

# Lakeland Board of Education

Monitoring: <b>Review: Annually, in February</b>	Descriptor Term: <b>Family and Medical Leave</b>	Descriptor Code: <b>5.305</b>	Issued Date: <b>04/14/14</b>
		Rescinds:	Issued:

## 1 PURPOSE

2 To entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for  
3 the care of a child, spouse or parent who has a serious health condition.

## 4 ELIGIBILITY

5 Anyone who has been employed for at least twelve (12) months by the school system ~~or~~ and anyone who has at  
6 least 1,250 hours of service (hours used for leave, even FMLA leave, shall not be credited for service for  
7 purposes of FMLA eligibility<sup>1</sup>) during the previous twelve month period.<sup>2</sup>

## 8 GENERAL PRINCIPLES

- 9 1. Any employee shall be granted, upon request, up to twelve (12) weeks unpaid leave for the birth or  
10 adoption of a child, the care of a child, spouse, or parent who has a serious health condition or for  
11 qualifying exigencies arising out of the fact that the employee's spouse, child, or parent is on active  
12 duty, or has been notified of an impending call or order to active duty, in support of a contingency  
13 operation. (Any employee requesting leave due to pregnancy, childbirth, or adoption shall be granted up  
14 to four (4) months leave.)<sup>3</sup>
- 15 2. Any employee on maternity leave shall be permitted to use accumulated sick leave during the period of  
16 actual physical disability only. Otherwise, the maternity leave shall be unpaid leave. A teacher may use  
17 up to thirty (30) days of accumulated sick leave for the adoption of a child. If both adoptive parents are  
18 teachers, only one parent may request leave. Written verification from the adoption agency or other  
19 entity handling the adoption shall be required before the leave is granted.<sup>4</sup>
- 20 3. A physician's statement may be required by the superintendent when determining the period of actual  
21 physical disability.<sup>5</sup>
- 22 4. Request for leaves and extension of leaves shall conform to state law governing all leaves of absence.

## 23 QUALIFYING EXIGENCIES

24 Qualifying exigencies include:

- 25 Issues arising from a covered service member's short notice deployment (i.e., less days of notice) for a  
26 period of seven days from the date of notification;
- 27 Military events and related activities, such as official ceremonies, programs, or events sponsored by the  
28 military or family support or assistance programs and informational briefings sponsored or promoted by  
29 the military, military service organizations, or the American Red Cross that are related to the active duty  
30 or call to active duty status of a covered service member;
- 31 Making or updating financial and legal arrangements to address a covered service member's absence;

1 Attending counseling provided by someone other than a health care provider for oneself, the covered  
2 service member, or the child of the covered service member, the need for which arises from the active  
3 duty or call to active duty status of the covered service member;

4 Taking up to 15 days of leave to spend time with a covered service member who is on short-term  
5 temporary, rest and recuperation leave during deployment;

6 Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration  
7 briefings and events, and other official ceremonies or programs sponsored by the military for a period of  
8 90 days following the termination of the covered service member's active duty status, and addressing  
9 issues arising from the death of a covered service member;

10 Any other event that the employee and employer agree is a qualifying exigency.

### 11 **MILITARY CAREGIVER LEAVE**<sup>8</sup>

12 An eligible employee who is a spouse, child, parent, or next of kin of a covered service member or covered  
13 veteran with a serious injury or illness shall be granted up to a total of 26 workweeks of unpaid leave during a  
14 "single 12-month period" to care for the covered service member or covered veteran. A covered service  
15 member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who  
16 is undergoing medical treatment, recuperation, or therapy, is otherwise in out-patient status, or is otherwise on  
17 the temporary disability retired list, for a serious injury or illness. A covered veteran is an individual who was a  
18 member of the Armed Forces at any time during the period of 5 years preceding the date of the medical  
19 treatment, recuperation, or therapy that has a serious injury or illness who is currently receiving medical  
20 treatment, recuperation, or therapy. The calculation of this 5-year period shall not include the interval of  
21 October 28, 2009 through March 8, 2013.

22 For covered service members, a serious injury or illness is one that was incurred by a service member in the line  
23 of duty on active duty that may render the service member medically unfit to perform the duties of his or her  
24 office, grade, rank, or rating. For covered veterans, a serious injury or illness is defined as:

- 25 i. A continuation of a serious injury or illness that was incurred or aggravated in the line of  
26 duty while on active duty that rendered the veteran unable to perform the duties of the veteran's  
27 office, grade, rank, or rating;
- 28 ii. A physical or mental condition for which the veteran has received a U.S. Department of  
29 Veterans Affairs Service Related Disability Rating (VASRD) of 50 percent or higher and such  
30 VASRD rating is based, in whole or in part, on the condition precipitating the need for military  
31 caregiver leave;
- 32 iii. a physical or mental condition that substantially impairs the veteran's ability to secure or follow a  
33 substantially gainful occupation by reason of a disability or disabilities related to military service, or  
34 would do so absent treatment; or
- 35 iv. an injury, including a psychological injury, on the basis of which the veteran has been  
36 enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family  
37 Caregivers.

38 The "single 12-month period" for leave to care for a covered service member or covered veteran with a serious  
39 injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later,  
40 regardless of the 12 month period established by the employer for other types of FMLA leave. An eligible  
41 employee is limited to a combined total of 26 workweeks of leave ~~for any FMLA-qualifying reason during the~~  
42 ~~"single 12-month period."~~ to provide care for a covered service member.<sup>9</sup> The maximum of 26 workweeks may  
43 include no more than 12 workweeks of leave that is taken for the birth and care of a newborn child, for  
44 placement of a child for adoption or foster care, for care of a parent who has a serious health condition, or for  
45 the employee's own serious health condition.<sup>9</sup>

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2 **RESTRICTIONS**

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1. For foreseeable leave, the employee shall provide the superintendent with at least thirty (30) days written notice before the beginning of the anticipated leave.

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2. The superintendent 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.

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3. If there is any reason to doubt the validity of the certification provided, the superintendent may require, at the expense of the school system, an opinion of a second health care provider.

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4. Once it has been established that the leave requested qualifies for FMLA, the superintendent/designee shall notify the employee within two (2) business days (absent extenuating circumstances) that —

Any leave taken pursuant to state leave statutes (paid vacation leave, personal leave, sick leave or worker's compensation) shall run concurrently with FMLA leave.<sup>6</sup>

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.<sup>7</sup>

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5. Intermittent Leave - When a licensed 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.

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6. Period Near the End of an Academic Term (Professional employees) - If leave is taken more than five (5) weeks prior to the end of the term, the superintendent 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.

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If the leave is taken five (5) weeks prior to the end of the term, the superintendent 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) week period before the end of the term.

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7. Any employee eligible under state law who requests leave due to pregnancy, childbirth, or adoption shall be granted up to four (4) months leave.<sup>3</sup> FMLA leave for birth and care of a newborn child or for placement of a child for adoption or foster care, shall run concurrently with the state leave.<sup>3</sup>

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8. Spouses who are both eligible employees of the school district are limited to a combined total of 12 workweeks of FMLA leave in a single 12-month period if the leave is taken for birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.<sup>8</sup> Under certain circumstances, spouses who share such leave may be eligible for limited amounts of additional leave for other qualifying FMLA reasons.<sup>8,9</sup>

~~Spouses employed by the same employer are limited to a combined total of 26 workweeks in a “single 12-month period” if the leave is to care for a covered service member or covered veteran with a serious injury or illness, and for the birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.~~

## REQUIREMENTS OF THE BOARD

1. The 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.
2. The employee shall be kept under any group health plan for the duration of the leave.
3. The Board may recover the 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.

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### Legal References

1. *Hinson v. Tecumseh Products Co.* 234 F.3d 1268, 6th Cir.(2000)
2. Federal Family and Medical Leave Act 1993
3. TCA 49-5-702; TCA 4-21-408
4. TCA 49-5-710
5. TCA 49-5-704
6. 29 CFR § 825.207
7. OP Tenn. Atty Gen 94-006 (Jan 13, 1994); *Plant v, Morton International, Inc* 212 F. 3d 929, 6th Cir. (2000)
8. 29 CFR § 825.127