

DANIEL BOONE REGIONAL LIBRARY

SUBJECT: Family and Medical Leave of Absence (FMLA)

ADMIN 1-340

BOARD

SECTION: 300 – Employee Benefit Policies

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POLICY

Pursuant to the Family and Medical Leave Act of 1993 (FMLA), the Daniel Boone Regional Library (DBRL) will provide up to twelve (12) workweeks (or up to twenty-six [26] workweeks in the case of leave to care for a covered service member with a serious injury or illness) of paid or unpaid, job-protected leave per twelve (12) month period for eligible staff who comply with DBRL's FMLA requirements. (See Appendix for definitions referenced within this policy.) This twelve (12) month period shall begin on the first date of leave and end twelve (12) months later.

Leave required under FMLA is unpaid; however, under the FMLA, the employee may choose or the employer may require use of accrued paid leave. DBRL requires use of paid leave, which accrues under Policies 1-323 Paid Time Off (PTO) and 1-329 Personal Leave. In order to use paid leave for FMLA leave, employees must comply with the applicable paid leave policies.

Employees who do not satisfy the requirements listed below are not eligible for FMLA leave, but may be eligible for other leave, paid or unpaid, in accordance with DBRL policies. In no event will FMLA leave last longer than twelve (12) workweeks (or twenty-six [26] workweeks where applicable). Staff on FMLA leave are required to exhaust all accrued unused paid leave before being placed in unpaid leave status. The employee will accrue DBRL's leave benefits (paid time off [Policy 1-323], holiday [Policy 1-326], personal leave [Policy 1-329], etc.) while in paid leave status. However, in unpaid leave status, the employee will not accrue any additional leave benefits, unless otherwise required by the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, *et seq.*

Requests for FMLA leave should be made to the employee's immediate supervisor. Employees are required to provide at least a thirty (30) -day advance notice for "foreseeable" FMLA leave (e.g., childbirth or scheduled medical treatment of a serious illness), except for circumstances in which the employee does not know approximately when the need for leave will begin (e.g., in the case of qualified exigency leave), in which case requests should be made as soon as practicable. A request for FMLA leave that is not "foreseeable" (e.g., medical emergencies) should be made as soon as practicable but at least within two (2) business days after learning of the need for leave. FMLA leave requests are subject to DBRL's usual and customary call-in policies for

reporting an absence. FMLA leave may be denied for failure to follow such policies. All medical information is kept in a separate, confidential medical file.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include 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. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified.

Staff who are found to have falsified, misrepresented, or omitted information to obtain FMLA benefits will be subject to immediate discipline, up to and including dismissal.

ELIGIBILITY REQUIREMENTS

Employees who have been working for DBRL for at least twelve (12) months before the request for FMLA leave and who have worked at least 1250 hours (or are credited with having worked at least twelve [12] months or 1250 hours pursuant to USERRA) during the immediately preceding twelve (12) -month period are eligible. Hours of service are calculated using the same legal standards as the federal overtime pay provisions (Sec. 7 of the FLSA-29 U.S.C. 207).

FAMILY/MEDICAL LEAVE

Family/Medical leave may be taken for the following reasons:

- Care of the employee's spouse, son, daughter or parent who has a serious health condition.
- The employee's inability to perform the functions of his or her job due to the employee's serious health condition.
- By the mother for incapacity due to pregnancy, for prenatal care or for her own serious health condition following child birth.
- Birth of a son or daughter of the employee and/or care of the newborn child, or placement of a son or daughter with the employee for adoption or foster care.

MEDICAL CERTIFICATION

DBRL may require a medical certification or subsequent medical opinions to support a request for FMLA leave because of a serious health condition. In any event, the employee is required to submit a completed medical certification form for FMLA leave requests of more than three (3) consecutive, full, regular working days.

MILITARY FAMILY LEAVE

Military family leave may be taken for the following reasons:

- Employee is the spouse, son, daughter, parent or next of kin of a covered service member and employee requires leave to care for such service member. Eligible employees will be able to take up to twenty-six (26) workweeks of leave in a single twelve (12) month period. DBRL may require an employee to obtain a certification completed by the employee and/or the covered service member and an authorized health care provider of the covered service member and confirmation of a covered

family relationship. However, an employee may provide an invitational travel order (ITO) or invitational travel authorization (ITA) issued to the employee to join an injured or ill service member at his or her bedside in lieu of the previously-described certification for the duration of the period covered by the ITO or ITA.

- A qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is a military member on covered active duty or call to covered active duty status or has been notified of an impending call or order to covered active duty status. Qualifying exigencies may include, but are not limited to, attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions and attending post-deployment reintegration briefings. Eligible employees will be able to take up to twelve (12) workweeks of leave in a single twelve (12) month period. DBRL may require the employee to provide a copy of the covered service member's active duty orders or other documentation indicating that the covered service member is on active duty or call to active duty status, and the dates of the covered military member's active duty status. DBRL may also require completion of an exigency leave certification form by the employee.

STATUS REPORT

DBRL may require the employee on FMLA leave to submit periodic reports on the employee's status and intention to return to work.

EMPLOYEE BENEFITS

During FMLA leave, DBRL will maintain the employee's health coverage on the same terms as if the employee had continued to work. If the employee chooses not to continue with coverage (e.g. fails to pay the employee portion of the premium), DBRL will provide notice of the end of coverage. If the employee's portion of the premium is more than thirty (30) days late from the date payment is due, DBRL's obligation to maintain health coverage ceases. Upon the employee's return to work, DBRL will restore the employee to coverage and benefits equivalent to those held before the start of FMLA leave if a lapse of coverage occurs due to non-payment. If DBRL pays the employee's share of any premium payment, DBRL may recover such amount from the employee. If the employee does not return to work after the FMLA leave, DBRL may recover the employer's share of the health insurance premiums incurred during an employee's unpaid FMLA leave, unless such failure is due to a serious health condition or circumstances beyond the employee's control. While in paid leave status, the employee is entitled to other DBRL benefits (e.g. paid time off [Policy 1-323], paid holidays [Policy 1-326], and personal leave [Policy 1-329] accruals).

Most eligible employees who take FMLA leave will be restored at the end of the leave to the same job held before the leave began, or to an equivalent job with equivalent terms and conditions of employment. DBRL shall require an employee whose leave was occasioned by the employee's own serious health condition to obtain a certification from the employee's health care provider that the employee is able to resume work. DBRL shall uniformly apply such requirement to all similarly situated employees (i.e. same occupation, same serious health condition). Upon returning to work, the employee must be able to perform the essential function of such job with or without reasonable accommodation.

USE OF LEAVE

An employee does not need to use FMLA leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

EMPLOYER RESPONSIBILITIES

DBRL must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employee's rights and responsibilities. If they are not eligible, DBRL must provide a reason for such ineligibility.

DBRL must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If DBRL determines that the leave is not FMLA-protected, DBRL must notify the employee.

UNLAWFUL ACTS BY EMPLOYERS

FMLA makes it unlawful for any employer to:

- Interfere with, restrain or deny the exercise of any right provided under FMLA.
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

FILING A COMPLAINT

Employees may use the DBRL Complaint of Employment Discrimination process to file a complaint with the Human Resource Manager. Complaints must be filed within thirty (30) days from the date of the last event. Complaints may also be filed with the United States Department of Labor or the employee may bring a private lawsuit. FMLA does not affect any Federal or State law prohibiting discrimination or supersede any State or Federal Law or collective bargaining agreement which provides greater family or medical leave rights.

This policy prohibits retaliation against any employee who files a complaint of discrimination or assists in the complaint process. Employees who participate in the process will not be adversely affected in the terms or conditions of employment, nor discriminated against or discharged because of a complaint.

FMLA section 109 (29 USC § 2619) requires FMLA covered employers to post the text of the Notice set forth in Appendix C to C.F.R. Part 825. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.

Note: This policy integrates with Worker's Compensation and DBRL Policies 1-292 Americans With Disabilities Act Employee Policy, 1-324 Funeral Leave, 1-323 Paid Time Off (PTO) and 1-329 Personal Leave.

FMLA DEFINITIONS APPENDIX

- **Loco Parentis:** A person who has the day-to-day responsibility to care for the child and to provide financial support, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A legal or biological relationship does not have to exist between the employee and the child.
- **Son or Daughter:** Biological, adopted, or foster child, step child, legal ward, or a child of a person standing in loco parentis, who is under the age of eighteen (18), or is eighteen (18) years of age or older who is incapable of self-care because of a mental or physical disability.
- **Parent:** Biological, adoptive, step or foster father or mother, or the person who stood in loco parentis to an employee when the employee was a son or daughter. This term does not include parents “in law.”
- **Spouse:** Husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either: (1) Was entered into in a State that recognizes such marriages; or (2) If entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one State.
- **Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider which includes, subject to certain conditions: (1) a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, (2) incapacity due to pregnancy, or for prenatal care, (3) incapacity due to a chronic serious health condition, (4) a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, or (5) absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated. Other conditions may meet the definition of continuing treatment.
- **Covered Service Member:** A current member of the Armed Forces (including a member of the National Guard or Reserves), with a serious injury or illness incurred in the line of duty on active duty in the Armed Forces, or that existed before the beginning of the service member’s active duty and was aggravated by the service in the line of duty on active duty in the Armed Forces, that may render the service member medically unfit to perform his or her duties, for which the service member is undergoing medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list. Also, an eligible veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness who was a member of the Armed Forces (including the National Guard or Reserves) at any time during the period of five [5] years preceding the date on which the veteran undergoes the medical treatment, recuperation or therapy.

The terms Son or Daughter and Parent have different definitions when applied to military family leave.

See FMLA regulations (29 CFR Part 825) for other and more detailed definitions. In the event of a conflict between a definition provided in this Policy and a definition contained in the FMLA regulations, the definition set forth in the FMLA regulations shall control.

FMLA: Family and Medical Leave act of 1993. Public law 103-3 (effective February 5, 1993), 107 Stat. 6 (29 U.S.C. 2601 et seq.)