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Yinghua Academy Policy 410

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## **410 FAMILY AND MEDICAL LEAVE POLICY**

### **I. PURPOSE**

The purpose of this policy is to provide for family and medical leave to employees in accordance with the Family and Medical Leave Act of 1993 (FMLA) and also with parenting leave under state law.

### **II. GENERAL STATEMENT OF POLICY**

The following procedures and policies regarding family and medical leave are adopted by Yinghua Academy, pursuant to the requirements of the FMLA and consistent with the requirements of the Minnesota parenting leave laws.

### **III. DEFINITIONS**

#### **A. “Covered active duty” means:**

1. 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; and
2. 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 under a provision of law referred to in 10 U.S.C. § 101(a)(13)(B).

#### **B. “Covered service member” means:**

1. a 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 and 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 for any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

- C. “Eligible employee” means an employee who has been employed by Yinghua Academy for a total of at least 12 months and who has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave. An employee returning from fulfilling his or her Uniformed Services Employment and Reemployment Rights Act (USERRA)-covered service obligation shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service. In determining whether the employee met the hours of service requirement, and to determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee’s pre-service work schedule can generally be used for calculations. While the 12 months of employment need not be consecutive, employment periods prior to a break in service of seven years or more may not be counted unless the break is occasioned by the employee’s fulfillment of his or her USERRA-covered service obligation or a written agreement, including a collective bargaining agreement, exists concerning Yinghua Academy’s intention to rehire the employee after the break in service.
- D. “Military caregiver leave” means leave taken to care for a covered service member with a serious injury or illness.
- E. “Next of kin of a covered service member” means the nearest blood relative other than the covered service member’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member’s next of kin, and the employee may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member’s only next of kin.
- F. “Outpatient status” means, with respect to a covered service member who is a current member of the Armed Forces, the status of a member of the Armed Forces assigned to:
1. a military medical treatment facility as an outpatient; or
  2. a unit established for the purpose of providing command and control of members of the Armed Forces receiving care as outpatients.

- G. “Qualifying exigency” means a situation where the eligible employee seeks leave for one or more of the following reasons:
1. to address any issues that arise from a short-notice deployment (seven calendar days or less) of a covered military member;
  2. to attend military events and related activities of a covered military member;
  3. to address issues related to childcare and school activities of a covered military member’s child;
  4. to address financial and legal arrangements for a covered military member;
  5. to attend counseling provided by someone other than a health care provider for oneself, a covered military member, or his/her child;
  6. to spend up to fifteen calendar days with a covered military member who is on short-term, temporary rest and recuperation leave during a period of deployment;
  7. to address care needs of a covered military member’s parent who is incapable of self-care;
  8. to attend post-deployment activities related to a covered military member; and
  9. to address other events related to a covered military member that both the employee and school district agree is a qualifying exigency.
- H. “Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves:
1. inpatient care in a hospital, hospice, or residential medical care facility; or
  2. continuing treatment by a health care provider.
- I. “Spouse” means a 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.
- J. “Veteran” has the meaning given in 38 U.S.C. § 101.

## IV. LEAVE ENTITLEMENT

### A. Twelve-week Leave Under Federal Law

1. Eligible employees are entitled to a total of 12 work weeks of unpaid family or medical leave during the applicable 12-month period as defined below, plus any additional leave as required by law. Leave may be taken for one or more of the following reasons in accordance with applicable law:
  - a. birth of the employee's child and to care for such child;
  - b. placement of an adopted or foster child with the employee;
  - c. to care for the employee's spouse, son, daughter, or parent with a serious health condition;
  - d. the employee's serious health condition makes the employee unable to perform the functions of the employee's job; and/or
  - e. any qualifying exigency arising from the employee's spouse, son, daughter, or parent being on covered active duty, or notified of an impending call or order to covered active duty in the Armed Forces.
2. For the purposes of this policy, "year" is defined as a rolling 12-month period measured backward from the date an employee's leave is to commence.
3. An employee's entitlement to FMLA leave for the birth, adoption, or foster care of a child expires at the end of the 12-month period beginning on the date of the birth or placement.
4. A "serious health condition" typically requires either inpatient care or continuing treatment by or under the supervision of a health care provider, as defined by applicable law. Family and medical leave generally is not intended to cover short-term conditions for which treatment and recovery are very brief.
5. A "serious injury or illness," in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means:
  - a. injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

- b. a “serious injury or illness,” in the case of a veteran 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 the medical treatment, recuperation, or therapy, means a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty in the Armed Forces) and that manifested itself before or after the member became a veteran.
- 6. Eligible spouses employed by Yinghua Academy are limited to an aggregate of 12 weeks of leave during any 12-month period for the birth and care of a newborn child or adoption of a child, the placement of a child for foster care, or to care for a parent. This limitation for spouses employed by Yinghua Academy does not apply to leave taken: by one spouse to care for the other spouse who is seriously ill; to care for a child with a serious health condition; because of the employee’s own serious health condition; or pursuant to Paragraph IV.A.1.e. above.
  - 7. Depending on the type of leave, intermittent or reduced schedule leave may be granted in the discretion of Yinghua Academy or when medically necessary. Yinghua Academy administration has the right to transfer or reassign temporarily, an employee on intermittent leave to an alternative position for which the employee is qualified and which better accommodates periods of leave than the employee’s regular position.

The “alternative” position must have equivalent pay and benefits but does not have to have equivalent duties. Yinghua Academy cannot transfer an employee to an alternative position to discourage the employee from taking leave.

An employee returning to full time work shall be placed in the same or equivalent position as before the leave commenced.

Part-time employees are only eligible for a pro-rata portion of leave to be used on an intermittent or reduced schedule basis, based on their average hours worked per week.

- 8. If an employee requests a leave for the serious health condition of the employee or the employee’s spouse, child, or parent, the employee will be required to submit sufficient medical certification. In such a case, the employee must submit the medical certification within 15 days from the date of the request or as soon as practicable under the circumstances.
- 9. If Yinghua Academy has reason to doubt the validity of a health care provider’s certification, it may require a second opinion at Yinghua Academy’s expense. If the opinions of the first and second health care

providers differ, Yinghua Academy may require certification from a third health care provider at Yinghua Academy's expense. An employee may also be required to present a certification from a health care provider indicating that the employee is able to return to work.

10. Requests for leave shall be made to Yinghua Academy. When leave relates to an employee's spouse, son, daughter, parent, or covered service member being on covered active duty, or notified of an impending call or order to covered active duty pursuant to Paragraph IV.A.1.e. above, and such leave is foreseeable, the employee shall provide reasonable and practical notice to Yinghua Academy of the need for leave. For all other leaves, employees must give 30 days' written notice of a leave of absence where practicable. The failure to provide the required notice may result in a delay of the requested leave. Employees are expected to make a reasonable effort to schedule leaves resulting from planned medical treatment so as not to disrupt unduly the operations of Yinghua Academy, subject to and in coordination with the health care provider.
11. Yinghua Academy may require that a request for leave under Paragraph IV.A.1.e. above be supported by a copy of the covered military member's active duty orders or other documentation issued by the military indicating active duty or a call to active duty status and the dates of active duty service. In addition, Yinghua Academy may require the employee to provide sufficient certification supporting the qualifying exigency for which leave is requested.
12. During the period of a leave permitted under this policy, Yinghua Academy will provide health insurance under its group health plan under the same conditions coverage would have been provided had the employee not taken the leave. The employee will be responsible for payment of the employee contribution to continue group health insurance coverage during the leave. An employee's failure to make necessary and timely contributions may result in termination of coverage. An employee who does not return to work after the leave may be required, in some situations, to reimburse Yinghua Academy for the cost of the health plan premiums paid by it.
13. Yinghua Academy may request or require the employee to substitute accrued paid leave for any part of the 12-week period. Employees may be allowed to substitute paid leave for unpaid leave by meeting the requirements set out in the administrative directives and guidelines established for the implementation of this policy, if any. Employees eligible for leave must comply with the family and medical leave directives and guidelines prior to starting leave. The Executive Director shall be responsible to develop directives and guidelines as necessary to implement this policy. Such directives and guidelines shall be submitted to the school board for annual review.

Yinghua Academy shall comply with written notice requirements as set

forth in federal regulations; including designation of FMLA. Additionally, Yinghua Academy may request the employee provide periodic status updates regarding their intent-to-return to work.

14. Employees returning from a leave permitted under this policy are eligible for reinstatement in the same or an equivalent position as provided by law. However, the employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave.

B. Twelve-week Leave Under State Law

1. An employee who does not qualify for parenting leave under Paragraphs IV.A.1.a. or IV.A.1.b. above may qualify for a twelve-week unpaid leave which is available to a biological or adoptive parent in conjunction with the birth or adoption of a child, or to a female employee for prenatal care or incapacity due to pregnancy, childbirth, or related health conditions. The length of the leave shall be determined by the employee but must not exceed 12 weeks unless agreed by the school. The employee may qualify if he or she has worked for Yinghua Academy for at least 12 months and has worked an average number of hours per week equal to one-half of the full time equivalent during the 12-month period immediately preceding the leave. This leave is separate and exclusive of the family and medical leave described in the preceding paragraphs but may be reduced by any period of paid parental, disability, personal, or medical, or sick leave, or accrued vacation provided by the employer so that the total leave does not exceed 12 weeks, unless agreed by the school, or leave taken for the same purpose under the FMLA. The leave taken under this section shall begin at a time requested by the employee. An employee who plans to take leave under this section must give the school reasonable notice of the date the leave shall commence and the estimated duration of the leave. For leave taken by a biological or adoptive parent in conjunction with the birth or adoption of a child, the leave must begin within 12 months of the birth or adoption; except that, in the case where the child must remain in the hospital longer than the mother, the leave must begin within 12 months after the child leaves the hospital.

C. Twenty-six-week Service Member Family Military Leave

1. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 work weeks of leave during a 12-month period to care for the service member. The leave described in this paragraph shall be available only during a single 12-month period. For purposes of this leave, the need to care for a service member includes both physical and psychological care.
2. During a single 12-month period, an employee shall be entitled to a

combined total of 26 work weeks of leave under Paragraphs IV.A. and IV.C. above.

3. The 12-month period referred to in this section begins on the first day the eligible employee takes leave to care for a covered service member and ends 12 months after that date.
4. Eligible spouses employed by Yinghua Academy are limited to an aggregate of 26 weeks of leave during any 12-month period if leave is taken for birth of the employee's child or to care for the child after birth; for placement of a child with the employee for adoption or foster care or to care for the child after placement; to care for the employee's parent with a serious health condition; or to care for a covered service member with a serious injury or illness.
5. Yinghua Academy may request or require the employee to substitute accrued paid leave for any part of the 26-week period. Employees may be allowed to substitute paid leave for unpaid leave by meeting the requirements set out in the administrative directives and guidelines established for the implementation of this policy, if any. Employees eligible for leave must comply with the family and medical leave directives and guidelines prior to starting leave.
6. An employee will be required to submit sufficient medical certification issued by the health care provider of the covered service member and other information in support of requested leave and eligibility for such leave under this section within 15 days from the date of the request or as soon as practicable under the circumstances.
7. The provisions of Paragraphs IV.A.7., IV.A.10., IV.A.12., IV.A.13., and IV.A.14. above shall apply to leaves under this section.

## **V. SPECIAL RULES FOR INSTRUCTIONAL EMPLOYEES**

- A. An instructional employee is one whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This includes, but is not limited to, teachers, coaches, driver's education instructors, and special education assistants.
- B. Instructional employees who request foreseeable medically necessary intermittent or reduced work schedule leave greater than 20 percent of the work days in the leave period may be required to:
  1. take leave for the entire period or periods of the planned medical treatment; or
  2. move to an available alternative position for which the employee is qualified, and which provides equivalent pay and benefits, but not



necessarily equivalent duties.

- C. Instructional employees who request continuous leave near the end of a term may be required to extend the leave through the end of the term. The number of weeks remaining before the end of a term does not include scheduled school breaks, such as summer, winter, or spring break.
1. If an instructional employee begins leave for any purpose more than five weeks before the end of a term and it is likely the leave will last at least three weeks, Yinghua Academy may require that the leave be continued until the end of the term.
  2. If the instructional employee begins leave for a purpose other than the employee's own serious health condition during the last five weeks of a term, Yinghua Academy may require that the leave be continued until the end of the term if the leave will last more than two weeks or if the employee's return from leave would occur during the last two weeks of the term.
  3. If the instructional employee begins leave for a purpose other than the employee's own serious health condition during the last three weeks of the term and the leave will last more than five working days, school district may require the employee to continue taking leave until the end of the term.
  4. If the school requires an instructional employee to extend leave through the end of a semester as set forth in this paragraph, 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. Any additional leave required by the school district to the end of the school term is not counted as FMLA leave but as an unpaid or paid leave, to the extent the instructional employee has accrued paid leave available and the school shall 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.
- D. The entire period of leave taken under the special rules will be counted as leave. Yinghua Academy will continue to fulfill Yinghua Academy's leave responsibilities and obligations, including the obligation to continue the employee's health insurance and other benefits, if an instructional employee's leave entitlement ends before the involuntary leave period expires.

## **VI. RECORDKEEPING REQUIREMENTS**

FMLA provides that covered employers shall make, keep, and preserve records pertaining to their obligations under the Act in accordance with the recordkeeping requirements of Section II (c) of the Fair Labor Standards Act and in accordance with these regulations.

Yinghua Academy shall maintain the following records:

1. basic payroll & personnel records
2. dates of FMLA leave taken
3. copies of employee notices for leave
4. documents describing employee benefits

5. certifications/re-certifications or medical histories

Documentation containing medical history information must be maintained separate from personnel files and in accordance with Title II of GINA (Genetic Information Nondiscrimination Act of 2008).

If ADA (Americans with Disability Act) as amended is applicable, such records shall be maintained in conformance with ADA confidentiality requirements, except in cases where

supervisors are informed regarding necessary restrictions on work duties. **OTHER**

- A. The provisions of this policy are intended to comply with applicable law, including the FMLA and applicable regulations. Any terms used from the FMLA will have the same meaning as defined by the FMLA and/or applicable regulations. To the extent that this policy is ambiguous or contradicts applicable law, the language of the applicable law will prevail.
- B. Yinghua Academy 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, Yinghua Academy must provide reason for the ineligibility.
- C. Yinghua Academy must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If Yinghua Academy determines that the leave is not FMLA-protected, the employee will be notified.

## **VII. DISSEMINATION OF POLICY**

- A. A poster prepared by the U.S. Department of Labor summarizing the major provisions of the Family and Medical Leave Act and informing employees how to file a complaint shall be conspicuously posted in each school district building in areas accessible to employees and applicants for employment.
- B. This policy will be reviewed at least annually for compliance with state and federal law.

**Legal References:** Minn. Stat. §§ 181.940-181.944 (Parenting Leave and Accommodations)  
10 U.S.C. § 101 *et seq.* (Armed Forces General Military Law)  
29 U.S.C. § 2601 *et seq.* (Family and Medical Leave Act)  
29 U.S.C. § 2619 (FMLA section 109)  
38 U.S.C. § 101 (Definitions)  
29 C.F.R. Part 825 (Family and Medical Leave Act)  
29 C.F.R Part 825.300(a), 825.312, & 825.500 (FMLA revised February 2013)

**Cross References:** MSBA Service Manual, Chapter 13, School Law Bulletin "M" (Statutory Provisions Which Grant Leaves to Licensed as well as Non-Licensed School District Employees – Family and Medical Leave Act Summary)

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