

# MSD of North Posey County

## FMLA POLICY

The Family and Medical Leave (FMLA) of absence may be authorized upon written application to the Administration. The employee must meet the eligibility requirements before the terms of such leave will be granted by the Administration. If the leave is granted, it will comply with the FMLA. This policy summarizes the rights and obligations of the employee and the MSD of North Posey County under the FMLA. FMLA-related forms are located on the MSD of North Posey County web site at [www.northposey.k12.in.us](http://www.northposey.k12.in.us).

**FMLA Leave Eligibility:** An eligible employee under the FMLA is an employee who has been employed by the MSD OF NORTH POSEY COUNTY for at least 12 months and who has worked at least 1,250 hours in the past 12 months.

**Reasons for FMLA Leave:** An eligible employee may take FMLA leave for any one of five different reasons. Specifically, an eligible employee may take FMLA leave of:

- (1) up to 12 weeks per leave year to care for a newborn child, or a child newly placed in the employee's custody through adoption or foster care, for a period of up to one year after such birth or placement;
- (2) up to 12 weeks per leave year to care for the employee's spouse, child or parent who has a serious health condition;
- (3) up to 12 weeks per leave year because of the employee's own serious health condition, if that condition renders the employee unable to perform his or her job functions;
- (4) up to 12 weeks per leave year because of a qualifying exigency arising from the fact that the employee's spouse, son, daughter, or parent is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation;
- (5) up to 26 weeks within a single 12-month period to care for a covered servicemember who is the employee's spouse, daughter, son, parent, or next of kin who is (a) undergoing medical treatment, recuperation, or therapy, (b) is in outpatient status, or (c) is on the temporary disability retired list, for a serious injury or illness suffered in the line of duty.

Any leave taken by an eligible employee for one or more of these reasons will be counted against that employee's annual FMLA leave entitlement. An employee may not combine forms of leave to exceed the maximum entitlement under the law. In other words, an employee is only eligible for a total of 12 or 26 weeks of FMLA leave a year, as applicable, depending on the reason for the leave. MSD of North Posey County will observe the employee's use of five (5) consecutive accumulated days as a trigger to investigate if an employee's leave qualifies for FMLA.

**Limits on Husband and Wife Leave:** A husband and wife who both work for the MSD OF NORTH POSEY COUNTY will be limited to a combined total of 12 weeks of FMLA leave per leave year for the birth, adoption, or foster placement of a child or to care for a parent with a serious health condition or in the event of a qualifying exigency. A husband and wife who both work for the MSD OF NORTH POSEY COUNTY will likewise be limited to a combined total of 26 weeks FMLA leave during the single 12-month period to care for a covered servicemember.

### **Definitions:**

**Contingency Operation:** A "contingency operation," as used in this policy, includes any operation designated by the Secretary of Defense as one in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; an operation that results in a call to duty of certain members of the Armed Forces from retirement, the reserves, the National Guard, or state militias; or any other operation which is the result of a national emergency declared by the President or Congress.

**Covered Servicemember:** Means a current member of the Armed Forces (including National Guard or Reserves) who has suffered a serious injury or illness incurred in the line of duty (1) for which he or she is undergoing medical treatment, recuperation, or therapy; (2) is otherwise in outpatient status; or (3) is on the temporary disability retired list. A covered servicemember does not include a former member of the Armed Services, National Guard or Reserves or one who is on the permanent disability retired list.

**Leave Year:** For the purpose of this policy (with the exception of leave to care for a covered servicemember), the leave year within which an eligible employee may take his or her 12 or 26 weeks of FMLA protected leave is September 1 to August 31.

**Next of Kin:** Means the nearest blood relative of the injured covered servicemember as defined by applicable law and regulation.

**Qualifying Exigency:** Qualifying exigencies include the following relating to the active duty or call to active duty status of a covered military servicemember: (1) Issues arising from the short notice (seven or less days) deployment of the employee's spouse, daughter, son, parent, or next of kin in the military ("servicemember") for a period of seven days from the date of notification; (2) military events and related activities; (3) certain childcare and related activities; (4) making and updating financial and/or legal arrangements; (5) attending counseling for the covered military servicemember or the child of the covered military servicemember; (6) taking up to five days of leave to spend time with a covered military servicemember who is on short-term temporary rest and recuperation leave during deployment; (7) attending certain post-deployment activities; and (8) any other event that the MSD OF NORTH POSEY COUNTY and the employee agree is a qualifying exigency and agree as to both the timing and duration of the leave.

**Serious Health Condition:** Means an illness, injury, impairment, or physical or mental condition that involves either:

- (1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; or
- (2) Continuing treatment by a health care provider, which includes:
  - (a) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes: (i) treatment two or more times by or under the supervision of a health care provider (i.e., in-person visits, the first within 7 days and the second within 30 days of the first day of incapacity unless extenuating circumstances exist for the latter); or (ii) one treatment by a health care provider (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment under the supervision of a healthcare provider; or
  - (b) Any period of incapacity related to pregnancy or for prenatal care.
  - (c) Any period of incapacity or treatment for a chronic serious health condition which – (i) continues over an extended period of time, (ii) requires periodic visits (at least twice a year) to a health care provider, and (iii) may involve occasional episodes of incapacity rather than a continuing period of incapacity.
  - (d) Any period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
  - (e) Any absences to receive multiple treatments (and recovery from such treatment) for restorative surgery or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days if not treated.

**Serious Illness or Injury:** For the purpose of determining whether an eligible employee's spouse, daughter, son, parent, or next of kin is a covered servicemember who has suffered a qualifying illness or injury in the line of duty, this means an injury or illness that renders the servicemember unable to perform the required duties of their office, grade, rank or rating.

**Single 12-Month Period:** The single 12-month period pertaining to leave to care for a covered servicemember begins on the first day the eligible employee takes military caregiver leave and ends 12 months after that date.

**Requesting FMLA Leave:** The MSD OF NORTH POSEY COUNTY will provide the necessary forms to request FMLA leave. (See the MSD OF NORTH POSEY COUNTY web site at [www.northposey.k12.in.us](http://www.northposey.k12.in.us) for the FMLA Employee Request form.). Employees must give the MSD OF NORTH POSEY COUNTY at least 30-days' notice of their intent to take leave under the FMLA if the leave is foreseeable. If the leave is not foreseeable, employees must make a good faith effort to provide notice as soon as practicable and must generally comply with the MSD OF NORTH POSEY COUNTY's call-in requirements. Any employee who fails to give the requisite notice may be delayed in receiving authorization for leave.

Employees must provide information sufficient to enable the MSD OF NORTH POSEY COUNTY to determine whether the leave may be FMLA-qualifying and the anticipated timing and duration of the leave. The MSD OF NORTH POSEY COUNTY may require information showing that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. If the leave is for a condition for which the MSD OF NORTH POSEY COUNTY has previously approved FMLA leave, the employee must specifically reference that qualifying reason for the leave or the need for FMLA leave.

**Notice of Designation:** Absent extenuating circumstances, the MSD OF NORTH POSEY COUNTY will notify employees

whether their leave has been approved as FMLA-qualifying no later than 5 business days after receiving sufficient information to make this designation. If known at the time of the designation, the MSD OF NORTH POSEY COUNTY will notify the employee of the amount of leave that will be counted against the employee's FMLA entitlement. If this information is not known at the time of the designation, the MSD OF NORTH POSEY COUNTY will provide such information, upon the employee's request, once every 30 days if leave is taken within that time period. If an employee is not eligible for FMLA leave, the MSD OF NORTH POSEY COUNTY will advise the employee why that is the case.

**Compensation for FMLA Leave:** Generally, FMLA leave is not paid. However, an eligible employee may elect to take any current year or accumulated paid sick leave or personal days for personal medical leave in lieu of taking unpaid leave under the FMLA. (Current year family illness days may also be used in cases of FMLA to care for a family member.) The eligible employee may elect to use their current year paid leave days without counting towards the employee's 12 or 26 weeks of FMLA leave granted per leave year. Any accumulated paid days used, however, will be counted towards the employee's 12 or 26 weeks of FMLA leave granted per leave year.

**Intermittent or Reduced Hours Leave:** In the case of leave taken to care for a seriously ill spouse, child, or parent; due to the employee's own serious health condition; a qualifying exigency; or to care for a covered servicemember, an employee may take leave intermittently (i.e., periodically) or on a reduced hours schedule (i.e., reduced number of working hours per day or per week) only when such leave is medically necessary and certified as such. Otherwise, such leave is not permitted except at the sole discretion of the MSD OF NORTH POSEY COUNTY. An employee who takes leave intermittently or on a reduced leave schedule may be temporarily transferred to another position for which the employee is qualified to better accommodate that leave.

**Job and Benefits Security:** An eligible employee who takes leave under the FMLA and who returns to work before his or her annual FMLA entitlement has expired will be restored to the position he or she held when the leave commenced, or to an otherwise equivalent position with respect to pay, benefits, and other terms and conditions of employment, unless the employee would no longer have been employed in such a position had the employee not taken such leave. Additionally, any unused employment benefits that had accrued to an eligible employee prior to the commencement of leave will be restored upon return from FMLA leave.

**Continuation of Group Health Plan Coverage.** Group health plan coverage will be maintained by the MSD OF NORTH POSEY COUNTY during an eligible employee's period of FMLA leave to the extent and under the same circumstances as it ordinarily is furnished to that employee. An eligible employee taking FMLA leave must contact the Deputy Treasurer to make arrangements to pay the employee's share of health care premiums during the FMLA leave. An eligible employee who fails to return to work after the expiration of the FMLA leave period for reasons that are not beyond his or her control will be expected to reimburse the MSD OF NORTH POSEY COUNTY for health care premiums paid by the MSD OF NORTH POSEY COUNTY during the leave period.

**Certification of the Need for Leave:** In cases of leave to be taken to care for a family member with a serious health condition, a covered servicemember who has suffered a serious injury or illness in the line of military duty, or due to the employee's own serious health condition, an eligible employee must provide the MSD OF NORTH POSEY COUNTY with a completed and signed health care provider certification indicating that the employee requires FMLA leave. The MSD OF NORTH POSEY COUNTY will provide the appropriate forms for such certification through its web site at [www.northposey.k12.in.us](http://www.northposey.k12.in.us) .

In cases of leave due to a qualifying exigency arising out of the active duty or call to active duty of a covered military servicemember, the MSD OF NORTH POSEY COUNTY requires that an employee's request for leave be supported by appropriate documentation as required by applicable law and regulation.

In all cases, the forms certifying and supporting the need for FMLA leave must be returned within 15 calendar days after the employee gives notice of intent to take FMLA leave unless not practicable. Failure to return this certification in a timely manner may result in delays in securing authorization for leave and the MSD OF NORTH POSEY COUNTY may deny FMLA coverage until the required certification is provided. Failure to return the certification at all will preclude the employee from taking leave.

The MSD OF NORTH POSEY COUNTY also may require, at its own expense, a second and third health care provider opinion (except with respect to leave to care for a covered servicemember) if there is a question as to the validity of the certification provided by the employee for leave for a serious health condition.

An eligible employee also may be asked to furnish the MSD OF NORTH POSEY COUNTY with subsequent health care provider certifications on a reasonable basis during the employee's leave period except if the employee is on leave to care for a covered servicemember. An eligible employee's failure to furnish subsequent certifications may result in termination of the employee's right to leave.

The MSD OF NORTH POSEY COUNTY may seek recertification of the need for leave as permitted by statute and regulation.

**Return to Work:** An employee returning to work from FMLA leave of absence must be able to perform the essential functions of his or her job. If a reasonable accommodation is required, the employee must notify the Superintendent or Human Resource Officer. An eligible employee on FMLA leave must submit to the MSD OF NORTH POSEY COUNTY a medical release (i.e., fitness for duty certification) indicating that the employee is able to return to work and perform the essential functions of the employee's position. The MSD OF NORTH POSEY COUNTY will furnish the employee with a list of essential functions to facilitate this process. Failure to submit a medical release will preclude the employee from being restored to his or her employment with the MSD OF NORTH POSEY COUNTY.

**Non-Discrimination/Non-Retaliation Policy Statement:** The MSD OF NORTH POSEY COUNTY will not: (1) interfere with, restrain, or deny the exercise of any right provided under the FMLA; (2) discharge or discriminate against any person for opposing any practice made unlawful by the FMLA; or (3) discharge or discriminate against any person for his or her involvement in any proceeding under or relating to the FMLA.

Any employee who believes that the MSD OF NORTH POSEY COUNTY has violated his or her FMLA rights should report his/her concerns to the Human Resource Officer for investigation and resolution. If the employee's concerns are not resolved in compliance with the law, the employee has the right to file a complaint with the U.S. Department of Labor or bring a private lawsuit against the MSD OF NORTH POSEY COUNTY. The FMLA does not affect any Federal or State law prohibiting discrimination or supercede any State or local law that provides greater family or medical leave rights.