

CODE: GBN

FAMILY AND MEDICAL LEAVE

Employees are entitled to family and medical leave under the federal Family and Medical Leave Act of 1993 (“FMLA”) or the Maine Family Medical Leave law when they meet all of the eligibility requirements of these laws. This policy sets forth several rules that must be applied uniformly to all employees who may be eligible for family and medical leave. The Superintendent and his/her designees are authorized to administer these laws and any accompanying regulations consistent with this policy. As used in this policy, “family and medical leave” means leave available under both the federal and state laws.

A. The Federal Employee Eligibility Periods

There are two types of eligibility periods under the federal law as described below. Employees must have worked for the employer for at least 12 months (not necessarily consecutive) and worked at least 1,250 hours in the previous 12 months to be eligible for leave under the federal law.

1. 12-Month Period for Birth, Adoption or Foster Care; Serious Health Condition Purposes; Qualifying Exigency

There is a 12-month eligibility period for FMLA leave taken for the following qualifying purposes:

- a. Birth and care of the newborn child of the employee;
 - b. Placement with the employee of a son or daughter for adoption or foster care;
 - c. Care for an immediate family member (spouse, child, or parent) with a serious health condition;
 - d. Medical leave when the employee is unable to work because of a serious health condition; or
 - e. Qualifying exigency leave for an employee whose spouse, child or parent is a regular member of the Armed Forces on covered active duty deployed to a foreign country or a reserve member of the Armed Forces (including National Guard) on covered active duty deployed to a foreign country under call or order to active duty in a contingency operation.
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1. The 12-month period used to determine employee eligibility for up to 12 weeks of FMLA leave for the purposes described above shall be a rolling 12-month period measured backward from the date an employee uses FMLA leave (each time an employee takes FMLA leave, the remaining leave is the balance of the 12 weeks not used during the immediately preceding 12 months).

For example, an eligible employee requests two weeks of FMLA leave to begin on November 1st. The employer looks back 12 months (from November 1st back to the previous November 2nd) and sees that the employee had taken four weeks of FMLA leave beginning January 1st, four

weeks beginning March 1st, and three weeks beginning June 1st. The employee has taken 11 weeks of FMLA leave in the 12-month period and only has one week of FMLA-protected leave available. After the employee takes the one week in November, the employee can next take FMLA leave beginning January 1st as the days of the previous January leave “roll off” the leave year.

2. Federal 12-Month Period for Military Caregiver Leave

There is a separate 12-month period for employees eligible for military caregiver leave of up to 26 weeks. Such leave may be taken to care for a spouse, child parent or next of kin of an eligible service member or veteran with a serious injury or illness. This leave is calculated from the first day that leave is taken for this purpose and does not track the employer’s designated 12-month FMLA tracking period as described above. Any military caregiver leave that is not taken within the specific 12-month period is forfeited. This leave period may overlap with the usual 12-month leave period designated by the school unit and in certain circumstances, this may impact the employee’s eligibility to take other types of FMLA leave.

B. Maine Requirements

1. Leave Amount and Eligibility

The eligibility period for family and medical leave available to employees under the Maine law is 10 work weeks in any two-year period. Employees must have worked for the employer for at least 12 months to be eligible for leave under the Maine law (there is no minimum hours worked requirement).

2. Qualifying Purposes

Leave may be used for the following qualifying purposes:

- a. Serious health condition of the employee;
- b. Serious health condition of the employee’s spouse, domestic partner, child (or child of domestic partner), parent or sibling;
- c. Birth of the employee’s child or child of his/her domestic partner;
- d. Placement of a child 16 years of age or younger with the employee or the employee’s domestic partner for adoption;
- e. Donation of an organ for human transplant by the employee;
- f. Death or serious health condition of the employee’s spouse, domestic partner, parent, sibling or child as a member of the state military forces or United States Armed Forces (including National Guard and Reserves) while on active duty.

C. Notice by Employee

Employees requesting leave shall provide at least 30 days’ notice to the Superintendent or his/her designee whenever the need for such leave is foreseeable. The employee shall provide appropriate medical certification (or other certification appropriate to the particular request) supporting the leave request.

When the Superintendent or his/her designee has reason to believe that an employee is or will be absent for an FMLA-qualifying purpose, the Superintendent or designee should request the appropriate information from the employee to determine the employee's eligibility for family and medical leave.

D. Coordination with Other Leave

When leave is taken that qualifies both as FMLA and as permitted leave under any employment contract, collective bargaining agreement or policy, the employee shall use FMLA and the other type of leave concurrently, provided that the employee meets all of the eligibility requirements for each type of leave. Types of leave that shall run concurrently with FMLA include, but are not necessarily limited to: personal and/or family sick leave, unpaid leave, disability leave, absence for work-related injuries, and any other applicable types of leave.

Example: An employee with a chronic illness qualifies for both sick leave and family medical leave. The employee has 30 days (six weeks) of accumulated paid sick leave. For the first six weeks, the employee is on paid sick leave and family and medical leave; the two types of leave run concurrently. Once the sick leave is exhausted, the employee has six more weeks of unpaid family medical leave until the 12-week federal FMLA entitlement is used up.

E. Fitness for Duty Certificate

Before returning to work, employees taking FMLA for their own serious health condition shall submit a certificate from a health care provider indicating that they are able to return to work and perform the essential functions of the position.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to 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.

Legal Reference: 26 USC § 2601 et seq.
29 CFR Part 825
26 MRSA § 843 et seq.

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