**Pay**

An employee can only be paid for time worked, time covered by sick days, time covered by short-term disability and time covered by worker's compensation when applicable. For twelve-month employees to qualify for pay for a holiday not worked, employees shall be required to be in a paid status, for any portion of the day, on their last scheduled work day prior to the holiday and on their next scheduled work day after the holiday.

An employee will receive a payout of earnings for time worked and/or sick/annual leave pay used during the 30-calendar day elimination period earned prior to the commencement of short-term disability pay.

Upon return from leave, an employee's annual earnings are divided by 26 checks or 22 checks (applicable to ten-month employees electing 22-pay status). If an employee is on a leave of absence and part of the leave is unpaid or paid by short-term disability, the employee will have an adjustment made to the remaining paychecks upon return from leave in order to prevent overpayment of earnings. A 26-pay employee may be converted to the 22-pay schedule upon return from leave. The employee may elect to return to the 26-pay schedule for the next school year.

**Pay Example:**

A teacher is on leave. The teacher's leave of absence is unpaid for 20 days prior to short-term disability paying. STD pays 8 days. The teacher returns after STD pay ends.

Teacher's annual salary is $45,000 based on 188 contracted work days.

$45,000/188\*160 days worked or covered by a sick day= $38297.87

$45,000/26 checks\*23 regular checks received during contracted work year = $39807.69

$39807.69 sum of 160 paid work days- $39,807.69 sum of23 checks = ($1509.82) The $1509.82 adjustment is applied to the paycheck/s upon return to active payroll.

$45,000/188\*.75 = $179.52 short-term disability per diem rate

$179.52\*8 days= $1436.17

Teacher's earnings for school year leave when leave taken:

$38,297.87 + 1436.17 = $39,734.04

**Seniority**

The employee's seniority is adjusted for each unpaid day. Return from leave is to same or similar position.

**Short-term Disability**

The date your doctor disables you from work is calendar day 1 of a 30-calendar day elimination period.

Accrued sick and/or accrued vacation leave (vacation leave applies to 12-month employees only) will be used on any work days occurring on calendar day 1 through calendar day 30. An accrued sick and/or vacation day is an earned day. The frontloaded sick and/or vacation days employees receive each new fiscal year are not accrued.

The 30-calendar day elimination period must be satisfied within the employee's contracted work year.

Short-term disability pays 75 percent of a ten-month employee's per diem rate on any work days beginning on calendar day 31 to a maximum of 182 calendar days.

Short-term disability pays 75 percent of a twelve-month employee's bi-weekly base earnings.

If an employee has accrued sick and/or vacation leave available, 25 percent of an accrued leave day will be used to supplement the 75 percent short-term disability pay.

Leave Examples:

1. Ten-month employee's first day of disability September 1. Accrued sick leave used on work days from September 1 through September 30. October 1 through end of six-week period, calendar day 42,(0ctober 12), short-term disability pays 75 percent per diem rate on work days from October 1 through October 12.

2. Ten-month employee's first day of disability is August 1. Employee's 30th calendar day of disability is August 30. The employee's 6-week disability period runs through September 11, calendar day 42. First contracted work day is August 18. Employee's 30th calendar elimination period satisfied within the contracted work year is September 16.

In example 2, the employee is not eligible for short-term disability pay because the last day of disability occurs before the 31st calendar day within the contracted work year.

The Family and Medical Leave Act

If the employee is eligible for FMLA designation, FMLA runs concurrent with short-term disability and worker's compensation leave. FMLA is a maximum of 60 work days for ten­ month employees and 12 work weeks for twelve-month employees. FMLA leave is paid or unpaid depending upon the employee's accrued leave and short-term disability pay. The employer maintains the employee's benefits during FMLA.

The FMLA designation cannot be determined until the leave begins. To be eligible for FMLA leave, employees must have one year of aggregate State service (employment time preceding breaks in service of seven years or greater is not counted toward aggregate service time), and have worked for at least 1250 hours during the prior 12 months. All State employment, for example, Merit and higher education, should be counted. One FMLA per 12-month period is allowed and the 12-month period eligibility is counted forward from the first date FMLA leave is taken.

**THE FAMILY AND MEDICAL LEAVE ACT**

|  |
| --- |
| **Introduction** The Family and Medical Leave Act, as amended, provides a means of balancing the demands of the workplace with the needs of families, and promoting the stability, integrity, and economic security of families in a manner that accommodates the legitimate interests of employers. The FMLA entitles "eligible" employees to take up to 12 workweeks of leave during a 12-month period for specified family and medical reasons.  Effective January 16, 2009, FMLA leave eligibility has been extended to include "Qualifying Exigency Leave" i.e., leave for employees to manage their affairs while a covered family member prepares for (or is on) active duty in the National Guard and Reserves. Effective March 8, 2013, FMLA "Qualifying Exigency Leave" covered family member has been extended to include Regular Armed Forces. The FMLA now also provides for up to 26 workweeks of "Military Caregiver Leave" i.e., leave for employees during a single 12-month period to care for a covered military family member and covered veteran.  The FMLA maintains eligible employees' pre-existing group health insurance coverage during periods of FMLA leave and restores most eligible employees to their same or an equivalent position at the conclusion of their FMLA leave. The following is a brief summary of the major provisions of the federal law and its State application:  **1. Eligibility** To be eligible for FMLA leave, employees must have one year of aggregate State service (employment time preceding breaks in service of seven years or greater is not counted toward aggregate service time), and have worked for at least 1,250 hours during the prior 12 months. All State employment, for example, Merit and higher education, should be counted.  **2. Provisions** Eligible employees may take:  a) Up to 12 workweeks FMLA leave for serious health conditions of themselves or specified family members. This includes "Qualifying Exigency Leave" for families of active duty Regular Armed Forces, National Guard and Reserve members to manage their affairs (the eligibility period for this type of leave begins on the first day of FMLA leave and runs for 12 months);  b) Up to 26 workweeks Military Caregiver Leave to care for a qualified military family member and qualified veteran (the eligibility period for this type of leave begins on the first day of Military Caregiver Leave and runs for a single 12-month period).  **3. Reasons for Using FMLA** Leave shall be granted for any of the following reasons:  a) To care for an employee's child after birth, or placement for adoption or foster care\*; to care for an employee's spouse, son, daughter, or parent who has a serious health condition; or for a serious health condition that renders employees unable to perform their job. Under certain circumstances, FMLA leave may be taken on an intermittent basis, or employees may work a part-time schedule. Such accommodations shall be made only when medically necessary or when agencies agree to a reduced leave schedule.  \*Employee FMLA leave entitlement for birth, adoption or placement for foster care expires one year following the date of birth, adoption or placement.  b) FMLA protection extends to eligible employees for "Military Caregiver Leave" to care for a parent, spouse, son, daughter, or as next of kin who is a covered military service member or covered veteran.  c) FMLA protection extends to eligible employees for "Qualifying Exigency Leave" when a covered military family member is on active duty or called to active duty for the following "qualifying exigencies": (1) short-notice deployment; (2) military events and related activities; (3) childcare and school activities; (4) financial and legal arrangements; (5) counseling; (6) rest and recuperation; (7) post-deployment activities; (8) parental care; and (9) additional activities where the employer and employee agree to the leave.  **4. Qualifying Conditions** Specific physical or mental conditions will determine what qualifies as a serious health condition. At least one of the following shall be satisfied: inpatient hospital care; absence from work or school for more than 3 consecutive calendar days that involves continuing treatment by a health care provider; continuing treatment for a chronic serious health condition; continuing treatment for a serious health condition that if not treated would result in incapacity for more than 3 days; and any period of incapacity prenatal care. The 3-day requirement does not apply for pregnancy, chronic serious health conditions, or for multiple treatments.  Continuing treatment means treatment two or more visits to a health care provider. The two visits must occur within 30 days of the beginning of the period of incapacity, and the first visit must take place within seven days of the first day of incapacity. Continuing treatment may also mean one treatment resulting in a regimen of continuing treatment under the supervision of a health care provider, or continuing supervision but not necessarily being actively treated for a severe long-term or chronic condition. Continuing supervision for a severe long-term or chronic condition requires at least two visits to a health care provider per year.  Common maladies like colds, flu, earaches, headaches other than migraine, etc., are not considered to be serious health conditions. Plastic surgery after injury or removal of a cancerous growth would be considered a serious health condition. Cosmetic surgery is not considered a serious health conditions unless in-patient hospital care is required.  **5. Definitions** To determine who is covered under FMLA, the following definitions shall apply:  a) For Family Member's Serious Health Condition   * "Spouse" means a husband or wife as defined or recognized under Delaware law for the purposes of marriage. * "Parent" means a biological parent adoptive, step or foster father or mother, or an individual who stands or stood "in loco parentis," meaning, "in place of parent," to the employee when the employee was a child. (This does not extend to a parent "in-law.") * "Son" or "daughter" means a biological, adoptive, step, or foster child, a legal ward, or a child of a person standing "in loco parentis" under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability.   b) For Military Caregiver Leave-For Family Member's Serious Health Condition   * "Son" or "daughter" mean son or daughter on active duty or call to active duty status" as an employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or called to active duty status, and who is of any age.   c) For Exigency Leave for child care and school activities   * "Son" or "daughter" means a biological, adoptive, step, or foster child, a legal ward, or a child of a person standing "in loco parentis" under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability.   **6. Application** Employees on FMLA shall use available accrued sick and/or accrued annual leave *with the exception of one workweek of annual leave and one workweek of sick leave*. Eligibility to use sick and annual leave is governed by Merit Rules 5.3 and 5.2, respectively.  Employees may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave does not run concurrently unless requested by the employee. If employees are offered a "light duty" assignment, they are permitted but not required to accept the position. Consequently, they may no longer qualify for payments from the workers' compensation benefit plan, but are still entitled to continue on FMLA either until the employee is able to return to the same job or until the 12-week FMLA leave entitlement is exhausted. FMLA leave taken on a part-time or intermittent basis is charged on a pro-rated basis.  b) Employees who exhaust their 26-week Military Caregiver Leave during the single 12-month period are not eligible for additional FMLA leave during that period for themselves or a family member.  c) Employees may only use annual leave to cover periods of Exigency Leave as the reasons for using such Leave are non-medical, and would not qualify for sick leave usage.  **NOTE**: Employees using annual or sick leave concurrently with FMLA leave must follow the same policy and procedural requirements that apply to other employees using such leave.  **7. Notice and Medical Certification** Employees are required to provide advanced leave notice and certification whenever practical. Ordinarily, 30 days advance notice shall be given when leave is "foreseeable."  a) Medical certification to support a request for FMLA leave is required and the employer may also require second or third opinions (at the employer's expense) and a "fitness-for-duty" report to return to work.  b) Military Caregiver certification is required to support a request for leave to care for a covered family service member. Employers may not request second opinions.  c) Exigency Leave certification is required to support a request for leave for one of the eight qualified reasons for exigency or for other related reasons not specified by mutual agreement of the employee and employer. Employers may only request verification of military status once per active duty or call to active duty event.  Employees are responsible for providing the qualifying reason. Employers are required to send the employee a written Notice of Eligibility and Employee Rights and Responsibilities within 5 business days. Failure of the employee to provide completed certifications within 15 calendar days may result in the delay or denial of FMLA. Employers should avoid any retroactive designation of FMLA leave. Medical certification is valid for the time specified by the health care provider.  Re-certification may be required in all cases:   * Every six months, in all cases of absence for a medical condition; * If an extension of the leave is requested; * If the circumstances in the last certification have changed; * If information has been received casting doubt on the stated reason or continued validity.   **8. Job Benefits and Protection** The FMLA maintains employee health care coverage for the duration of the leave period. Employees who fail to return to work after their FMLA leave entitlement has been exhausted shall be responsible for their State share under their existing "group health plan" unless they fail to return to work due to their own or eligible family member's serious health condition, or for some other reason beyond their control. Employees are responsible for re-payment of State contributions toward coverage for any unpaid leave. Coverage will be reinstated upon an employee's return without waiting until the next open enrollment period. It is unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided under FMLA. Additionally, an employer cannot discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for their involvement in any proceeding under or relating to FMLA. The U.S. Department of Labor is authorized to investigate and resolve complaints of FMLA violations and an eligible employee may bring a civil action against an employer for violations.  FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.  For assistance in applying FMLA, contact Michele Hartnett, Leave Specialist, [Michele.Hartnett@redclay.k12.de.us](mailto:Michele.Hartnett@redclay.k12.de.us) or telephone, 302.552.3812. |

RED CLAY CONSOLIDATED SCHOOL DISTRICT DONATED LEAVE PROGRAM

The provisions of Section 1318A, Title 14, Delaware Code are as follows:

One or more employees may transfer accrued, unused sick leave days to one or more other employees of the same school district who have requested and qualify for donated leave time.

The Donated Leave Program is established by the District as Board Policy and/or is pursuant to terms of a collective bargaining agreement.

The Program shall not prohibit participation by employees based on inclusion in or exclusion from a certified bargaining unit.

The donation must be in increments of whole days. For every two days donated, the two sick days are converted to one day. The value of the donated day is the donor’s per diem rate vs. the recipient’s per diem rate.

Donated leave is only available for catastrophic illness as defined as any illness or injury which is diagnosed by a physician and certified by the physician as rendering the employee unable to work for a period greater than five calendar weeks.

Employees may not use sick time including donated leave In lieu of applying for short-term disability. Per Delaware State Senate Bill 395, Section 3*,* "Once an employee exhausts the short-term disability elimination period, the employee will be deemed to have applied for benefits under Amendment 5253 and shall not be eligible to utilize paid leave in lieu of application for short-term disability."

Employees may not use sick time including donated leave in lieu of applying for disability pension preparation period.

Separate periods of disability resulting from the same or a related medical condition and occurring within any twelve month consecutive period shall be considered the same period of disability.

The donated leave must be converted into the cash value at the donor's rate of pay and shall be converted into hours of leave at the recipient's rate of pay. The District will then credit the recipient's account.

The recipient must be an employee of the School District for at least six months to use donated leave. The recipient must have used all sick days and personal days and 1/2 of vacation leave (if applicable). Medical justification for the recipients leave must be renewed every thirty days during any absence.

No person shall sell any accrued leave, which might otherwise be donated under this section. The State liability is limited to paying the State share of salary, benefits, and OEC's.

Any recipient of leave under this Policy is subject to a one year cap. Any unused donated leave will be returned to the donor.

REQUEST FOR DONATED LEAVE

Employee Name (Last, First, M)

Employee ID LAST 4 DIGITS OF SSN

Upon presentation of the original or a photocopy of this signed authorization, I authorize any medical professional, hospital, medical Institution, pharmacy, or government agency having Information concerning me, to release said Information to the Red Clay Consolidated School District or Its designated representative to be used for determining my eligibility for Donated Leave. This authorization shall be valid from the date signed through the duration of this claim.

AUTHORIZATION TO RELEASE INFORMATION FOR SOLICITATION PURPOSES

I hereby authorize the release of information indicated above to solicit days on my behalf under the Red Clay Consolidated School District donated leave program. I understand that this information will be shared with employees requesting information in connection with my request for leave donations.

Employee Signature Date

Please note:

• If employee meets the Donated Leave requirements, The Benefits Office will send the Donor Solicitation form to the recipient's Red Clay Consolidated School District email address. The recipient will need to provide a copy of the form to potential donors.