

## Personnel

**SUBJECT: HEALTH INSURANCE**

Health insurance for certified and support staffs shall be in accordance with their respective negotiated agreements and applicable law.

**Continuation of Medical Insurance Coverage at Termination of Employment**

Under the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), employees and their dependents are eligible to continue their insurance coverage for up to eighteen (18) months when termination of their insurance is due to a reduction in their hours worked, or upon termination of their employment.

Dependents of employees are eligible to continue their insurance for up to thirty-six (36) months upon occurrence of one (1) of the following events:

- a) Death of the covered employee; or
- b) Divorce or legal separation from the covered employee; or
- c) An employee becomes eligible for Medicare and ceases to participate in the employer-sponsored plan; or
- d) The dependents of a covered employee reach the maximum age for dependent coverage.

Spouses of deceased retirees may continue in any community-rated health insurance plan at their own expense. Those who are eligible to continue coverage have up to sixty (60) days to complete the Continuation of Coverage Election Form. They must pay the full cost of their premium plus administrative costs incurred by the District.

American Recovery and Reinvestment Act of 2009, Public Law 111-5  
Consolidated Omnibus Budget Reconciliation Act of 1985  
Insurance Law Section 3221(m)(4)(5) and (6)  
Patient Protection and Affordable Care Act (ACA), Public Law 111-148

Amended

1<sup>st</sup> reading October 9, 2013

2<sup>nd</sup> reading November 11, 2013

Adopted December 11, 2013

Adopted: 6/25/09

2009

6520

Personnel

**SUBJECT: WORKERS' COMPENSATION**

Employees injured in the performance of their duties are covered by Workers' Compensation Insurance. Employees shall report work-related injuries immediately to their immediate supervisor. Delay in reporting, if necessary, must be justified to the satisfaction of the Board of Education and/or the insurance agency.

Reimbursement for Workers' Compensation Insurance benefits shall be in accordance with their respective negotiated agreements.

Education Law Sections 1604(31), 1709(34) and 2503(10)

Adopted: 6/25/09

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**SUBJECT: EMPLOYEE ASSISTANCE PROGRAM (EAP)**

The District will provide an Employee Assistance Program for employees who are experiencing personal difficulties. The purpose of the program is to assist employees in obtaining help to resolve such problems in an effective and confidential manner. This program recognizes that the primary obligation to seek assistance and to resolve the problem rests with the employee.

The Board recognizes that a wide range of problems that are not directly associated with an employee's job function may have an effect on an employee's job performance. The problems may involve physical illness, mental or emotional illness, alcohol abuse or alcoholism, drug abuse or dependency, tobacco abuse or personal problems such as those of a marital, family, or financial nature.

A joint District/employee organization committee will be established to assist in the implementation of this policy.

NOTE: Refer also to Policies #3410 -- Code of Conduct on School Property  
#6150 -- Alcohol, Drugs and Other Substances (School Personnel)  
#6151 -- Drug-Free Workplace

**SUBJECT: DEFENSE AND INDEMNIFICATION OF BOARD MEMBERS AND EMPLOYEES****Liability Protection Pursuant to Education Law**

The Board of Education recognizes its statutory obligation to indemnify School District employees (and in certain circumstances, Board of Education members and volunteers) pursuant to the provisions of Education Law Sections 3023, 3028 and 3811. For the purposes of this policy, the term "employee" shall be as defined in the applicable statute(s).

The District shall not be subject to the duty to defend unless the employee, within the time prescribed by statute, delivers appropriate notice of the claim to the Board of Education.

- a) For purposes of Education Law Section 3811, the employee must give written notice within five (5) days after service of process upon him/her. The statute mandates only written notice of the claim to the Board of Education; however, submission of relevant legal documents by the employee to the Board is also encouraged.
- b) For purposes of Education Law Sections 3023 and 3028, the employee must deliver the original or a copy of the relevant legal documents to the Board within ten (10) days after service of process upon him/her.

The District will provide legal defense and/or indemnification for all damages, costs, and reasonable expenses incurred in the defense of an action or proceeding if authorized pursuant to statute and provided that the alleged action or omission which occurred or allegedly occurred is covered by the appropriate statute(s). Furthermore, the District will not be required to provide indemnification protection and/or legal defense unless the employee was, at the time of the alleged incident, acting in the discharge of his/her duties within the scope of his/her employment or authorized volunteer duties and/or under the direction of the Board of Education.

**Public Officers Law Section 18**

The Board of Education hereby also confers the benefits of New York State Public Officers Law Section 18 upon the "employees" of the District, as defined in Public Officers Law Section 18; and the District assumes the liability for the costs incurred in accordance with the provisions of Public Officers Law Section 18. The benefits accorded to District employees under Public Officers Law Section 18 shall supplement and be available in addition to defense or indemnification protection conferred by other enactment or provisions of law.

The term "employees" shall include members of the Board of Education; the Superintendent; District officers; District employees; volunteers expressly authorized to participate in a District sponsored volunteer program; or any other person holding a position by election, appointment or employment in the service of the District, whether or not compensated. The term "employee" shall also include a former employee, his/her estate or judicially appointed representative.

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**SUBJECT: DEFENSE AND INDEMNIFICATION OF BOARD MEMBERS AND EMPLOYEES (Cont'd.)**

Pursuant to the provisions of Public Officers Law Section 18, and upon compliance by the employee with the requirements of this statute, the District shall provide for the defense of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting within the scope of his/her public employment or duties. Furthermore, the District shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his/her public employment or duties. However, in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of the settlement by the Board of Education.

The duty to defend and/or indemnify and save harmless, in accordance with Public Officers Law Section 18, shall be conditioned upon the delivery by the employee to the School Attorney or to the Superintendent a written request to provide for his/her defense, together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after he/she is served with such document. Pursuant to Public Officers Law Section 18, the full cooperation of the employee in the defense of such action or proceeding and in the defense of any action or proceeding against the District based upon the same act or omission, and in the prosecution of any appeal, shall also be required as a condition for the District's duty to defend and/or indemnify and save harmless to exist.

**Exceptions to Liability Coverage**

Indemnification coverage and/or provision of legal defense by the District will not apply unless the actionable claim is of the type covered by the statute(s) and/or is not otherwise exempt from coverage pursuant to law. Additionally, indemnification coverage and/or the duty to provide a defense shall not arise where such action or proceeding is brought by or on behalf of the School District.

Paul D. Coverell Teacher Protection Act of 2001, as authorized by the No Child Left Behind Act of 2001,  
20 United States Code (USC) Section 6731 et seq.  
Education Law Sections 1604(25), 1604(31-b), 1709(26), 1709(34-b), 2560, 3023, 3028 and 3811  
General Municipal Law Sections 6-n and 52  
Public Officers Law Section 18

Adopted: 6/25/09

## Personnel

**SUBJECT: LEAVES OF ABSENCE**

In general, leaves of absence will be administered by the Superintendent. The Board reserves the right to grant leaves of absence for purposes or under conditions not contemplated or considered in the policy statement. Where a leave of absence is falsely requested or improperly used, the Board may undertake appropriate disciplinary action. The purpose or conditions of a leave of absence may not be altered except by permission of the Superintendent, as expressed in writing.

Leaves of absence, contractual, et al.

## a) Employees who are members of a negotiating unit:

Authorization is granted to approve requests for leaves of absence submitted in accordance with provisions of contracts in effect between the District and each bargaining unit.

## b) Employees who are not members of a negotiating unit:

Authorization is granted to approve requests for leaves of absence submitted by these employees where the requests are consistent with provisions of contracts in effect between the District and the bargaining unit most compatible with the employment status of the employee.

## c) Employees who are under contract to the District:

Authorization is granted to implement provisions for leaves of absence contained in each contract.

Other leaves of absence

Other leaves of absence include, but are not limited to, the following:

## a) Emergency Service Volunteer Leave

Upon presentation of a written request from the American Red Cross and with the approval of the Superintendent, employees certified by the American Red Cross as disaster volunteers will be granted leave from work with pay for up to 20 days in any calendar year to participate in specialized disaster relief operations. This leave will be provided without loss of seniority, compensation, sick leave, vacation leave, or other overtime compensation to which the volunteer is otherwise entitled.

## b) Screenings for Cancer

Employees will be granted up to four hours of paid leave on an annual basis to undertake a screening for cancer. This leave will be excused leave and will not be charged against any other leave to which the employee is entitled.

## c) Blood Donation

(Continued)

**SUBJECT: LEAVES OF ABSENCE (Cont'd.)**

The District must either, at its option:

1. Grant three hours of unpaid leave of absence in any 12-month period to an employee who seeks to donate blood off-premises. The leave may not exceed three hours unless agreed to by the Superintendent or designee; or
2. Allow its employees without use of accumulated leave time to donate blood during work hours at least two times per year at a convenient time and place set by the Superintendent or designee, including allowing an employee to participate in a blood drive at the District.

Leave taken by employees at a District-designated donation alternative (such as a District-sponsored blood drive at the workplace) must be paid leave that is provided without requiring the employee to use accumulated vacation, personal, sick, or other leave time.

The District will not retaliate against an employee for requesting or obtaining a leave of absence under this section. Additional leaves for the purpose of blood donation under any other provision of law will not be prevented.

d) Bone Marrow Donation

Employees seeking to undergo a medical procedure to donate bone marrow will be granted leaves to do so, the combined length of the leaves to be determined by the physician, but may not exceed 24 work hours unless agreed to by the Superintendent or designee. The District will require verification for the purpose and length of each leave requested by the employee for this purpose.

The District will not retaliate against an employee for requesting or obtaining a leave of absence under this section. Additional leaves for the purpose of bone marrow donation under any other provision of law will not be prevented.

e) Nursing Mothers (Breastfeeding/Lactation)

The District will provide reasonable unpaid break time or permit the use of paid break time or mealtime each day to allow an employee to express breast milk for her nursing child for up to three years following childbirth. The District will make reasonable efforts to provide a room or other location in close proximity to the work area where the employee can express milk in privacy. The District will not discriminate against an employee who chooses to express breast milk in the workplace.

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**SUBJECT: LEAVES OF ABSENCE (Cont'd.)**

Reasonable unpaid break time is generally no less than 20 minutes and no more than 30 minutes dependent upon the proximity of the designated location for expressing breast milk. In most situations, the District is required to provide unpaid break time at least once every three hours if requested by the employee. At the employee's option, the District will allow the employee to work before or after her normal shift to make up the amount of time used during the unpaid break time(s) so long as the additional time requested falls within the District's normal work hours.

The District will provide written notice to employees who are returning to work following the birth of a child of their right to take unpaid leave for the purpose of expressing breast milk. This notice may either be provided individually to affected employees or to all employees generally through publication of the notice in the employee handbook or posting of the notice in a central location.

Any employee wishing to avail herself of this benefit is required to give the District advance notice, preferably prior to her return to work, to allow the District an opportunity to establish a location and schedule leave time to accommodate employees as needed.

f) Witnesses or Victims of Crimes

The District will grant an unpaid leave of absence to an employee, who is a victim of or a witness to a criminal offense, that is required or chooses to appear as a witness, consult with the district attorney, or exercise his or her rights as provided in the Criminal Procedure Law, the Family Court Act, and the Executive Law.

To use this leave, the employee must provide notice of the need for leave at any time prior to the actual day of leave. The District is permitted to ask the party who sought the attendance or testimony of the employee to provide verification of the employee's service. Employees will not be penalized or discharged for absences by reason of a required appearance as a witness in a criminal proceeding, or consultation with the district attorney, or exercising his or her rights as provided under the law.

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## g) Victims of Domestic Violence

Unless the absence would cause an undue hardship to the District, the District will provide reasonable accommodations to employees who are victims of domestic violence who must be absent from work for a reasonable time in accordance with law.

An employee availing themselves of this leave must provide the District with reasonable advance notice, unless providing this notice is not feasible. An employee unable to provide reasonable advance notice must, within a reasonable time after the absence, provide a certification to the District when requested.

To the extent allowed by law, the District will maintain the confidentiality of any information related to an employee's status as a victim of domestic violence.

## h) Military Leave

The District will comply with state and federal laws regarding military leave and re-employment.

## i) Jury Duty

As provided by law, any employee who is summoned to serve as a juror and who notifies the District to that effect prior to his or her term of service will not, on account of absence by reason of jury service, be subject to discharge or penalty. The District will ensure that all absences for this purpose are granted in accordance with law and the terms of any applicable collective bargaining agreement.

## j) Voting

Employees who are registered voters may take up to three hours of paid leave to vote at any general election, special election called by the Governor, primary election, or municipal election. This does not include school district elections, library district elections, fire district elections, special town elections, or early voting periods. The employee will be allowed time off for voting only at the beginning or the end of his or her working shift, as the District may designate, unless otherwise mutually agreed.

Employees requiring working time off to vote must notify the District not less than two working days before the day of the election.

The District must post a notice informing employees of their right to leave in order to vote not less than ten working days before an election and until polls close on election day. This notice will be conspicuously posted in a place where it can be seen by employees as they come and go to their place of work.

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29 USC § 207(r)

Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 USC §§ 4301-4333

Civil Service Law §§ 71-73 and 159-b

Education Law §§ 1709(16), 2509(6), 2573(12), 3005, 3005-a and 3005-b

General Municipal Law §§ 92, 92-c, and 92-d

Election Law § 3-110

Executive Law § 296(22)

Judiciary Law §§ 519 and 521

Labor Law §§ 202-a, 202i, 202j, 202l and 206-c

Military Law §§ 242 and 243

Penal Law § 215.14

**SUBJECT: FAMILY AND MEDICAL LEAVE ACT**

The Board, in accordance with the Family and Medical Leave Act of 1993 (as amended) (FMLA), gives "eligible" employees of the District the right to take unpaid leave for a period of up to 12 work weeks in a 12-month period as determined by the District.

The District uses a "rolling" 12-month period measured backward from the date of any FMLA leave usage as its method for calculating the leave year period for the commencement of the FMLA leave period. In certain cases, FMLA leave may be taken on an intermittent or reduced schedule basis rather than all at once.

The entitlement to leave for the birth or placement of a child will expire at the end of the 12-month period beginning on the date of the birth or placement.

Employees are "eligible" if they have been employed by the District for at least 12-months and for at least 1,250 hours of service during the previous 12-month period. Full-time teachers are deemed to meet the 1,250-hour test. However, a break in employment for military service (i.e., call to active duty) should not interrupt the 12-month/1,250 hours of employment requirement and should be counted toward fulfilling this prerequisite. The law covers both full-time and part-time employees.

Qualified employees may be granted leave for one or more of the following reasons:

- a) The birth of a child and care for the child;
- b) Adoption of a child and care for the child;
- c) The placement of a child with the employee from foster care;
- d) To care for a spouse, minor child or parent who has a "serious health condition" as defined by the FMLA;

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**SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)**

- e) To care for an adult child who is also incapable of self-care due to a disability (regardless of date of the onset of disability) and has a "serious health condition" as defined by the FMLA; and/or
- f) A "serious health condition" of the employee, as defined by the FMLA, that prevents the employee from performing his or her job.

A "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider that renders the person incapacitated for more than three consecutive calendar days. Furthermore, the first visit to a health care provider for an employee claiming a "serious health condition" under FMLA must occur within seven days of the aforementioned incapacity with the second required visit occurring within 30 days of the incapacitating event. In order for an employee to claim the need for continuous treatment under FMLA for a chronic serious health condition, the condition must require a minimum of two visits per year to a healthcare provider, continue over an extended period of time, and may cause episodic rather than a continuing period of incapacity. A "serious health condition" is also defined as any period of incapacity related to pregnancy or for prenatal care.

**Military Family Leave Entitlements**Military Caregiver Leave

An eligible employee who is the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) is entitled to up to 26 weeks of leave in a single 12-month period to care for a "military member" who is:

- a) Recovering from a service-connected serious illness or injury sustained while on active duty; or
- b) Recovering from a serious illness or injury that existed prior to the service member's active duty and was aggravated while on active duty; or
- c) A veteran who has a qualifying injury or illness from service within the last five years and aggravates that illness or injury.

This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. Military Caregiver Leave may be combined with other forms of FMLA-related leave providing a combined total of 26 weeks of possible leave for any single 12-month period; however, the other form of FMLA leave when combined cannot exceed 12 of the 26 weeks of combined leave. Military Caregiver Leave has a set "clock" for calculating the 12-month period for when FMLA leave begins and tolling starts at the first day of leave taken.

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**SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)**

The term "military member" means:

- a) A member of the Regular Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- b) A veteran (discharged or released under any condition other than dishonorable) who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

"Qualifying Exigency" Leave/Call to Active Duty

An "eligible" employee is entitled to FMLA leave because of "a qualifying exigency" arising out of circumstances where the spouse, son, daughter, or parent of the employee is serving in the regular Armed Forces or either the National Guard or the Reserves and is on active duty during a war or national emergency called for by the President of the United States or Congress, or has been notified of an impending call to active duty status, in support of a contingency operation. There is no "qualifying exigency" unless the military member is or is about to be deployed to a foreign country.

A "qualifying exigency" related to families of the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve personnel on (or called to) active duty to take FMLA protected leave to manage their affairs is defined as any one of the following reasons:

- a) Short-notice deployment;
- b) Military events and related activities;
- c) Childcare and school activities;
- d) Parental care leave;
- e) Financial and legal arrangements;
- f) Counseling;
- g) Rest and recuperation (for up to 15 calendar days);
- h) Post-deployment activities; and

(Continued)

**SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)**

- i) Any additional activities where the employer and employee agree to the leave.

In any case in which the necessity for leave due to a qualifying exigency is foreseeable, the employee will provide such notice to the employer as is reasonable and practicable. This military-related leave is for up to 12 weeks during a single 12-month period. Leave may be taken intermittently or on a reduced leave schedule.

**Concurrent Leave**

Employees must use paid leave concurrently with periods of FMLA leave.

**Implementation/Benefits/Medical Certification**

At the Board or employee's option, certain types of paid leave may be substituted for unpaid leave.

An employee on FMLA leave is also entitled to have health benefits maintained while on leave. If an employee was paying all or part of the premium payments prior to leave, the employee will continue to pay his or her share during the leave period.

In most instances, an employee has a right to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions at the conclusion of the leave.

The Board has a right to 30 days' advance notice from the employee where practicable. In addition, the Board may require an employee to submit certification from a health care provider to substantiate that the leave is due to the "serious health condition" of the employee or the employee's immediate family member. Under no circumstance should the employee's direct supervisor contact any health care provider regarding the employee's condition; all contact in this manner must be made by a health care provider (employed by the employer), a human resource professional, a leave administrator or a management official. If the medical certification requested by the employer is found to be deficient, the employer must indicate where the errors are, in writing, and give the employee seven days to provide corrected materials to cure any deficiency prior to any action being taken.

**Special Provisions for District Employees**

An instructional employee is an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting (e.g., teachers, coaches, driving instructors, special education assistants, etc.). Teaching assistants and aides who do not have instruction as the principal function of their job are not considered an "instructional employee."

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**SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)**Intermittent Leave Taken by Instructional Employees

FMLA leave that is taken at the end of the school year and resumes at the beginning of the next school year is not regarded as intermittent leave but rather continuous leave. The period in the interim (i.e., summer vacation) is not counted against an employee and the employee must continue to receive any benefits that are customarily given over the summer break.

Intermittent leave may be taken but must meet certain criteria. If the instructional employee requesting intermittent leave **or leave on a reduced schedule** will be on that leave for more than 20% of the number of working days during the period for which the leave would extend, the following criteria may be required by the employer:

- a) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- b) Transfer temporarily to an available alternative 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.

Appropriate notice for foreseeable FMLA leave still applies and all employees must be returned to an equivalent position within the school district. Additional work-related certifications, requirements and/or training may not be required of the employee as a contingent of their return to work.

Leave Taken by Instructional Employees Near the End of the Instructional Year

There are also special requirements for instructional employees taking leave and the leave's relation to the end of the term. If the instructional employee is taking leave more than five weeks prior to the end of the term, the District may require that the employee take the leave until the end of the term if the leave lasts more than three weeks and the employee was scheduled to return prior to three weeks before the end of the term.

If the instructional employee is taking leave less than five weeks prior to the end of the term for any of the previous FMLA-related reasons except qualifying exigency, the District may require that the employee remain out for the rest of the term if the leave lasts more than two weeks and the employee would return to work during that two-week period at the end of the instructional term.

If the instructional employee begins taking leave during the three weeks prior to the end of the term for any reason except qualifying exigency, the District may require that the employee continue leave until the end of the term if the leave is scheduled to last more than five working days.

Any additional time that is required by the District due to the timing of the end of the school year, will not be charged against the employee as FMLA leave because it was the District who requested that the leave extend until the end of the term.

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**SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)****FMLA Notice**

A notice which explains the FMLA's provisions and provides information concerning the procedures for filing complaints of violations of the FMLA will be posted in each school building and a notice of an employee's FMLA rights and responsibilities will be either placed in the employee handbook of the employer or furnished to each new employee upon hire. The District has five days to supply this notice from the date of hire.

Family and Medical Leave Act of 1993 (as amended), Public Law 103-3  
National Defense Authorization Act of 2008, Public Law 110-181  
10 USC 101(a) (13)  
29 USC 1630.1 and 2611-2654  
29 CFR Part 825 and Part 1630  
42 USC 12102  
Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191  
45 CFR Parts 160 and 164

NOTE: Refer also to Policy #6552 -- Military Leaves of Absence

Amended:

1<sup>st</sup> reading: February 8, 2017

2<sup>nd</sup> reading: March 22, 2017

Adopted: April 5, 2017

Amended:

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2<sup>nd</sup> reading: November 11, 2013

Adopted: December 11, 2013

6/25/09



## Personnel

**SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)/MILITARY LEAVES OF ABSENCE**

In accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and State Law, the School District, upon advance notice by the employee, shall grant leaves of absence for service in the uniformed services and/or military duty (hereinafter referred to as "military service" or "military duty") to its employees who are ordered to duty or volunteer for qualifying military service. The employee's notice may be either verbal or written. No advance notice is required if military necessity prevents the giving of notice, or the giving of notice is otherwise impossible or unreasonable under all the circumstances.

**Employment Rights**

Time during which an employee is absent pursuant to military leave shall not constitute an interruption of continuous employment in the School District and no such employee shall be subjected, directly or indirectly, to any loss or diminution of time service, increment, vacation or holiday privileges, or any other right or privilege, by reason of such absence; nor shall any employee be prejudiced by reason of such absence with reference to continuance in employment, reemployment, reinstatement, transfer or promotion.

**Salary/Compensation**

Every employee shall be paid his/her salary or other compensation for any and all periods of absence while engaged in the performance of ordered military duty, and while going to and returning from such duty. This payment of salary/compensation shall not exceed a total of thirty (30) days or twenty two (22) working days, whichever is greater, in any one (1) calendar year; and shall not exceed thirty (30) days or twenty-two (22) working days, whichever is greater, in any one (1) continuous period of such absence.

The employee must be permitted, upon request, to use any accrued vacation, annual, or similar leave with pay during the period of military service in order to continue his/her civilian pay. The School District may not require the employee to use accrued leave.

The employee is not entitled to use accrued sick leave during the period of military service, unless the District allows employees to use sick leave for any reason or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave.

**Employee Benefits****Health Plan Coverage**

If the employee has coverage under a health plan in connection with his/her employment with the District, the employee must be permitted to elect to continue the coverage for a certain period of time as designated in law.

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**SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)/MILITARY LEAVES OF ABSENCE (Cont'd.)**

When the employee is performing military service, he/she is entitled to continuing coverage for himself/herself (and dependents if the plan offers dependent coverage) under a health plan in connection with the employment. The plan must allow the employee an opportunity to continue coverage for a period of time that is the lesser of:

- a) The 24-month period beginning on the date on which the employee's absence for the purpose of performing military service begins; or
- b) The period beginning on the date on which the employee's absence for the purpose of performing military service begins, and ending on the date on which the employee fails to return from service or apply for a position of reemployment.

Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and USERRA's exceptions to the requirement that the employee give advance notice of military service. Further, health plan administrators may develop reasonable procedures for employee payment to continue coverage, consistent with USERRA and the terms of the plan.

**Pension/Retirement Plans**

While on military duty, any School District employee who is a member of any pension or retirement system may elect to contribute to such pension or retirement system the amount which he/she would have contributed had such employment been continuous. Upon making such contribution, the employee shall have the same rights in respect to membership in the retirement system as he/she would have had if the employee had been present and continuously engaged in the performance of his/her position. To the extent that such contributions are paid, absence while engaged in the performance of military duty shall be counted in determining the length of total service under such pension or retirement system.

Alternatively, employees will have an opportunity to make up contributions to the pension or retirement system upon return to employment in the District in accordance with law and the individual employee's pension/retirement system.

The payment of member contributions required under law to obtain military service credit is waived for members called to active military duty on or after September 11, 2001 and prior to January 1, 2006, as the result of Non-Contributory Military Service Credit legislation signed as Chapter 326 of the Laws of 2005.

Time during which an employee is absent on military duty shall not constitute an interruption of continuous employment, but such time shall not be counted or included in determining the length of total service in the pension or retirement system unless the employee contributes to the pension or

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**SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)/MILITARY LEAVES OF ABSENCE (Cont'd.)**

retirement system the amount he/she would have been required to contribute if the employee had been continuously employed during the period of military duty.

Leaves of Absence for Military Spouses

The spouse of a member of the armed forces of the United States, national guard or reserves who has been deployed during a period of military conflict (defined as a period of war declared by the United States Congress, or in which a member of a reserve component of the armed forces is ordered to active duty pursuant to the United States Code), to a combat theater or combat zone of operations shall be allowed up to ten (10) days unpaid leave by their employer. Such leave shall only be used when such person's spouse is on leave from the armed forces of the United States, National Guard or reserve while deployed during a period of military conflict to a combat theater or combat zone of operations.

In accordance with law, an employee means a person who performs services for hire for the District for an average of twenty (20) or more hours per week, and includes all individuals employed at any District site having twenty (20) or more District employees, but shall not include independent contractors.

An employer shall not retaliate against an employee for requesting or obtaining a leave of absence as provided above. The provisions of this section shall not affect or prevent an employer from providing leave for military spouses in addition to leave allowed under any other provision of law. The provisions of this section shall not affect an employee's rights with respect to any other employee benefit provided by law.

**Reemployment/Restoration Rights ("Escalator Principle")**

Per USERRA, as a general rule, the employee is entitled to reemployment in the job position that he/she would have attained with reasonable certainty if not for the absence due to military service. The position to which the returning service member should be restored has become known as the "escalator position." The escalator principle requires that the employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job benefits that he/she would have attained if not for the period of military service.

Depending on the circumstances/intervening events, the escalator principle may cause an employee to be reemployed in a higher or lower position, transferred, laid off, or even terminated.

The employee must be qualified for the reemployment position. The District shall make reasonable efforts to help the employee become qualified to perform the duties of this position. The District is not required to reemploy the employee on his/her return from military service if the

(Continued)

**SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)/MILITARY LEAVES OF ABSENCE (Cont'd.)**

employee cannot, after reasonable efforts by the District, qualify for the appropriate reemployment position.

Per State law, an employee restored to his/her position after the termination of military duty shall be entitled to the rate of compensation he/she would have received had the employee remained in his/her position continuously during the period of military duty; and the employee shall be deemed to have rendered satisfactory and efficient service in the job position during the period of military leave of absence. Further, the employee shall not be subjected directly or indirectly to any loss of time service, increment, or any other right or privilege; nor shall an employee be prejudiced in any way with reference to promotion, transfer, reinstatement or continuance in employment.

All other rights, benefits, and responsibilities of a District employee serving in the military shall be in accordance with law, regulations, and/or the applicable contract/collective bargaining agreement.

**Probationary Service**

Public Employees in General

If a public employee (with the exception of the probationary service of "teachers" as described below) enters military duty before the expiration of the probationary period in any position to which he/she may have been appointed, or to which he/she may thereafter be appointed or promoted, the time such employee is absent on military duty shall be credited as satisfactory service during this probationary period.

Teachers/Supervisory Staff

In any case where a "teacher" (*as defined in State Education Law Section 3101, the term "teacher" encompasses a broad category of full-time members of the teaching and supervisory staff of the District, and is not limited to "instructional" employees*) enters military duty before the expiration of the probationary period to which he/she may have been appointed, the time the "teacher" is absent on military duty shall be credited as satisfactory service during this probationary period. If the end of such probationary service occurs while the "teacher" is on military duty or within one (1) year following the termination of military duty, the period of the probationary service may be extended by the Board of Education for a period not to exceed one (1) year from the date of termination of military duty. However, in no event shall the period of probationary service in the actual performance of teaching services extend beyond that required by the School District at the time of the "teacher's" entry into military service.

(Continued)

**SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)/MILITARY LEAVES OF ABSENCE (Cont'd.)**

**Collective Bargaining Agreements/Contracts/Plans/Practices**

In accordance with USERRA, any State or local law, contract, agreement, policy, plan, or practice that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit under USERRA, such greater employment right or benefit will supersede this Federal Law.

**Notice of Rights and Duties**

The District shall provide a notice of the rights, benefits and obligations of employees and the District under USERRA. The District may provide the notice by posting it where employee notices are customarily placed. The District may also provide such notice to its employees in other ways that will minimize costs while ensuring that the full text of the notice is provided (e.g., by handing or mailing out the notice, or distributing the notice via electronic mail).

The U.S. Department of Labor has developed and made available on its web site <http://www.dol.gov/vets/programs/userra/poster.htm> a poster for use by private and State employers (including school districts) that can be posted in order to comply with the notification mandate.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)  
38 United States Code (USC) Sections 4301-4333  
Public Law 108-454  
20 Code of Federal Regulations (CFR) Part 1002  
Military Law Sections 242 and 243  
Education Law Section 3101

## Personnel

**SUBJECT: TAX SHELTERED ANNUITIES**

The Board of Education authorizes staff participation in tax sheltered annuities and shall provide for payroll deductions for such participation. Any company selected by members of the staff must be approved by the Board of Education.

The Board of Education shall determine criteria which shall serve as the minimal requirements which a firm must comply with in order to solicit participation among the staff. Any firm soliciting participation in such tax sheltered annuities among the staff of the School District must comply with the provisions of Section 403(b) of the Internal Revenue Code of 1954, as amended. Additionally, such firms must also abide by all other relevant laws and regulations set forth by the State of New York and its relevant agencies, and must be licensed to provide tax sheltered annuities in New York State.

The Superintendent and/or the School Business Official are authorized to approve, on behalf of the Board of Education, application from employees for agreements with the School District for reductions in contract salary, the amount of such deduction to be remitted to the company specified by the employee in the agreement for the purpose of purchasing a tax sheltered annuity which qualifies for purposes of Section 403(b).

All companies which sell tax sheltered annuities to employees through the School District must be approved by the Superintendent and/or School Business Official; and all vendors servicing the 403(b) tax sheltered annuity plan must complete all District created forms.

Every deduction from the employee's salary must be made through the proper salary reduction authorization card signed by the employee, the agent, and the plan administrator. The plan administrator must sign and complete this deduction card prior to processing. The deduction will become effective, as soon as possible, based on the current payroll schedule.

All tax sheltered annuity agreements and any changes thereafter, under Section 403(b) of the Internal Revenue Code must be filed using a District generated form or equivalent form that includes a hold-harmless agreement acceptable to the District.

Failure on the part of any vendor and/or agent to comply with this policy will be sufficient grounds for denying further sales to School District employees.

Section 403(b) of the Internal Revenue Code of 1954, as amended  
Education law Sections 1604(31-a), 1709(34-a), 1709(35), and 3109  
General Municipal law Sections 93-b and 93-c

Adopted: 6/25/09

## Personnel

**SUBJECT: EMPLOYMENT OF RETIRED PERSONS**

A retired person may be employed and earn compensation in a position in the District, without any effect on his or her status as retired and without suspension or diminution of his or her retirement allowance subject to the conditions enumerated in Retirement and Social Security Law Section 211(1). However, there will be no earning limitations on or after the calendar year in which a retired person attains age 65.

No retired person may be employed in the District except upon approval of the Civil Service Commission or the Commissioner of Education unless otherwise authorized in accordance with law.

Two sections of the Retirement and Social Security Law (Sections 211 and 212) affect a retiree's return to public employment in New York State. If a retiree returns to public employment, he or she may still be able to collect his or her pension depending upon:

- a) How much is earned after returning to work; and
- b) The retiree's age.

If a retiree is under age 65, he or she can return to public employment without approval or reduction in retirement benefits as long as his or her calendar year earnings do not exceed the Section 212 limit. If a retiree's earnings will be more than the Section 212 limits, the employer must request and receive prior approval from the appropriate agency to hire the retiree under Section 211.

Section 211 waivers are provided for "unclassified service" positions. Retired police officers employed by a school district as a School Resource Officer (SRO) fall under the "classified service" but may have the earnings limitation waived at the discretion of the Commissioner of Education, as long as all of the requirements for waivers in the unclassified service are fulfilled.

There is generally no restriction on a retiree's earnings beginning in the calendar year he or she turns 65, unless returning to public office.

**Section 211 Approval Process**

Approval for post-retirement employment of a person under the age of 65 or a retired police officer employed as a SRO whose calendar year earnings exceed the Section 212 limit may be granted only on the written request of the District giving detailed reasons related to the standards set forth in Section 211; and on a finding of satisfactory evidence by the Civil Service Commission or the Commissioner of Education that the retired person is duly qualified, competent, and physically fit for the performance of the duties of the position in which he or she is to be employed and is properly certified where certification is required.

(Continued)

**SUBJECT: EMPLOYMENT OF RETIRED PERSONS (Cont'd.)**

The District will prepare a detailed recruitment plan to fill the vacancy on a permanent basis when the need arises and will undertake extensive recruitment efforts to fill the vacancy prior to making a determination that there are no available non-retired persons qualified to perform the duties of that position.

Approvals to hire retired individuals may be granted for periods not exceeding two years each, provided that a person may not return to work in the same or similar position for a period of one year following retirement. However, in accordance with Section 212, a retiree may return to work in the same or similar position within the same year following retirement if his or her earnings are under the Section 212 limit or if he or she receives a Section 212 waiver, or other conditions exist set forth in law.

**Reporting Requirements and Disclosure**

- a) The District will report all money earned by a retired person in its employ in excess of the earnings limitation outlined in Section 212 to the retirement system administered by the State or any of its political subdivisions from which the retired person is collecting his or her retirement allowance.
- b) The District, when employing a retired person who is eligible to collect or is already collecting a retirement allowance from a retirement system administered by the state or any of its political subdivisions, will report on an annual basis to the retirement system paying the retirement allowance and to the State Comptroller. This report will consist of the re-employed retiree's name, date of birth, place of employment, current position, and all earnings.

**Public Record**

Any request for approval of the employment of a retired person, including the reasons stated, and the findings and determination of the request will be a public record open for inspection in the Office of the Civil Service Commission, the Commissioner of Education, or the Board making the findings and determination as specified in Section 211.

Education Law §§ 525 and 3101  
Retirement and Social Security Law §§ 111, 211, 212, 217, and 411  
8 NYCRR § 80-5.5(b)

Amended:  
1<sup>st</sup> reading – February 12, 2020  
2<sup>nd</sup> reading- March 18, 2020  
Adopted: April 8, 2020

Amended:  
1<sup>st</sup> reading – August 19, 2014  
2<sup>nd</sup> reading – August 27, 2014  
Adopted – September 10, 2014  
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