# POLICY REGARDING THE FAMILY AND MEDICAL LEAVE ACT OF 1993 AND THE RHODE ISLAND FAMILY AND PARENTAL LEAVE ACT

*The Chariho Regional School District Committee hereby adopts the following as a general statement of its intent and desire to comply in all respects with the federal Family and Medical Leave Act, and with Rhode Island's Family and Parental Leave Act. The following represents a summary of these provisions only, and interested or affected persons are encouraged to consult with the office of the Director of Administration and Finance for more particular information. This policy is subject to change to remain accurate and up-to-date with changes in federal or state law.*

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act ("FMLA") for all private, state and local government employees, and some federal employees. FMLA became effective on August 5, 1993, for most employers. If a collective bargaining agreement (CBA) was in effect on that date, FLMA became effective on the expiration date of the CBA or February 5, 1994, whichever was earlier.

FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. However, the employee must have worked at least 1,250 hours over the previous 12 months.

The School Committee of the Chariho Regional School District has elected to use a 12 month period prior to the first day of requested FMLA to determine the 1,250 hour eligibility.

## EMPLOYER COVERAGE

FMLA applies to the following types of employers:
1. public agencies, including state, local and federal employers, local education agencies (schools), and
2. private sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year and who are engaged in commerce or in any industry or activity affecting commerce — including joint employers and successors of covered employers.

## EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee must:
1. work for a covered employer.
2. have worked for the employer for a total of 12* months.
3. have worked at least 1,250 hours over the previous 12 months; and,
4. work at a location in the United States or in any

territory or possession of the United States where at
least 50 employees are employed by the employer
within 75 miles.
(See special rules for returning reservists under USERRA.)

**LEAVE ENTITLEMENT**
The School Committee of the Chariho Regional School District will grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12 month period for one or more of the following reasons:
• for the birth and care of an employee's newborn child;
• for placement with the employee of a son or daughter for adoption or foster care;
• to care for an immediate family member (spouse, child or parent) with a serious health condition; or
• to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a combined total of 12 workweeks of family leave for the birth and care of their newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth or placement of the child.

Under some circumstances, employees may take FMLA leave intermittently - which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule. (*See also the Special Rules Applying to Employees of Schools, below.*)

• If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.
• FMLA leave may be taken intermittently whenever medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

An employer is responsible for designating if an employee's use of paid leave counts as FMLA leave, based on information from the employee.

"**Serious health condition**" means an illness, injury, impairment, or physical or mental condition that involves either:
• any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, and any
period of incapacity, or subsequent treatment in connection with such inpatient care;
-or-
• continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:
1. A health condition (including treatment therefore, or recovery therefrom) lasting more than three consecutive days, and any subsequent treatment or period of

incapacity relating to the same condition, that also includes:

-treatment two or more times by or under the supervision of a health care provider; or

-one treatment by a health care provider with a continuing regimen of treatment; or

2. Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; or

3. A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; or

4. A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or

5. Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

"**Health care provider**" means:

• doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or

• podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist) authorized to practice, and performing within the, scope of their practice, under state law; or

• nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; or

• Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or

• Any health care provider recognized by the employer or the employer's group health plan benefits manager.

## MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave. In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

## JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave, nor be counted against the employee under a "no fault" attendance policy.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid "key" employees after using FMLA leave during which health coverage was maintained. In order to do so, the employer must:

-notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;

-notify the employee as soon as the employer decides it will deny job restoration, and explain the reasons for this decision;

-offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and

-make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

A "key" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees within 75 miles of the work site.

**NOTICE & MEDICAL CERTIFICATION**

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. Employers may also require employees to provide:

• medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;

• second or third medical opinions (at the employer's expense) and periodic re-certification; and

• periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employer's operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to $100 for each separate offense.

Also, covered employers must inform employees of their rights and responsibilities under FMLA, including giving specific written information on what is required of the employee and what might happen in certain circumstances, such as if the employee fails to return to work after FMLA leave.

**UNLAWFUL ACTS**

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any related practice, or because of involvement in any proceeding related to FMLA.

**ENFORCEMENT**
The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also bring a private civil action against an employer for violations.

**OTHER PROVISIONS**
Special rules apply to employees of local education agencies, such as Chariho. (See below.)

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (ELSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other federal or state law which prohibits discrimination, nor supercede any state or local law which provides greater family or medical leave protection. Nor does it affect an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan. The FMLA also encourages employers to provide more generous leave rights.

**FURTHER INFORMATION**
For more information on FMLA or to request forms, please contact:

Sue Rogers, Human Resources Administrator
364-3260

The final rule implementing FMLA is contained in the January 6, 1995, Federal register. For more information, please contact the nearest office of the Wage and Hour Division, listed in most telephone directories under "U.S. Government, Department of Labor."

# Special FMLA Rules Applying to Employees of Schools:

(a) Certain 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.

(b) The special rules affect the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees. "Instructional employees" are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education

assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

(c) Special rules which apply to restoration to an equivalent position apply to all employees of local educational agencies.

**Limitations applying to the taking of intermittent leave or leave on a reduced leave schedule**

(a) 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. An instructional employee who is on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

(1) If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employer may require the employee to choose either to:

(i) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

(ii) 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.

(2) These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave per week over a period of several weeks, the special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position. "Periods of a particular duration" means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave.

(b) If an instructional employee does not give required notice of foreseeable FMLA leave (see Sec. *825.302)* to be taken intermittently or on a reduced leave schedule, the employer may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the employer may require the employee to delay the taking of leave until the notice provision is met.

**Limitations applying to the taking of leave near the end of an academic term**

(a) There are also different rules for instructional employees who begin leave more than five weeks before the end of a term, less than five weeks before the end of a term, and less than three weeks before the end of a term. Regular rules apply except in circumstances when:

(I) An instructional employee begins leave more than five weeks before the end of a term. The employer may require the employee to continue taking leave until the end of the term if-

(i) The leave will last at least three weeks, and

(ii) The employee would return to work during the three-week period before the end of the term.

(2) The employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of a term. The employer may require the employee to continue taking leave until the end of the term if-

(i) The leave will last more than two weeks, and

(ii) The employee would return to work during the two-week period before the end of the term.

(3) The employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of a term, and the leave will last more than five working days. The employer may require the employee to continue taking leave until the end of the term.

(b) For purposes of these provisions, "academic term" means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employer could require the employee to stay out on leave until the end of the term.

**Leave taken during "periods of a particular duration" is counted against the FMLA leave entitlement**

(a) 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 taken will count as FMLA leave.

(b) In the case of an employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The employer has the option not to require the employee to stay on leave until the end of the school term. Therefore, any additional leave required by the employer to the end of the school term is not counted as FMLA leave; however, the employer shall be required to maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.

**Special rules applying to restoration to "an equivalent position"**

The determination of how an employee is to be restored to "an equivalent position" upon return from FMLA leave will be made on the basis of the collective bargaining agreement, if applicable, and established school committee policies and practices. The "established policies" and collective bargaining agreements used as a basis for restoration must be in writing, must be made known to the employee prior to the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to "an equivalent position" must provide substantially the same protections as provided in the Act for reinstated employees. In other words, the policy or collective bargaining agreement must provide for restoration to an "equivalent position" with equivalent employment benefits, pay, and other terms and conditions of employment. For example, an employee may not be restored to a position requiring additional licensure or certification.

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## RHODE ISLAND PARENTAL AND FAMILY LEAVE ACT

Under the **Rhode Island Parental and Family Leave Act ("RIPFLA")** eligible employees are provided with *13 consecutive weeks in any two calendar years under certain conditions*.

**Eligibility**

To be eligible for RIPFLA benefits, an employee must:

1. work for a total of 12 months;
2. have worked an average of 30 hours a week or more over the previous 12 months

**Purpose of Leave**

The leave required to be provided under the Act must be for one or more of the following reasons:

- Birth of a child of an employee.
- Placement of a child 16 years of age or less with an employee in connection with the adoption of such child by the employee.
- "Serious illness" of the employee or the employee's parent, spouse, child, mother-in-law, or father-in-law. ("Serious illness" is defined to mean a disabling physical or mental illness, injury, impairment or condition that involves in-patient care in a hospital, nursing home, or hospice, or out-patient care requiring continuing treatment or supervision by a health care provider.)

Adopted 11-18-03