



FMLA GUIDE ADDENDUM



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SPECIAL RULES FOR SCHOOLS

SPECIAL RULES FOR INSTRUCTIONAL EMPLOYEES

The DOL recognizes that disruptions of the learning environment can harm students and unfairly burden school administrators. Accordingly, the DOL crafted these [Special Rules](#) to help minimize the burden that FMLA leave imposes on schools while at the same time protecting the rights of teachers and other instructional employees to take leave.

Special rules apply to employees of local educational agencies, including public school boards and elementary and secondary schools under their jurisdiction, and private elementary and secondary schools. The special rules do not apply to other kinds of educational institutions, such as colleges and universities, trade schools, and preschools.

The special rules apply only to “instructional employees,” whose principal function is to teach and instruct students in a class, small group, or individual setting. Instructional employees typically include:

- » Teachers;
- » Athletic coaches;
- » Driving instructors;
- » Sign language interpreters; and
- » Other “Special Education” teachers and assistants.

Noninstructional employees who are NOT covered by the special rules include:

- » Teaching assistants OR aides (who do not instruct as their principal responsibility);
- » Counselors;
- » Psychologists;
- » Curriculum specialists;
- » Cafeteria workers;
- » Maintenance workers;
- » Bus drivers; and
- » Others who do not provide student instruction as their principal job duty.

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SPECIAL RULES ON EMPLOYEE COVERAGE TEST

The Family and Medical Leave Act's 50-employee coverage test does not apply. The usual requirements for employees to be eligible **do** apply, however, including employment at a worksite where at least 50 employees are employed within 75 miles.

For example, employees of a rural school would not be eligible for FMLA leave if the school has fewer than 50 employees and there are no other schools under the jurisdiction of the same employer (usually a school board) within 75 miles.

SPECIAL RULES FOR LEAVE NEAR THE END OF A SEMESTER

Special Rules apply to instructional employees requesting leave near the end of an academic term, a particularly crucial period for teachers and students. If an instructional employee begins FMLA leave **more than five weeks before the end of a term**, the school may require the employee to remain on leave until the end of the term if the requested leave is expected to last at least three weeks and the employee would otherwise return to work during the last three weeks of the term. If the instructional employee begins FMLA leave **during the last five weeks of a term**, the school may require the employee to remain on leave until the end of the term if the leave is expected to last more than two weeks and the employee would otherwise return to work during the last two weeks of the term.

If the instructional employee begins FMLA leave **during the last three weeks of the term**, the school may require the employee to continue taking leave until the end of the term if the leave is expected to last more than five working days.

- » Leave that ends with the school year and begins the next semester is considered consecutive, not intermittent.
- » Summer vacation, when the employee would not have worked anyway, does not count against his or her FMLA leave entitlement.
- » If the employee needs intermittent leave, and would be on leave for more than 20% of the total number of working days over the period the leave would extend, the school may require him or her either to:
 - Take leave for a period or periods of a particular duration, not greater than the duration of the medical treatment; or
 - Transfer temporarily to an available alternative position for which he or she is qualified, with equivalent pay and benefits, which better accommodates recurring periods of leave.

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SPECIAL RULES FOR INTERMITTENT LEAVE

If an instructional employee needs intermittent or reduced leave and the employee would be on leave for more than 20% of the total number of working days over the leave period, the school may require the employee to choose between the following options:

1. Taking a certain period of consecutive days on leave, not greater than the duration of the employee's planned medical treatment; or
2. Transferring temporarily to an available position for which the employee is qualified, which has equivalent pay and benefits, and which better accommodates recurring periods of leave than does the employee's regular position.

For example, the school could offer the above options to an instructional employee who normally works five days each week but needs to take two days of FMLA leave per week over a period of several weeks.

SPECIAL RULES FOR COUNTING FMLA LEAVE

There are also special rules for keeping track of an instructional employee's FMLA leave:

- » The initial period of leave was required by the employee and therefore is properly counted against FMLA entitlements, but the additional leave was required by the employer and is therefore not counted against the employee.
- » Similarly, FMLA leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement.
- » When FMLA leave continues beyond the end of the school year, the school must continue to provide the employee with any benefits over the summer vacation that the employee would normally receive if he or she had been working at the end of the school year and were not on leave.

For example, when an employee is required to remain on leave until the end of an academic term, the school may only designate as FMLA leave the period of time during which the employee is actually unable to work, not the period of time after which he or she was ready and able to return to work but was asked by the school to remain on leave.

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SPECIAL RULES FOR LEAVE NEAR END OF TERM

If the employee requests to begin leave more than five weeks before the end of the term:

- » The school may require the employee to continue taking leave until the end of the term if the leave will last at least three weeks, and the employee would return to work during the two-week period before the end of the term.

If the employee requests to begin leave during the three weeks before the end of the term due to birth, adoption, or caring for a family member or covered service member:

- » The school may require the employee to continue taking leave until the end of the term if the leave will last more than five working days.

SPECIAL RULES FOR DURATION OF LEAVE FOR SCHOOL EMPLOYEES

If an employee chooses to take leave for “periods of a particular duration” in the case of intermittent or reduced-schedule leave, the entire period of leave will count as FMLA leave.

- » In the case where an employee is required to take leave until the end of an academic term, only the period until the employee is ready and able to return to work is counted as FMLA leave. Any additional leave required until the end of the school term cannot be charged against FMLA leave entitlement. The school is still required to maintain group health coverage and return the employee to an equivalent position, however.

SPECIAL RULES FOR RESTORATION TO AN EQUIVALENT POSITION

Lastly, the special rules provide that a school’s “established policies and practices” will determine how an employee should be restored to an “equivalent position” upon return from FMLA leave. The policy must be in writing, must be made known to the employee prior to taking FMLA leave, and must clearly explain the employee’s right to be restored to an equivalent position upon return from leave. Specifically, the policy must provide for restoration to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. An employee may not be restored to a position requiring additional licensing or certification.

Special rules that apply to restoration to an equivalent position apply to **all employees** of local educational agencies.



SPECIAL RULES FOR SCHOOLS

This addendum is for **informational and educational purposes only** and is not a replacement for, nor should it be taken as, legal or professional advice. These guidelines are not intended as a replacement for Federal, State, or Local guidance, but rather to summarize the requirements set forth in the relevant Federal statutes and regulations; states may require a different set of guidelines. Since laws change frequently, we recommend that employers follow the most updated set of guidelines and obtain legal advice for their specific situations.