



# Tennessee School Boards Association

Descriptor Term:

## Family and Medical Leave

Descriptor Code:

5.305

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01/30/07

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### PURPOSE

To entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition.

### ELIGIBILITY

Anyone who has been employed for at least twelve (12) months by the school system or anyone who has at least 1,250 hours of service (Hours used for leave, even FMLA leave, shall not be credited for service for purposes of FMLA eligibility<sup>1</sup>) during the previous twelve month period.<sup>2</sup>

### GENERAL PRINCIPLES

1. Any employee shall be granted, upon request, up to twelve (12) weeks unpaid leave for the birth or adoption of a child or the care of a child, spouse, or parent who has a serious health condition. (Any employee requesting leave due to pregnancy, childbirth, or adoption shall be granted up to four (4) months leave.)<sup>3</sup>
2. Any employee on maternity leave shall be permitted to use accumulated sick leave during the period of actual physical disability only. Otherwise, the maternity leave shall be unpaid leave. A teacher may use up to thirty (30) days of accumulated sick leave for the adoption of a child. If both adoptive parents are teachers, only one parent may request leave. Written verification from the adoption agency or other entity handling the adoption shall be required before the leave is granted.<sup>4</sup>
3. A physician's statement may be required by the director of schools when determining the period of actual physical disability.<sup>5</sup>
4. Request for leaves and extension of leaves shall conform to state law governing all leaves of absence.

### RESTRICTIONS

1. For foreseeable leave, the employee shall provide the director of schools with at least thirty (30) days written notice before the beginning of the anticipated leave.
2. The director may require that a request for leave be supported by certification issued by a health care provider with the following information:

- 1 a. the date on which the serious health condition commenced;
- 2 b. the probable duration of the condition;
- 3 c. the appropriate medical facts within the knowledge of the health care provider regarding
- 4 the condition; and
- 5 d. a statement that the eligible employee is needed to care for the son, daughter, spouse or
- 6 parent and an estimate of the amount of time that such employee is needed.

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8 3. If there is any reason to doubt the validity of the certification provided, the director may require,  
9 at the expense of the school system, an opinion of a second health care provider.

10 4. Once it has been established that the leave requested qualifies for FMLA, the director of schools/  
11 designee shall notify the employee within two (2) business days (absent extenuating circumstances)  
12 that —

14 Any leave taken pursuant to state leave statutes (paid vacation  
15 leave, personal leave, sick leave or worker's compensation)  
16 shall run concurrently with FMLA leave.<sup>6</sup>

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18 The notice may be given orally or in writing. If the notice is oral, it shall be confirmed in writing,  
19 no later than the following pay day.<sup>7</sup>

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21 5. Intermittent Leave - When a licensed employee requests foreseeable leave for planned medi-  
22 cal treatment and the employee would be on leave for greater than 20% of the total number of  
23 working days in the period during which the leave would extend, the school may require that  
24 such employee elect either to take the leave for periods of a particular duration, not to exceed  
25 the duration of the planned medical treatment or to transfer temporarily to an available alter-  
26 native position offered by the school system for which the employee is qualified, and that has  
27 equivalent pay and benefits and better accommodates recurring periods of leave.

28 6. Period Near the End of an Academic Term (*Professional employees*) - If leave is taken more than  
29 five (5) weeks prior to the end of the term, the director of schools may require the employee to  
30 continue taking leave until the end of the term if the leave is at least three (3) weeks of duration  
31 and the return of employment would occur during the three (3) week period before the end of  
32 the term.

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34 If the leave is taken five (5) weeks prior to the end of the term, the director of schools may  
35 require the employee to continue taking leave until the end of the term if the leave is greater  
36 than two (2) weeks duration and the return to employment would occur during the two (2) week  
37 period before the end of the term.

38 **REQUIREMENTS OF THE BOARD**

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40 1. The employee shall be restored to the same position of employment or an equivalent position  
41 with no loss of benefits, pay or other terms of employment.

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43 2. The employee shall be kept under any group health plan for the duration of the leave.  
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- 3. The Board may recover the premium paid under the following conditions:
  - a. the employee fails to return from leave after the period of leave has expired.
  - b. the employee fails to return to work for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the control of the employee.

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Legal References:

- 1. *Hinson v. Tecumseh Products Co.* 234 F.3d 1268, 6th Cir.(2000)
- 2. Federal Family and Medical Leave Act 1993
- 3. TCA 49-5-702; TCA 4-21-408
- 4. TCA 49-5-710
- 5. TCA 49-5-704
- 6. 29 CFR § 825.208
- 7. OP Tenn. Atty Gen 94-006 (Jan 13, 1994);  
*Plant v. Morton International, Inc* 212 F. 3d 929, 6th Cir. (2000)

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Cross References:

- Sick Leave 5.302
- Long Term Leaves 5.304