

LEAVES AND ABSENCES

Policy DEC, DECA, DECB

The district offers employees paid and unpaid leaves of absence in times of personal need. This handbook describes the basic types of leave available and restrictions on leaves of absence. Employees who have personal needs that will require long leaves of absence (5 days or more) are required to notify the benefits and risk management office as well as their campus administrator or supervisor. When the need for a long leave is foreseeable, employees must provide a 30-day advance notice.

Employees who take an unpaid leave of absence may continue their insurance benefits at their own expense. Health care benefits for employees on leave authorized under the Family and Medical Leave Act will be paid by the district as they were when they were working. Otherwise, the district does not make benefit contributions for employees who are on unpaid leave.

Personal and local leave is earned on an annual basis. Regular full-time and part-time employees (as opposed to temporary, substitute or seasonal) earn state personal leave and local leave at the rate explained for each below. Leave is available for the employee's use at the beginning of the school/contract year. If an employee who works an eight hour day works enough days to earn seven days of combined state and local leave, he or she is eligible to take seven (eight hour) days of leave. If the same employee works only five hours per day, he or she is eligible for seven (five hour) days of leave. If an employee leaves the district before the end of the work year, the cost of any unearned leave days taken shall be deducted from the employee's final paycheck.

Paid leave may be used in full-day or half-day increments. Earned comp time must be used before any available paid state and local leave. Unless an employee requests a different order, available paid state and local leave will be used in the following order:

1. local sick leave under the terms and conditions applicable to such local sick leave
2. state sick leave accumulated prior to the 1995-1996 school year under the terms and conditions applicable to such state sick leave
3. state personal leave accumulated in the 1995-1996 school year and each school year thereafter under the terms and conditions applicable to such state personal leave
4. local extended sick leave under the terms and conditions of such local extended sick leave

State Personal leave (beginning with the 1995-1996 school year, all state leave is referred to as personal leave – either nondiscretionary personal leave or discretionary personal leave)

Employees must follow district and department or campus procedures to report or request any leave of absence and complete the appropriate leave request. An employee's absence must be reported for any type of absence from regular duty (see the Appendix for instructions).

Medical Certification: Any employee who is absent more than five (5) days or exhibits a questionable pattern of absences because of a personal or family illness must submit a medical certification from a qualified health care provider confirming the specific dates of the illness, the reason for the illness, and, in the case of personal illness, the employee's fitness to return to work.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits covered employers 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 ask that employees and health care providers do not provide any genetic information in any medical certificate. "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.

Continuation of Health Insurance: Employees on an approved leave of absence other than family and medical leave may continue their insurance benefits at their own expense. Health insurance benefits for employees on paid leave and leave designated under the Family and Medical Leave Act will be paid by the district as they were prior to the leave. Otherwise, the district does not pay any portion of insurance premiums for employees who are on unpaid leave.

An employee is no longer eligible for insurance through the district after six months of unpaid leave other than FML. If an employee's unpaid leave extends for more than six months, the district will provide the employee with notice of COBRA rights.

Personal Leave

State law entitles all employees to five days of paid personal leave per year. Personal leave is available for use at the beginning of the year. A day of personal leave is equivalent to the number of hours per day in an employee's usual assignment, whether full-time or part-time. There is no limit on the accumulation of state personal leave. It can be transferred to other Texas school districts and is generally transferable to education service centers. Personal leave may be used for two general purposes: nondiscretionary and discretionary.

Nondiscretionary: Leave taken for personal or family illness, family emergency, a death in the family, or active military service is considered nondiscretionary leave. Reasons for this type of leave allows very little, if any, advance planning. Nondiscretionary leave may be used in the same manner as state sick leave.

Discretionary: Leave taken at an employee's discretion that can be scheduled in advance is considered discretionary leave. An employee wishing to take discretionary personal leave must submit a notice of the request to his or her principal or supervisor five (5) days in advance of the anticipated absence. The effect of the employee's absence on the educational program or department operations, as well as the availability of substitutes, will be considered by the principal or supervisor. Each employee is limited to five (5) discretionary personal leave days a year. An employee's pay will be docked beginning with the sixth day of discretionary personal leave taken.

Family emergency shall be limited to disasters or life threatening situations involving the employee or a member of the employee's immediate family. An employee may use up to five days per academic year for a family emergency. An employee may request and be granted one instance of family emergency leave per academic year not to exceed five days.

Leave Proration. If an employee separates from employment with the district before his or her last duty day of the year, or begins employment after the first duty day, state personal leave will be prorated based on the actual time employed. When an employee separates from employment before the last duty day of the school year, the employee's final paycheck will be reduced by the amount of state personal leave the employee used beyond his or her pro rata entitlement for the school year.

State sick leave

This leave applies only to employees who were members of the Texas Teacher Retirement System prior to the 1995-1996 school year and have unused state sick leave from that period. No state sick leave days have been earned or recorded since the completion of the 1994-1995 school year. As stated above, all state leave since that time is recorded as state personal leave.

State sick leave accumulated before 1995 is available for use and may be transferred to other school districts in Texas. State sick leave can be used only in full-day or half-day increments except when coordinated with family and medical leave taken on an intermittent or reduced-schedule basis.

If an employee uses more sick leave than he or she has earned, the cost of unearned sick leave will be deducted from the employee's next paycheck.

State sick leave may be used for the following reasons only:

- Employee illness
- Illness in the employee's immediate family
- Family emergency (i.e., natural disasters or life-threatening situations)
- Death in the immediate family
- Active military service

Local sick leave

Local policy entitles all employees to five (5) days of local sick leave per year. Local sick leave is earned at a rate of one-half work day for each eighteen work days of employment. A day of earned local sick leave is equivalent to an assigned work day. There is no limit on the accumulation of local sick leave, but it cannot be transferred to other school districts. Local sick leave can only be used in full-day or half-day increments except when coordinated with family and medical leave taken on an intermittent or reduced-schedule basis.

Local sick leave may be taken for the following reasons:

- illness of the employee
- illness of the employee's immediate family
- family emergency (i.e., natural disasters or life-threatening situations)
- death in the employee's immediate family
- birth or adoption of an employee's child, or the foster care placement of a child with the employee. For this purpose, full time employees may use accrued local sick leave for up

to six weeks beginning no later than one month after placement of the child in the home. Local extended sick leave (see below) may also be used for this purpose. Intermittent leave shall not be permitted for the care of a newborn child or the adoption or placement of a child with the employee. See Family Medical Leave for information regarding the permissible use of intermittent leave.

Local extended sick leave

After all leave has been exhausted, employees may be granted up to 10 days of sick leave at one-half their daily rate of pay when the reason for their absence is extended personal illness or disability, including pregnancy-related disability, or illness of a member of the employee's immediate family. The long-term or chronic illness or disability and/or related illness or disability must be documented by medical certification from a health care provider. Request for extended leave should be made to the benefits and risk management office.

In order to be eligible for extended leave, an employee must complete 90 days of continuous employment either in the current school year or the prior school year and complete the requirements listed in the above paragraph.

Family and medical leave (FML)—general provisions

The following text is from the federal notice, *Employee Rights and Responsibilities Under the Family and Medical Leave Act*. Specific information that the district has adopted to implement the FMLA follows this general notice.

Leave Entitlements

Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within 1 year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered service member's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the service member with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

Benefits and Protections

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

Eligibility Requirements

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave; and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

Requesting Leave

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection.

Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

Employer Responsibilities

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the

FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility. Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave

Enforcement

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
www.wagehour.dol.gov

FMLA section 109 (29 U.S.C. § 2619) required FML covered employers to post the text of this notice.

Regulations 29 C.F.R. § 825.300 (a) may require additional disclosures.

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Local Family and Medical Leave provisions

Eligible employees can take up to 12 weeks of unpaid leave in the 12-month period measured backward from the date an employee uses FML.

Use of paid leave: FML runs concurrently with accrued sick and personal leave, temporary disability leave, compensatory time, assault leave, and absences due to a work-related illness or injury. The district will designate the leave as FML, if applicable, and notify the employee that accumulated leave will run concurrently.

Combined leave for spouses: Spouses who are both employed by the district are limited to a combined total of 12 weeks of FML to care for a parent with a serious health condition; or for the birth, adoption, or foster placement of a child. Military caregiver leave for spouses is limited to a combined total of 26 weeks.

Intermittent leave: When medically necessary or in the case of a qualifying exigency, an employee may take leave intermittently or on a reduced schedule. The district does not permit the use of intermittent or reduced-schedule leave for the care of a newborn child or for adoption or placement of a child with the employee.

Fitness for Duty. An employee that takes FML due to the employee's own serious health condition shall provide, before resuming work, a fitness-for-duty certification from the health care provider. If certification of the employee's ability to perform essential job functions is required, the district shall provide a list of essential job functions (e.g., job description) to the employee with the FML designation notice to share with the health care provider.

Reinstatement. An employee returning to work at the end of FML will be returned to the same position held when the leave began or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

In certain cases, instructional employees desiring to return to work at or near the conclusion of a semester may be required to continue on family and medical leave until the end of the semester. The additional time off is not counted against the employee's FML entitlement, and the district will maintain the employees group health insurance and reinstate the employee at the end of the leave according the procedures outlined in policy (see DECA (LEGAL)).

Failure to Return. If, at the expiration of FML, the employee is able to return to work but chooses not to do so, the district may require the employee to reimburse the district's share of insurance premiums paid during any portion of FML when the employee was on unpaid leave. If the employee fails to return to work for a reason beyond the employee's control, such as a continuing personal or family serious health condition or a spouse being unexpectedly transferred more than 75 miles from the district, the district may not require the employee to reimburse the district's share of premiums paid.

District contact: Employees that require FML or have questions should contact the benefits and risk management office for details on eligibility, requirements, and limitations.

Temporary disability

Certified employees: A full-time employee (those who work a minimum of twenty-five hours per week) whose position requires certification from the State Board for Educator Certification (SBEC) is eligible for temporary disability leave. The purpose of temporary disability leave is to provide job protection to full-time educators who cannot work for an extended period of time because of a mental or physical disability of a temporary nature. Temporary disability leave must be taken as a continuous block of time. It may not be taken intermittently or on a reduced schedule. Pregnancy and conditions related to pregnancy are treated the same as any other temporary disability. Temporary disability leave must be used concurrently with paid leave if applicable.

Certified employees who are anticipating the need for temporary disability leave should contact the benefits and risk management office. Employees must request approval for temporary disability leave on a form provided by the district (see Appendix for sample form). An employee's notification of need for extended absence due to the employee's own medical condition shall be accepted as a request for temporary disability leave. The request must be accompanied by a physician's statement confirming the employee's inability to work and estimating a probable date of return. If disability leave is approved, the length of leave is no longer than 180 calendar days.

If a certified employee is placed on temporary disability leave involuntarily, he or she has the right to request a hearing before the Board of Trustees. The employee may protest the action and present additional evidence of fitness to work.

When a certified employee is ready to return to work, the benefits and risk management office should be notified at least 30 days in advance when possible. The return-to-work notice must be accompanied by a physician's statement confirming that the employee is able to resume regular duties. Certified employees returning from leave will be reinstated to the school to which they were previously assigned if an appropriate position is available. If an appropriate position is not available, the employee may be assigned to another campus, subject to the approval of the campus principal. If a position is not available before the end of the school year, the employee will be reinstated to a position at the original campus at the beginning of the following school year.

Other full-time employees are eligible to request temporary disability leave by following the same procedures outlined above for certified employees except that their return to work is subject to job availability.

Workers' compensation benefits (See also workers' compensation insurance)

Policies CRE and DEC

An employee absent from duty because of a job-related illness or injury may be eligible for workers' compensation weekly income benefits if the absence exceeds seven calendar days.

An employee receiving workers' compensation wage benefits for a job-related illness or injury may choose to use accumulated sick leave or any other paid leave benefits. An employee choosing to use paid leave will not receive workers' compensation weekly income benefits until all paid leave is exhausted or to the extent that paid leave does not equal the pre-illness or pre-injury wage. If the use of paid leave is not elected, then the employee will only receive workers' compensation wage benefits for any absence resulting from a work related illness or injury, which may not equal his or her pre-illness or pre-injury wage.

All work related accidents or injuries must be reported immediately to the benefits and risk management office and the campus administrator.

Assault leave

Policy DEC

Assault leave provides extended job income and benefits protection to an employee who is injured as the result of a physical assault suffered during the performance of his or her job. An injury is treated as an assault if the person causing the injury could be prosecuted for assault or could not be prosecuted only because that person's age or mental capacity renders the person nonresponsible for purposes of criminal liability.

An employee who is physically assaulted at work may take all the leave time medically necessary (up to two years) to recover from the physical injuries he or she sustained. At the request of an

employee, the district will immediately assign the employee to assault leave. Days of leave granted under the assault leave provision will not be deducted from accrued personal leave and must be coordinated with workers' compensation benefits. Upon investigation the district may change the assault leave status and charge leave used against the employee's accrued paid leave. The employee's pay will be deducted if accrued paid leave is not available.

Assaults on personnel should be reported to the appropriate school official immediately. Assault Leave will initially be granted if requested and will be processed through the benefits and risk management office.

Bereavement leave

Policy DEC

Use of state leave and/or local sick leave for death in the immediate family shall not exceed five work days per occurrence.

Jury duty

Policy DEC

The district provides paid leave to employees who are summoned to jury duty. Employees who report to the court for jury duty may keep any compensation the court provides. An employee should report a summons for jury duty to his or her supervisor as soon as it is received and record the absence in the Aesop system. Upon completion of jury duty or release from the court, submit the jury summons and discharge notification to the NISD payroll department.

An employee may be required to report back to work as soon as they are released from jury duty if there are four or more hours left in the work day. The supervisor may consider the travel time required and the nature of the individual's position when determining the need to report to work. A copy of the release from jury duty or of documentation of time spent at the court may be required.

Compliance with a Subpoena

Policy DEC

Employees will be granted paid leave to comply with a valid work-related subpoena to appear in a civil, criminal, legislative, or administrative proceeding. Employees may be required to submit documentation of their need for leave for court appearances.

Truancy Court Appearances

An employee who is a parent or guardian of a child and any court-appointed guardian ad litem of a child who is required to miss work to attend a truancy court hearing may use personal leave or compensatory time for the absence. Employees who do not have paid leave available will be docked for any absence required because of the court appearance.

Religious Observance

The district will reasonably accommodate an employee's request for absence for a religious holiday or observance. Accommodations such as changes to work schedules or approving a day of absence will be made unless they pose an undue hardship to the district. The employee may use any accumulated personal leave for this purpose. Employees who have exhausted applicable paid leave may be granted an unpaid day of absence.

Absences for court appearances related to an employee's personal business shall be deducted from the employee's personal leave or shall be taken by the employee as leave without pay.

Military leave

Policy DEC

Paid Leave for Military Service: Any employee who is a member of the Texas National Guard, Texas State Guard, reserve component of the United States Armed Forces, or a member of a state or federally authorized Urban Search and Rescue Team is entitled to paid leave when engaged in authorized training or duty ordered by proper authority. Paid military leave is limited to 15 days each fiscal year. In addition, an employee is entitled to use available state and local personal or sick leave during a time of active military service.

Reemployment after Military Leave: Employees who leave the district to enter into the United States uniformed services or who are ordered to active duty as a member of the military force of any state (e.g., National or State Guard) may return to employment if they are honorably discharged. Employees who wish to return to the district will be reemployed provided they can be qualified to perform the required duties. To be eligible for reemployment, employees must provide notice of their obligation or intent to perform military service, provide evidence of honorable discharge or release, and submit an application for reemployment within the period of time specified by law to the department of human resources. In most cases, the length of federal military service cannot exceed five years.

Employees who perform service in the uniformed services may elect to continue their health plan coverage at their own cost for a period not to exceed 24 months. Employees should contact the benefits and risk management office for details on eligibility, requirements, and limitations.