

FAMILY AND MEDICAL LEAVE ACT

St. Louis Language Immersion School recognizes that a leave of absence from active employment may be necessary for family or medical reason. The following leave of absence policy complies with the provisions of the Family and Medical Leave Act of 1993 (FMLA), which entitles eligible employees to take up to twelve (12) workweeks of unpaid leave for family and medical reasons (up to 26 workweeks for covered events related to those serving in the Armed Forces). SLLIS will designate an administrator to act as compliance officer for FMLA issues. The compliance officer's name, address, and telephone number will be provided for all employees. SLLIS will regularly evaluate FMLA compliance to ensure fair and equitable opportunities for all eligible employees.

Section 1 Definitions

Section 1.1 *Armed Forces* – Army, Navy, Air Force, Marine Corps and Coast Guard, including the National Guard and Reserves.

Section 1.2 *Child* – A biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person acting as a parent if the child is under 18 or 18 or over but incapable of self-care due to mental or physical disability at the time that FMLA leave is to commence. For the qualifying exigency leave and military caregiver leave only, the age of the child does not matter.

Section 1.3 *Covered Active Duty* – In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country. In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in accordance with law.

Section 1.4 *Covered Servicemember* – The employee's spouse, child, parent or next of kin who is 1) a current member of the 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 2) a covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness.

Section 1.5 *Covered Veteran* – an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) and was discharged or released under conditions other than dishonorable at any time during the five-year period preceding the date the

eligible employee takes FMLA leave to care for the veteran. For veterans discharged or released prior to March 8, 2013, the period between October 28, 2009, and March 8, 2013, does not count toward the determination of the five-year period mentioned above.

Section 1.6 *Instructional Employee* – Employee whose principal function is to teach and instruct students in a class, a small group or an individual setting. This term includes athletic coaches, driving instructors and special education assistants (e.g., signers for the hearing impaired). It does not include teachers’ 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.

Section 1.7 *Military Caregiver Leave* – Leave taken to care for a covered servicemember with a serious injury or illness under the Family and Medical Leave Act of 1993.

Section 1.8 *Next of Kin* – For the purposes of military caregiver leave, the nearest blood relative other than a spouse, parent, son or daughter, in order of priority as established by 29 C.F.R. § 825.127.

Section 1.9 *Outpatient Status* – Covered servicemember assigned to a military medical treatment facility or a unit established for the purpose of providing command and control of members of the Armed Forces as outpatients.

Section 1.10 *Parent* – The biological, adoptive, stepparent or foster parent of a “child” as defined in Section 1.3 of this policy.

Section 1.11 *Qualifying Exigency* – Issues that arise due to covered active duty or a call to covered active duty of an employee’s spouse, child or parent, including issues involved with short-notice deployment, military events and related activities, childcare and school activities, the need for financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, parental care, and other activities as defined by 29 C.F.R. § 825.126.

Section 1.12 *Serious Health Condition* – Illness, injury, impairment or physical or mental condition that involves inpatient care at a hospital, hospice or residential medical facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing treatment by a healthcare provider.

Section 1.13 *Serious Illness or Injury (for military caregiver leave)* –

- (a) In the case of a current member of the Armed Forces, an injury or illness incurred in the line of duty on active duty in the Armed Forces (including the National Guard or Reserves) or that existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty, that may render the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank or rating; and
- (b) In the case of a veteran, an injury or illness that meets one or more of the standards listed in 29 C.F.R. § 825.127 and that was incurred in the line of duty on active duty in the Armed Forces, or that existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty, and that manifested itself before or after the servicemember became a veteran.

Section 1.14 *Spouse* – Husband or wife, which 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 still 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 marriage.

Section 2 **Eligible Employees**

Section 2.1 Employees eligible for family and medical leave must:

- (a) Have been employed for a total of at least twelve (12) months (not necessarily consecutive); and
- (b) Have worked at least 1,250 hours during the twelve (12) months immediately preceding the commencement of the leave; and
- (c) Be employed at a work-site where the employer employs at least fifty (50) employees within a 75-mile radius.

All periods of absence from work due to or necessitated by USERRA-covered services is counted in determining the employee's eligibility for FMLA leave.

Section 2.2 For a list of reasons for which all eligible employees qualify for FMLA leave, please reference Section 5.3.

Section 3 Notice to Employees

Section 3.1 *General Notice.* SLLIS will post notice to employees explaining FMLA benefits in accordance with law. SLLIS will also include FMLA notice in an employee handbook or other written guidance to employees concerning employee benefits or leave rights or will distribute a copy of the general notice to each new employee upon hiring. Notice may be provided electronically in accordance with law.

Section 3.2 *Eligibility and Rights and Responsibilities Notices.* Absent extenuating circumstances, SLLIS will provide the employee notice of the employee's eligibility to take FMLA leave and the rights and responsibilities of the employee within five (5) business days of the request for leave or acquiring knowledge that an employee's leave may be for an FMLA-qualifying reason. Such notice will be provided at the beginning of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. Additional notice is not required in the same 12-month period unless leave is taken for a different qualifying reason or the employee's eligibility status has changed.

Section 3.3 *Designation Notice.* As noted above, once SLLIS has received enough information to determine whether the employee's leave will be counted as FMLA leave, SLLIS will provide written notice to the employee within five (5) business days, absent extenuating circumstances, regarding its decision. SLLIS will notify the employee if a fitness-for-duty certification will be required before returning to work and, if required, include a list of the essential functions of the employee's position with SLLIS. SLLIS will notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA leave entitlement, if known. SLLIS may designate leave as FMLA leave retroactively if the retroactive designation will not cause harm or injury to the employee.

Section 4 Notice to Employer

Section 4.1 *Employee Notice to SLLIS.* An employee must notify SLLIS of the need for leave and explain the reason for the leave so SLLIS can determine whether the leave qualifies for FMLA. Employees are responsible for ensuring SLLIS receives complete and accurate documentation to support requested leaves.

When the employee's leave is foreseeable, the employee must provide notice to the President or designee of the reasons for the leave, the anticipated duration of the leave, and the anticipated start of the leave. Notice must be provided thirty (30) days in advance of the need to take FMLA leave when the need for leave is foreseeable. When 30 days' notice is not realistic, the employee

must provide notice to SLLIS as soon as practicable and must explain upon request why 30 days' notice was not possible. If an employee fails to provide the required notice, SLLIS may delay or deny the FMLA-protected leave.

If the leave is for a qualifying exigency, an employee must provide notice as soon as practicable, regardless of how far in advance the leave is foreseeable.

For purposes of this section, "as soon as practicable" means as soon as both possible and practical under all the facts and circumstances of the employee's individual case.

Section 4.2 *Unforeseeable Need for Leave.* When the need for leave is not foreseeable, an employee must provide notice to SLLIS as soon as practicable under the facts and circumstances of the particular case. The employee or the employee's spokesperson, if necessary, shall provide sufficient information for SLLIS to reasonably determine whether the requested leave qualifies under the FMLA.

Section 5 Leave Use

Section 5.1 For all FMLA purposes except military caregiver leave, SLLIS adopts a 12-month leave year beginning on July 1 and ending the following June 30.

Section 5.2 The FMLA leave year for military caregiver leave begins on the first day that such leave is taken and runs for the following twelve (12) months. All eligible employees are entitled to military caregiver leave for a period not to exceed 26 workweeks of leave per single servicemember. Twenty-six weeks of leave are available per covered servicemember, per injury/illness. However, no more than 26 weeks of leave may be used during each single 12-month period.

Section 5.3 An eligible employee may take unpaid leave for a period not to exceed twelve (12) workweeks for the following reasons:

- (a) The birth of the employee's child (leave must be concluded within one year of the date of the birth);
- (b) The placement of a child with the employee for adoption, or foster care when foster placement is pursuant to State action (leave must be concluded within one year of the date of placement);

- (c) The serious health condition of the employee that makes the employee unable to perform the essential functions of the employee's position, or the serious health condition of the employee's spouse, child, or parent;
- (d) The care of a spouse, child, parent, or next of kin who is a covered servicemember (including some veterans) with a serious illness or injury (military caregiver leave); or
- (e) A qualifying exigency arising out of the fact that the spouse, child or parent of the employee is on covered active duty, or has been notified of an impending call or order to covered active duty, in the Armed Forces.

Section 5.4 An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during a single 12-month period, provided that the employee is entitled to no more than 12 workweeks of leave for one or more of the following: the birth of the employee's child or to care for such child; the placement of a child with the employee for adoption or foster care; in order to care for the employee's spouse, son, daughter or parent with a serious health condition; for the employee's own serious health condition; or because of a qualifying exigency. For example, an employee could take 16 weeks of military caregiver leave and still have ten weeks available for the birth of a child. However, an employee who used ten weeks of military caregiver leave could not take 14 weeks for the birth of a child because that exceeds the 12 weeks allowed for such leave. Leave that qualifies as both military caregiver leave and leave for the serious health condition of a parent, spouse or child will be designated first as military caregiver leave.

Section 5.5 When both spouses are employed by SLLIS and eligible for FMLA leave, the leave will be limited to an aggregate total of 12 workweeks during a 12-month period in cases where the leave is taken for the birth or first-year care of the employees' child, adoption or foster placement of a child with the employees, or to care for a parent with a serious health condition. However, where both spouses use a portion of the total 12-week FMLA leave entitlement for the same qualifying event, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for another qualifying purpose. When both spouses are employed by SLLIS and use military caregiver leave or a combination of military caregiver leave and leave for the birth or first-year care of their child, adoption or foster placement of a child with the employees, or to care for a parent with a serious health condition, both employees will be limited to an aggregate total of 26 workweeks of leave.

Section 5.6 SLLIS shall apply all appropriate paid leave to an FMLA absence to the extent allowed by law and policy, giving proper notice to the employee. If an employee's accrued paid leave is exhausted, but an FMLA-qualifying reason for absence persists or a new FMLA-qualifying

reason for absence occurs, the resulting absences will continue to be protected FMLA leave until allowable FMLA leave has been used, but such absences will be unpaid.

Section 5.7 When an employee has an absence that meets the criteria to be an FMLA-qualified absence, SLLIS will designate such absence as part of the employee's total annual FMLA entitlement, even if the employee has not requested FMLA leave and/or is absent under paid or unpaid leave in accordance with law or SLLIS policy. If an employee is on a Workers' Compensation absence due to an injury or illness that would also qualify as a serious health condition under the FMLA, the same absence will also be designated as an FMLA-qualifying absence and charged against the employee's FMLA-protected time entitlement.

Section 5.8 FMLA leave may be taken intermittently as required for the health of the employee or family member or, under certain circumstances, as reduced-schedule leave. Instructional employees may take intermittent or reduced-schedule leave to be with a healthy newborn only when SLLIS and the employee have reached agreement for how the leave will be used.

Section 5.9 SLLIS reserves the right to require adequate certification and recertification of any FMLA-qualifying event or condition of the employee or employee's spouse, child, parent or next of kin and authentication or clarification of such certification as SLLIS deems necessary. Failure to provide such certification when requested will result in denial of the leave, and may result in discipline or termination of employment. Employees on FMLA-designated leave must periodically report on their status and intent to return to work. SLLIS may also require that an employee present a certification of fitness to return to work.

Section 5.10 SLLIS reserves the right to require that the employee receive a second (and possibly third) opinion from another healthcare provider (at SLLIS expense) certifying the serious health condition of the employee or employee's family member.

Section 5.11 The President or designee may contact applicable healthcare providers regarding health conditions resulting in requested leaves.

Section 5.12 Use of FMLA leave will coordinate with other Board policies and procedures governing leave time. Once FMLA leave has been exhausted, any continuing leave time will be governed by the provisions of other applicable SLLIS leave policy or procedure.

Section 6 Instructional Employees

Section 6.1 SLLIS believes that students benefit most from consistency in the classroom. Accordingly, if an instructional employee requests intermittent leave or reduced-schedule leave due to medical reasons and the requested leave equals more than twenty (20) percent of instructional

time, SLLIS may require the instructional employee to take block leave or to find an alternate placement for the period of planned medical treatment.

Section 6.2 When an instructional employee on FMLA leave is scheduled to return close to the end of a school term, SLLIS may elect to use a special rule to prolong the employee's leave until the beginning of the next school term. Under such circumstances, the extended leave time is unpaid and is not charged against the employee's annual FMLA entitlement. The President may apply such special rules or general FMLA rules in his or her discretion as best serves the SLLIS school community.

Section 7 Leave Protections

Section 7.1 Use of FMLA leave by employees cannot result in the loss of any employment benefit that accrued prior to the start of the employee's leave.

Section 7.2 Eligible employees are entitled to continued participation in SLLIS's health plan as long as they are entitled to FMLA leave protection. If any employee fails to return to work after the expiration of his or her allowed leave time, the employee will be expected to reimburse SLLIS for those benefits paid, as required by law.

Section 7.3 Generally, eligible employees who take leave for an FMLA-qualifying reason may return to the same position or an equivalent position with the same pay, benefits and working conditions at the conclusion of the leave, in accordance with the law. It is within SLLIS's discretion to make placement decisions as necessary to ensure consistency of instruction.

Section 7.4 Under FMLA, it is unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided under the FMLA. Additionally, it is unlawful for an employer to discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

Section 8 Recordkeeping

Section 8.1 The President or designee will ensure that personnel records regarding FMLA eligibility and leave are maintained in accordance with law and available for inspection, copying and transcription by representatives of the U.S. Department of Labor upon request.

Section 9 Enforcement

Section 9.1 The U.S. Department of Labor is authorized to investigate and resolve complaints of violation of the FMLA. An eligible employee may bring a civil action against an employer for

violations. For additional information, contact the nearest office of the U.S. Department of Labor's Wage and Hour Division.

Approved:

May 19, 2017