

## **FAMILY AND MEDICAL LEAVE**

### **A. Leave Without Pay:**

1. Employees may take leave without pay when they have exhausted their leave benefits and need additional leave to cover personal illness; the illness of a spouse, child, or parent; the birth or adoption of a child; for any “qualifying exigency” arising out of the fact that the employee’s spouse, son, daughter, or parent is on active duty, or has been notified of an impending call or order to active duty as a member of the National Guard or Reserves, in support of a contingency operation; or to care for a covered service member with a serious injury or illness if the employee is the service member’s spouse, son, daughter, parent, or next of kin.
2. An employee is not entitled to leave without pay unless:
  - a. that employee has been employed for at least 12 months by the School Committee\*, and
  - b. that employee has worked at least 1250 hours in the previous 12-month period or has a salaried position of at least .5 FTEs.

\* While the 12 months of employment need not be consecutive, employment periods prior to a break in service of 7 years or more need not be counted unless the break is occasioned by the employee’s fulfillment of his/her National Guard or Reserve military obligation (as protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA), agreement, exists concerning the employer’s intention to rehire the employee after the break in service.

3. Extent of leave:
  - a. An eligible employee may take up to 12 weeks (or 26 weeks if leave to care for a covered service member with a serious injury or illness is also used) of leave total during a 12-month period, including any paid leave used. The employee must exhaust all sick leave as per contract, available paid vacation leave and personal leave before being entitled to take leave without pay.
4. Definitions:
  - a. “Child means a son or daughter, whether biological, adopted, foster child, a stepchild, legal ward, or child to whom the employee stands *in loco parentis*, if the child is either under the age of 18 years or is incapable of self-care because of a mental or physical disability.
  - b. “Health Care Provider” means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state where the doctor practices, or any person determined by the Secretary of Labor to be capable of providing health care services.
  - c. “Intermittent Leave” means leave taken in whole day periods but less than a whole work week.
  - d. “Parent” means a biological parent of an employee or an individual who stood *in loco parentis* to an employee when the employee was a child.

- e. “Reduced Leave Schedule” means a leave schedule that reduces the usual number of hours per work week, or hours per workday, of an employee.
- f. “Serious Health Condition” means an illness, injury, impairment, or physical or mental condition, which involves either:
  - (1) inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e. inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care;
  - or
  - (2) continuing treatment by a health care provider, which includes:
    - a. A period of incapacity lasting more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:
      - Treatment two (2) or more times by or under the supervision of a health care provider (i.e. in-person visits, the first within seven (7) days and both within thirty (30) days of the first day of incapacity); or
      - One (1) treatment by a health care provider (i.e. an in-person visit within seven (7) days of the first day of incapacity) with a continuing regimen of treatment (e.g. prescription medication, physical therapy);
    - or
    - b. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or
    - c. Any period of incapacity or treatment for a chronic serious health condition, which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for absence; or
    - d. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
    - e. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) days if not treated.
- g. “Spouse” means a husband or wife, as defined by state law.
- h. “Twelve-Month Period” is the preceding 12-month period from when the leave commences.

## **B. Types of Leave Without Pay**

### **1. Personal Medical Leave without Pay:**

The Superintendent may grant a medical leave of absence without pay to an employee who, because of a serious health condition, is unable to perform the functions of his or her job.

- a. An employee must exhaust all available sick leave before taking leave without pay.
- b. Medical Certification:
  - (1) The Superintendent may require a medical certification from the employee's health care provider stating the following:
    - the date on which the health condition began,
    - the probable duration of the condition,
    - the appropriate medical facts within the health care provider's knowledge regarding the condition,
    - a statement that the employee is unable to perform the functions of his/her job.
  - (2) If the Superintendent has reason to doubt the validity of the medical certification provided by the employee's health care provider, he or she may require, at the School Committee's expense, a second opinion. The employee must obtain the opinion of the School Committee's designated health care provider concerning the information in letter "b" above.

The health care provider giving the second opinion may not be a person regularly employed by the School Committee.

- (3) If the second opinion conflicts with the first, the School Committee may require, at the School Committee's expense, a third opinion. The third health care provider's opinion shall be final and binding on the School Committee and the employee.
- (4) The Superintendent may require an employee on medical leave without pay to provide medical certifications at reasonable intervals.
  - a. If the necessity for leave is foreseeable based on planned medical treatment, the employee shall:
    - make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the school, subject to the approval of the employee's health care provider.
    - give the employee's supervisor at least thirty (30) days' notice, before the date the leave is to begin, of the employee's intention to take personal medical leave without pay, except that if the date of treatment requires the leave to begin in less than thirty (30) days, the employee shall provide such notice as practicable.
  - b. If the necessity for leave is foreseeable less than thirty (30) days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day.
  - c. If the necessity for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the employer's usual and customary notice and procedural requirements for requesting leave.
  - d. The employee may take intermittent leave or take leave on a reduced leave schedule when medically necessary.

- e. Before the employee may resume work, the employee must present his or her supervisor with written medical certification from the employee's health care provider that the employee is able to resume work. If reasonable safety concerns exist, the School Committee may, under certain circumstances, require such a certification for employees returning from intermittent FMLA leave.

## 2. **Family Medical Leave Without Pay:**

The Superintendent may grant a medical leave of absence without pay to an employee who needs the time off to care for the employee's spouse, child, or parent, if the spouse, child, or parent has a serious health condition.

### a. **Medical Certification**

- (1) The School Committee may require a medical certification from the health care provider for the spouse, child, or parent, as the case may be, stating –
  - the date on which the health condition began,
  - the probable duration of the condition,
  - the appropriate medical facts within the health care provider's knowledge regarding the condition,
  - that the employee is needed to care for the spouse, child, or parents, as the case may be, and an estimate of the amount of time that such employee is needed to care for the spouse, child, or parent.
- (2) If the School Committee has reason to doubt the validity of the medical certification provided by the employee's health care provider, he or she may require, at the School Committee's expense a second opinion. The employee must obtain the opinion of the School Committee's designated health care provider concerning the information in letter "b" above. The health care provider giving the second opinion may not be a person regularly employed by the School Committee.
- (3) If the second opinion conflicts with the first, the School Committee may require, at the School Committee's expense, a third opinion. The third provider's opinion shall be final and binding on the School Committee and the employee.
- (4) The Superintendent may require an employee on medical leave without pay to provide medical certification at reasonable intervals.

### b. **If the necessity for leave is foreseeable based on planned medical treatment, the employee –**

- (1) Shall make a reasonable effort to schedule the treatments so as not to disrupt unduly the operations of the school, subject to the approval of the health care provider for the spouse, child, or parent of the employee, as the case may be, and
- (2) Shall give the employee's supervisor at least thirty (30) days notice, before the date the leave is to begin, of the employee's intention to take family medical leave without pay, except that if the date of the treatment requires the leave to begin in less than thirty days, the employee shall provide such notice as practicable.

- c. If the necessity for leave is foreseeable less than thirty (30) days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day.
- d. If the necessity for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the employer’s usual and customary notice and procedural requirements for requesting leave.
- e. The employee may take intermittent leave or take leave on a reduced leave schedule when medically necessary.

### **3. Parental Leave Without Pay:**

An employee may take parental leave without pay within one (1) year of the birth of the child in order to care for that child. An employee may take parental leave without pay within one (1) year of the placement of a child with the employee for adoption or foster care.

- a. When the need for parental leave without pay is foreseeable based on expected birth or placement, the employee shall give his or her supervisor at least thirty (30) days notice before the date the leave is to begin. If the date of the birth or placement requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable. Absent unusual circumstances, employees must comply with the employer’s usual and customary notice and procedural requirements for requesting leave.
- b. An employee taking parental leave without pay may not take intermittent leave or work on a reduced leave schedule without the express consent of the Superintendent in writing.

### **4. Qualifying Exigencies Leave Without Pay:**

An employee may take leave without pay for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation. Qualifying exigency leave is not available to family members of military members in the Regular Armed Forces. A qualifying exigency is defined as follows:

- Short-notice deployment (i.e. deployment on 7 or less days notice) for a period of 7 days from the date of notification.
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation
- Post-deployment activities
- Additional activities not encompassed in the other categories, but agreed to by the employer and employee

- a. Certification
  - (1) Leave for a qualifying exigency must be supported by a copy of the covered military member's active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party. A second and third opinion and recertification are not permitted for certification of a qualifying exigency. The employer may contact the individual or entity named in a certification of leave for a qualifying exigency for purposes of verifying the existence and nature of the meeting.
- b. An employee must provide notice of the need for foreseeable leave due to a qualifying exigency as soon as practicable. When the need is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Generally, it should be practicable to provide notice for unforeseeable leave within the time prescribed by the employer's usual and customary notice requirements.
- c. Leave may be taken intermittently for a qualify exigency.

## 5. Care for Service Member Leave Without Pay:

An employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness may take leave without pay for up to a total of twenty-six (26) work weeks during a single twelve (12) month period to care for the service member.

A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves who is undergoing medical treatment, recuperation, or therapy, is otherwise in out-patient status, or is otherwise on the temporary disability retired list for a serious injury or illness. A serious injury or illness is one that was incurred by a service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating. The "single 12-month period" for leave to care for a covered service member with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by the employer for other types of FMLA leave. An eligible employee is limited to a combined total of 26 work weeks of leave for any FMLA-qualifying reason during the "single 12-month period." (Only 12 of the 26 total weeks may be for a FMLA-qualifying reason other than to care for a covered service member).

- a. Medical Certification
  - (1) Leave to care for a covered service member with a serious injury or illness must be supported by a certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family. Second and third opinions and recertification are not permitted. The employer may use a health care provider, a human resource professional, a leave administrator, or a management official, but not the employee's direct supervisor, to

authenticate or clarify a medical certification of a serious injury or illness, or an ITO or ITA.

- b. Employees seeking to use military caregiver leave must provide 30 days advance notice of the need to take FMLA leave for planned medical treatment for a serious injury or illness of a covered service member. If leave is foreseeable, but 30 days advance notice is not practicable, the employee must provide notice as soon as practicable – generally, either the same or next business day. When the need is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Generally, it should be practicable to provide notice for unforeseeable leave within the time prescribed by the employer’s usual and customary notice requirements.
- c. Leave may be taken intermittently whenever medically necessary to care for a covered service member with a serious injury or illness. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer’s operation.

### **C. Special Rules:**

#### **1. Rules Applicable to Instructors in Periods Near the Conclusion of the Academic Term:**

The following rules apply to any employee who takes leave without pay under this policy and who is employed principally in an instructional capacity.

- a. If leave without pay begins more than five (5) weeks before the end of an academic term, the principal may require the employee to continue taking leave until the end of that academic term if –
  - The leave is of at least three (3) weeks duration, and
  - The return to work would occur during the three-week period before the end of the academic term.
- b. If Parental or Family Medical leave without pay begins within five (5) weeks before the end of an academic term, the principal, may require the employee to continue taking leave until the end of that term if –
  - The leave is of a least two (2) weeks duration, and
  - The return to work would occur during the two-week period before the end of the academic term.
- c. If Parental or Family Medical leave without pay begins within three (3) weeks before the end of an academic term, the principal may require the employee to continue taking leave until the end of that term, if the leave is for more than five (5) working days.
- d. The extended leave is counted against the teacher’s FMLA allotment. If the teacher’s FMLA allotment expires during the extension, the additional time is nevertheless deemed FMLA leave.

## **2. Intermittent Leave and Reduced Leave Schedules:**

- a. If the intermittent leave or reduced leave schedule is foreseeable based on planned medical treatment, the Superintendent may require the employee to transfer temporarily to an available alternate position –
  - which is offered by the Superintendent,
  - for which the employee is qualified,
  - which has equivalent pay and benefits, and
  - which better accommodates recurring periods of leave than the regular employment position of the employee.
- b. If a teacher does not give the School Committee the required thirty (30) days notice for intermittent leave or a reduced leave schedule which is foreseeable, he or she must delay the taking of leave until the notice provision is met.
- c. If a teacher takes intermittent leave or a reduced leave schedule which is for more than 20% of the normal working days over the period of the leave, that teacher must instead take the entire period as FMLA leave.

## **3. Benefits during Leave:**

- a. While the employee is on leave, the Agawam Public Schools shall maintain coverage of that employee under its group health plan at the level and under the conditions which would have been provided if the employee had continued in employment instead of being on leave.
- b. If the employee normally had a monthly payment to that plan, the employee must make that monthly payment. If the employee fails to make such payments, the Agawam Public Schools shall, if possible, continue the benefits at the reduced rate. If such a reduced rate is not possible, then the employee shall be excluded from the group health plan.

## **4. Employment and Benefits upon Return to Work:**

- a. Any employee who takes leave under this Policy for the intended purpose of the leave shall be entitled, on return from leave –
  - to be restored to his or her former job, or
  - to be placed in an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.
- b. The taking of leave under this policy shall not result in the loss of any employment benefit accrued before the date on which the leave began, nor be counted against the employee under a “no fault” attendance policy. If a bonus or other payment, however, is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, payment may be denied unless it is paid to an employee on equivalent leave status for a reason that does not qualify as FMLA leave.
- c. No employee shall accrue seniority or employment benefits during any period of leave, nor shall the employee be entitled to any right, benefit, or position of employment other than those to which the employee would have been entitled if the employee had not taken the leave. This policy

does not change the legal status of probationary teachers or the Superintendent's authority under M.G.L. Chapter 71, sec. 41 and 42.

#### **5. Failure to Return from Leave:**

The Agawam Public Schools may recover the premium which it paid for maintaining coverage of the employee under its group health plan during the employee's unpaid leave under this policy if –

- a. the employee fails to return from unpaid leave under this policy after the period of leave to which the employee is entitled has expired; and
- b. the employee fails to return to work for a reason other than –
  - the continuance, recurrence, or onset of a serious health condition which would entitle the employee to personal or family medical leave without pay, or
  - other circumstances beyond the control of the employee.

#### **6. Prohibited Acts:**

- a. No employee of the Agawam Public Schools shall interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under this title.
- b. No employee of the Agawam Public Schools shall discriminate against any individual for opposing any practice contrary to this policy.
- c. No employee of the Agawam Public Schools shall discriminate against any individual for:
  - filing any charge, instituting or causing to be instituted any proceeding, under or related to this policy,
  - giving, or being about to give, any information in connection with any injury or proceeding relating to any right provided under this policy, or
  - testifying, or being about to testify, in any inquiry or proceeding relating to any right provided under this policy.

#### **LEGAL REFS.:**

P.L. 103-3 "Family and Medical Leave Act of 1993"  
29 U.S.C. S2601 et seq.  
Department of Labor Relations, 29 C.P.R. Part 825  
Va Code S22.1-303  
P.L. 110-181, "National Defense Authorization Act"

#### ***Agawam Public Schools 2010***

Approved by School Committee on June 8, 2010, by a vote of 6 – 0 – 1 absent.