

LEAVE OF ABSENCES

INFORMATION AND FORMS

The Black Horse Pike Regional School District provides eligible employees who need to be out of work for more than 5 work days, a leave of absence in accordance with the provisions of the Federal Family and Medical Leave Act of 1993 (FMLA) and/or the New Jersey Family Act (NJFLA) as well as certain Personal Leave as defined in the District's Collective Bargaining Unit Agreements.

Types of Leaves

Federal Family and Medical Leave (FMLA)

Reasons for Leave:

- Employee's serious health condition
- Serious health condition of the employee's spouse, child or parent
- Birth of employee's child, or the placement of a child with employee for adoption or foster care
- To care for a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty, or qualifying exigency

The FMLA provides up to twelve weeks of Leave in a 12-month period.

To be eligible for leave under the FMLA, an employee must have been employed by the Black Horse Pike Regional School District for at least twelve (12) months, and have worked at least 1,250 hours during the 12 months immediately preceding the commencement of the leave.

All periods of time when the employee was on the payroll, including casual and temporary employment, count toward determining whether the employee has been employed for at least 12 months. Only periods of actual work time count toward the determination of whether the employee has worked at least 1,250 hours during the preceding 12 months. Periods of paid or unpaid leave, holidays, etc. which are not work time for purposes of the Fair Labor and Standards Act are excluded.

An employee taking FMLA leave for his/her own serious health condition or to care for a seriously ill spouse, child or parent may take leave on an intermittent basis, or by reducing his/her scheduled work hours. The employee must provide certification from the health care provider caring for the employee and/or family member that leave must be taken in that manner. Intermittent Leave will be taken in increments of half or full days.

If an employee requests intermittent or reduced leave status, the Board has the right to temporarily transfer the employee to another position of equivalent pay and benefits in order to better accommodate the employee's leave.

Health benefits will continue during an approved FMLA leave for an **employee's own health serious health condition** for up to one year (up to 2 years, if the Board approves it) from the date the leave commenced, per the BHPEA contract. However, the employee will still be required to make his/her usual contributions toward their health benefits.

New Jersey Family Leave Act (NJFLA) *

Reasons for Leave:

- To care for an employee's newborn, within 12 months of birth
- To care for an employee's newly adopted child, within 12 months of placement
- To care for an employee's family member with a serious health condition

An employee's own serious health condition is not eligible under NJFLA.

The NJFLA provides for up to 12 weeks of leave in a 24-month period. The 24-month period begins on the first day of the employee's first NJFLA leave.

To be eligible for leave under the NJFLA, an employee must be employed in New Jersey by a covered employer. The employee must have been employed for at least twelve (12) months for the employer and must have worked 1,000 base hours in the preceding twelve (12) months.

Like the NJFLA, Federal Family and Medical Leave Act (FMLA) also provides time off from work in connection with the birth or adoption of a child or the serious illness of a parent, child or spouse. When an employee takes leave for a purpose covered by both the FMLA and the NJFLA, the leaves run **concurrently**, and counts against the employee's entitlement under both laws.

The FMLA provides time off from work due to an employee's own disability, while the NJFLA does not. Thus, even though an employee may utilize all of his/her allotted time under the FMLA due to his/her disability, the employee may subsequently be entitled to time off under the NJFLA in connection with the birth or adoption of a child or the serious illness of a parent, child or spouse.

Health benefits will continue during leave under NJFLA, as long as the employee continues to make his/her contributions.

***Update, April, 2020**

Governor Phil Murphy signed legislation expanding the protections of the New Jersey Family Leave Act. In addition to the reasons for leave already in place, the new legislation now permits 12 weeks of unpaid leave in a 24-month period so that the employee may provide care made necessary due to a state of emergency declared by the Governor, an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of a communicable disease (such as the case of COVID-19), which:

(a) requires in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee, by order of a public official due to the epidemic or other public health emergency;

(b) prompts the issuance by a public health authority of a determination, including by mandatory quarantine, requiring or imposing responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable disease or known or suspected exposure to the communicable disease because the presence in the community of a family member in need of care by the employee, would jeopardize the health of others; or

(c) results in the recommendation of a health care provider or public health authority, that a family member in need of care by the employee voluntarily undergo self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that family member in need of care by the employee, would jeopardize the health of others.

Previously, employees were only entitled to take leave under the New Jersey Family Leave Act to provide care for the birth of a child of the employee, the placement of a child into foster care with the employee or in connection with adoption of such child by the employee or for the serious health condition of a family member of the employee. This legislation now expands these three reasons to include those as outlined above. This does not change the leave provisions as outlined under the federal Family First Coronavirus Response Act. It is simply an expansion of the permitted reasons for leave under New Jersey Family Leave Act.

New Jersey Family Leave Insurance (FLI)

This leave applies to nearly all private and public employers and may be used by an employee to:

- Care for a newborn, within 12 months of birth
- Care for a newly adopted child, within 12 months of placement
- Care for a family member with a serious health condition

Employees are not eligible for FLI for his/her own serious health condition.

FLI provides employees with up to six (6) weeks of partial wage replacement every year, through the State of New Jersey, to care for a newborn or adopted child or a seriously ill family member.

Beginning July 1, 2020. The law will allow up to twelve (12) weeks of continuous family leave or fifty-six (56) days of intermittent leave. For January 1-June 30, 2020, claimants are paid two-thirds (2/3) of their average weekly wage, up to a maximum, \$667 per week. **As of July 1, 2020, claimants are paid 85% of their average weekly wage, and the maximum weekly benefit increases to \$881 per week.** Maximums may be adjusted yearly.

To be eligible for FLI benefits, you must have been employed with a New Jersey covered employer and earn a certain amount of wages. Visit this link to see how your eligibility and benefits are calculated: <https://myleavebenefits.nj.gov/labor/myleavebenefits>

The 'Base Year' period is the 52 weeks immediately before the week in which your family leave began. Only New Jersey covered wages during the base year period can be used to establish a valid claim.

Employees taking family leave and receiving FLI benefits in connection with a family member's 'serious health condition' may take the leave intermittently or consecutively. The law defines intermittent leave as 42 separate days of leave. **Beginning July 1, 2020. The law will allow up to twelve (12) weeks of continuous family leave or fifty-six (56) days of intermittent leave.** For example, an employee that works five days a week would receive a maximum of 30 days of FLI benefits if he/she took the leave consecutively. The same employee would receive 42 days of FLI benefits if the employee took the leave intermittently. While the law does not define the time increments for intermittent FLI benefits, the legislative history suggests that it can only be taken in full-day increments.

An employee seeking to take intermittent leave, receiving FLI benefits, for a family member's serious health condition is required to provide employers 15 days' notice unless: 1) an emergency or other unforeseen circumstance precludes prior notice; and 2) the employee makes a reasonable attempt to schedule the leave in a non-disruptive manner. Additionally, the employee may provide the employer with a regular schedule of days for intermittent leave.

If any employee requests intermittent or reduced leave status, the Board may temporarily transfer the employee to another position of equivalent pay and benefits in order to better accommodate the employee's leave.

Family Leave Insurance does not have any waiting period restrictions built into it. Benefits are issued for each family leave day claimed, immediately after they are approved.

Eligibility to receive FLI benefits is determined by the State of New Jersey.

FLI paid leave runs concurrently with the applicable State and Federal leave.

GENERAL PROVISIONS

An employee may opt to use all accrued sick and personal time prior to requesting the FMLA/NJFLA benefit. Otherwise, medical leaves approved by the Black Horse Pike Regional School District will run concurrently with FMLA/NJFLA leaves.

Use of Personal Time

If an employee is on a leave because of the employee's own serious health condition, the employee may opt to use any accrued sick leave for the period of his/her medical disability. Once an employee's accrued sick time has been exhausted, the employee may opt to use any remaining accrued paid leave time, such as vacation or personal time, until it is exhausted. Once accrued paid leave time is exhausted, the balance of the leave shall fall under the FMLA/NJFLA, all applicable paperwork must be completed, and the family/medical leave shall be unpaid.

Medical Disputes on Eligibility

If there is a dispute about the medical opinion provided by the employee's physician, the Board may require a second opinion by a physician of its choice at its expense. If a third opinion is necessary, a third physician may be selected, also at the Board's expense. This Physician must be agreed upon by both the employee and the Board and may not be employed on a regular basis by the Board.

Special Provisions for Instructional Employees

Leave taken for a period that ends with the school year and begins that 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 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.

However, 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% of the total number of working days over the period the leave would extend, the employer may require the employee to choose either to:

- Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- 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.

Example: If an instructional employee who normally works five days per week needs to take two days of FMLA leave per week over a period of several weeks, the above rules apply. Employees taking leave which constitutes 20% or more of the working days during the leave period would be subject to transfer to an alternative position.

If 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:

- The leave will last more than two weeks; and
- The employee would return to work during the two-week period before the end of the term.

If an instructional employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of the 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.

Choice of Leave Year

The Black Horse Pike Regional School District uses the rolling 12-month period to calculate leave eligibility under FMLA/NJFLA. In other words, in calculating eligibility for leave, the Board will count back 12 months from the proposed commencement date of leave to determine how many weeks may be available to the employee under FMLA/NJFLA.

Coordination of Paid and Unpaid Leave

If an employee is on leave because of the employee's own serious health condition, the employee may opt to use any accrued sick leave for the period of his/her medical disability. Once an employee's accrued sick time has been exhausted the employee may opt to use any remaining accrued paid leave time, such as vacation or personal time, until it is exhausted. Once applicable accrued paid leave time is exhausted, the employee's leave will fall under the FMLA/NJFLA, all applicable paperwork must be completed, and the balance of family/medical leave shall be unpaid.

Provisions for Covered Service Member Families

Employees who are eligible for leave under FMLA may be entitled to:

- Twelve (12) weeks of unpaid leave during any 12-month period for any qualifying exigency for the spouse, child, or parent of a family member who is on active duty or is notified of an impending call or order to active duty in the Armed Forces (including the Reserves and National Guard); and
- Twenty-six (26) weeks of unpaid leave during one 12-month period for the covered spouse, child, parent or next of kin of an Armed Forces member who is undergoing medical treatment, recuperation or therapy, is on out-patient status, or is on the temporary disabled retired list for a serious injury or illness.

Any absences under these provisions will count toward the employee's FMLA eligibility.

Both Spouses Working for the BOE

Spouses who are eligible for FMLA/NJFLA leave and are employed by the BOE are limited to a **combined** total of 12 weeks of leave during any 12-month period if the leave is taken:

- For the birth of the employee's son or daughter or to care for the child after birth; or
- For the placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement; or
- To care for the employee's parent with a serious health condition.

WHAT FORMS NEED TO BE COMPLETED?

In order to determine your eligibility and receive approval for your leave, you must complete and submit the following forms to the Office of the Superintendent of Schools prior to taking a leave of absence:

Forms for FMLA, NJFLA

Healthcare Provider Form WH380: Employees seeking to take FMLA and/or NJFLA leave for a serious health condition are required to complete this form, which includes a certification from a health care provider. This certification must include:

- The date the serious health condition commenced;
- The probably duration of the condition;
- The medical facts within the knowledge of the provider of the certification;
- A statement concerning the need for the employee to provide care for the individual;
- An estimate of the time the employee will need away from work to provide care;
- A statement of the medical necessity for any intermittent leave; and
- Dates of any future intermittent treatment, when possible.

Employees must also send a letter to the Superintendent and the Supervisor of Personnel Management requesting the leave, including the date the leave will commence and the anticipated return date. The letter must also include your designation of the use of your applicable accrued sick, personal and vacation time.

EMPLOYER REQUIREMENTS

The Black Horse Pike Regional School District must conspicuously post notice of Paid Family Leave Rights (FLI benefits) using a form provided by the New Jersey Department of Labor. The District must also provide written copy of notice to each employee:

- At the time of the employee's hiring;
 - Whenever an employee notifies you that he/she is taking time off to bond with a newborn or newly adopted child or to care for a seriously ill family member; and
 - At any time, upon the first request of an employee.
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EMPLOYEE REQUIREMENTS

Employees must provide notice as follows:

Employees must write a letter to the Superintendent, copying his/her supervisor and the Assistant Superintendent, requesting the leave. The letter should include the beginning and anticipated return dates and how the employee would like to designate his/her time (sick/personal/vacation). Any medical documentation and FMLA/NJFLA paperwork should also be included, if applicable. This letter will go before the Board for approval at the next scheduled meeting.

To care for a sick relative:

- Employees must provide prior notice in a 'reasonable and practical manner', absent emergency or unforeseen circumstances, for a consecutive leave.

To care for newborn or adopted child:

- 30 days prior notice – the District may delay the staff member taking leave for at least thirty days if the staff member fails to give thirty days' notice for foreseeable leave with no reasonable excuse for the delay.

WHAT IS THE RETURN TO WORK PROCEDURE?

Intent to Return to Work and Recertification:

The Board may periodically inquire as to the employee's intended return-to-work date. The employee must notify the Board at least every 30 days as to the employee's intent to return to work. During a covered leave, the employee must also provide medical re-certification to the Board at least every 30 days. Re-certification may also be required whenever circumstances have changed significantly or the Board received information casting doubt on the reason for the absence.

Return to Work Certification

The Board will require a note from the employee's physician certifying that the employee has been cleared to return to work after an absence for the employee's own serious medical condition. This will not be required for intermittent leave.

WILL MY JOB BE HELD FOR ME?

If approved for an FMLA or NJFLA leave, you are guaranteed to return to the same or equivalent position. If you remain out past the time allowable under FMLA/NJFLA, your job may no longer be protected.

WILL MY BENEFITS CONTINUE?

Health benefits will continue during FMLA/NJFLA . However, employees are still responsible to continue making the contributions at his/her applicable rates.

All benefits to which employees are entitled at the time of the employee's extended leave of absence shall be preserved during the absence for one year from the effective date of the commencement of the extended leave (an additional year may be granted by the Board). If an extended leave of absence, which is over and above FMLA/NJFLA, is granted, the one year shall commence on the first day of whichever leave is taken by the employee.

DEFINITIONS

Family Member

Family Member is defined in FMLA to include the employee's spouse, son, daughter or parent (but not a parent-in-law). A son or daughter is any child under 18 who is the biological or adopted child of the employee, or whom the employee supervises on a day-to-day basis and for whom the employee is financially responsible, or who is an eligible dependent under the District's health benefits plan (e.g., a step-child or foster child). A son or daughter is also a child over 18 years old who is incapable of self-care because of a mental or physical disability. A parent is any biological parent, or any parent who assumed the day-to-day and financial responsibility for the employee when the employee was a child.

Same sex domestic partners/spouses will be treated as the employee's spouse for the purpose of this policy, provided they qualify for benefits under the District's benefits program.

The son or daughter of a same sex domestic partner/spouse of a district employee will be treated as the employee's child for the purpose of this policy, provided that the child qualifies for benefits coverage under the District's benefits program.

Serious Health Condition

- A serious health condition entitling an employee to FMLA leave means an illness, injury, impairment or physical condition that involves:
 1. Inpatient care in a hospital, hospice or residential medical care facility or a subsequent treatment in connection with such inpatient care; or
 2. Continuing treatment by a healthcare provider.
- A serious health condition involving continuing treatment by a healthcare provider includes any one or more of the following:
 1. A period of incapacity (e.g., inability to work, attend school or perform regular daily activities) of more than three consecutive calendar days and any subsequent treatment or incapacity relating to the same condition. This period of incapacity must also involve:
 - a) Treatment two or more times by a healthcare provider; or
 - b) Treatment by a healthcare provider on at least one occasion which results in a regimen of continuing treatment under the provider's supervision.

2. Any period of incapacity due to pregnancy or prenatal care;
 3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - a) Requires periodic visits with a health care provider;
 - b) Continues over an extended period of time; and
 - c) Causes occasional rather than continuous periods of incapacity (e.g. asthma, diabetes, epilepsy, etc.
 4. A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective, provided the employee is under the continuing supervision of a healthcare provider (e.g., Alzheimer's, stroke, terminal stage of a disease)
 5. Any period of absence to receive multiple treatments (including a period of recovery therefrom) by a healthcare provider either for restorative surgery, or for a condition which, if untreated, would likely result in a period of incapacity for more than three consecutive days (e.g., chemotherapy, dialysis, physical therapy).
- A serious health condition does not include cosmetic treatments or cosmetic surgery unless hospitalization is required. Common colds, flu, headaches, earaches, routine dental treatments, and similar conditions are not serious health conditions for FMLA purposes. Treatments such as use of over-the-counter medications or bed rest, which can be initiated without visiting a physician, are generally not serious health conditions.

Healthcare Provider

Healthcare Provider is defined as any physician, podiatrist, dentist, clinical psychologist, optometrist, nurse or midwife who is authorized to provide health care and is acting within the scope of his/her duties. The rules also include, "any healthcare provider that is recognized by the employer or accepted by the employer's group health plan (or equivalent program)". Further, the rules specifically include clinical social workers as healthcare providers.

Active Duty

The term "active duty" means duty under a call or order to active duty of members of uniformed services as described in section 101(a)(13)(B) of the title 10, United States Code.

Covered Service Member

The Term "covered service member" means 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 serious illness or injury.

NOTES ON MATERNITY LEAVE/CHILD BONDING

FMLA Leave

Employee is entitled to unpaid leave for up to 4 weeks prior to birth and the 6 weeks immediately following the birth of her child, for her own serious health condition. Employee must submit a letter to the Superintendent requesting the leave at least 90 days prior to the first anticipated day of the leave. Included in this letter should be:

- Begin and end dates (anticipated) for the leave
- Dates you wish to use accrued sick/personal/vacation time, if applicable
- Doctor's note confirming the pregnancy and anticipated due date

Note: If medical complications require the period of disability to extend beyond the 4 weeks prior to the birth or the 6 weeks immediately following birth, specific doctor requests/documentation must be provided.

NJFLA Leave to bond with child

Employee is entitled to up to 12 weeks of unpaid leave during the first 12 months immediately following the birth of the child in order to bond with that child. Documentation required:

- Letter requesting the leave (as above). However, employee may not use accrued sick time for this leave. The employee may use accrued vacation and/or personal time. The letter should include the designation of how this time should be applied and the anticipated return date.
- Copy of the birth certificate for the child.

NJFLI

Family Leave Insurance benefits are approved by the state on a case-by-case basis. This is paid leave, as explained on page 2 of this document. This does not apply to the employee's pregnancy, but only for bonding with the newborn child. Applications may be completed online at the following website: <https://myleavebenefits.nj.gov/labor/myleavebenefits/>. The Black Horse Pike Regional School District has information on NJFLI but does not process the applications or make approval/disapproval decisions.

The employee must notify the Black Horse Pike Regional School District as soon as reasonably possible of any changes in leave and return dates.

NOTES FOR TEACHERS

Per the BHPEA contract, the Board shall honor leave dates so requested if they will not substantially interfere with the effective administration of the educational program to which the teacher was assigned, subject to the following conditions:

- a) As a condition of the teacher's return, the Board may require production of a certificate from a physician certifying that the teacher is medically able to resume her duties.
- b) In no event shall non-tenured teachers have such leaves of absence beyond the end of a contract year in which leave is requested to commence.
- c) In no event shall such leaves for tenured teachers extend beyond a period of two semesters from the date on which said leave is to commence.

- d) The Board may grant a leave for dates other than those requested upon finding that the grant of leave for the dates requested would substantially interfere with the administration of the school. In general, maternity disability/child rearing leaves shall commence and end at the beginning of a semester.
 - e) The Board will honor sick leave requests which meet the requirements and criteria established in Section 1 herein, so long as the delivery occurs within the time specified in the teacher's request for use of sick leave. If delivery occurs prior to the initially requested disability period, the Board shall permit use of accumulated sick leave for the required absence prior to delivery and for all school days during a 30 calendar day period following delivery.
 - f) The Board understands that an anticipated delivery date represents a physician's best estimate and that circumstances can cause the estimate to be incorrect. The Board will not act to deny leave under this article when date estimates are incorrect because of circumstances beyond the pregnant teacher's control.
 - g) When the teacher's absence due to disability leave does not extend 30 days before and after delivery and the teacher has furnished a prior notice from a physician certifying the pregnancy and the anticipated delivery date, the Board shall not require the physician's notice described under Section A of Article VIII (SICK LEAVE) of this Agreement.
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Medical Leave ineligible under FMLA/FLA

Employees who are not eligible to be covered under FMLA/FLA (due to insufficient time employed by the district to qualify, for example) may seek approval by the Board for a medical leave for their **own serious health condition or maternity leave**. Medical documentation must be included, along with a formal request to the Superintendent and Supervisor of Personnel for the leave. Anticipated begin and end dates must be noted in the letter, along with the designation of use of any accrued sick/personal time, if applicable