

CCSU Policy Form GCBDB-E(12): FMLA/VPFL Frequently Asked Questions

Revised 2/5/09

What does the FMLA/VPFL provide to employees?

The Federal Family and Medical Leave Act ("FMLA") and/or Vermont Parental and Family Leave Law ("VPFL") requires *covered* employers to provide up to 12 weeks of unpaid, job-protected leave in any rolling 12-month period to "eligible employees" for the following reasons:

- (1) for the birth of an employee's child and to care for the newborn (leave must conclude within 12 months of birth);
- (2) for placement of a child with an employee for adoption or foster care (leave must conclude within 12 months of placement);
- (3) to care for the employee's spouse or civil union partner, child, step child, ward who lives with the employee, foster child, parent or parent of the employee's spouse with a "serious health condition" (certification required); or
- (4) for an employee's "serious health condition" (certification required) which renders the employee unable to work.

The FMLA further provides eligible employees the following military family leave entitlements:

- (1) Qualifying Exigency Leave: provides up to 12 weeks of unpaid, job-protected leave in any rolling 12-month period for any "qualifying exigency" (certification required) arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent; or
- (2) Military Caregiver Leave: provides up to 26 weeks of unpaid, job-protected leave in a "single 12-month period" to care for a "covered servicemember" with a serious injury or illness (certification required).

In addition to the leaves outlined above, employees eligible for VPFL are entitled to short-term family leave of up to 4 hours in any 30 day period (but not more than 24 hours in any 12 month period) of unpaid leave. More than 4 hours may be permitted in any 30 day period provided such is consistent with the District's paid leave policies.

During the period of approved FMLA/VPFL, the employee's insurance benefits must be maintained under the same conditions as if s/he continued to work. Upon return from approved FMLA/VPFL, the employee must be reinstated to the same or an equivalent job with the same status, pay, benefits, and terms and conditions of employment, except in the following circumstance: The employee's job terminated or s/he would have been laid off for reasons unrelated to the leave.

Who is eligible for FMLA/VPFL Leave?

To be eligible for leave under the FMLA/VPFL an employee must: (1) Have been employed by the district for at least 12 months, and (2) Have worked at least 1250 hours (for FMLA) or 1560 hours (for VPFL) during the 12-month period immediately preceding the commencement of the leave.

In order to determine support staff eligibility, actual hours worked as reported to payroll will be used.

Full-time teachers who worked full-time during the 12-month period immediately preceding the commencement of the leave will be considered eligible for both FMLA and VPFL. Teachers who worked less than full-time, but at least 0.80 FTE during the 12-month period immediately preceding the commencement of the leave will be considered eligible for FMLA only. Teachers who worked less than 0.80 FTE during the 12-month period immediately preceding the commencement of the leave will not be considered eligible for FMLA nor VPFL.

In order to determine eligibility for administrators, directors, and other non-teaching professionals, eight hours per day times the number of contracted days will be used as the standard.

What constitutes a "serious health condition"?

For purposes of the Family/Parental and Medical Leave policy, a "serious health condition" means an illness, injury, impairment or physical or mental condition that:

1. Poses imminent danger of death; or
2. Requires inpatient care in a hospital, hospice, or residential-medical care facility; or
3. Requires continuing in-home care under the direction of a physician; or
4. Requires continuing treatment by or under the supervision of a health care provider in one of the following five circumstances:
 - a. For a period of incapacity of more than 3 consecutive calendar days that also involves:
 - i. treatment two or more times by or under the supervision of a health care provider (the two visits must occur within 30 days of the period of initial incapacity except in extenuating circumstances); or
 - ii. treatment by a health care provider on at least one occasion resulting in a regimen of continuing treatment under the supervision of the health care provider (the first visit must occur within 7 days of the initial incapacity);
 - b. Any period of incapacity due to pregnancy or for prenatal care;
 - c. Any period of incapacity or treatment due to a chronic serious health condition. A chronic serious health condition is one which:
 - i. Requires periodic visits (at least two per year) for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; and
 - ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - iii. May cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy).
 - d. A permanent or long-term period of incapacity for which treatment may not be effective (e.g. stroke, Alzheimer's);
 - e. Any period of absence to receive multiple treatments (e.g. chemotherapy, physical therapy, kidney dialysis);

What constitutes a "qualified exigency"?

The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

Who is considered a "covered servicemember" under the Military Caregiver Leave?

A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

What is Short-Term Family Leave?

Short-Term Family Leave is available to employees eligible for VPFL (see above for eligibility) to enable them to (1) participate in preschool or school activities directly related to the academic advancement of the employee's child, stepchild, foster child or ward who lives with the employee; (2) attend or to accompany the employee's child, stepchild, foster child or ward who lives with the employee or the employee's parent, spouse or parent-in-law to routine medical or dental appointments; (3) accompany the employee's parent, spouse, or parent-in-law to other appointments for professional services related to their care and well-being; or, (4) respond to a medical emergency involving the employee's child, stepchild, foster child or ward who lives with the employee or the employee's parent, spouse or parent-in-law.

The employee must give reasonable written notice of intent to take short-term family leave. The notice must be given at least seven days before the leave is to be taken unless waiting seven days could have a significant adverse impact on the employee's family member.

Can I use my available paid leaves under FMLA/VPFL?

If available and consistent with existing District policies and master agreements/personal contracts, certain kinds of "paid leave" which are provided by the District may be substituted for (i.e., used concurrently with) unpaid FMLA leave. For example, an employee who qualifies for FMLA leave may be required or permitted to use his/her available sick, vacation,

family/emergency, and/or personal leave for up to the entire duration of the approved FMLA leave for the employee's serious health condition which renders him/her unable to work.

Employees eligible for VPFL leave (those who have worked a minimum of 1560 hours in the previous 12-month period - which excludes part-time teachers and most school year support staff) have the discretion of utilizing up to six weeks of any of their accrued paid leave (including sick, family/emergency, personal, and vacation leave) concurrent with unpaid FMLA/VPFL for any of the qualifying conditions outlined above. For example, an employee who qualifies for FMLA/VPFL leave who worked at least 1560 hours during the previous 12-month period may utilize their available paid sick leave (as well as family/emergency, personal, and vacation leaves) to care for the their immediate family member with a serious health condition for up to the first six weeks of the approved FMLA/VPFL leave. Those who work less than 1560 hours could not use their personal sick leave days in this circumstance except to the extent allowed under contract.

What are my responsibilities under FMLA/VPFL?

Employees must provide written notice to Human Resources at least thirty (30) days before the leave is to begin. If 30 days notice is not practicable, the employee must provide the notice the same day or next business day the employee becomes aware of the need for leave. Employees shall provide notification using *Form GCBDB-E(1): Employee Request for Family, Medical or Military Family Leave*. A copy of the form may be obtained on-line at www.ccsuvt.org or by contacting Human Resources at 879-5584. If the leave is not foreseeable in advance, the employee (or representative) shall contact Human Resources directly, as soon as practicable, via telephone, facsimile, e-mail, or in-person.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA/VPFL protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA/VPFL leave was previously taken or certified.

If the leave request is related to (1) the employee's own serious health condition, (2) a serious health condition of a covered family member, (3) a qualified exigency, or (4) military caregiver leave, certification to support the leave request shall be required in most cases. Certification forms may be obtained on-line at www.ccsuvt.org, or by calling 879-5584. Completed certification forms should be returned to Human Resources to assure confidentiality.

If an employee is taking FMLA/VPFL due to his/her own serious health condition, the employee may also be asked to provide a fitness-for-duty certification (FFD) prior to being restored to employment. A copy of the *Fitness-for-Duty Certification* form may be obtained on-line at www.ccsuvt.org or by contacting Human Resources at 879-5584.

How will I know if I'm eligible for FMLA/VPFL, or if my leave will be designated as FMLA/VPFL?

Once a request for FMLA/VPFL is received, Human Resources shall inform employees requesting leave whether they are eligible under FMLA/VPFL. If they are, the notice shall specify any additional information required as well as the employees' rights and responsibilities. If the employee is not eligible, the notice shall provide a reason for the ineligibility. Human Resources shall also inform employees if leave will be designated as FMLA/VPFL-protected and the amount of leave counted against the employee's leave entitlement. If it is determined that the leave is not FMLA/VPFL-protected, the employee shall be so notified.

If I have a qualifying condition, can I elect to just use my paid leave instead and not use FMLA/VPFL?

No. If an employee has a qualifying condition and is eligible for FLMA/VPFL, the FMLA/VPFL leave must be used concurrent with the paid leave. The law does not entitle employees to 12 weeks beyond the paid leaves that are available through the district.

If I am out related to a work related disability, will FMLA/VPFL be used?

Yes, if the condition qualifies as a serious health condition. FMLA/VPFL applies to all qualifying conditions regardless to how the condition was obtained. Although sick leave may be used at a rate of ½ day for each day of absence for work related disabilities, FMLA/VPFL is counted as a full day.

If you have any questions or would like additional information, please refer to policy code [GCBDB](#), or visit our website at <http://www.ccsuvt.org/ccsu/hr/bc/leaves.php#FMLA>. For a copy of the required posters, please visit our website at <http://www.ccsuvt.org/ccsu/hr/fsprequirements.php>.