

<h1>POLICY</h1>	<p>9320</p> <p>Adopted: May 6, 2014</p> <p>Personnel & Negotiations</p>
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SUBJECT: FAMILY AND MEDICAL LEAVE ACT

Consistent with the Family and Medical Leave Act of 1993 (FMLA), as amended, the Greater Southern Tier BOCES Board recognizes the right of its eligible employees to take unpaid leave under the conditions set forth by FMLA. The Board hereby establishes this Policy to ensure that requests for FMLA leave are processed in an orderly and non-discriminatory manner.

Eligibility for FMLA Leave

Employees are eligible for FMLA leave if they have been in the employ of BOCES for at least twelve (12) months, and have worked at least 1,250 hours for the 12 months immediately preceding the commencement of FMLA.

Entitlement to Leave

Employees who meet the eligibility requirements described above are eligible to take up to twelve (12) weeks of unpaid leave during a single 12-month period for the following reasons: (1) the birth of the employee’s son or daughter and to care for the child during the first 12 months following birth; (2) the placement of a son or daughter with the employee for adoption or foster care and to care for the child during the first 12 months following placement; (3) a serious health condition which renders the employee unable to perform the functions of his/her job, including incapacity due to the employee’s pregnancy, prenatal medical care or child birth; (4) the care associated with a serious health condition of an employee’s spouse, dependent child, or parent, or (5) a “qualifying exigency” arising out of the fact that the employee’s spouse, son, daughter, or parent is on covered active duty or has been notified of an impending call to covered active duty in the Armed Forces.

In addition, eligible employees are entitled to up to twenty-six (26) weeks of unpaid leave during a single 12 month period in order to care for their spouse, child, parent, or next of kin (*i.e.*, closest blood relative) who is a covered military service member. In no case may the total amount of leave taken in a 12-month period exceed 26 weeks for any FMLA-qualifying reason.

BOCES will employ a “rolling” twelve (12) month calculation method to determine the 12-month period during which FMLA leave may occur. A rolling 12-month period measures backwards from the date an employee seeks to use FMLA leave to determine whether the 12-week entitlement has been exhausted. However, when leave is taken to care for a covered military service member, the 12-month period will be measured forward from the date an employee’s first FMLA leave to care for the covered military service member begins.

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Notice of Leave

If the need for FMLA leave is foreseeable based on expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or planned medical treatment for a serious injury or illness of a covered military service member, employees must provide at least thirty (30) days' advance notice. If 30 days' notice is not possible, notice must be provided as soon as practicable (or within 1 or 2 business days of learning of the need for leave), except in extraordinary circumstances. For foreseeable leave due to a qualifying exigency, notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable. Failure to provide such notice may be grounds for delaying the start of the FMLA leave or denying the request for leave.

If the need to use FMLA leave is not foreseeable, the employee must provide notice as soon as practicable (or within 1 or 2 business days). Employees are expected to provide notice in accordance with this Policy, as well as BOCES usual and customary notice requirements, which means that notice of the need for unforeseeable FMLA leave should ordinarily be given prior to the start of the employee's workday, absent unusual circumstances. Failure to provide such notice may be grounds for delaying the start of the FMLA leave or denying the request for leave.

Employees taking FMLA leave for planned medical treatment must consult with BOCES and make a reasonable effort to schedule such treatment so as to not unduly disrupt the operations of BOCES.

When an employee requests FMLA leave, BOCES will notify the employee of the employee's eligibility to take FMLA leave within five (5) business days, absent extenuating circumstances. Employee eligibility is determined (and notice must be provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. All FMLA absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable 12-month period.

If the employee is eligible, the employee will be given a written notice of Rights and Responsibilities. If the employee is not eligible, BOCES will provide the employee with a written notice indicating the reason for ineligibility.

If leave will be designated as FMLA-protected, BOCES will inform the employee, in writing, within five (5) business days, absent extenuating circumstances, and provide information on the amount of leave that will be counted against the employee's 12 or 26 week entitlement. If the leave will not be designated as FMLA-protected because it does not meet the requirements of the FMLA, BOCES will also notify the employee in writing.

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Medical Certification

Medical certification issued by an appropriate health care provider will be required of eligible employees requesting FMLA leave for their own serious health condition or for the care associated with the serious health condition of a dependent child, spouse or parent. Additionally, if an employee is requesting leave because of a “qualifying exigency” or to care for a “covered [military] service member,” the employee must also provide appropriate certification.

Employees may obtain medical certification forms from the Human Resources Office. When the employee requests leave, BOCES will notify the employee of the requirement for medical certification and that it is due no later than five (5) business days after the employee requests leave. The employee must provide the requested medical certification to BOCES within fifteen (15) calendar days of the date of the request, unless to do so is not practicable despite the employee’s diligent, good faith efforts. Failure to provide requested medical certification in a timely manner may result in denial of leave until it is provided.

The employee’s certification must be complete and sufficient. In the event that the certification is deficient, BOCES will advise the employee, in writing, what additional information is necessary to make the certification complete and sufficient. The employee will be given seven (7) calendar days (unless not practicable despite the employee’s diligent, good faith efforts) to cure any such deficiency. If the deficiencies are not cured in the resubmitted certification, BOCES may deny the taking of FMLA leave.

Relationship to Paid Leave

Eligible employees are required to substitute any accrued paid sick leave, paid personal leave, or paid vacation leave for any part of the 12-week period to which FMLA would apply (*i.e.*, paid leave will run concurrently with the unpaid FMLA leave). Accordingly, the employee receives pay pursuant to the BOCES’ applicable paid leave contractual provision or policy during the period of otherwise unpaid FMLA leave. Use of such paid leave is determined by the terms and conditions of such contract or policy. Once paid leave is exhausted, the remainder of the FMLA leave entitlement will be unpaid.

Any leave of absence taken pursuant to an applicable disability law or Workers’ Compensation law will be run concurrently with FMLA leave.

Return from FMLA Leave

Eligible employees returning from FMLA leave for their own serious health condition will be required to provide medical certification from their health care provider that he/she is able to resume work. This certification must specifically address the employee’s ability to perform the

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essential functions of his/her job. Failure to provide such medical certification may result in delay or denial of reinstatement.

Upon returning from FMLA leave, an eligible employee will be entitled to return to his/her position, or to an equivalent position with equal pay, benefits, and terms and conditions of employment to the extent required by FMLA.

Provision of FMLA Leave in Respect to Law, Policy and Contract

This Policy is intended to provide the minimum required benefits conferred by FMLA and its implementing regulations on employees. It may not be interpreted in conflict with such law or regulations.

Employees whose terms and conditions of employment are subject to collective bargaining under the Taylor Law may have leave benefits in excess of those provided in this Policy. Where such contractual benefits exceed those provided in this Policy, those benefits will provided in lieu of the comparable benefits provided in this Policy.

All terms used in this Policy shall be as defined by FMLA and/or its accompanying regulations.

Cross-references: Family and Medical Leave Act (as amended), 29 USC §§2601 *et seq.*
 29 CFR Part 825
 Taylor Law, Civil Service Law §§200 *et seq.*