

November 17, 2008

RE: Leaves for childbirth and child-rearing

In reply to your question, I am enclosing information regarding leaves of absence related to your pregnancy and the birth of your child. Sequentially, they are a paid maternity disability leave, unpaid family leave, and an unpaid child-rearing leave. How you use them is your decision. In addition you may be eligible to collect state family leave payments (similar to unemployment benefits) for part of your unpaid family leave time

The first leave, maternity disability leave, presumptively begins 30 calendar days prior to the expected delivery date and presumptively ends 30 calendar days after the date. You are legally presumed to be too disabled to work during this time period, but you can choose to work closer to your due date or return to work sooner, if you are medically able and wish to do so. If you choose to take the maternity disability leave, within each 30-day period, you are entitled to use 20 paid sick leave days, if you have that many days accumulated. You may use more for a longer period of time if a physician certifies that you are disabled from working for a longer time period. If you do not have enough accumulated sick days to receive pay for all of the time when you are unable to work due to maternity disability, your leave will be without pay after your sick days are exhausted.

The second leave, unpaid family leave, begins when you are no longer medically disabled, but wish to remain out of work to care for and bond with your new child. It will normally extend your paid health benefits up to 12 additional weeks. It can commence at the end of your first leave. Both of the first two leaves are statutory rights. During the unpaid family leave you may qualify for state family leave payments. These payments may last for up to six (6) weeks and will be at approximately two-thirds of your weekly salary up to a maximum of \$524.00 per week. To apply for these payments you must give your employer 30 days advance notice of your due date) and you must apply to the state within 30 days after the family leave begins. You may request the necessary forms from your employer now so you will have them for later use.

The third leave, child-rearing leave under your Association's contract, commences at the termination of the second leave. Health insurance is no longer paid for by the Board. You have an option to purchase the insurance at the Board's group rate under COBRA, a federal law. The Board Secretary's office will supply you with the necessary forms. This leave continues for a period of time through the remaining school year or a shorter period, according to the terms of your collective bargaining agreement.

Your rights, if you are a tenured employee, may include the choice of extending your leave another full school year according to the provisions of your Association contract, as well as preserving your right a job for which you are certified and eligible upon returning to the district. There should be no loss of any benefit or right when you return; i.e., your contractual features should begin where they left off. Non-tenured employees may have more restricted rights, depending upon the terms of the collective agreement.

Read the enclosed materials carefully. The letters are only samples. Additionally, your district may have forms and procedures which it requires all employees to use, so you should check on that. For brevity's sake, you may wish to combine them all into one letter with the appropriate dates. Submit everything in a timely fashion – no less than 60 days prior to the delivery date. It is wise to keep copies of all correspondence.

Congratulations!

NJEA UniServ Field Representative

Enclosures



**Instructions
for Requesting
Leaves of Absence
For Childbirth
and
Child -Rearing**



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HIGHLIGHTS REGARDING CHILDBIRTH AND CHILD-REARING LEAVE

What leave options exist?

Leaves related to childbirth consist of two main components: a disability period during which a female employee is disabled by pregnancy and childbirth, followed by a child-rearing period during which the employee is on leave to take care of the newborn child. These two components are treated differently under our laws.

Must a board of education grant a female employee's request to use accumulated sick leave for disability due to pregnancy or childbirth?

Yes, under the same conditions that it allows any other employee to use sick leave for other types of disabilities. Under New Jersey's "Law Against Discrimination" contained in N.J.S.A. 10:5-1 et seq., disabled pregnant employees may be neither favored nor discriminated against, but must be treated as are all other disabled employees. Disability resulting from pregnancy constitutes an illness under N.J.S.A. 18A:30-1, New Jersey's sick leave statute in education law, so sick days can be used during any period of pregnancy or post-childbirth disability when an employee cannot physically perform the duties of her position.

What proof of disability may a board require from a pregnant employee?

As in all cases where an employee requests sick leave, a board of education may require that the pregnant employee file a physician's certificate with the board secretary to establish disability. There is a presumption of disability for the ninth month of pregnancy and for one month following the child's birth. Therefore, the physician need not certify that the employee is disabled; a non-specific doctor's certificate indicating the anticipated delivery date satisfies a board's request for medical certification of disability during this two-month period. This means an employee automatically qualifies to use her accumulated sick days for any work days falling within 30 calendar days before or after delivery, if she wishes to use those days.

If an employee requests a disability leave outside the two months of presumed disability (usually due to unexpected medical complications), a board may require additional certification as to the actual dates the disability began or terminated.

If a board harbors a doubt as to the judgment of the employee's physician, a board may invoke its power under N.J.S.A. 18A:16-2 and 18A:16-3 to require the employee to undergo a physical exam by the school physician or by a physician of the employee's choosing subject to board approval.

Must a board of education grant an employee's request for an extended leave of absence for child rearing purposes?

If the employee is eligible, he/she may request the leave under the provisions P.L. 1989, Chapter 261, the Family Leave Act for up to 12 weeks of leave without salary. (See Highlights sheet regarding Family Leave Act.)

Any negotiated contractual benefits regarding family leave in your local Association's contract are in addition to those afforded the employee under the law. Child-rearing leaves must be made

available to male and female employees on a non-discriminatory basis. During the child-rearing leave an eligible employee may apply to the State of New Jersey to collect Family Leave payments (similar to unemployment benefits) for up to six (6) weeks of the leave. These payments are not salary and do not count for pension or seniority purposes.

During the leave of absence for child rearing, may the employee utilize accumulated sick days?

Normally sick days cannot be used due to family disability or child-rearing. However, the State permits an employer to allow an employee to use sick days, with certain limitations, if the employee is applying for State Family Leave payments. Your local Association contract may also have provisions dealing with pay during child-rearing leaves and the use of sick days for that type of leave. Using sick days may reduce the amount of State Family Leave payments an employee can receive.

Does a pregnant employee have the right to use accumulated sick leave during the period of actual disability when she applies for, and the board grants, a year-long unpaid maternity leave?

Not necessarily. In the case of Logandro v. Cinnaminson Township BOE, 1979 S.L.D. 378, aff'd in part, rev'd in part, St. Bd. 1980 S.L.D. 1511, the State Board of Education ruled that the board may refuse to pay sick leave for every kind of disability arising during an extended leave of absence, including pregnancy, as long as pregnancy-related disability was treated in the same manner as any other disability.

However, if the negotiated contract allows for paid leaves of absences, a pregnant employee must be given the choice between taking an extended unpaid leave such as this, and taking a paid leave commencing upon her disability, followed by an unpaid leave of absence.

As previously noted, if the employee has applied for State Family Leave Benefits the use of sick days may be possible anyway, for up to two (2) weeks of the leave or such longer period as may be agreed upon or negotiated into your local Association's contract.

May a board regulate the timing of pregnancy disability and child care leave?

Yes. In order to preserve educational continuity, a board of education may establish or negotiate policies which control the timing of pregnancy disability and child rearing leaves by placing the employee on an involuntary unpaid leave either prior to or subsequent to the actual disability period. The Commissioner's decision in Dyson c. Montvale BOE, S.L.D. 833, aff'd App. Div., unpublished decision (February 8, 1982), establishes that as long as such an educationally motivated policy is applied to other leaves of absence, and where it does not deprive the employee of her right to utilize accumulated sick leave during the actual period of her disability, the board will not be guilty of sexual discrimination.

On the other hand, the leading New Jersey civil rights case of Castellano v. Linden BOE, 79 N.J. 407 (1979), held that even the legitimate desire to maintain instructional continuity will not justify a board policy or a negotiated contractual provision which singles out pregnant teachers and forces them to take a leave of absence or which does not allow the employee to use her accumulated sick leave while she is disabled.

Must a non-tenured employee on a maternity/child rearing leave be offered an employment contract for the following year?

No. It is not considered gender discrimination if the board's policy regarding non-renewal of contracts for disability reasons is not limited to employees with disability resulting from pregnancy.

May a board change the assignment of an employee returning from maternity leave?

Yes. A school board need not place any employee returning from leave in the same assignment but may exercise its management prerogative to transfer the teacher employee within the scope of his/her certificate or other employees within their area of expertise and skill.

May a school board discount periods of maternity leave when calculating seniority?

Yes, for periods beyond the first 30 days of unpaid leave. The Appellate Division in the case of Cohen v. Emerson BOE, 225 N.J. Super. 324 (App. Div. 1988) has interpreted N.J.A.C. 6:3-1.10(b) to mean that each tenured employee is entitled to seniority credit for up to 30 days' absence regardless of whether the employee had been absent for more or less than 30 days. Any period of leave without salary after the first 30 days will not count for seniority.

Excerpted from: School Leader, Nov./Dec. '89 Issue, "From Here to Maternity—Legal Aspects of Maternity Leave", by Donna Kay, NJSBA Assistant Counsel.

**A COMPARISON OF KEY PROVISIONS
of the
FEDERAL FAMILY MEDICAL LEAVE ACT
and the
NEW JERSEY FAMILY LEAVE ACT**

Federal: (FMLA) P.L. 103-3, 1993

N.J.: P.L., 1989, Chp. 261

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| <ol style="list-style-type: none"> 1. Provides a maximum of 12 weeks of leave without salary within 12 months. 2. All health benefits are maintained, but cannot accrue other benefits while on leave (i.e., seniority, etc.) 3. Covers serious illness to <u>self</u>*, family, childbirth/care, or adoption. 4. Eligible employees must work at least 12 months and 1250 hours during the preceding 12 month period for the same employer. 5. Restrictions for teaching employees (may require leave to continue until end of term under certain circumstances.) 6. Covers employers with more than 50 employees. 7. Intermittent leave available, but employer and employee must agree to schedule. 8. Does not replace disability leaves, but may enhance. 9. May be able to collect state Family Leave of which payments for up to six (6) weeks if leave is not for employee's own disability. | <ol style="list-style-type: none"> 1. Provides 12 weeks of leave without salary within 24 months. 2. All health benefits are maintained. 3. Covers serious illness to family, childbirth/care or adoption. 4. Eligible employees must work at least 12 months and 1000 "base" hours during the preceding 12 month period for the same employer. 5. No special restrictions for teaching employees. 6. Covers all government employers. 7. Intermittent leave detailed in state regulations. 8. Does not replace disability leave, but may enhance. 9. May be able to collect state Family Leave of which payments for up to six (6) weeks if leave is not for employee's own disability. |
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* This act may be used to provide 12 weeks protection for those who do not qualify for permanent disability under the A.D.A.

INSTRUCTIONS FOR REQUESTING CHILDBIRTH RELATED LEAVES OF ABSENCE

There are four (4) phases to this Procedure: (see sample letter)

1. Disability Leave (use of unused sick time – paid by district)

Employee uses all or portion of accumulated sick leave and will receive full compensation for all days so used.

The pivotal point to use in determining the commencement date and termination date for this leave is the “due date of birth.”

Example: Teacher has fifty (50) accumulated sick days. The due date of birth is November 15th. Teacher counts backwards thirty (30) calendar days from this date (11/15) to determine the commencement date for the paid leave portion of the disability leave from the district. Next, the teacher counts forward thirty (30) calendar days beyond and including the due date of November 15 to determine the date for termination of the paid portion of the disability leave from the district.

The total period of disability is determined by the employee and her physician in which case the commencement and termination dates may, due to physical causes, provide for a greater period of time both before and after the birth. However, the “normal” time from for disability is four (4) weeks prior to the birth and four (4) weeks after the birth.

2. Family Leave (according to Chapter 261.P.L. of New Jersey, 1989)

This leave is an unpaid leave of a maximum length of 12 weeks during which the employer must maintain your health benefits. In the case of childbirth, it is used for child-rearing after the employees own disability ends. During this time you may be eligible for state Family Leave payments (similar to unemployment benefits), if the employee gave the employer at least 30 days advance notice of the anticipated date of birth and files a claim with the state within 30 days after the start of the child-rearing leave.

3. Contractual Child-Rearing Leave

This leave takes place immediately after the termination of the statutory family leave of absence and is a period of time wherein the employee continues to be away from her teaching post and does not receive salary or Board-paid health insurance for such absence. This form of leave arises from your local Association’s contract or Board policy.

This portion of the total leave may continue for the full term stipulated in the Contract or may be for such lesser period of time providing that the teacher’s request to return to her post does not interrupt the educational program. Generally, this has been determined to be periods within the academic year which establish “normal” breaks for pupil attendance, i.e., September, January, February and March as feasible, non-interruptive return periods.

**INSTRUCTIONS FOR REQUESTING MATERNITY LEAVE OF ABSENCE –
Cont.**

4. Return to the District

The employee must provide a written statement from her physician verifying physical capability to return to her post. Proper notification of intent to return accompanied by the physician's statement should be forwarded to the Board Secretary, Superintendent, and Principal sixty (60) calendar days prior to the effective return date or as stipulated by the Contract.

SAMPLE LETTER TO REQUEST MATERNITY LEAVE

The following letter should be accompanied by the physician's statement verifying pregnancy and establishing the expected due date of birth.

This letter should be sent to:

- 1. Board Secretary - Optional
- 2. Superintendent - Copy
- 3. Principal - Copy (optional)
- 4. Teacher - Retains copy

The date of forwarding the letter should be no later than sixty (60) days prior to the commencement of the disability leave (if requested) or sixty (60) days prior to the anticipated commencement of the maternity leave when no disability leave is requested.

SAMPLE

Date

Board Secretary
Address

Dear

Mr./Mrs./Ms.:

Enclosed is a statement from my physician verifying pregnancy and stating the approximate due date of birth.

I am requesting a Maternity/Disability Leave of Absence to commence on or about _____. I intend to use _____ days of my accumulated sick days which will establish the date of _____ as terminating my disability leave of absence.

Following the completion of my maternity/disability leave, I wish to be placed on an unpaid leave of absence in accordance with the New Jersey Family Leave Act. This leave will commence on _____ and end on _____. I intend to apply to the State of New Jersey for Family Leave Insurance Benefits for the maximum time period available under that law. I will submit the necessary forms for your completion within the time prescribed by the law. At the end of my statutory family leave, I wish to continue the Child Rearing leave in accordance with our contract beginning on _____. Proper notification verifying my intent to return will be provided.

May I please receive written notification from the Board of Education granting this leave.

Sincerely,

Enclosure (physician's statement)
cc: Superintendent
Building Principal

FAMILY AND MEDICAL LEAVE ACT

Name _____

Position _____

Work Site _____

Date Submitted _____

Under the provisions of the Family and Medical Leave Act of 1993, I hereby notify the _____ Board of Education of my intent to take an unpaid leave of absence pursuant to the Act for the following reasons and length of time: _____
_____ (indicate exact dates here).

Check one of the following reasons:

- _____ The birth of a child
- _____ The adoption of a child
- _____ Serious health condition of a family member
- _____ Serious health condition – self

I have been employed by the _____ Board of Education for at least twelve (12) months prior to the effective date of the leave. I have worked at least 1,250 base hours during that period. I have not received leave under the FMLA totaling twelve (12) weeks within a twelve-month period (including the leave described in this notification).

Signature

Date