



County Technical Assistance Service

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Special Rules for Schools

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Special Rules for Schools

Reference Number: CTAS-1044

Special rules apply to instructional employees of local educational agencies (including county school boards) that affect the taking of intermittent leave, leave on a reduced schedule or leave near the end of an academic term. The term “instructional employees” includes teachers, athletic coaches, driving instructors, and special education assistants, but it does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, bus drivers or maintenance workers. Special rules also apply to restoration to an equivalent position, and these apply to all school employees.^[1]

The period during summer vacation when the employee would not have been required to work is not counted against the employee’s FMLA leave entitlement. Leave that ends with the school year and begins the next semester is considered leave taken consecutively rather than intermittently.

Limitations on Intermittent and Reduced Leave. If an eligible instructional employee needs intermittent leave or leave on a reduced schedule that is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent 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 in a block or blocks of time not greater than the duration of the planned treatment, or transfer temporarily to an available alternative position for which the employee is qualified, with equivalent pay and benefits, and which better accommodates recurring periods of leave. The block or blocks of time begin no sooner than the first day leave is needed and end no later than the last day on which leave is needed; it may be one uninterrupted block of time. If an instructional employee fails to give the required notice of foreseeable FMLA leave to be taken intermittently or on a reduced schedule, the employer may require the employee to take leave of a particular duration or transfer temporarily to an alternative position, or delay the leave until the notice requirement is met.

Limitations on Leave Near End of Term. Instructional employees who take leave near the end of the term are subject to the following rules:

1. If the leave begins 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 three weeks and the employee would return to work during the three-week period before the end of the term.
2. If the leave begins during the five-week period before the end of the term because of the birth or placement of a child, to care for a family member with a serious health condition, or to care for a covered servicemember, 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.
3. If the employee begins leave during the three-week period before the end of the term for the birth or placement of a child, to care for a family member with a serious health condition, or to care for a covered servicemember, the employer may require the employee to continue taking leave until the end of the term if the leave will last more than five working days.

If the employee is required to take leave until the end of the term under these rules, only the leave taken until the employee is ready and able to return to work is charged against the employee’s FMLA leave entitlement. The additional leave required by the employer is not counted as FMLA leave, but the employer is required to maintain group health insurance and restore the employee to the same or a similar position upon conclusion of the leave.

Special Rules on Restoration to Equivalent Position. The determination of how all school employees are to be restored to an equivalent position is to be made on the basis of established written school board policies and collective bargaining agreements. The policy or collective bargaining agreement must provide for restoration to a position with equivalent benefits, pay, and other terms and conditions of employment.

[1] 29 C.F.R. § 825.600 *et seq.*

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