Family Medical Leave Act ("FMLA")

1. Q: **When does an employee become eligible for FMLA leave?**
   A: After you have worked at least 12 months on the date your FMLA leave commences.

2. Q: **What benefits are provided under the FMLA?**
   A: The FMLA requires that the District continue your health insurance coverage, at the same level enjoyed by an active employee, for a total of 12 weeks of leave. The FMLA does not require that leave be paid.

3. Q: **Can the district use absences covered by the FMLA in making the tenure decision?**
   A: No. Newly hired teachers are protected by the FMLA after one year of service. Absences for FMLA reasons in second or successive years cannot be used as factors in deciding assignments, determining whether tenure is awarded, or as the basis for disciplinary action of any kind.

4. Q: **For what purposes may an employee use FMLA leave?**
   A: FMLA leave may be used for the following reasons:
   a) because of the employee's serious health condition (medical leave)
   b) the birth of a child and to care for the newborn (childbirth and newborn leave)
   c) the adoption and care of a newly adopted child (adoption leave)
   d) to care for the employee's spouse, son, daughter or parent with a serious health condition (family leave)
   e) in loco parentis of domestic partner's child
   f) military caregivers
   g) qualified exigency leave

5. Q: **What is a "serious health condition" that entitles an employee to medical or family leave under the FMLA?**
   A: A "serious health condition" is an injury, illness, impairment or physical or mental condition that involves one or more of the following:
   a) inpatient hospital care
   b) a condition lasting more than three calendar days that involves continuing treatment, which means 1 visit to health care provider in first 30 days of incapacity, and a 2nd visit if required by health care provider or 1 visit to health care provider with continuing treatment.
   c) chronic or long-term disabling health conditions.

6. Q: **Can paid leave be substituted for unpaid leave under the FMLA?**
   A: Yes. Both the employee and the employer have the right to require the substitution of paid leave for unpaid leave during the FMLA leave.

7. Q: **Can an employee save FMLA leave for use only after the employee's sick leave runs out?**
   A: No. The district is entitled to begin your FMLA leave on the first day you are out on sick leave due to a serious health condition, whether you have sick days or not. In other words, you cannot "pyramid" a contractual leave with a FMLA leave; they run concurrently.

8. Q: **Do absences due to an "on-the-job" injury involving a Worker's Compensation claim count against FMLA leave?**
   A: Yes

9. Q: **Do holidays/breaks count in the calculation of the 12 weeks leave?**
   A: Yes, unless school is in recess for one or more weeks (i.e. winter spring and summer breaks), in which case the days do not count against the leave entitlement.

10. Q: **Which family members are covered by the FMLA for purposes of family leave?**
    A: You are entitled to use FMLA family leave for the serious health condition of sons, daughters, spouses, parents and children of domestic partners only. To take FMLA leave to care for these family members, you must show that the family member is unable to provide for his or her basic medical, hygienic, nutritional, safety or transportation needs. Leave must be allowed even if another family member is available to care for the person. If, in loco parentis for child, other family member can take FMLA for purpose of family leave.

11. Q: **How much leave may a husband and wife take if they are both employed by the district?**
    A: Both would be eligible for the full 12 weeks for the purpose of their own "serious health condition". However, for any other qualifying condition (i.e. birth, family member, adoption, etc.) the maximum ***combined*** leave time would be 12 weeks.

12. Q: **Does FMLA leave have to be taken all at once?**
    A: No. Under certain circumstances, intermittent leave may be taken.

13. Q: **How much notice of my plans for FMLA leave does an employee have to give the District?**
    A: When FMLA leave is foreseeable, such as for childbirth and newborn care leave, you must give at least 30 days' advance notice of the date you expect to begin your leave, and its anticipated duration. If leave is unforeseeable, such as in an emergency, you must give notice as soon as practicable after you become aware of the serious nature of your condition or that of a family member.

14. Q: **Does the district have the right to require medical verification for an FMLA leave request?**
    A: Yes. If the accuracy or veracity of the information provided by the employee when the request for leave was made is in question, the district may require medical certification. Existing practice, policy or contract rights may be a factor.

15. Q: **Does the employee have to expressly request FMLA leave to be protected?**

A: No. But you must explain the reasons for the needed leave so that the district is aware that a serious health condition is involved. The following notices trigger FMLA protections:

(a) "My daughter has pneumonia and I must stay home to take care of her;"
(b) "I broke my arm in a car accident and I won't be in for a week;"
(c) "My back condition has kicked up again and I can't get out of bed."

The following will not trigger FMLA protections because they do not suggest a serious health condition:

(a) "I cannot come to work because of personal problems;"
(b) "I am too upset to work;"
(c) "I have to stay home because of my daughter."

16. Q: **What notice may the district require regarding an employee's return to work:**

A: If circumstances require a change in the employee's anticipated return to work date, the employee is expected to, and may be required by the district to, provide reasonable notice of the change (i.e. within two business days).

17. Q: **What happens if the employee does not return to work at the end of an FMLA leave?**

A: That depends on the reason(s) why the employee does not return to work. If the employee chooses not to return (i.e. resigns or fails to provide a legitimate reason for not returning), the health insurance premiums paid by the district are considered a debt owed by the employee. The district may take any legal option available to collect the debt.

If the reason for not returning at the end of an FMLA leave is beyond the employee's control, the district may not have the right to recapture the premiums paid on behalf of the employee during the leave. For example, if a serious health condition continues to exist, either for the employee or an immediate family member. Such conditions would be considered out of the employee's control. Additional leave time may be available through the contract for these conditions.

For the purposes of FMLA leave, an employee is considered to have returned to work if he/she works at least 30 days upon their return.

Special Rules for Instructional Employees

1. Q: **How is "instructional employee" defined for the purposes of FMLA leave requirements?**

A: Instructional employees are those whose principal function is to teach and instruct students in a class or individual setting. This does **not** include auxiliary personnel such as guidance counselors, school psychologists, curriculum specialists, assistants or aides.

2. Q: **Are there special "return-to-work" rules for instructional employees?**
A: Yes. These rules generally fall within three (3) categories as described below.

RULE #1
If an instructional employee begins a leave period more than five (5) weeks before the end of a semester, and the leave will last at least three (3) weeks, and the employee would return to work during the last three (3) weeks of the semester, the district may require the employee to continue taking leave until the end of the semester.

RULE #2
If an instructional employee starts a leave period for other than his/her own serious health condition within five (5) weeks of the end of a school term, and the leave will last more than two (2) weeks, and the employee would return to work within two (2) weeks before the end of the academic term, the district may require the employee to continue taking leave until the end of the term.

RULE #3
If an employee commences leave for other than his/her own serious health condition, within three (3) weeks before the end of the school term and the leave will last more than five (5) working days, the district may require the employee to continue taking leave until the end of the term.

3. Q: **If the employee is required to remain on leave beyond the requested leave period due to one of the above rules, is that additional time charged against the employee's FMLA leave entitlement?**
A: No

4. Q: **Is the district required to maintain the employee's health insurance coverage (to the same extent as active employees) during this additional leave time?**
A: Yes

5. Q: **Are there any special rules for instructional employees concerning intermittent leave?**
A: Yes. If the requested leave would be more than 20 percent of the total number of working days over the entire period of the leave, the district may require the employee to either take leave for the entire period or transfer temporarily to an alternate position which may better serve the district's needs. If the employee chooses to take the entire period, then the entire leave time will be charged against FMLA.

6. Q: **When the employee returns to work at the end of an FMLA, is the district required to return him/her to the same assignment prior to the leave?**
A: No. Based upon policy, practice or contract language, the district is only required to restore the employee to an "equivalent position". However, the returning employee cannot be reassigned to a position that requires a substantial increase in either travel time or distance.

Rights to Maternity / Child Care Leave

1. Q: **When does FMLA leave begin in the case of pregnancy/childbirth?**
   A: With the first day you are deemed medically unable to work.

2. Q: **If the employee initially requests 12 weeks of leave for child birth or newborn care, can the employee decide to return earlier?**
   A: Yes. But you must provide at least two days advance notice, unless your return falls near the end of the term.

3. Q: **Is a father entitled to FMLA leave to care for a newborn?**
   A: Yes. A father may take up to 12 consecutive weeks of newborn care leave. Newborn care leave can be taken at birth or at anytime until the child is one year old. The child does not have to be ill or in need of special care. If both parents work for the school district, total leave for both can be limited to 12 weeks.

4. Q: **Does FMLA leave apply to adoptions?**
   A: Yes. FMLA adoption leave can begin before the child is placed if attendance is required at counseling sessions, court, consultations with attorneys and doctors, etc.

5. Q: **May an employee substitute paid sick leave for unpaid leave under FMLA for qualifying conditions other than his/her own serious health condition?**
   A: Only to the extent that either practice, policy or contract language provides.

6. Q: **Does an employee have the right to take child care leave for more than 12 weeks?**
   A: The FMLA does not provide for a right to leave beyond the 12 weeks. An unpaid child care leave beyond the 12 week FMLA leave is governed by the collective bargaining agreement.