

## **5:185-AP Administrative Procedure - Resource Guide for Family and Medical Leave**

### School Code

[105 ILCS 5/24-6.4](#), added by P.A. 102-335 (mandates a lower 1,000 hour threshold for FMLA eligibility rather than 1,250 hours).

### Web Resources

Compilation of resources from the U.S. Dept. of Labor (DOL), Wage & Hour Division

[www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla)

Revised FMLA Poster

[www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf](http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf)

Certification of Health Care Provider for Employee's Serious Health Condition

[www.dol.gov/whd/forms/WH-380-E.pdf](http://www.dol.gov/whd/forms/WH-380-E.pdf)

**Note:** Consult the Board Attorney to ensure that: (1) the District is using the most recent version of the DOL's FMLA notification and certification forms, (2) Genetic Information Nondiscrimination Act (GINA) safe harbor protections are adequately customized into these forms (the DOL did not include in its forms the specific instructions included in GINA's sample safe harbor provision), and (3) both federal and State law requirements are met.

Certification of Health Care Provider for Family Member's Serious Health Condition

[www.dol.gov/whd/forms/WH-380-F.pdf](http://www.dol.gov/whd/forms/WH-380-F.pdf)

See **Note**, above.

Notice of Eligibility and Rights & Responsibilities

[www.dol.gov/whd/forms/WH-381.pdf](http://www.dol.gov/whd/forms/WH-381.pdf)

Designation Notice

[www.dol.gov/whd/forms/WH-382.pdf](http://www.dol.gov/whd/forms/WH-382.pdf)

Certification of Qualifying Exigency For Military Family Leave (PDF)

[www.dol.gov/whd/forms/WH-384.pdf](http://www.dol.gov/whd/forms/WH-384.pdf)

Certification for Serious Injury or Illness of Covered Servicemember -- for Military Family Leave

[www.dol.gov/whd/forms/WH-385.pdf](http://www.dol.gov/whd/forms/WH-385.pdf)

Fact Sheet #28 (Non-Military) (PDF)

[www.dol.gov/whd/regs/compliance/whdfs28.htm](http://www.dol.gov/whd/regs/compliance/whdfs28.htm)

Fact Sheet #28A (Military) (PDF)

[www.dol.gov/whd/regs/compliance/whdfs28a.htm](http://www.dol.gov/whd/regs/compliance/whdfs28a.htm)

Department of Labor Rules

29 C.F.R. Part 825,

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title29/29cfr825\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title29/29cfr825_main_02.tpl)

Subpart A - Coverage Under the Family and Medical Leave Act §825.100

|          |                                             |
|----------|---------------------------------------------|
| §825.100 | The Family and Medical Leave Act            |
| §825.101 | Purpose of the Act                          |
| §825.102 | Definitions                                 |
| §825.103 | [Reserved]                                  |
| §825.104 | Covered employer                            |
| §825.105 | Counting employees for determining coverage |

|               |                                                                                                                                                                                                                                                                         |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| §825.106      | Joint employer coverage                                                                                                                                                                                                                                                 |
| §825.107      | Successor in interest coverage                                                                                                                                                                                                                                          |
| §825.108      | Public agency coverage                                                                                                                                                                                                                                                  |
| §825.109      | Federal agency coverage                                                                                                                                                                                                                                                 |
| §825.110      | Eligible employees                                                                                                                                                                                                                                                      |
| §825.111      | Determining whether 50 employees are employed within 75 miles                                                                                                                                                                                                           |
| §825.112      | Qualifying reasons for leave, general rule                                                                                                                                                                                                                              |
| §825.113      | Serious health condition                                                                                                                                                                                                                                                |
| §825.114      | Inpatient care                                                                                                                                                                                                                                                          |
| §825.115      | Continuing treatment                                                                                                                                                                                                                                                    |
| §§825.116-118 | [Reserved]                                                                                                                                                                                                                                                              |
| §825.119      | Leave for treatment of substance abuse                                                                                                                                                                                                                                  |
| §825.120      | Leave for pregnancy or birth                                                                                                                                                                                                                                            |
| §825.121      | Leave for adoption or foster care                                                                                                                                                                                                                                       |
| §825.122      | Definitions of covered servicemember, spouse, parent, son or daughter, next of kin of a covered servicemember, adoption, foster care, son or daughter on active duty or call to covered active duty status, son or daughter of a covered servicemember, and parent of a |

covered servicemember

§825.123 Unable to perform the functions of the position

§825.124 Needed to care for a family member or covered servicemember

§825.125 Definition of health care provider

§825.126 Leave because of a qualifying exigency

§825.127 Leave to care for a covered servicemember with a serious injury or illness (military caregiver leave)

#### Subpart B - Employee Leave Entitlements Under the Family and Medical Leave Act

§825.200 Amount of leave

§825.201 Leave to care for a parent

§825.202 Intermittent leave or reduced leave schedule

§825.203 Scheduling of intermittent or reduced schedule leave

§825.204 Transfer of an employee to an alternative position during intermittent leave or reduced schedule leave

§825.205 Increments of FMLA leave for intermittent or reduced schedule leave

§825.206 Interaction with the FLSA

§825.207 Substitution of paid leave

§825.208 [Reserved]

§825.209 Maintenance of employee benefits

§825.210 Employee payment of group health benefit premiums

§825.211 Maintenance of benefits under multi-employer health plans

§825.212 Employee failure to pay health plan premium payments

§825.213 Employer recovery of benefit costs

§825.214 Employee right to reinstatement

§825.215 Equivalent position

§825.216 Limitations on an employee's right to reinstatement

§825.217 Key employee, general rule

§825.218 Substantial and grievous economic injury

§825.219 Rights of a key employee

§825.220 Protection for employees who request leave or otherwise assert FMLA rights

## Subpart C - Employee and Employer Rights and Obligations Under the Act

§825.300 Employer notice requirements

§825.301 Designation of FMLA leave

- §825.302 Employee notice requirements for foreseeable FMLA leave
- §825.303 Employee notice requirements for unforeseeable FMLA leave
- §825.304 Employee failure to provide notice
- §825.305 Certification, general rule
- §825.306 Content of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member
- §825.307 Authentication and clarification of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member; second and third opinions
- §825.308 Recertifications for leave taken because of an employee's own serious health condition or the serious health condition of a family member
- §825.309 Certification for leave taken because of a qualifying exigency
- §825.310 Certification for leave taken to care for a covered servicemember (military caregiver leave)
- §825.311 Intent to return to work
- §825.312 Fitness-for-duty certification
- §825.313 Failure to provide certification

## Subpart D - Enforcement Mechanisms

§825.400 Enforcement, general rules

§825.401 Filing a complaint with the Federal Government

§825.402 Violations of the posting requirement

§825.403 Appealing the assessment of a penalty for willful violation of the posting requirement

§825.404 Consequences for an employer when not paying the penalty assessment after a final order is issued

#### Subpart E - Recordkeeping Requirements

§825.500 Recordkeeping requirements

#### Subpart F - Special Rules Applicable to Employees of Schools

§825.600 Special rules for school employees, definitions

§825.601 Special rules for school employees, limitations on intermittent leave

§825.602 Special rules for school employees, limitations on leave near the end of an academic term

§825.603 Special rules for school employees, duration of FMLA leave

§825.604 Special rules for school employees, restoration to an equivalent position

#### Subpart G - Effect of Other Laws, Employer Practices, and Collective Bargaining Agreements on Employee Rights Under FMLA

§825.700 Interaction with employer's policies

§825.701 Interaction with State laws

§825.702 Interaction with Federal and State anti-discrimination laws

APPROVED: July 11, 2022

**Harlem School District 122**