



School Administrators Association of New York State

SAANYS
LEGAL DEPARTMENT

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UNDERSTANDING FMLA LEAVE

Overview

When you or one of your unit members are faced with the prospect of a lengthy leave of absence because of a medical or family-related emergency, it is important to know that the duration of leave is not necessarily limited to contractually accrued sick time. The Family and Medical Leave Act (FMLA) requires private and public employers in the United States to provide unpaid, job-protected leave to employees for medical and family related care, including the care of immediate family members.

Under FMLA, eligible employees may take up to 12 weeks of FMLA leave every 12 months. FMLA leave may be taken as a continuous period of leave; it may be broken up throughout the designated 12 month period on a day-by-day basis; it may be used to reduce hours worked daily, if medically necessary.

This article will discuss some general principles of FMLA leave and also address issues specific to public school administrators, including the consequences of taking FMLA leave on pension calculations and the duration of a probationary appointment.

Eligibility for FMLA Leave

In order to be eligible for FMLA leave, employees need to have worked for their current district for a total of 12 months. The 12-month eligibility period need not be continuous.

Further, the employee must have worked for the district at least 1,250 hours in the 12 months immediately preceding the requested leave. 1,250 hours is roughly equal to 24 hours a week over the course of a calendar year.

Finally, the employee must be employed in a district that has at least 50 employees. Accordingly, employees in some of the smallest districts may not be eligible.

Employers are required to grant FMLA leave to care for serious health conditions experienced by employees, their children, their spouses, or their parents. A serious health condition renders the employee unable to perform some or all essential job functions, including absences required to attend necessary medical appointments. FMLA leave is also available for bonding time following childbirth or adoption.

Requesting FMLA Leave

SAANYS recommends that, when requesting FMLA leave, members do so in writing, stating the reasons the leave is requested. The notice should be provided as soon as it is foreseeable, and, excepting emergencies, at least 30 days before leave will be required. Members should reach out to a SAANYS representative if they have any questions about requesting FMLA leave. Note that employers are permitted to request information from an employee's medical provider before granting a leave request. Generally, the employee will have 15 days to provide the requested information.

Calculating Leave Time

Under FMLA, the employer designates the 12-month period based on which an employee's 12 weeks of leave is calculated. The employer may designate the 12-month period in one of four ways: (1) the calendar year (Jan. 1 to Dec. 31); (2) any other fixed 12-month period, including individual periods commencing on each employee's start date; (3) the 12 months beginning the date on which the employee first requests leave; or (4) a backward-looking 12-month period, where, for any leave requested, the employer will look back 12 months to determine whether any leave has been taken, and what amount of leave remains.

Generally, FMLA leave may be taken all at once or, when medically necessary, intermittently in weeks, days or even hours. FMLA leave may only be charged to an employee for time actually taken, and time that an employee is not scheduled to report to work does not count against the remaining leave time available.

Concurrent Use of Contractual Sick Time, Pensionability, and Tenure

Contractually accrued sick time may be used simultaneously with FMLA leave, and employers may require that it is. Periods of FMLA leave during which contractually accrued sick time is in use count toward employees' pension benefits under TRS and toward the completion of administrators' probationary appointments. Any FMLA time that is taken after contractually accrued sick time runs out, or any time when an employee is permitted and elects to take FMLA leave non-concurrently is not pensionable and will not contribute to a tenure determination.

Employee Protections During and After Leave

Continuation of health insurance. Employers must continue an employee's health insurance benefits during FMLA leave as though the employee was not on leave.

Prohibition on discrimination. Employers are forbidden from retaliating against employees who request or use FMLA leave. Retaliation includes, discipline, threats of discipline, negative performance reviews, or denial of a promotion or other rights based on leave taken or requested.

Returning to work. Following FMLA leave, employees have the right to return to the same position they previously occupied or an equivalent job that provides the same, pay, benefits, and other terms and conditions of employment.

Members are encouraged to contact a SAANYS representative if they feel their FMLA rights or protections have been violated.