

# **Papio-Missouri River NRD**

## **Family and Medical Leave & Family Military Leave Policy**

January 8, 2015

## **Basic Leave Entitlement**

In accordance with the Family and Medical Leave Act (FMLA) and its regulations, eligible employees may take a leave of absence because (1) of the birth of a son or daughter and in order to care for such son or daughter; (2) of the placement of a son or daughter with the employee for adoption or foster care; (3) the employee is unable to work due to his/her own serious health condition; (4) the employee needs to care for a spouse, son or daughter or parent with a serious health condition; (5) of a qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is on active duty or call to active duty status in support of a contingency operation as a member of the National Guard or Reserves; or (6) the employee is the spouse, son or daughter, parent or next of kin of a covered servicemember with a serious injury or illness and the employee needs to care for that person.

To be eligible for FMLA leave, an employee must:

1. Have been employed by the District for at least 12 months, which need not be consecutive; and
2. Have worked at least 1250 hours for the District during the 12 month period immediately preceding the commencement of the leave

Except in the case of servicemember family leave, an employee's total cumulative FMLA leave may not exceed 12 weeks in any 12-month period. Additionally, all employees must use available sick leave and vacation leave while on FMLA leave. A husband and wife who are eligible for FMLA leave and are employed by the District are limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken to care for the employee's parent with a serious health condition, for the birth of the employee's son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement. FMLA leave for the birth or placement of a child must be completed within one year after the birth or placement of that child.

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings. The District may require employees to provide a copy of the covered military member's active duty orders or other military issued documentation that indicates that the covered military member is on active duty in support of a contingency operation, and the dates of the active duty service.

## **Servicemember Family Leave**

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for

which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

### **The 12-Month Period**

In calculating entitlement to FMLA leave, the 12-month period is determined on a “rolling” basis, measured backward from the date an employee uses any FMLA leave. Under this method, each time an employee takes FMLA leave, the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.

For example, if you use four weeks beginning February 1, 2013, four weeks beginning June 1, 2013, and four weeks beginning December 1, 2013, you would not be entitled to any additional FMLA leave until February 1, 2014. However, on February 1, 2014, you would be entitled to four weeks of leave; on June 1, 2014 you would be entitled to an additional four weeks, etc.

### **Using Available Paid Leave**

You will be required to take any available paid leave (vacation, sick leave, etc.), if any, as part of your FMLA leave that is otherwise unpaid. Employees on leave for a condition or injury covered by Worker’s Compensation will be required to take FMLA leave concurrently with that Worker’s Compensation leave. Employees do not continue to accrue vacation or sick leave (if provided) during such leave.

### **Notice and Certification**

In the case of foreseeable leave, you must provide 30 days advance notice, if possible. If 30 days’ notice is not possible, notice must be provided as soon as possible. If it is necessary for you to take leave to obtain planned medical treatment, you must make a reasonable effort to schedule the treatment so it does not disrupt our operations. In some cases, you may need leave on only an intermittent basis. In those cases, you may be assigned to an alternative position which better accommodates your intermittent absences.

In the case of leave due to the serious health condition of you or your spouse, child or parent, you will be required to provide appropriate medical certification. This certification must include information such as the date the serious health condition commenced; the probable duration of the condition; the appropriate medical facts within the knowledge of the health care provider regarding the condition; and, in the case of your own serious health condition, a statement from a health care provider that you are unable to perform your job duties. In addition, if your leave is to care for a family member, the health care provider must indicate that you are needed to care for the family member and provide an estimate of the time you will be needed.

In the case of servicemember family leave, you must provide appropriate certification to confirm the family member is a “covered servicemember” or “covered veteran.” This certification must include information such as the date the serious injury or illness commenced, the probable duration of the serious injury or illness, and the appropriate medical facts within the knowledge of the health care provider regarding the condition. In addition, the health care

provider must indicate that you are needed to care for the covered servicemember and provide an estimate of the time you will be needed, and if the individual is a covered veteran, confirmation that the military member is a veteran, the date of separation, and whether the separation was other than dishonorable.

In the case of military “qualifying exigency” leave, you will be required to provide appropriate documentation and certification of the need for leave and certain details related to the leave, including but not limited to, where applicable, a copy of the military member’s Rest and Recuperation leave orders, or other documentation issued by the military setting forth the dates of the military member’s leave.

### **Return to Work and Benefits**

Upon return from your leave, we will reinstate you to your former position or to an equivalent position. Your seniority and benefits will not continue accruing during any unpaid period of your leave. If you are returning from a leave due to your own serious health condition, you must provide a note from your health care provider releasing you to work.

Any group insurance you had prior to leave will continue during the term of your leave on the same basis as if you were not absent from work, including your obligation to pay your normal portion of the premium. Please note that if you fail to return from your leave, we may recover from you the cost of any premiums paid on your behalf to continue insurance coverage, as allowed by law.

### **Discretionary Leave for Employees Not Eligible under FMLA**

The District may, *at its sole discretion*, grant FMLA leave, or some variation of leave, to those employees who are not legally entitled to such leave due to ineligibility (e.g., less than 12 months’ employment).

### **Additional Information on FMLA Leave**

It is impossible to cover all aspects of family and medical leave in this policy. Therefore, when you determine that you will need to take leave under this policy, please contact the Administrative Coordinator or refer to the Federal Department of Labor's "Employee Rights and Responsibilities" notice, a copy of which is attached hereto.

## **EMPLOYEE RIGHTS AND RESPONSIBILITIES** **UNDER THE FAMILY AND MEDICAL LEAVE ACT**

### **Basic Leave Entitlement**

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

### **Military Family Leave Entitlements**

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

### **Benefits and Protections**

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

### **Eligibility Requirements**

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

### **Definition of Serious Health Condition**

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 prevents the employee from performing the functions of the employee's job, or prevents the qualified family member 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 3 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 meet the definition of continuing treatment.

### **Use of Leave**

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

### **Substitution of Paid Leave for Unpaid Leave**

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

### **Employee Responsibilities**

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

### **Employer Responsibilities**

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

### **Unlawful Acts by Employers**

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

### **Enforcement**

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

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.

**FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.**