period Before the End of the Term – If the employee begins leave during the three week period before the end of the term for adoption or foster care, to care for a family member with

a serious health condition, or to care for a servicemember, Kanawha County Schools may require that the employee continue taking leave until the end of the term, if the leave will last more than five working days.

If Kanawha County Schools requires any employee to take leave until the end of the term under one of the Special Rules discussed above, only the period of time that the employee was actually unable to work will be counted against the employee's total leave requirement.

27.07. Coordination of Leave. Kanawha County Schools will require employees to substitute any available paid leave for any unpaid FMLA leave. The substitution of paid leave for unpaid FMLA leave does not extend the length of FMLA leave. The paid leave will run concurrently with the employee's FMLA entitlement.

Leaves of absence taken in connection with a disability leave plan or workers' compensation injury/illness shall run concurrently with any FMLA leave entitlement.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

For additional information about leave entitlements and obligations that might arise when FMLA is not available or is exhausted, please consult other leave policies in this handbook or contact the Administrator.

27.08 No Moonlighting While on Leave. Taking or working at another job during FMLA leave or any other authorized leave of absence is grounds for disciplinary action, up to and including discharge, to the extent permitted by law.

27.09 Misrepresentation of Facts to Take Leave. Employees who misrepresent facts in order to take FMLA leave will be subject to discipline, up to and including termination.

27.10. Procedures for Requesting Leave. Employees who take FMLA leave must timely notify Kanawha County Schools of their need for FMLA leave.

27.10.1 Timing of Employee Notice. Employees must provide 30 days advance notice of the need to take FMLA if the need for leave is foreseeable. When scheduling planned medical treatment, the employee must consult with Kanawha County Schools and must make reasonable efforts to schedule the treatment so as not to disrupt unduly Kanawha County Schools' operations, subject to the health care provider's approval.

When the need for leave is not foreseeable, employees must provide notice as soon as practicable and must generally comply with Kanawha County Schools' normal call-in procedures. The employee must also explain the inability to provide the notice within 30 days of the leave.

27.10.2 Content of Employee Notice. To trigger FMLA protections, employees must inform their supervisor or the Administrator of the need for FMLA-qualifying leave and the anticipated timing and duration of the leave, if known. Employees may do so by specifically referring to FMLA leave or explaining the reasons for leave so as to allow Kanawha County Schools to determine that the leave is FMLA-qualifying. For example, an employee might explain that:

- a) a medical condition renders the employee unable to perform the functions of his or her job;
- b) she is pregnant;
- c) he or she is hospitalized overnight;
- d) he or she is or a family member is under the continuing care of a health care provider;
- e) the leave is due to a qualifying exigency caused by a covered military member being on active duty or called to active duty status; or
- f) if the leave is for a family member, that the condition renders the family member unable to perform daily activities or that the family member is a covered servicemember with a serious injury or illness.

When calling off from work, the employee must provide sufficient information to the employee's supervisor or the Kanawha County Schools Administrator to reasonably determine that the absence is FMLA related. Calling in sick, without providing more information, will not be considered sufficient notice to trigger Kanawha County Schools' obligations under this policy. Employees must respond to Kanawha County Schools' questions to determine if absences are potentially FMLA-qualifying. If employee fails to explain the reasons for FMLA leave, the leave may be denied.

When employees seek leave due to FMLA-qualifying reasons for which Kanawha County Schools has already approved FMLA-protected leave, the employee must specifically reference the qualifying reason for the leave or the need for FMLA leave.

27.11 Cooperation in Scheduling of Planned Medical Treatment.
When planning medical treatment, employees must consult with Kanawha County

Schools and make a reasonable effort to schedule treatment so as not to unduly disrupt Kanawha County Schools' operations, subject to the approval of an employee's health care provider. Employees must consult with Kanawha County Schools prior to the scheduling of treatment to work out a treatment schedule that best suits the needs of both Kanawha County Schools and the employees, subject to the approval of an employee's health care provider. If an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to fulfill this obligation, Kanawha County Schools may require the employee to attempt to make such arrangements, subject to the approval of the employee's health care provider.

27.12 Notification of, Eligibility for, and Designation of, FMLA Leave.

Kanawha County Schools will notify employees who request FMLA whether they are eligible. If an employee is eligible for FMLA, Kanawha County Schools will notify the employee of any rights and responsibilities with regard to taking FMLA and whether the employee will be required to provide any additional information. Depending upon the type of FMLA that the employee is taking, Kanawha County Schools may require employees to submit documentation in support of their request. If an employee has already begun leave, Kanawha County Schools may mail a copy of this notice to the employee's address. Employees are responsible for ensuring that the Kanawha County Schools Administrator is aware of the employee's current address.

Kanawha County Schools will also state whether the leave will be designated as FMLA and the total amount of leave that will be counted against the employee's FMLA entitlement. Under certain circumstances and to the extent permitted by law, Kanawha County Schools may retroactively designate leave as FMLA with appropriate written notice to employees.

27.13 Submission of Documentation and Certifications Supporting Need for FMLA Leave. Depending upon the nature of FMLA leave sought, employees may be required to submit documentation or certification supporting their need for FMLA-qualifying leave.

27.13.1 Documentation for Active Duty or Call to Active Duty. Employees requesting this type of servicemember FMLA must provide proof of the qualifying member's call-up or active military service. This documentation may be a copy of the military orders or other official Armed Forces communication.

27.13.2 Documentation of the Need for Leave to Care for an Injured or Ill Servicemember. Employees requesting this type of leave must provide documentation of the family member's or the next of kin's injury, recovery or need for care. This documentation may be a copy of the

military medical information, orders for treatment or other official Armed Forces communication pertaining to the servicemember's injury or illness, incurred on active military duty that renders the member medically unfit to perform his or her military duties.

27.13.3 Medical Certification.

A. Initial Medical Certification. If the leave request is for the employee's own serious health condition or to care for a family member's serious health condition, the employee must also provide a *Certification of Health Care Provider* form signed by the employee's health care provider within 15 calendar days.

When the Certification provided by the employee is incomplete or insufficient, Kanawha County Schools will inform the employee of what is missing or insufficient and allow the employee seven (7) calendar days to correct the documentation. Additional time may be allowed in extenuating circumstances. If the employee fails to provide Certification at all, or if the employee fails to provide a complete and sufficient Certification despite the opportunity to do so, the employee may be denied FMLA leave.

B. Second and Third Opinions. Kanawha County Schools may request a second opinion if the Certification is confusing, provides conflicting information, etc. Employees may be required to authorize release of their FMLA-related medical information from their health care provider if requested by the health care provider selected by Kanawha County Schools. The second opinion is conducted at Kanawha County Schools' expense. While waiting on the outcome of the second opinion, employees will provisionally remain on FMLA. If the second opinion does not ultimately establish that the leave qualifies for FMLA, then the leave shall not be designated as FMLA, and the absences will be treated in accordance with Kanawha County Schools' attendance policy.

If there is a difference between the original Certification and the second opinion, Kanawha County Schools can request a third opinion, at its own expense. The health care provider will be jointly chosen by Kanawha County Schools and the employee. Again, employees may be required to authorize release of their FMLA-related medical information to the third opinion provider, and employees will provisionally remain on FMLA. This third opinion will be binding. If the third opinion does not ultimately establish that the leave qualifies for FMLA, then the leave shall not be designated as FMLA, and the

absences will be treated in accordance with Kanawha County Schools' attendance policy.

Upon written request from the employee, Kanawha County Schools will provide the employee with copies of the second and third opinions.

Except in unusual circumstances, employees will not be asked to travel outside a normal commuting distance for a second or third opinion. For both the second and third opinions, Kanawha County Schools will reimburse the employee for "out of pocket" travel expense upon receipt of appropriate documentation.

C. Recertification. For an employee's own serious health condition or the serious health condition of a family member, Kanawha County Schools may require a recertification after the duration of the original leave request expires.

Kanawha County Schools may also require recertification within thirty (30) days of a previous certification if the employee's circumstances change significantly, the employee asks for an extension of leave, or Kanawha County Schools learns of information that casts doubt on the validity of the certification.

In all cases, Kanawha County Schools may request a recertification of a medical condition every six (6) months in connection with a FMLA related work absence. Once Kanawha County Schools has requested the recertification, the employee will have fifteen (15) days to provide the recertification, at the employee's own expense.

27.14. Group Health Insurance and Other Benefits During FMLA

Kanawha County Schools will maintain group health care benefits according to the associated plan documents while an employee is on FMLA, but the employee is responsible for paying the normal monthly contribution.

Unless Kanawha County Schools notifies an employee of other arrangements, whenever an employee is receiving pay from Kanawha County Schools during FMLA, the employee's portion of the group health plan premium will be deducted from the employee's paycheck.

If FMLA is unpaid, an employee must pay his/her portion of the group health premium through a method determined by Kanawha County Schools upon leave. Kanawha County Schools' obligation to maintain health care coverage ceases if an

employee's premium payment is more than 30 days late. If an employee's payment is more than 15 days late, Kanawha County Schools will send a letter notifying the employee that coverage will be dropped on a specified date unless the co-payment is received.

If the employee does not return to work within 30 calendar days at the end of the leave period (unless the employee cannot do so because of a serious health condition or other circumstances beyond the employee's control), the employee will be required to reimburse Kanawha County Schools for the cost of the premiums Kanawha County Schools paid for maintaining coverage during their unpaid FMLA. Kanawha County Schools will not seek reimbursement of health insurance premiums if the employee fails to return because of a continuation, recurrence, or onset of a serious health condition, *and* the employee is still eligible for FMLA under this policy. If the employee is unable to return to work because of the employee's own or a covered family member's serious health condition, the employee will be required to provide medical certification. If the employee fails to provide the certification within 30 days, Kanawha County Schools may recover 100% of the premiums.

All other benefits, including paid time off, cease to accrue during the unpaid portion of the leave. Employees will be entitled to any employment benefit that accrued prior to the start of their FMLA.

27.15. Restoration of Employment and Fitness for Duty. Subject to some exceptions, employees generally have the right to return to the same position or to any equivalent position with equivalent pay, benefits, and other employment terms. Kanawha County Schools will notify employees if they qualify as "key employee," if Kanawha County Schools intends to deny reinstatement, and of the employee's rights in such instances.

27.15.1. Timing of Return to Work. Kanawha County Schools will assume that employees will return to work on the date indicated on the approved FMLA request. If the employee decides to return on a different date, the employee must first notify Kanawha County Schools as soon as practicable. If the employee wishes to take additional FMLA, the employee must file another FMLA request. If the employee fails to return to work following the expiration of FMLA, the employee may be considered to have voluntarily resigned.

27.15.2. Submit Fitness for Duty Certification. Employees returning from FMLA for their own serious health condition must present a fitness for duty document signed by a health care provider. Kanawha County Schools may delay and/or deny job restoration until employees provide return to work/fitness for duty certifications.