

Family and Medical Leave Act Information

Family and Medical Leave Act (FMLA)

Family and Medical Leave (FML) is leave without pay that is available to employees of the Nebraska Department of Education (NDE) under the provisions of the federal Family and Medical Leave Act (FMLA) of 1993. It provides up to 12 weeks of unpaid leave during a 12-month period beginning with the date of the first absence, assures that upon return to work at the end of the approved FML period the employee's former position is available to them, and requires that the State maintain its contribution to the employee's health insurance and basic State-provided life insurance that was in place at the time the leave began. Eligible employees must have been employed by the State of Nebraska for at least 12 months and have worked at least 1,250 hours during the previous 12-month period.

Family and Medical Leave can be taken 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 seriously ill spouse, mother, father, or child (must be under 18 years of age; or 18 years of age or older and incapable of self-care because of a mental or physical disability).
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Amendments to the FMLA by the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, expanded the FMLA to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any "qualifying exigency" arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a "single 12-month period" to care for a covered service member with a serious injury or illness.

Use of Leave

Article 15, Section 15.16A of the NDE–NAPE/AFSCME Bargaining Agreement provides detailed explanations of the FMLA provisions. If you have any questions about leave provisions or how they apply to your specific situation, contact Amy Spellman in the NDE Human Resources Office (HR) at 402-471-5027.

15.16A Family and Medical Leave (FML) is unpaid time off from work, and is subject to the provisions of 29 CFR 825. An employee must have at least twelve (12) total months of State service and have worked at least 1,250 hours in the previous twelve (12) month period to be eligible for FML. Employees may request that accrued paid leave (e.g., vacation, sick) and compensatory time, if the employee is subject to Section 8.2, be applied along with the unpaid FML entitlement. In this case, any paid leave will run concurrently with the FML entitlement.

Employees who are absent and receiving Worker's Compensation benefits, or using any paid leave exceeding 40 hours for full-time employees or exceeding the number of hours proportionate to the percentage of FTE for part-time employees, taken for any of the reasons listed in Section 15.16B, will have such leave credited against the twelve (12) week FML entitlement. Unpaid FML not charged to sick or vacation is subject to service date adjustments under Section 15.19.

If FML exceeds 40 hours during a twelve month period starting with the date FML is first used for full-time employees, or exceeds the number of hours proportionate to the percentage of FTE for part-time employees, sick leave must be used concurrently if the reason for the FML is also a reason sick leave may be used under Section 15.2. If the reason for FML is not also a reason sick leave may be used, or if and when accumulated sick leave is exhausted, such employee shall be required to utilize (1) accumulated unused compensatory time off if the employee is subject to Section 8.2 and (2) accrued vacation leave, in that order until exhausted; however, vacation leave may be reserved in an amount up to 40 hours for full-time employees, or proportionate to the percentage of FTE for part-time employees, unless Catastrophic Leave is requested per Section 15.18.

Genetic Information Nondiscrimination Act Title II (GINA)

GINA prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. In order to comply with this law, we are asking that you not provide any genetic information when responding to the request for medical information. 'Genetic information,' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Definition of Serious Health Condition

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

- 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**
- Continuing treatment by a health care provider, which includes:
 1. A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:
 - treatment two or more times by or under the supervision of a health care provider (*i.e.*, in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); **or**
 - one treatment by a health care provider (*i.e.*, an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (*e.g.*, prescription medication, physical therapy); **or**
 2. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care necessary for each absence; **or** 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 each absence; **or**
 3. 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**
 4. 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 days if not treated.

Employee Responsibilities

Family and Medical Leave Act Request Form must be completed by the employee, signed, and submitted to HR at least 30 days prior to the beginning of the leave if the need for the leave is foreseeable. If the need was not foreseeable, the form must be completed and submitted as soon as possible.

Certification of Health Care Provider Form for the employee or employee's family member must be completed and signed by the medical provider if the leave being requested is for medical purposes. It must be returned to the NDE Human Resources Office within 15 calendar days of submission of the request form or receipt of the Eligibility Notice Form.

Insurance Coverage Continuation Form must be completed by the employee if there will be unpaid time, signed, and submitted to HR.

All forms should be sent to Nebraska Department of Education, Attention Human Resources, P.O. Box 94987, Lincoln, NE 68509-4987 or can be faxed to 402-471-6639.

Supervisor Communication is the responsibility of the employee. The employee must communicate with his/her supervisor in regards to his/her return to work and to complete his/her timesheet.

Reporting Leave - Please discuss with NDE HR when it is time to complete your timesheet.

Return to Work – If any changes occur in the anticipated return date, it is the responsibility of the employee to notify his or her supervisor. The supervisor will notify HR. In the event additional certification is required, HR will notify the employee and the supervisor of that requirement. A *Return-to-Work/Fitness-for-duty form* may be required if the absence exceeds five (5) consecutive work days.

NDE Human Resources Responsibilities

HR reviews the *Family and Medical Leave Request Form* for completeness and eligibility; within five business days of receipt of the form HR provides notice of eligibility and rights and responsibilities under the FMLA and includes any additional information that is required to make a final determination; pending receipt of the *Certification of Health Care Provider Form* if it is required; and notifies the employee's supervisor.

HR reviews the *Insurance Coverage Continuation Form*, adds the premium information, and works with the employee and NDE Central Accounting to assure that insurance coverage continues as requested and that the employee's share of the premiums is paid by payroll deduction or personal check, as required and as applicable to the situation

Upon receipt of the completed and signed *Certification of Health Care Provider form* a final determination regarding eligibility and designation of FML will be made. Within five business days HR prepares a designation notice detailing the *Designation of Family and Medical leave* and provides a copy of that notice to the employee and the supervisor.