Family, Medical, and Maternity Leave

The conditions on the use of Family, Medical, and Maternity Leave as authorized by this Policy are to be construed in a manner consistent with any applicable state and federal laws. An employee must first exhaust accrued sick leave, vacation leave, and other available leaves if such leave may be used for the situation requiring childbirth, adoption/foster care, family care, or personal disability leave. This requirement does not apply to leaves that qualify for payments under State Paid Family Medical Leave or Industrial Insurance Benefits.

State Paid Family and Medical Leave

Paid family and medical leave are benefits administered by the Washington State Employment Security Department. Employees interested in applying for these benefits must follow the process described in Chapter 192-610 WAC. Employees who have questions regarding the application process may contact the Employment Security Department or visit its website at paidleave.wa.gov. ESD 123 will post notices made available by the Employment Security Department that provide pertinent information regarding paid family and medical leave benefits.

A brief description of the paid family and medical leave benefits program is provided below. The description is not meant to capture every aspect of the program; rather, it is meant to give a general overview.

Eligibility
Employees who have worked 820 hours during the first four of the last five completed calendar quarters or the last four completed calendar quarters are eligible for paid family and medical leave.

Reasons for leave
Family leave means leave taken by an employee from work for the following reasons:

1. To participate in providing care, including physical or psychological care, for a family member made necessary by a serious health condition of the family member;
2. To bond with the employee's child during the first 12 months after the child's birth, or the first 12 months after the placement of a child under the age of eighteen with the employee; or
3. Because of any qualifying exigency as permitted under the federal family and medical leave act for family members as defined by RCW 50A.05.010(10).

Medical leave means any leave taken by an employee from work made necessary by the employee's own serious health condition as defined by RCW 50A.05.010(20).

Amount of leave
Employees may take up to 12 weeks of paid family leave during a period of 52 consecutive calendar weeks.

Employees may take up to 12 weeks of paid medical leave during a period of 52 consecutive calendar weeks. Paid medical leave may be extended by two weeks if the employee experiences a serious health condition with a pregnancy that results in incapacity.

Employees may take a combined 16 weeks of paid family and paid medical leave during a period of 52 consecutive calendar weeks. The combined total may be extended to 18 weeks if the employee experiences a serious health condition with a pregnancy that results in incapacity.

Employee notice to ESD 123
An employee must provide ESD 123 at least 30 days' written notice before paid family or medical leave is to begin if the need for the leave is foreseeable based on an expected birth, placement of a child, or planned medical treatment for a serious health condition (see Form 5404-F1).

An employee must provide ESD 123 written notice as soon as practicable when 30 days' notice is not possible because of a lack of knowledge of approximately when leave will be required to begin, because of a change in circumstances, or because of a medical emergency.

An employee must provide ESD 123 written notice as soon as is practicable for foreseeable leave due to a qualifying military exigency, regardless of how far in advance such leave is foreseeable.

The notice must be in writing and contain at least the anticipated timing and duration of the leave.

ESD 123 notice to employee
Whenever ESD 123 becomes aware that an employee is absent from work for more than seven consecutive days to take family or medical leave, ESD 123 will provide the employee with a written statement outlining their rights.

The notice will be sent by the fifth business day after the employee's seventh consecutive missed day of work due to family or medical leave or by the fifth business day after the employer becomes aware that the employee's absence is due to family or medical leave, whichever is later.

Employment restoration
Upon return from paid family or medical leave, an employee is entitled to be restored to the position of employment held by the employee when the leave commenced or to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

As a condition of restoration for employees who have taken medical leave, ESD 123 may require those employees to receive certification from their health care provider that they are able to resume work.

ESD 123 may deny restoration to any salaried employee who is among the highest-paid ten percent of its employees if the following apply:

1. Denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;
2. ESD 123 notifies the employee of its intent to deny restoration on such basis at the time ESD 123 determines the injury would occur; and
3. The leave has commenced and the employee elects not to return to employment after receiving the notice.

ESD 123 may also deny restoration if the employee would not otherwise have been employed at the time of reinstatement.

If ESD 123 chooses to deny restoration, it will provide written notice of such denial in person or by certified mail. The notice will include a statement that ESD 123 intends to deny employment restoration when the leave has ended, the reasons behind the decision to deny restoration, an explanation that health benefits will still be paid for the duration of the leave, and the date on which eligibility for employer-provided health benefits ends.

The rights described above only apply in the following circumstances: ESD 123 has 50 or more employees; the employee has been employed by ESD 123 for twelve months or more; and, the employee

has worked for ESD 123 for at least 1,250 hours during the 12 months immediately preceding the date on which leave will commence.

Federal Family and Medical Leave

General provisions

Every employee of ESD 123 who has worked for ESD 123 at least one year and for at least 1,250 hours in the preceding year is entitled to twelve (12) workweeks of family leave during any twelve (12) month period to do the following:

1. Care for a newborn child, an adopted child of the employee who is under the age of eighteen at the time of placement for adoption, or a newly placed foster child;
2. Care for a spouse, parent, or child of the employee who has a serious health condition, or the employee may obtain leave for his or her own serious health condition if it renders the employee unable to perform their job; or
3. Respond to a qualifying exigency occurring because the employee's spouse, son/daughter, or parent is on active duty or has been notified of pending active duty in support of a contingency operation.

An employee who is the spouse, son or daughter, parent, or next of kin of a service member who is recovering from a serious illness or injury sustained while on active duty is entitled to twenty-six (26) weeks of unpaid leave in a twelve (12) month period to care for the service member.

Family leave requested under this policy must be taken full-time and consecutively unless an alternative schedule is approved by the Superintendent or designee or where intermittent or reduced leave is medically necessary. Instructional staff may not take reduced or intermittent leave when it would constitute twenty (20) percent of the number of working days in the period during which the leave would extend without the approval of the Superintendent or designee. An instructional employee may be transferred to an alternative equivalent position that would accommodate reduced or intermittent leave if such a position is available.

A period of family leave is in addition to any sick leave taken due to the employee's temporary disability attributable to pregnancy or childbirth.

The Superintendent or designee may require written verification from the employee's health care provider when the employee is taking medical leave based on his or her own serious health condition.

ESD 123 may obtain the opinion of a second health care provider, at ESD 123 expense, concerning any information pertinent to the employee's leave request. If the opinions of the health care providers differ on any matter determinative of the employee's eligibility for family leave, the two health care providers will select a third provider, whose opinion, obtained at the employer's expense, will be conclusive.

Birth or adoption

Leave taken for newborn or adopted childcare will be completed within one year after the date of birth or placement for adoption.

ESD 123 will grant leave upon the same terms to male employees as is available to female employees upon the birth or adoption of the employee's child. Leave will be granted upon the same terms to employees who become adoptive parents or stepparents, at the time of birth or initial placement for adoption of a child under the age of six, as is available to employees who become biological parents. Such leave is available only when the child lives in the employee's household at the time of birth or initial placement.

Employee requests for leave of absence due to birth or initial placement for adoption of a child will be submitted in writing to the Superintendent or designee not less than thirty (30) days prior to the beginning date of the leave. The notice will include the approximate beginning and ending dates for the leave requested.

If both parents of a newborn or newly adopted child are employed by ESD 123, they will be entitled to a total of twelve workweeks of family leave during any twelve-month period, and leave will be granted to only one parent at a time. There is no pooling effect for spouses if the family leave is related to a serious health condition.

Continuation of health benefits
During the term of any leave provided by this Policy, ESD 123 will continue coverage of the employee's group health plan as though the employee were not on leave. During any uncompensated leave, the employee will remain responsible for any amount usually contributed by the employee to the health plan premium.

Employment restoration
Any employee returning from an authorized family leave will be entitled to the same position held by the employee when the leave commenced, or to a position with equivalent benefits and pay.

An employee may be denied restoration under the following circumstances: a) the specific job is eliminated by a bona fide restructuring, or a reduction-in-force resulting from lack of funds or lack of work, b) an employee on family leave takes a position with another employer outside the home, c) the employee fails to provide the required notice of intent to take family leave or fails to return on the established ending date of leave, d) or as otherwise allowed by law. If an employee fails to return from family leave, ESD 123 may recover the costs of the employee's health benefits paid during the leave.

Instructional staff may be required to delay their return from family leaves to the beginning of the next semester under the following circumstances:

1. The employee began the leave five or more weeks before the end of the semester, the leave is for more than three weeks, and the employee would otherwise return to work within three weeks of the end of the semester.
2. The employee began family leave (except for a personal health condition) less than five weeks before the end of the semester, the leave is for more than two weeks, and the employee would otherwise return to work within two weeks of the end of the semester.
3. The employee began family leave (except for a personal health condition) three or fewer weeks before the end of the semester and the period of leave is more than five working days.

Maternity Leave

A staff member may use accumulated paid sick leave for the period of actual disability attributable to pregnancy or childbirth. This period will extend from the date of birth for a period of not more than sixty (60) days unless an actual period of disability that begins prior to the date of birth or continues beyond 60 days is otherwise verified in writing by the employee's physician.

If the employee's accumulated sick leave is exhausted during the period of maternity, ESD 123 will grant a leave of absence without pay or fringe benefits, upon the staff member's request, for the remainder of the period of actual disability due to pregnancy or childbirth.

During any unpaid portion of such leave of absence, the staff member may pay the premiums for any ESD 123 insurance plans to keep coverage in effect for the employee and her family.

Notice
A pregnant staff member is requested to notify their immediate supervisor and Human Resources by the beginning of the fifth (5) month of pregnancy.

At the time of such notice the staff member will submit a written request to her immediate supervisor and the Superintendent or designee for one or more of the following:

1. Maternity leave for the period of their actual disability due to pregnancy or childbirth;
2. Family leave for a period of up to twelve (12) weeks, in addition to any period of maternity disability leave. ESD 123 will extend the employee's health benefit during this period of unpaid leave;
3. Leave of absence for a period of up to the beginning of the next school term or fiscal/school year. Such extended leave of absence may be approved at the discretion of the Superintendent or designee based upon consideration of educational program needs and the desires of the staff member, together with the recommendation of her personal physician or licensed practitioner; or
4. Termination of employment by resignation.

The notice to ESD 123 will include the approximate beginning and ending dates for the leave.

Employment conditions
A pregnant staff member may continue working as long as they are capable of performing their normal duties, or with reasonable accommodation as supported with written approval of by a physician or licensed practitioner.

The staff member may return to work when physically able to perform their duties. If the employee intends to return to work within sixty (60) days of childbirth, their personal physician or licensed practitioner must certify that the staff member is in good health and ready to resume their duties.

No later than thirty (30) days after the date of birth, the staff member is requested to notify the Superintendent or designee of the specific date when they will return to work. Unless Human Resources approves an earlier date of return, the employee will give at least fourteen (14) days advance notice of the actual date of return.

The staff member will return to their duties following an extended leave of absence on the date approved by the Superintendent or designee. If the employee is still experiencing a disability due to pregnancy, miscarriage, abortion, childbirth, or recovery which prevents the employee from performing their duties on the scheduled date of return, an additional period of unpaid leave of absence may be approved at the discretion of the Superintendent or designee based upon consideration of educational program needs and the recommendation of the employee's personal physician or licensed practitioner.

Assignment upon return
An employee who has taken a leave of absence only for the actual period of disability relating to pregnancy or childbirth or up to twelve weeks of family leave will return to the same assignment, or a similar position for which they are qualified with at least the same pay and benefits, as they held prior to the maternity leave or family leave.

Upon return from extended maternity leave, a staff member will be entitled to a position in ESD 123 subject to the availability of a position for which they are qualified. An effort will be made to place the staff member in their original position or in a comparable position.

First Reading: 11/16/2021
Second Reading: 12/16/21

Reference:

RCW 28A.400.300 Hiring and discharging of employees—Written leave policies—Seniority and leave benefits of employees transferring between school districts and other educational employers.
RCW 49.12.270 Sick leave, time off—Care of family members.
RCW 49.12.360 Parental leave—Discrimination prohibited.
RCW 50A Family and medical leave
WAC 162-30-020 Pregnancy, childbirth, and pregnancy related conditions.
WAC 192-500-800 Paid family and medical leave
29 USC Sec 2601 Findings and purposes.
29 CFR Pt. 825 The family and medical leave act of 1993

Cross Reference:

Policy 5400 - Personal Leave