



Book	Board of Trustees Policy
Section	300 Employees
Title	Family Medical Leave Act (FMLA)
Code	311
Status	Active
Last Revised	October 6, 2022

Agora Cyber Charter School

Board of Trustees Policy

FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY

The Family and Medical Leave Act (FMLA) provides eligible employees the right to take a leave of absence, generally unpaid, for a period of up to twelve (12) work weeks in any twelve (12) month period, have group health insurance continued during that FMLA leave and to be reinstated upon return to work at the completion of such leave. The Agora Cyber Charter School ("Charter School") is a qualifying employer under the FMLA and provides FMLA benefits to eligible employees as required by law.

I. Eligibility for Leave:

In order to be an "eligible employee" under the FMLA, you must meet three- (3) requirements as of the date the leave would commence:

- a. you must have been employed by the Charter School for at least twelve (12) months; and
- b. you must have worked for the Charter School for at least 1,250 hours during the twelve (12) month-period immediately preceding the commencement of the leave; and
- c. you must work at a worksite where 50 or more employees are employed within 75 miles of the work site.

Note: Although the 12 months of employment need not be consecutive, employment prior to a break in service seven (7) years ago need not be counted, with two exceptions. These exceptions include employees who take leave as a result of military obligations through the National Guard or Reserve or where a written agreement exists concerning the employer's intention to rehire the employee after the break in service. Furthermore, the employer may consider employment

outside of the seven year period but this practice must be done uniformly with regard to all employees with similar breaks. Additionally, there is the possibility of having up to twenty-six (26) workweeks of available leave if certain qualifications are met by employees covered by active military duty, deployment and for care of illness or injury sustained in the line of duty.

Please understand that it is possible for an ineligible employee on Non-FMLA leave to become eligible for FMLA leave while on leave, by meeting the 12-month requirement and that any portion of the leave taken for a qualifying reason after the employee becomes eligible would be protected FMLA leave.

("Key" employees, defined as salaried employees among the highest paid 10 percent of the total employee populace, are covered, but may not have a right to job restoration. You will be notified if you are considered to be a key employee.)

II. Qualifying Reasons for FMLA Leave:

If you meet the eligibility requirements as described above, you are entitled to FMLA leave for the following reasons:

- a. Birth of your child and in order to care for a newborn child;
- b. Placement of a child with you for adoption or foster care;
- c. To care for your spouse, child, or parent (not parent-in-law) who has a serious health condition;
- d. Because of a serious health condition that renders you unable to perform the functions of your job; or
- e. Because of qualifying exigencies in support of spouse, child or parent covered by active duty military deployment or care of a covered service member due to illness or injury in the line of duty.

III. Serious Health Condition:

The term "serious health condition" is one of the most significant terms under FMLA. Currently, the term is defined to mean an illness, injury, impairment, or physical or mental condition that involves either (a) inpatient care in a hospital, hospice or residential medical care facility or (b) continuing treatment by a health care provider. 29 U.S.C. § 2611(11). Serious health conditions are illness, injury, impairment, or physical or mental conditions that involve:

- a. any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- b. a period of incapacity requiring absence of more than **three calendar days** from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
- c. any period of incapacity due to pregnancy, or for prenatal care; or
- d. any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- e. a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or

- f. any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

A chronic serious health condition as one that (1) requires “periodic visits” for treatment by a health care provider or nurse under the supervision of the health care provider, (2) continues over an extended period of time, and (3) may cause episodic rather than continuing periods of incapacity. While “periodic” is not defined, there is a requirement of at least two (2) visits a year to a healthcare provider to qualify.

The term ‘serious health condition’ is not intended to cover short-term conditions for which treatment and recovery are very brief. Conditions or medical procedures that would not normally be covered by the FMLA include minor illnesses that last only a few days or surgical procedures that typically do not involve hospitalization and require only a brief recovery period.

A “serious illness or injury” is one sustained in the line of duty on active duty by a member in the Armed Forces, including the National Guard or Reserves, or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty and that may render medically unfit to perform his or her duties of the member’s office, grade, rank or rating. In the case of a covered veteran, it is an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty and that manifested itself before or after the member became a veteran.

IV. Substance Abuse and Alcoholism:

Please note that substance abuse and/or alcoholism may be considered a “serious health condition” if the conditions of this section are met. However, FMLA leave may only be taken for the treatment of substance abuse or alcoholism. In other words, absence because of your use of a substance or alcohol, rather than for the treatment of the illness, does not qualify for FMLA leave.

v. Duration of Leave:

An eligible employee may not take more than a total of twelve (12) work weeks of FMLA leave within any twelve (12) month period. Your entitlement to FMLA leave because of the birth of a child or the placement of a child with you for adoption or foster care expires at the end of the twelve (12) month period beginning on the date of the birth or placement. Any such FMLA leave must be concluded within the twelve (12) months unless state law, contractual agreement or Charter School practice allows for a longer period of time.

To care for a covered service member, an eligible employee may take twenty-six (26) weeks of leave during a single twelve (12) month period. The single twelve (12) month period begins on the first day the eligible employee takes FMLA leave to care for a covered service member and ends twelve (12) months after that date; it is measured on a rolling forward basis. An employee is entitled to a combined total of twenty-six (26) weeks of leave for any FMLA-qualifying reason during the single twelve (12) month period. However, the employee is never entitled to more than twelve (12) weeks of leave for one or more types of FMLA leave other than care of a service member.

If spouses both work for the Charter School and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care or to care for a parent (but not a parent-in-law) with a serious health condition, the spouses may only take a combined total of twelve (12) weeks

of leave. If a spouses both work for the Charter School and each wishes to take leave to care for a covered ill or injured service member, the spouses may only take a combined total of twenty-six (26) weeks of leave.

The “12-month period” of FMLA is determined to be a “rolling” twelve- (12) months measured backward from the date you use any FMLA leave. Under the “rolling” 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee requests FMLA to begin on July 1st of the current year, the Charter School would “look back” 12 months (from July 1st back to June 30 of the previous year) to see if any FMLA leave has been used and, if so, how much of the total 12-week period remains available to the employee.

VI. Intermittent Leave or a Reduced Work Schedule:

The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances (CFR Section 203):

- a. Intermittent/reduced schedule leave may be taken when medically necessary to care for a seriously ill family member or because of the employee's serious health condition.
- b. Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the employer's approval.

When permitted under the FMLA, an eligible employee may take FMLA leave in twelve (12) consecutive weeks, may use the leave intermittently or under certain circumstances may use the leave to reduce the work week or work day, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of twelve (12) work weeks over the twelve (12) month period.

The Charter School may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule for that eligible employee. The Charter School and the employee must mutually agree to the schedule before you may take the leave intermittently or work a reduced hour schedule for child birth or placement of child for adoption or foster care.

If you plan to take intermittent leave or work a reduced schedule due to a serious health condition, the medical certification must also include dates and the duration of treatment as well as a statement of medical necessity for taking intermittent leave or working a reduced work schedule.

VII. Thirty (30) Day Notice for FMLA Leave:

You must provide the Charter School with at least thirty (30) days advance notice before FMLA leave is to begin if the need for leave is foreseeable based on an expected birth or placement of a child, or planned medical treatment for a serious health condition of you or a family member as permitted by the FMLA.

If thirty (30) days' notice is not practicable, (such as lack of knowledge, medical emergency or change in circumstances), notice must be given as soon as possible. You must also make a reasonable effort to schedule medical treatment, so as not to unduly disrupt the Charter School's operations, subject to the approval of the health care provider.

If you fail to provide thirty (30) days' notice when the need for leave was foreseeable, the Charter School may deny FMLA leave until at least thirty (30) days' after the notice was first given.

VIII. Medical Certification:

Application for FMLA leave based on your serious health condition or that of a spouse, child or parent will require medical certification completed by the applicable health care provider.

The certification must state:

- a. The date on which the health condition commenced
- b. The health care provider's best judgment as to the probable duration of the condition
- c. The health care provider's best judgment as to the patient's present incapacity
- d. Appropriate medical facts regarding the condition (such as the regimen of treatment prescribed, hospitalization requirements, etc.)
- e. If you are needed to care for a spouse, child, or parent, along with an estimate of the amount of time that your assistance will be needed.
- f. The Charter School has a supply of the appropriate medical certification forms and if you are requesting FMLA leave due to a serious health condition you should obtain a copy of the form from the Chief Executive Officer ("CEO"). It is your obligation to have the form completed by the health care provider, and to return the completed form to Human Resources.
- g. The Charter School may, through you request subsequent re-certification of your or family member's serious health condition on a reasonable basis. Such requests must be coordinated with the CEO.

IX. Paid Leave and FMLA Leave:

FMLA by itself is unpaid leave. However, if an employee is receiving worker's compensation or other disability benefits, receipt of such benefits will run concurrently with FMLA leave.

The Charter School will require eligible employees to use all accrued earned time off days while on FMLA leave to the extent allowed by law. As a result: (1) at least part of your FMLA leave may be paid; and (2) you would thereby be prevented from enlarging annual leave entitlement by adding earned time off days to an approved twelve (12) week FMLA leave period.

X. Benefits Coverage During Leave:

The Charter School will continue to provide you with health insurance benefits for the full period of the approved leave, providing you pay the Charter School monthly for your portion of the coverage, if any, as required for all employees. If paid leave is substituted for unpaid leave, the Charter School will deduct your portion of the health plan premium as a regular payroll deduction. If your leave is unpaid, you must remit your portion of the premium on a monthly basis to the Charter School's CEO on or before the 1st day of the month for each month during your leave.

As permitted by law, your health care coverage will cease if your premium payment is more than thirty (30) days late.

You will continue to accrue earned time off days for any portion of your FMLA leave that is paid, however, you will not accrue any earned time off days for the portion of your leave that is unpaid.

XI. Restoration of Employment:

Upon expiration of your FMLA leave, an eligible employee must be restored to his/her old position or to a position with equivalent pay, benefits, and conditions of employment unless:

- a. The circumstances are such that the employee would have lost his/her position even if FMLA has not been taken (e.g., layoff.).
- b. An employee is not able to perform the essential functions of the position because of a physical or mental health condition. In this case, if an employee is unable to perform the original job with or without reasonable accommodation, an attempt will be made to transfer the employee to an alternate suitable position for which the employee is otherwise qualified, if one is available.
- c. An employee fails to present a Certification by the health care provider that stating that he/she is unable to return to work (under circumstances where the Charter School lawfully requires such Certification.)
- d. The Charter School proved the leave to be fraudulent.

12. Failure to Return from Leave:

Employment may be terminated immediately if an employee fails to return from FMLA leave after the twelve- (12) week eligibility period, and is not covered under another type of authorized leave.

13. Failure to Satisfy Medical Certification/Recertification Requirements:

If you fail to satisfy the medical certification/recertification requirements for leave under this policy, the Charter School may not be obligated to grant you FMLA leave and once the fifteen (15) day period (discussed below) has elapsed, your absence may not be considered as FMLA protected.

14. Application Procedure:

Application and Medical Certification forms for FMLA may be obtained from the CEO who is responsible for the administration of this policy.

In order to make application for this leave; you must submit a request in writing. Your licensed healthcare provider must complete the Certification of Health Care Provider. Both of these completed documents must be returned to the CEO or designee within fifteen (15) days from the letterhead date that accompanies these documents when they are given or sent to you by CEO or his/her designee.

Once these completed documents are returned to the CEO or his/her designee and reviewed, you will receive written notification of your approval/disapproval for this leave within three (3) school days of receipt.

If approved for FMLA leave, your first day of the approved leave period will coincide with your first full day or partial day of absence.

TO THE EXTENT THAT ANYTHING IN THIS POLICY COULD BE CONSTRUED TO CONFLICT WITH THE CHARTER SCHOOL'S CHARTER OR APPLICABLE STATE AND/OR FEDERAL LAWS, THE APPLICABLE STATE AND/OR FEDERAL LAWS AND/OR CHARTER CONTROL.