

ABSENCES: FAMILY & MEDICAL LEAVE ACT

POLICY

It is the policy of the Diocese of Harrisburg to provide leaves of absence in accordance with the Family and Medical Leave Act of 1993 (FMLA or Act). In accordance with the FMLA, the Diocese of Harrisburg provides family and medical leaves of absence to any eligible employee who is unable to work because of a reason set forth in the Act.

I. PURPOSE

To fully comply with all applicable provisions of the FMLA the Diocese of Harrisburg has adopted this policy to implement the terms of the FMLA and to ensure that eligible employees are entitled to family and medical leave according to the terms and conditions stated in this policy and in the Diocese of Harrisburg's other applicable leave policies.

II. SCOPE

This policy is applicable to all employees of the Diocese of Harrisburg, its parishes, schools and affiliated agencies.

III. DEFINITIONS

Under this policy, the following definitions apply:

1. "Eligible Employee" means an individual who has been employed by the Diocese of Harrisburg, or one of its Parishes, schools or affiliated agencies for at least 12 months, has worked at least 1,250 hours during the preceding 12-month period, and is employed at a worksite with at least 50 employees within 75 miles of that worksite.
2. "FMLA Leave" means leave, which qualifies under the Family and Medical Leave Act of 1993 and is designated by the Diocese of Harrisburg as so qualifying.
3. "Leave Year" means the twelve-month period measured forward from the commencement of the employee's first FMLA Leave.
4. "Qualifying Family Member" means an employee's spouse, child or parent,
 - a. "Child" means a biological, adopted, or foster child, a step-child, and a child an employee has legal custody for, or a child of a person standing in *loco parentis*. Further, the child must be either under age 18, or older if the child is incapable of self-care because of mental or physical disability.

- b. “Spouse” means a husband or wife as defined or recognized under Pennsylvania law for the purpose of marriage.
- c. “Parent” means a biological parent of the employee or an individual who stands or stood in *loco parentis* to an employee when the employee was a child under 18 or incapable of self-care.

“Serious Health Condition” means an illness, injury, impairment or physical or mental condition that causes a period of incapacity resulting in:

- i. The need for inpatient care (overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with such inpatient care;
- ii. A period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves treatment two or more times by a health care provider within 30 days of the beginning of the incapacity, or treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment;
- iii. The need for continuing treatment or supervision by a health care provider due to pregnancy;
- iv. A chronic health condition which requires at least two visits per year to a health care provider, continues over an extended period of time and may cause episodic rather than a continuing period of incapacity;
- v. A period of incapacity which is permanent or long-term care due to a condition for which treatment may not be effective; or
- vi. A period of absence to receive multiple treatments for an injury or condition which would result in incapacity of more than three consecutive days if not treated.

IV. ENTITLEMENT TO LEAVE

An Eligible Employee is entitled to a total of 12 work weeks of unpaid leave, or paid leave if the employee has accrued sufficient sick leave time, during each Leave Year in the event of one or more of the following:

- 1. The birth of a child and in order to care for that child;
- 2. The placement of child for adoption or foster care, and to care for the newly placed child;

3. Care of a Qualifying Family Member with a Serious Health Condition; or
4. A Serious Health Condition of the employee that makes the employee unable to perform one or more of the essential functions of his/her job.

Any leave taken under one or more of these circumstances will be counted against the employee's total entitlement for that Leave Year.

If a husband and wife both work for the Diocese of Harrisburg, its parishes, schools or affiliated agencies and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a Qualifying Family Member with a Serious Health Condition, the husband and wife may only take a combined total of 12 weeks of leave. In the case of the birth, adoption or placement of a child, the leave must be taken continuously.

V. ELIGIBILITY

In order to take family and medical leave under this policy, the employee must be an "Eligible Employee" who meets all of the following conditions:

1. The employee must have worked for the Diocese of Harrisburg for 12 months, or 52 weeks. The twelve months, or 52 weeks, need not have been consecutive but must have been accumulated during the seven years prior to the commencement of the first FMLA Leave. The Diocese of Harrisburg is only required to keep records for three years, therefore if the diocese determined that an employee is not eligible to take FMLA Leave based on those records, the *employee* will have to submit proof of his or her periods of employment for years four through seven to demonstrate eligibility.
2. The employee must have worked at least 1,250 hours during the twelve-month period immediately preceding the employee's leave date. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave will not be counted in determining the 1,250 hours eligibility test for an employee under the FMLA.
3. The employee must work in an office or worksite where 50 or more employees are employed, by the Diocese of Harrisburg, its parishes, schools or affiliated agencies, within 75 miles of that office or worksite.

VI. NOTICES AND REQUESTS FOR FMLA LEAVE

All employees requesting FMLA Leave under this policy must provide verbal or written notice with an explanation of the reason(s) for the needed leave to the Human Resources Department at the diocese via their employer.

Notice must consist of:

1. The reason(s) for the needed leave;
2. The FMLA-qualifying reason for the leave; and
3. The anticipated timing and duration of the leave, including the reason for such leave and the treatment schedule if intermittent or reduced schedule leave is requested.

If the need for leave is foreseeable, the employee is required to provide such notice to the Human Resources Department at the diocese via their employer at least thirty (30) days before the commencement of the leave. If the need for leave is unforeseeable, notice must be given as soon as practicable. If an employee fails to provide notice in accordance with this policy, with no reasonable excuse for the delay, the leave request may be denied or the commencement of the leave may be postponed.

The Diocese of Harrisburg will respond to requests for FMLA Leave in writing, usually within five business days of the request. See “Employer Response Form” – sample. The response will notify the employee concerning his/her provisional eligibility for leave and the employee’s rights and obligations with respect to the leave. For employees on intermittent leave, this notice will be provided every six months. (See Part IX, Intermittent or Reduced Schedule Leave).

If there is a change in the dates of the scheduled leave, the employee is required to give additional notice as soon as practical. The Diocese of Harrisburg periodically may require the employee to report on his/her status and intent to return to work.

When the Diocese of Harrisburg learns of an FMLA reason for leave after a leave has commenced under another of the Diocese of Harrisburg’s policies, the Diocese of Harrisburg will designate the leave as FMLA-qualifying from the commencement of the event. Employees are required to cooperate in providing the Diocese of Harrisburg with information needed to make this determination.

VII. CERTIFICATION OF A SERIOUS HEALTH CONDITION

An employee requesting FMLA Leave for his/her own Serious Health Condition or the Serious Health Condition of a Qualifying Family Member must submit a completed medical certification substantiating the need for FMLA Leave. Forms must be obtained from the Human Resources Department via your employer. See “Family and Medical Leave Certification Form” sample. The form must be completed by the health care provider of the employee, or if the requested leave is for the employee’s Qualifying Family Member, the health care provider of the Qualifying Family Member.

The employee must return the form to the Human Resources Department via their employer within 15 calendar days of the request. Failure to provide a certification in a

timely, legible and complete manner may result in a denial of FMLA Leave. Once the completed form is returned, the requested FMLA Leave will be approved or disapproved.

If the Diocese of Harrisburg chooses, it may ask for a second opinion from an independent health care provider, at the Diocese of Harrisburg's expense. If necessary to resolve a conflict between the original certification and the second opinion, the Diocese of Harrisburg may require the opinion of a third doctor, also at the Diocese of Harrisburg's expense. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinions.

The Diocese of Harrisburg also may require the employee to submit recertification(s) on a periodic basis. Failure to comply with these certification requirements will result in the delay, denial or termination of FMLA Leave.

Finally, when FMLA leave involves a Qualifying Family Member, employees also may be required to provide reasonable documentation to confirm the family relationship. Leave for a son or daughter aged 18 or over also may require that the employee demonstrate through certification that the child is disabled and incapable of self-care.

VIII. USE OF PAID LEAVE

FMLA Leave under this policy will be considered unpaid leave. However, if an employee is entitled to paid leave under another applicable leave policy of the Diocese of Harrisburg, including sick leave, vacation leave, personal leave or short-term disability, he or she may choose to use paid leave concurrently with FMLA Leave, as follows:

1. For the employee's own serious health condition, the employee first must use sick leave to cover the absence. Where the employee qualifies for short-term disability (STD) benefits, sick leave and STD will run concurrently with FMLA Leave. If the employee has exhausted sick leave, personal and vacation leave may be applied.
2. For leave to care for a Qualifying Family Member, the employee first must use sick leave, as allowed by the employer's sick leave policy to cover the absence to care for a family member. If the employee has exhausted sick leave, personal and vacation leave may be applied.

Once an employee's paid sick leave has been exhausted, the remainder of the employee's FMLA Leave will be without pay unless the employee chooses to use vacation time and personal days. Once all paid time off has been exhausted any remaining FMLA leave will be without pay.

Employees on leave that qualifies both as workers' compensation and FMLA Leave who are offered a modified duty position will have the option of remaining on FMLA Leave (and foregoing the modified duty position and additional workers' compensation benefit) or terminating the FMLA Leave to accept the modified duty position.

IX. INTERMITTENT OR REDUCED SCHEDULE LEAVE

FMLA Leave due to the Serious Health Condition of an employee or an employee's Qualifying Family Member may be taken intermittently or on a reduced leave schedule basis when medically necessary. The request process is the same as a request for a continuous leave.

Intermittent leave may be taken in whole or partial day increments and will be counted against the 12-week total Leave Year allotment.

If an employee takes intermittent or reduced schedule leave, the Diocese of Harrisburg may require the employee to transfer temporarily to an available alternative position with an equivalent pay rate and benefits, including a part-time position, so as not to unduly disrupt the Diocese of Harrisburg's operations while the employee is on the reduced or intermittent schedule. In addition, employees are required to notify the Director of Human Resources via their employer, in advance of scheduling treatment that might interfere with operations to discuss whether an alternative treatment schedule would be less disruptive.

FMLA Leave taken in order to care for a new child following birth, adoption or placement may not be taken intermittently or on a reduced work schedule basis.

X. CONTINUATION OF GROUP HEALTH BENEFITS

While on FMLA Leave, the Diocese of Harrisburg will maintain all the employee's benefit coverage under the same terms and conditions as though the employee was actively at work.

If an employee chooses not to return to work following the expiration of FMLA Leave for reasons other than a continued Serious Health Condition of the employee, or of the employee's Qualifying Family Member, or for circumstances beyond the employee's control, the Diocese of Harrisburg reserves the right to recover from the employee any insurance costs during any unpaid portion of the employee's FMLA Leave. The Diocese of Harrisburg, however, will give the employee the option to continue health care coverage for six months at the employee's expense.

XI. LIFE INSURANCE

Life Insurance will be continued throughout the duration of FMLA leave.

XII. RETIREMENT PLAN

Contributions to a 401k plan will automatically stop when an employee goes on unpaid leave and resume when the employee returns to pay status. Contributions remain invested with the plan and are not available for withdrawal, unless a case for hardship can be met. Employees who have outstanding loans when they go on FMLA Leave must arrange to make repayments to the loans during unpaid leave.

XIII. FMLA and WORKERS COMPENSATION

FMLA Leave will run concurrently with leave under the Workers' Compensation program if employees take FMLA leave for their own serious health condition that result from job-related injuries or illnesses.

XIV. FMLA and SHORT-TERM DISABILITY

FMLA Leave will run concurrently with leave under the Diocesan Short Term Disability Insurance Plan, if employees take FMLA Leave for their own serious health condition that results from non-work related injuries or illnesses.

XV. RETURN TO WORK

Before returning to work following FMLA Leave for the employee's own Serious Health Condition (except for intermittent or reduced work schedule leave), the employee will be required to present a certification of fitness from his/her health care provider that the employee is medically able to resume work. If the date on which an employee is scheduled to return to work from an FMLA Leave changes, the employee is required to give notice of the change, if foreseeable, to the Diocese of Harrisburg within two business days of the change.

An employee returning from FMLA Leave will be restored to the same position or to a position with equivalent pay, benefits, conditions and terms of employment.

Reinstatement to an employee's previous position may be denied if:

1. The employee fails to provide the Diocese of Harrisburg with the required post-leave fitness for duty certification;
2. Conditions unrelated to the FMLA Leave have resulted in the elimination of the employee's position while the employee was on leave and would have eliminated the position even if the employee had not been on leave;
3. The employee qualifies as a "key employee." This exemption generally applies to the highest paid 10% of the workforce. Any employee designated as a key employee will be notified when taking FMLA Leave of his/her status.

SPECIAL RULES CONCERNING INSTRUCTIONAL STAFF IN ELEMENTARY and SECONDARY SCHOOLS

The special rules affects the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees. "***Instructional employee's***" are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

What limitations apply to the taking of intermittent leave or leave on a reduced leave schedule?

(1) An instructional employee who is using FMLA Leave on an intermittent basis or working on a reduced leave schedule at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year. The period during the summer vacation, when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement.

(2) If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member, or for the employee's own serious health condition, which is FORESEEABLE based on planned medical treatment, 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, THEN

The school may require that the employee:

- (i) Take leave for a period or periods of a particular duration, not to exceed the duration of the planned treatment; or
- (ii) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

For example:

If an instructional employee who normally works five days each week needs to take two days of FMLA Leave per week over a period of several weeks, the special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position.

"Periods of a particular duration" means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave.

(3) If an instructional employee does not give required notice of foreseeable FMLA Leave to be taken intermittently or on a reduced leave schedule, the school may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the school may require the employee to delay the taking of leave until the notice provision is met.

Rules applicable to periods of FMLA Leave near the conclusion of an academic term

The following rules apply with respect to periods of leave near the conclusion of an academic term in the case of any eligible employee employed principally in an instructional capacity

(1) LEAVE COMMENCES MORE THAN 5 WEEKS PRIOR TO THE END OF TERM

If the eligible employee begins FMLA leave more than 5 weeks prior to the end of the academic term the school may require the employee to continue taking leave until the end of the term IF—

- The leave is of at least three weeks duration, AND
- The return to employment would occur during the 3-week period before the end of term.

(2) LEAVE LESS THAN 5 WEEKS PRIOR TO THE END OF TERM

If the eligible employee begins FMLA Leave for a reason other than their own serious health condition that commences 5 weeks prior to the end of term, the school may require the employee to continue taking leave until the end of the term IF--

- The leave will last more than two weeks, AND
- The return to employment would occur during the 2-week period before the end of the term.

(3) LEAVE LESS THAN 3 WEEKS PRIOR TO THE END OF TERM

If the eligible employee begins FMLA Leave for a reason other than their own serious health condition during the period that commences 3 weeks prior to the end of the academic term and the duration of the leave is greater than 5 working days, the school may require the employee to continue to take leave until the end of the term.

For purposes of these provisions, "academic term" means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the Principal could require the employee to stay out on leave until the end of the term.

XVII. MILITARY PROVISIONS

ENTITLEMENT TO LEAVE UNDER THE NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) 1993

An Eligible Employee is entitled to a total of 26 weeks of unpaid leave, or paid leave if the employee has accrued sufficient leave time, during each Leave Year to care for a “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 outpatient status, or is otherwise on temporary disability retired list, for a serious injury or illness.

Under this Act the definition of “Qualifying Family Member” means an employee's spouse, child, parent or next of kin

Section 585(a) of the National Defense Authorization Act (NDAA) amended the FMLA to provide two new leave entitlements:

Military Caregiver Leave: An eligible employee who is the spouse, child, parent or next of kin of a covered service-member will be entitled to take up to 26 work weeks of unpaid leave during a “single 12 month period” to care for a covered service-member with a serious illness or injury incurred in the line of duty on active duty.

Eligible employees may not take leave under the military caregiver provision to care for former members of the Armed Forces or members who are on the permanent disability retired list.

Leave is for a single 12-month period per service member per injury. The 12 months for this leave begins on the first day the leave is taken and ends 12 months later, regardless of what other method the Diocese of Harrisburg uses for calculating FMLA entitlement. Any remaining leave after the 12-month period is forfeited.

Depending on the familial relationship and illness or injury the eligible employee may qualify to take traditional FMLA leave after the 12 month period has ended.

Qualifying Exigency Leave: This leave helps families of members of the National Guard and Reserves manage their affairs while the member is on active duty in support of a contingency operation. This provision makes the normal 12 work weeks of FMLA job protected leave available to eligible employees with a covered military member serving in the National Guard or Reserves to use for “any qualifying exigency” arising out of the fact that a covered military member is on active duty or called to active duty status in support of a contingency operation. A qualifying exigency is defined as:

1. Short-notice deployment (7 calendar days prior to deployment)
2. Military events and related activities (in advance and during deployment), including family support or assistance programs
3. Informational briefings

4. Childcare and school activities (e.g. to arrange alternative childcare, provide urgent, immediate need child care or attend meetings at school or daycare)
5. Financial and legal arrangements (e.g. prepare powers of attorney, enroll for military health care, prepare will or living trust)
6. Counseling (non-medical, for oneself, service member or child)
7. Rest and recuperation (up to 5 days for each)
8. Post-deployment activities (to attend ceremonies and briefings for 90 days or to address issues arising from service member's death)
9. Additional activities agreed to by the employer and employee

When applying for leave the employee will be required to provide a copy of the service member relative's orders or other military documentation, showing the call to active duty and expected dates of active duty service.

The Diocese of Harrisburg reserves the right to contact the appropriate DOD unit to verify the service member's orders.

The Diocese of Harrisburg reserves the right to seek certification from the employee of the reason for each qualifying exigency leave requested during the period of the relative's service.

XVI. QUESTIONS

Questions about this policy or eligibility for FMLA Leave should be directed to the Director of Human Resources.

Benefit Updated: July 1, 2010

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POLICY

ACKNOWLEDGEMENT FORM

As an employee of the Diocese of Harrisburg, its parishes, schools or agencies, I certify that I have received, read and understand the Diocese of Harrisburg's Family & Medical Leave Act Policy, as amended and effective on 7/1/10.

Employee Signature

Date

Employee Name Printed