HICKSVILLE CONGRESS OF TEACHERS

WORKSHOP

on

MATERNITY LEAVE

and

FAMILY MEDICAL LEAVE ACT

FAMILY MEDICAL LEAVE ACT (FMLA)

- FMLA leave is 12 weeks during a 12-month period.
- Employers are required to maintain employees' group health insurance.
- An employee is eligible under the law to take family and medical leave if he or she has been employed for at least 12 months and has worked at least 1250 hours in the 12 months immediately preceding commencement of leave.
- The employee must give 30 days' notice of his or her intention to take the leave.
- It is discretionary on the employer's part whether to require an employee to use paid sick leave before or during FMLA leave.
- Absences of one or more weeks when school is closed and employees are not expected to report to work do not count against FMLA leave entitlements (e.g. Summer or Holiday recess).
- Family leave is available for the birth and care of an infant, adoption and care of a child, and the placement with the employee of a child in foster care.
- Medical leave is available to an employee who has a serious health condition that prevents the employee from performing his or her job, or to care for a spouse, dependent child or parent who has a serious health condition.
- At the end of the leave, the employee is entitled to return to the position he or she held when the leave commenced or to an equivalent position.
- Depending on the duration of the leave and the length of time remaining until the end of the school term, the district can require the employee to wait until the next term to return. The additional time is not counted as FMLA leave.
- An employee does not lose accrued benefits as a result of the leave, but he or she is not entitled to accrue seniority for the period of the leave (unpaid leave).

What To Do and When To Do It!

1. When your pregnancy is medically determined you MUST notify your Principal in writing and ESTIMATE your plans for leave.

2. At the start of your 5th month you MUST file with your principal a written statement from your doctor regarding how much longer you can be expected to work. This may be right up until delivery.

3. At LEAST 30 days prior to starting your leave, file the FMLA request form (blue). At this time you should also request any extended leave that you desire. You WILL be granted a full year, including the 12 weeks of FMLA, plus the time necessary to bring you to the start of a new school year or semester.

4. Check the letters that you receive to make sure that what you requested is what you received and there are no discrepancies. Call Personnel if there are.

5. At least 90 days before you are due to return, you MAY request an ex tension for up to one additional year. The board may or may not grant this request.

Calculating Available Sick Days for FMLA

1. Write a note to Personnel requesting a printout of sick days available if you are not sure of your balance.

2. Determine how many days you will earn this year.

Year 1	10 days	available September 1
Year 2	11 days	available September 1
Year 3	12 days	1.2 at the end of each month
Year 4	13 days	1.3 at the end of each month
Year 5	14 days	1.4 at the end of each month
Year 6+	15 days	1.5 at the end of each month

If you don't work or use sick days for a full month you will not earn any days in that month.

3. Count the number of days you will have when you start your FMLA. Count the Number of days you will earn while on FMLA and on payroll. This is the total number of days you have available for your leave.

ARTICLE XVII. EXTENDED LEAVES OF ABSENCE

At least sixty (60) days prior to the end of any extended leave of absence, the teacher will inform the superintendent in writing of intention to return to duty. Failure to do so, after notification by the district by Registered or Certified Mail, will result in loss of right to return. Upon termination of leave, provided that all contract provisions pertaining to such leave have been met, the teacher will be returned to duty unless his or her position has been abolished or declared surplus, in which case he/she will be excessed in accordance with provisions of law.

A. The Board agrees that up to three (3) teachers designated by the local, state or national association will, upon request, be granted a leave of absence for up to two (2) years without pay for the purpose of engaging in association (local, state, or national) activities. Upon return from such leave a teacher will be considered as if he/she were actively employed by the Board during the leave.

B. A leave of absence of up to two (2) years will be granted to any teacher who joins any federally financed program to serve the needy or serves as an exchange teacher and is a full time participant in any such program. Upon return from such leave, teacher will be treated as in "A" above.

C. Military leave, as provided by law, will be granted to any teacher in any branch of the Armed Forces of the United States. Upon return from such leave, teacher will be placed on the salary schedule at the level he would have achieved if he/she had not been absent.

D. A teacher will notify her building principal in writing of her pregnancy as soon as it is medically confirmed and, at the same time, will estimate the length and dates of the maternity leave she expects to request. If the teacher is still on staff at the start of her fifth month of pregnancy, she will file with the building principal a statement from her doctor estimating how much longer she may be expected to work with safety.

1. On at least thirty (30) days notice, said teacher may request, and the Board will grant, a maternity leave without pay or increment of up to one year, plus the length of time necessary to bring her to the beginning of a new school year. Except as provided by FMLA, return from leave pursuant to this paragraph shall be either on September 1st or at the commencement of a semester (February 1st at the elementary schools).

2. At least ninety (90) days prior to the end of a maternity leave, a teacher may request an extension of up to one additional year which the Board in its discretion may grant or deny.

3. Return from maternity leave will be permitted after submission of approved certification of medical fitness.

4. Once granted, a maternity leave will run for the full term approved, except that the Board in its discretion may permit earlier return to duty.

5. Maternity leave provisions will be applied to a female teacher adopting a child on written request of such teacher effective on the date of receiving de facto custody of such child.

6. No teacher on maternity leave will be denied opportunity to substitute in the Hicksville school system in the area of her certification of competence during the period of such leave.

7. Failure by the teacher to observe the provisions of this contract section will relieve the Board of Education of the obligations to guarantee re-employment.

E. A leave of absence without pay or increment of up to one (1) year will be granted a teacher on written request for the purpose of caring for a sick member of the teacher's immediate family. Additional leave may be granted at the discretion of the Board.

F. The Board will grant a leave of absence without pay or increment to any teacher for up to three years to campaign for elective public office and/or to serve in any such elective or appointive position.

G. Any tenured teacher whose personal illness extends beyond the period covered by his/her accumulated sick leave will be granted a further leave without pay for such time as is necessary for complete recovery from such illness. Such leave shall be without loss of increment credit for a period of up to two (2) years.

H. A leave of absence without pay for up to two (2) years will be granted to teachers for the purpose of teaching or administrative internships, graduate fellowships, or academic residencies. When leaves are so granted, the returnee teacher will be subject to re-employment for up to two years at the discretion of the Board.

I. The Board in its discretion, may grant other leaves of absence without pay for periods of up to one (1) year for good and sufficient reasons and may grant extensions up to one (1) additional year on written requests received at least ninety (90) days prior to termination of leave.

J. All benefits to which a teacher was entitled at the time his/her leave began will be restored to him/her upon his return to duty. Unless his/her position has been abolished or declared surplus, he/she will be assigned to the position from which he/she took leave, if available, or, if not, to a substantially equivalent position.

Family and Medical Leave Act

Consistent with the Family and Medical Leave Act of 1993, effective August 5, 1993, the Hicksville Board of Education recognizes the right of eligible employees to unpaid family and medical leave for up to twelve (12) weeks during a twelve (12) month period. The Board shall ensure that all eligible employees who use such leave shall have their health benefits continued during the leave, shall not have any previously accrued benefits altered and shall be returned to an equivalent position according to established Board practices, policies and collective bargaining agreements.

To be eligible for family or medical leave, an employee must have been employed for at least twelve (12) months and have worked at least 1,250 hours during the 12 months preceding a leave request.

Family leave shall be provided any eligible employee, regardless of gender, when a child is born to the employee, or when one is either placed with the employee for adoption or foster care. Medical leave shall be granted to any eligible employee, regardless of gender, in order for the employee to take care of a spouse, child, or parent who has a serious health condition, or when the employee has a serious health condition rendering him/her unable to perform the functions of the employee's job.

Any eligible employee taking a family or medical leave under this policy shall be required to use accrued paid vacation, personal, family or sick leave for purposes of either a medical or family leave. The accrual of seniority and the maintenance of any benefits shall remain in effect during the course of this medical or family leave, provided that this leave does not exceed twelve (12) weeks in a year , and provided that the employee returns from the leave, unless such failure to return is a result of the continuation, recurrence, or onset of a serious health condition, or is due to circumstances beyond the control of the employee. No seniority will be provided for any employee who does not return from a family or medical leave. The District may seek to recoup the costs of health insurance premiums for the time of the leave from such an employee.

The employee, on a form designated by the Hicksville Board of Education, shall notify the district for his/her request for a leave, if forseeable, at least thirty (30) days prior to the date when the leave is to begin. If such leave is not forseeable then the employee shall give such notice as is practical. The District shall require certification from a health care provider if medical leave is requested.

When an employee returns following a medical leave, s/he, at the discretion of the Superintendent of Schools or the Superintendent's designee, shall be returned to either the same or an equivalent position. The determination of such an assignment will be made in a manner consistent with the educational needs of the District and in a manner consistent with law, the employee's certification and tenure areas, and any applicable collective bargaining agreement. The District, in its discretion, may deny restoration to an employee who is among the highest paid 10% of the employees, if: a) such a restoration will result in a substantial and grievous economic injury to the District, b) the District notifies the employee of its intent not to restore him/her when the District determines such injury would occur, and c) such notice is written, and delivered to the employee either personally or via certified mail, return receipt requested, before the employee commences the leave.

The Board of Education directs the Superintendent of Schools to develop and implement Regulations governing the implementation of this Policy.

The District shall post a notice prepared or approved by the Secretary of Labor, stating the pertinent provisions of the Family and Medical Leave Act, including information concerning enforcement of the Law.

Legal Reference: Family and Medical Leave Act of 1993, Public Law 103-3

Board Approval Date: November 17, 1993

Family and Medical Leave Act Regulations

Consistent with the Federal and Medical Leave Act of 1993, the Hicksville Board of Education, on August 5, 1993, shall provide for twelve (12) weeks of unpaid leave in a twelve (12) month period for its eligible employees. An eligible employee is one, regardless of gender, who must have been employed for at least twelve months and have worked at least 1,250 hours during the twelve months preceding the leave request.

Family and Medical Leave

An eligible employee, regardless of gender, is entitled to take a family leave for a period of time not to exceed 12 weeks, for the birth of a son or daughter, the adoption of a son or daughter, or the placement of a child with the employee for foster care. Family leave must be taken within one year of the birth or placement of the employee's child. If both spouses are employed by the Hicksville Public Schools, the combined amount of time for family leave shall be limited to twelve (12) weeks.

An eligible employee, regardless of gender, is entitled to take a medical leave for a period of time not to exceed twelve (12) weeks, in order for the employee to care for a spouse or child, or to take care of a parent who has a serious health condition. The limitation of twelve (12) weeks does not include a medical leave when the employee has a serious health condition rendering him/her unable to perform the functions of the employee's job.

For purposes of this Board Regulation, a son, daughter, or child shall be defined as any individual, whether biological, adopted, a foster child, a stepchild, legal ward, or a child standing *in loco patentis* who is under eighteen (18) years of age or, if over eighteen (18), is incapable of self-care due to a mental or physical handicap. A parent shall be defined as a biological parent of the employee or an individual who stood *in loco parentis* to the employee when s/he was a son/daughter. Furthermore, a serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

Notice to Take Leave

The employee is obligated to notify the District of his /her request for family or medical leave using a form designated by the District at least thirty (30) days prior to the date when the leave is to begin, when such leave is forseeable. If such leave is not forseeable, then notice shall be given as early as practical. If the employee requests medical leave, reasonable attempts shall be made to schedule treatment so as not to disrupt the operations of the District.

Intermittent Leave

An employee who requests family leave, shall not be provided intermittent leave or a reduced leave schedule unless the employee and the District, through the Superintendent or the Superintendent's designee, mutually agree. Intermittent leave may be provided for medical leave, however, the District may, at its sole discretion, transfer the employee to a comparable position if, in its sole discretion as determined by the Superintendent or the Superintendent's designee, it will better accommodate such intermittent periods of leave and provide for a minimal disruption to the students of the District. For instructional employees who request medical leave and it is forseeable that the medical treatment shall cause the employee to be on leave for more than twenty percent

(20%) of the total number of working days in the period of leave, the District, at its sole discretion as determined by the Superintendent or the Superintendent's designee, may require the employee to take a block of time or to transfer to a position, which, in the sole discretion of the Superintendent or Superintendent's designee, is equivalent, but which better accommodates intermittent periods of leave and the educational needs of the District. For purposes of this Regulation, the term instructional employees includes, but is not limited to teachers and instructional support staff and administrators, but does not refer to teaching assistants, school bus drivers, maintenance and service workers, food service personnel and other "non-instructional employees."

Certification

Any employee requesting medical leave must present a certification from the health care provider of the person for whom the employee is taking the leave. This request must be in writing on a form prescribed by the District, and submitted in a timely manner. The certificate shall include:

1) the date on which the serious health condition commenced;
2) the probable duration of the condition ;
3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;
4) a statement that the employee is needed to care for the family member and an estimate of the amount of time that such employee shall be needed, or a statement that the employee is unable to perform the functions of the employee's position; and
5) the dates and duration of medical treatment if the request is for intermittent leave for a planned medical treatment.

If the District doubts the validity of the certification provided for a medical leave, then, at the District's expense, a second opinion may be required from a health care provider selected by the District. The School Physician cannot give this opinion. If the two opinions conflict, a third health care provider shall be chosen by the two parties to render a final opinion at the District's expense.

Restoration

An instructional employee who begins any type of leave at least five (5) weeks before the end of an academic term, may, at the sole discretion of the Superintendent or the Superintendent's designee, be required not to return until the new term begins if the leave is at least three (3) weeks long and the employee would not return during the last three (3) weeks of the term. An instructional employee who begins leave, for any purpose other than personal illness, less than five (5) weeks prior to the end of an academic term, may, at the sole discretion of the Superintendent or the Superintendent's designee, be required not to return until the new term begins if the leave is greater than two (2) weeks long and the employee would not return during the last two (2) weeks of the term. An instructional employee who begins leave, for any purpose other than personal illness, less than three (3) weeks prior to the end of the term and the leave is longer than five (5) working days, may, at the sole discretion of the Superintendent or the Superintendent's designee, be required not to return until the new term begins.

The District reserves the right to deny restoration to an employee who is among the highest paid ten percent (10%) of the District's employees if: a) such a restoration will result in a substantial and grievous economic injury to the District, b) the District notifies the employee of its intent not to restore him/her when the District determines such injury would occur, and c) such notice is written, and delivered to the employee either personally or via certified mail, return receipt requested, before the employee commences the leave.

Right to Benefits During Leave

An eligible employee is entitled to a combined total of twelve (12) weeks of unpaid family leave and medical leave in a twelve (12) month period. Any employee who uses the family and/or medical leave under this policy shall be required to use accrued paid vacation, personal, family or sick leave for purposes of either a medical or family leave. The accrual of seniority and the maintenance of any benefits shall remain in effect during the course of this medical or family leave, provided that this leave does not exceed twelve (12) weeks in a twelve month period, and provided that the employee returns from the leave, unless such failure to return is a result of the continuation, recurrence, or onset of a serious health condition, or is due to circumstances beyond the control of the employee. No seniority will be provided for any employee who does not return from a family or medical leave. Any eligible employee who uses either a family or medical leave may, upon return from the leave, be returned to an equivalent position in accordance with Board of Education Policies and collective bargaining agreements, depending upon the educational needs of the District as determined at the sole discretion of the Superintendent of Schools or the Superintendent's designee.

Failure to Return

The District reserves the right to seek recovery the health care premiums paid for the employee during the leave when the employee fails to return from either a family or medical leave. However, recovery of health insurance premiums cannot occur if the employee fails to return because of the continuation, recurrence, or onset of a serious health condition, retires at the end of the medical leave, or fails to return due to circumstances beyond the control of the employee. In addition, no seniority credit for the period of the leave will be granted to any employee who fails to return from either a family or medical leave.

Effect on Existing Laws or Agreements

Any collective bargaining agreement which contains greater leave benefits than this policy shall remain in force. Any collective bargaining agreement which does not meet the requirements of the Family and Medical Leave Act shall be modified to comply with it by August 5, 1993.

Notice of Policy

The District shall post a notice prepared or approved by the Secretary of Labor stating the pertinent provisions of the Family and Medical Leave Act, including information concerning enforcement of the law.

Board Approval Date: November 17, 1993

FAMILY MEDICAL LEAVE ACT

GENERAL PROVISIONS

1. What kind of leave can be taken? Employees of covered employers may take unpaid leave for the birth, adoption or foster care placement of a child, to care for seriously ill immediate family members (spouses, children or parents), or for the employees' own "serious health condition".

2. Is the leave paid or unpaid? The FMLA provides unpaid leave but the FMLA allows employees to elect, or employers to require, substitution of accrued paid leave for the FMLA leave.

3. Who is a covered employer? The FMLA applies to "covered" employers. Public employers are subject to the FMLA, no matter how many employees they employ, and private employers are covered if they employ at least 50 employees.

4. Who is an eligible employee? To be eligible, an employee must have been employed for a minimum of 12 months (which need not be consecutive) prior to requesting leave and have worked at least 1,250 hours during the previous 12 calendar months. Also, an employee must work for an employer who employs at least 50 workers within a 75 mile radius.

5. How long is the leave? FMLA leave is 12 weeks during a 12-month period. If a husband and wife are employed by the same employer, leave for birth, adoption, foster care placement or to care for a sick parent may be limited to a combined total of 12 weeks per year.

6. Are benefits provided? Employers are required to maintain employees' group health insurance.

7. Do employees have to be reinstated? Employers are required to reinstate employees to the same or "equivalent" positions, except that under some circumstances, they may refuse to reinstate "key employees".

8. Do employees have to give notice and provide medical certification? Employees are required to provide 30 days' notice when the leave is foreseeable, as in the case of the birth of a child. Under certain circumstances, employees may have to furnish medical certification.

9. Do employers have to tell employees about the FMLA? Employers must post a Department of Labor notice and include information in existing employee handbooks or, if there are no handbooks, give it to employees when they request FMLA leave.

10. What are intermittent and reduced leaves? Intermittent leave is "leave taken in separate periods of time due to a single illness or injury..." Reduced leave is defined as "a leave schedule that reduces the usual number of hours per workweek, or hours per workday..."

Reduced or intermittent leave may be taken when "medically necessary" for the employee or to care for a family member, provided there is a serious health condition. Leave can be taken in increments of one or more hours. Both types of leave are not allowed to be used for the birth, adoption, or foster care placement of a child unless the employer agrees.

SPECIAL PROVISIONS FOR EMPLOYEES AT K-12 INSTITUTIONS

1. "Instructional employees" are those whose principal function is to teach and instruct students in a class, small group or individual setting. Teachers, coaches, driving instructors and special education assistants are included. Teacher aides or assistants who do not teach or instruct, counselors, psychologists, curriculum specialists, cafeteria and maintenance workers and bus drivers are excluded.

2. If an instructional employee takes reduced or intermittent leave which would amount to 20% or more of the total working days in the leave period, the employee may be required to take leave for the entire period of treatment or to transfer to an alternative position for which the employee is qualified, which has equivalent pay and benefits, and which better accommodates recurring leave periods.

3. Additional limitations apply to leave taken near the end of a term by instructional employees. Employers may require the leave to extend to the end of the term in the following circumstances:

a. The leave begins more than five weeks before the end of the term, the leave lasts at least three weeks, and the employee would return during the last three weeks.

b. The leave begins during the last five weeks of the term, for reasons other than the employee's own serious health

condition, lasts more than two weeks, and the employee would return to work during the last two weeks.

c. The leave begins during the last three weeks of the term, for reasons other than the employee's own serious health condition, and leave will continue for at least five working days.

4. If an instructional employee runs out of FMLA leave because of an involuntary end of term extension, the employee retains the right to continued health insurance and other entitlements.

5. The restoration of all school employees to equivalent positions will be based on state law, established school board policies, practices and collective bargaining agreements, which are in written form. Of course, these must provide for equivalent benefits, pay and other terms and conditions of employment, like the same shift.

GENERAL RIGHTS ON REINSTATEMENT

1. Employees are not (unless required by another law, contract or policy) entitled to accrue seniority or additional service related benefits while on leave or to any "right, benefit or position to which the employee would have been entitled had the employee not taken the leave."

2. Certain "key employees" may be denied reinstatement. Key employees are the highest paid 10% of all employees, salaried and unsalaried, eligible and ineligible, within 75 miles of the facility where an employee is employed. Reinstatement may only be denied when necessary to "prevent substantial and grievous economic injury to the operations of the employer."

The initial determination of key employee status is made at the time leave is requested and employees must be so notified. The employer must tell the employee as soon as it determines economic injury will occur which may be before or while leave is taken. The notice must be given by certified mail or in person, and provide the basis for the determination; also, the employer must allow the employee reasonable time to return to work. If the employee doesn't then return to work, the employee is still entitled to continued health benefits and to request reinstatement at the end of the leave period.

3. If an employee is unable to perform the essential duties of the position because of a physical or mental condition, the employer's

obligations may be governed by the Americans with Disabilities Act. An employee need not be reinstated if, with reasonable accommodation, the employee cannot perform the essential functions of the position.

REMEDIES

Employers cannot discriminate against employees who exercise their rights under the FMLA. Employees can sue in either federal or state court within two years (or three years if the violation was willful). Also, the Secretary of Labor may commence actions for injunctive relief and damages. The employee can get compensatory and liquidated damages, interest, attorney's fees, reinstatement, back pay and benefits.

COLLECTIVE BARGAINING AGREEMENTS AND STATE LAWS

A collective bargaining agreement or a state law with more generous leave provisions will prevail over the FMLA requirements. Also, the union may negotiate additional but not fewer protections and benefits: rights under the FMLA cannot be waived by employees or bargained away.

An example of a more generous law is Executive Law Section 296(1)(g). Because it prohibits mandatory leave beyond the period of pregnancy disability, instructional employees on maternity leave can't be required to remain on leave until the end of the term.

HICKSVILLE PUBLIC SCHOOLS
REQUEST FOR A FAMILY AND/OR MEDICAL LEAVE

I. GENERAL INFORMATION (to be completed by employee)

Employee Name: _____

School/Department: _____

II. LEAVE REQUEST INFORMATION (to be completed by employee)
Type of leave requested:

☐ MEDICAL LEAVE

FROM: _____ (last day of work)

TO: _____ (anticipated date of return)

☐ FAMILY LEAVE

FROM: _____ (last day of work)

TO: _____ (anticipated date of return)

Reason for leave request: (check appropriate line and complete information)

( ) This MEDICAL leave is requested for purposes of taking care of:
☐ myself ☐ spouse ☐ child ☐ parent who has a serious health condition

( ) This FAMILY leave is requested for purposes of:
☐ birth ☐ adoption ☐ foster placement of a child

_____ (employee signature) _____ (date)

III. MEDICAL VERIFICATION (to be completed by HEALTH CARE PROVIDER)

A. ☐ This is to certify that _____ (employee's name) is needed to care for _____ (name of seriously ill person), a family member who has the following serious health condition _____ (nature of serious health condition) that commenced on _____ (date of onset).
It is anticipated that the employee will continue or be needed in a caretaking capacity until _____ (anticipated date of return to work). OR

B. ☐ This is to certify that _____ (employee's name) has the following serious health condition _____ (nature of serious health condition) that commenced on _____ (date of onset).
It is anticipated that the employee will be unable to perform the functions of his/her job and thus be unable to return to work until _____ (anticipated date of return to work).

_____ PRINT Name of health care provider

_____ ADDRESS of health care provider

_____ SIGNATURE of health care provider

_____ DATE