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## DISTRICT ADMINISTRATIVE RULE

### GBRIG-R Federal Family and Medical Leave Act

8/6/18 x/x/25

#### RATIONALE/OBJECTIVE:

The Cobb County School District (District) provides eligible employees limited unpaid leave for designated qualifying events in accordance with the Family and Medical Leave Act (FMLA).

#### RULE:

##### A. APPLYING FOR FAMILY AND MEDICAL LEAVE:

1. Employees who desire to apply for Family Medical Leave should contact the District Benefits/Leaves Office for information and the appropriate paperwork, Request for Leave Under the Family and Medical Leave Act (Form GARH-1):
  - a. The application should be submitted at least thirty days prior to the beginning of the leave when reasonable advance planning is possible;
  - b. Family Medical Leave begins the first day that the employee is absent from work due to the qualifying event;
  - c. If 30-day notification is not provided for a foreseeable leave, the District may delay the start of the leave.
2. The FMLA provides that an employer may require an employee seeking leave under the FMLA to provide sufficient facts to support the request for leave. The Benefits/Leaves Office will provide the employee requesting leave with designated documents which must be completed and received back in the Benefits/Leaves Office BEFORE the employee may retain the benefit of FMLA-protected leave. Failure to do so may result in a denial of the employee's FMLA request. FMLA applicants have fifteen calendar days to return forms to the District. Employees will receive written FMLA approval confirmation from the Benefits/Leaves Office.

##### B. BASIC LEAVE ENTITLEMENT:

1. **Qualifying Reasons for 12 Workweeks of FMLA Unpaid Leave:** An eligible employee (See Section H. Glossary) is entitled to a combined total of 12 workweeks of unpaid leave during a 12 month period (See Section H. Glossary) for the following reasons:
  - a. For incapacity due to pregnancy, prenatal medical care, or childbirth;
  - b. To care for the employee's child after birth, or placement for adoption or foster care; entitlement to leave for a birth or placement of a child expires at the end of the 12 month period beginning on the date of the birth or placement;
  - c. To care for the employee's spouse, child, or parent who has a serious health condition; and
  - d. For a serious health condition that makes the employee unable to perform the functions of his/her job.
  - e. For a qualifying exigency leave arising out of the fact that the eligible employee's spouse, child, or parent is a on covered military member on active duty or call to active duty status (See Section H. Glossary) in the National Guard or Reserves in support of a contingency operation. (An employee whose family member is on active duty or call to active duty status in support of a contingency operation as a member of the Regular Armed Forces is not eligible to take leave because of a qualifying exigency.) active duty, including when the military member is called to covered active duty status or has been notified on an impending call or order to

**covered active duty (See Section H. Glossary).** One or more of the following are qualifying exigencies:

(1) **Short-notice Deployment:**

Leave may be used for up to seven (7) calendar days beginning on the date the covered military member is notified of the impending call to active duty if the notification is seven (7) or less calendar days prior to the date of deployment.

(2) **Military Events and Related Activities:**

Leave may be used to attend any official military ceremony, program, or event related to the active duty or call to active duty status or to attend certain family support or assistance programs and informational briefings.

(3) **Childcare and School Activities:**

Leave may be used ~~to~~ **for certain childcare and related activities arising from the military member's covered active duty, including:**

- (a) Arrange for alternative childcare under certain circumstances;
- (b) Provide childcare on an urgent, immediate need basis;
- (c) Enroll in or transfer to a new school or daycare facility when necessary; or
- (d) Attend meetings with staff at a school or daycare facility when necessary.

(4) **Care of the Military Member's Parent:**

**Leave may be taken to cover certain activities arising from the military member's covered active duty related to care of the military member's parent who is incapable of self-care.**

(5) ~~(4)~~ **Financial and Legal Arrangements:**

Leave may be taken to make or update various financial or legal arrangements to address the covered military member's absence while on active duty; or to act as the covered military member's representative before a federal, state, or local agency in connection with military service benefits.

(6) ~~(5)~~ **Counseling:**

Leave may be taken to attend counseling (by someone other than a health care provider) for the employee, for the covered military member, or for a child or a dependent of the covered military member when necessary as a result of the active duty or call to active duty status.

(7) ~~(6)~~ **Rest and Recuperation:**

Leave **Up to 15 calendar days of leave** may be used to spend time with a covered military member who is on short-term, temporary, rest-and-recuperation leave during the period of deployment. ~~Eligible employees may take up to five days of leave for each instance of rest and recuperation.~~

(8) ~~(7)~~ **Post-Deployment Activities:**

Leave may be taken to attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status. This leave also addresses issues that arise from the death of a covered military member while on active duty status.

(9) ~~(8)~~ **Additional Activities:**

Leave may be taken to address other events arising from the military duty provided that the District and employee agree that such leave shall qualify as an exigency and agree to the timing and duration of such leave.

2. **Military Caregiver Leave:**

An eligible employee (See Section H. Glossary) is entitled to 26 workweeks of leave during a single 12-month period (See Section H. Glossary) to care for a family member with a serious injury or illness (See Section H. Glossary) related to certain types of military service. The family member must be a covered servicemember (See Section H. Glossary). The employee must be the spouse, son, daughter, parent, or "next of kin" (See Section H. Glossary) of the covered service member. Service members may specifically designate in writing another blood relative as their nearest blood relative for purposes of this leave. (U.S. Department of Labor Form WH-385-V)

- a. If the employee does not take all of their 26 workweeks of leave entitlement to care for a covered servicemember during the single 12-month period, the remaining part of his/her 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

- b. An eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness. However, no more than 26 workweeks of leave may be taken within any single 12-month period.
- c. Employees are not entitled to take leave to care for former members of the Armed Forces, former members of the National Guard or Reserves, or servicemembers on the permanent disability retired list.

3. **Multiple Leave Qualifications within the Single 12-Month Period:**

- a. An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during the single 12 month period, but the employee is entitled in that period to no more than 12 weeks of leave for any other types of FMLA leave (i.e., birth of a child, placement of a child, serious health condition of the employee or family member, or qualifying exigency). For example, an employee may, during the single 12-month period, take 16 weeks of FMLA leave to care for a covered servicemember and 10 weeks of FMLA leave to care for a newborn child.
- b. If a leave qualifies as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition during a single 12-month period, the District must designate such leave as leave to care for the covered servicemember in the first instance. Such leave shall not be designated and counted as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition.

**C. REQUIRED CERTIFICATION:**

1. **General Provisions:**

An employee requesting FMLA leave for the care of a spouse, parent, or child with a serious health condition for the employee's own serious health condition, or for the care of a family member who is a covered servicemember with a serious illness or injury shall support the leave requested by a certification issued by the health care provider of the employee; of the child, spouse, or parent of the employee; or of the covered servicemember. To meet this obligation, the health care provider shall complete the appropriate District certification form, which requests only information permitted by FMLA. (Form GARH-1 [Request for Leave Under the FMLA]; U.S. Department of Labor Form WH-380-E; U.S. Department of Labor Form WH-380-F; U.S. Department of Labor Form WH-385)

2. **Exigency:**

- a. The first time an employee requests leave due to a qualifying exigency arising out of active duty or call to active duty status of a covered military member, the employee shall provide a copy of the covered military member's active duty or other military documentation which indicates the appropriate military status, the dates of the active duty status, and certification that provides details of the leave. (Form GARH-1 [Request for Leave Under the Family & Medical Leave Act]; U.S. Department of Labor Form WH-384)
- b. If the need for exigency leave arises out of a different active duty or call to active duty status of the same or different covered military member, a copy of new active duty orders or other documentation issued by the military will be required, and the employee shall provide certification regarding the leave. (Form GARH-1 [Request for Leave Under the Family & Medical Leave Act]; U.S. Department of Labor Form WH-384)

- 3. The employee must provide complete and sufficient certifications to the District. The District shall notify the employee in writing if it finds a certification to be incomplete or insufficient, and the written notification shall state what additional information is necessary. The employee shall have seven (7) calendar days to cure the deficiencies identified. If the resubmitted certification does not cure the deficiencies, the District may deny the taking of FMLA any leave provided under Federal Law.
- 4. After providing the employee the opportunity to cure any deficiencies in the certifications for leave requested for the employee's own serious health condition or the serious health condition of a family member, the District may directly contact the health care provider to authenticate and/or clarify the certification. Authentication is limited to providing the health care provider with a copy of the certification and requesting verification that the

certification form was completed and/or authorized by the health care provider who signed the document. Clarification means contacting the health care provider to understand the handwriting on the certification or to understand the meaning of the response.

a. Only the District's health care provider, Human Resources professional, leave administrator (including a third-party administrator), or management official shall make the contact with the employee's health care provider. An employee's direct supervisor shall not make these inquiries.

b. ~~Prior to contacting the employee's health care provider to clarify the certification, the District shall obtain a valid HIPAA Privacy Rule authorization from the employee. If the employee chooses not to provide the authorization to the District and does not otherwise clarify the certification, the District may deny the taking of the FMLA leave if the certification is unclear.~~

5. **Second and Third Opinions:**

a. The District reserves the right, at its own expense, to designate a second health care provider who is not District employee or who is not regularly utilized by the District to provide a second opinion concerning any information in the certification;

b. If the second opinion differs from the opinion in the original certification, the District may require, at its own expense, a third opinion from a health care provider approved jointly by the District and the employee;

c. A third opinion, should it be necessary, shall be final and binding.

6. **Return to Work:**

a. Prior to the employee's return to work from leave for his/her own serious health condition, the District shall require the employee to provide certification by his/her health care provider that the employee is able to resume work by submitting a completed Form GARH-8 (Release to Return to Work Form);

b. The employee shall not return to the worksite until the Benefits /Leaves Office has:  
(1) Received the employee's completed Form GARH-8; and  
(2) Contacted the employee, advising him/her to return to work.

**D. IMPACT ON EMPLOYEE BENEFITS:**

Employment benefits accrued by the employee before leave is taken will not be altered by the employee's absence under this Rule.

1. **Benefits:**

a. **Health:**

The employee is entitled to continuation of group health benefits during the leave period:

(1) Once it is confirmed that an employee will not receive a District paycheck, the Benefits Office will bill the employee directly for all benefit coverage for which he/she is currently enrolled, at the applicable rate;

(2) While the employee is covered by FMLA, once billed, the employee's health portion is forwarded to the State Health Benefit Plan (SHBP);

(3) Once ~~Family and Medical Leave~~ **FMLA** expires, the employee will be billed at non-FMLA rates;

(4) The District facilitates initial billings for SHBP;

(5) If an employee fails to return to work after the leave period has ~~expired~~ **ended**, the District may recover the health benefits premium expenditures it expended on behalf of the employee during the unpaid leave period, except if the reason is the continuation, recurrence, or onset of either a serious health condition of the employee or the employee's spouse, parent or child; or a serious injury or illness of a covered servicemember; or other circumstances beyond the employee's control.

b. **Others:**

The Benefits Office will also bill the employee for all local benefits (for example, ~~optional~~ **voluntary** life, dental, and vision insurance). Employees should send all remittances for health (SHBP) and local benefits directly to the Benefits Office.

2. **Return to Work:**

Upon return **from FMLA leave**, the employee is entitled to restoration to the same position or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

3. **Non-Accrual/Non-Accumulation:**

An employee will not accrue/accumulate employment benefits such as step credit, **sick or** vacation days, ~~or short-term leave~~ during any unpaid period of leave.

#### **E. OTHER LEAVE PROVISIONS:**

##### **1. Paid Leave:**

An eligible employee's accrued ~~paid short-term~~ **sick** and/or vacation leave will be used in accordance with the requirements of and as provided by existing District Rules and regulations in conjunction with all or any part of the relevant workweeks of unpaid leave provided by this Rule. The use of paid leave (~~short-term~~ **sick** and/or vacation leave) shall be consistent with District Rules and Regulations.

##### **2. Intermittent ~~or Reduced~~ Leave:**

Leave taken for the serious health condition of an eligible employee's spouse, child, or parent, for the employee's own serious health condition, or illness of a covered servicemember may be taken intermittently or on a reduced leave schedule (See Section H. Glossary) when medically necessary. Leave due to a qualifying exigency may also be taken on an intermittent or reduced leave schedule.

###### **a. Scheduling:**

If an employee needs leave intermittently ~~or on a reduced leave schedule for planned medical treatment~~, the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the District, subject to approval of the employee's, family member's, or covered servicemember's health care provider.

###### **b. Possible Reassignment:**

If the employee requests intermittent leave ~~or leave on a reduced leave schedule~~ that is foreseeable based on a planned medical treatment for the employee, a family member, or a covered servicemember, the District may reassign the employee temporarily to an available alternative position for which the employee is qualified with equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

###### **c. Instructional Employees:**

If an eligible instructional employee (See Section H. Glossary) requests intermittent leave ~~or leave on a reduced leave schedule~~ that is foreseeable based on a planned medical treatment for the employee's serious health condition, for a family member with a serious health condition, or for a covered servicemember and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the District may:

- (1) Require the instructional employee to take full-day leave for a period or periods of a particular duration that is not greater than the duration of the planned treatment;
- or
- (2) Temporarily reassign the employee to an alternative position as described in the preceding paragraph.

#### **F. INSTRUCTIONAL EMPLOYEES:**

1. An eligible instructional employee may be required to continue his/her leave until the end of a semester when the employee begins the leave:

- a. More than five weeks before the end of the semester, the leave will last at least three weeks, and the employee would return to work during the three week period before the end of the semester.

- b. For a purpose other than the employee's own serious health condition:

- (1) During the five-week period before the end of a semester, the leave will last more than two weeks, and the employee would return to work during the two week period before the end of the semester;

- (2) During the three week period before the end of a semester and the leave will last more than five workdays.

2. If an eligible employee is required to take leave until the end of the semester, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement.

#### **G. SPECIAL PROVISIONS:**



1. The District may deny restoration under this Rule to an employee whose salary is in the highest 10% of the employees employed by the District if such denial is necessary to prevent substantial and grievous economic injury to the District's operations.
2. In cases where both spouses **are both FMLA eligible and** are employed by the District, the combined amount of unpaid leave for childbirth, adoption or foster placement of a child, the care for the child after birth or placement, or serious health condition of a parent is limited to twelve (12) **FMLA** workweeks.
3. **Record Keeping:**  
The Benefits/**Leaves** Office shall make, keep, and preserve records showing compliance with the Family and Medical Leave Act of 1993 and in accordance with the Fair Labor Standards Act of 1938 and FMLA federal regulations.

## H. GLOSSARY:

### 1. **Active Duty or Call to Active-Duty Status:**

~~Duty under a call or order to active duty in support of a contingency operation of retired members of the Regular Armed Forces, certain members of the Retired Reserve, and various other Reserve members including the Ready Reserve, the Selected Reserve, the Individual Ready Reserve, the National Guard, state military, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, and Coast Guard Reserve. A call to active duty is a federal call to active duty; state calls to active duty are not covered unless under order of the President of the United States pursuant to one of the laws cited in the FMLA regulations.~~ **For members of the Regular Armed Forces, covered active duty is duty during deployment of the member with the Armed Forces in a foreign country. For members of the National Guard and Reserves, covered active duty is duty during deployment of the member with the Armed Forces to a foreign country under a call or order to activate duty in a contingency operation. Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States. It includes deployment to international waters.**

### 2. **Child:**

A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is:

- a. Under 18 years of age; or
- b. 18 years of age or older and incapable of self-care because of a mental or physical disability.

### 3. **Covered Servicemember:**

A current member or covered veteran of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness, including a current member of the Armed Forces or National Guard or Reserves who is otherwise in outpatient status or on the temporary disability retired list for serious injury or illness. An eligible employee must commence leave to care for a covered veteran within five years of the veteran's active duty service, but the single 12-month period may extend beyond the five-year period.

### 4. **Eligible Employee:**

An employee who has been employed by the District for at least 12 months on the date on which FMLA leave is to commence. The employee must have worked at least 1,250 hours during the 12 months prior to the start of FMLA leave.

### 5. **Employment Benefits:**

All benefits provided or made available to employees by the District, including but not limited to group life insurance, health insurance, disability insurance, sick leave, personal leave, and pensions.

### 6. **Exigency:**

A pressing need; a situation calling for immediate action or attention

### 7. **Health Care Provider:**

A doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse midwives, clinical social workers, and physician assistants who are authorized to practice in by the State in which he/she practices and who are performing within the scope of their practice as defined under State law or who practice in a country other than the United States, are authorized to practice in accordance

with the laws of that country, and who are performing within the scope of his/her practice as defined under that country's law. Health care provider also includes Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts and any health care provider from whom the District or the District's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

**8. Instructional Employees:**

Employees whose principal function is to teach and instruct students in a class, a small group, or an individual setting.

**9. Intermittent Leave:**

Leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time, and may include leave periods from an hour or more to several weeks.

**10. Next of Kin:**

Next of kin designation applies only to Military Caregiver Leave and means the nearest blood relative of the servicemember, other than the service member's spouse, parent, son, or daughter. The order of priority is: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions; siblings; grandparents; aunts and uncles; and first cousins, unless the servicemember has specifically designated in writing another blood relative as his/her nearest relative for purposes of Military Caregiver Leave (Form GBRIG-5 [Next of Kin Verification Form]).

**11. Parent:**

The biological, adoptive, step, or foster father or mother of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

~~**12. Reduced Leave Schedule:**~~

~~A leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.~~

**13. Serious Health Condition:**

An illness, injury, impairment, or physical or mental condition that involves:

- a. An overnight stay in a medical care facility; or
- b. Continuing treatment by a health care provider for a condition that either prevents the individual from performing the functions of his/her job or other regular daily activities or from attending school. Subject to certain conditions, the continuing treatment of a serious health condition requirement may be met by:
  - (1) A period of incapacity of more than **three (3)** consecutive, full calendar days combined with at least two **(2)** visits to a health care provider within 30 days of the first day of the incapacity or one **(1)** visit and a regimen of continuing treatment. The first visit must occur within **seven (7)** days of the start of the incapacity;
  - (2) Incapacity due to pregnancy or for prenatal care;
  - (3) Incapacity due to a chronic condition;
  - (4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective;
  - (5) Conditions requiring multiple treatments.

**14. Serious injury or illness:**

An injury or illness incurred by the covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.

**15. Single 12-Month Period:**

The single 12-month period begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date.

**16. Spouse:**

A husband or wife, as defined by the Family and Medical Leave **Act** and its regulations.

**17. Twelve Month Period:**

The 12 month period in which the 12 workweeks of leave entitlement occurs is a "rolling" 12 month period measured backward from the date an employee uses any leave granted by this Rule, except Military Caregiver Leave which is governed by the single 12-month period definition.

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406  
407 Legal Reference  
408 O.C.G.A. 20-2-852 Maternity leave  
409 29 CFR Part 825 The Family and Medical Leave Act of 1993 - Regulations  
410 29 CFR 1604.10 Employment policies relating to pregnancy and childbirth  
411 29 USC 2601 Family and Medical Leave Act