

PERSONNEL

Section 9 Attendance, FMLA and Military Leave

A. Attendance

ESU #13 depends on each employee to be reliable and punctual in reporting for work in order to provide its services and programs safely and efficiently. Regular and dependable attendance is an essential function of each employment position.

Employees are to be absent from scheduled work only to the extent reasonably unavoidable. Appointments are to be scheduled for non-work hours whenever possible.

Leaves are to be used for the purpose intended. Abuse of leave privileges will not be tolerated. Such abuse may result in disciplinary action, up to and including termination of employment.

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B. Reporting Absences and Making Leave Requests

Employees are to utilize the appropriate notification and approval procedures for all absences, giving as much notice of the need to take a leave of absence as possible.

1. *Requesting Use of Leave Days.* An employee who wants to use available leave is to submit a Request for Leave on the ESU #13 reporting software. The request is to be submitted as soon as possible, but at least five days prior to the leave unless the need for leave is unexpected, in which case a notice of leave should be given as soon as practical. The supervisor may require that more advance notice be given depending on the nature of the employee’s duties or the need to schedule a substitute.

2. *Giving Notice of Unscheduled Absences.* An employee who is unable to request prior advance approval for an absence because of the nature of the circumstance requiring the absence (such as personal illness or unforeseen emergency) is to report the need to be absent as soon as the situation is known. Before the end of the day on the first day of the absence, and on each subsequent day of absence, the employee is to report whether the employee will be able to return to work on the next duty day unless specific arrangements have been made in writing between the employee and their direct supervisor in relation to the extended absence.

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C. Returning from Absences

1. *Justification for Absences Taken Without Prior Approval.* If an employee is absent without prior approval either: (1) the day immediately preceding or immediately following a regularly scheduled school break (such as winter break, spring break, and semester breaks) or (2) during the first two weeks or the last two weeks of school (student contact days), the employee may be required to give verification (for example, a doctor’s note) to their immediate supervisor to establish that the employee was unable to work for an excusable condition or excusable reason.

2. *Establishing Fitness for Duty.* Employees must present a written statement from their physician or health care provider to their supervisor when the employee is absent for any period of time because of injury requiring care from a physician or health care provider, or absent from work for five days or more due to a personal health condition. The statement is to clearly verify that the employee is mentally and physically able to return to duty. This statement is to be presented in person, or by other methods agreed upon by both parties, to the employee’s supervisor before the employee returns to duty in order that the readiness to perform work can be observed and/or discussed.

Employees are required to disclose any medical restrictions that limit their ability to perform the essential functions of their position to their supervisor and to request a meeting with the Americans with Disabilities Act (ADA) Coordinator (ESU #13 Human Resources Manager) to discuss the provision of reasonable accommodations. ESU #13 will not discriminate against any employee due to disability and will provide reasonable accommodations. Information provided about medical conditions or disabilities shall be treated as confidential, as required by state and federal statutes, and will be divulged only to the extent necessary to provide reasonable accommodations.

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D. Paid Leaves

1. *Paid Leaves Available.* ESU #13 makes the following forms of paid leaves available: Sick Leave, Bereavement Leave, Professional Leave, Vacation Leave, and Personal Leave. In addition, ESU #13 complies with laws that require leaves to be allowed without loss of pay, such as for military service and jury duty. More leave information can be found in the *ESU #13 Employee Handbook*.

2. *Negotiated Agreement.* Paid leaves are provided for in the negotiated agreement with the designated association of certified employees. The negotiated agreement will control where there is any direct conflict with this policy.
3. *Nature of Paid Leave.* Paid leave is available to employees when the following specific conditions are met: (1) the employee is currently employed by ESU #13; (2) the paid leave day is taken on a day the employee would otherwise be expected to be at work; and (3) the employee has met the conditions that are applicable to the type of paid leave that has been requested.
4. *Leave Year.* The leave year for paid leaves is ESU #13's fiscal year unless otherwise stated by individual contract.
5. *Leave Days.* Paid leave days are provided based on the same number of hours the employee is scheduled to work on the day the leave is taken. For example, if an employee is scheduled to work six hours on a day that sick leave is used, the use of the sick leave on that day constitutes the use of one full sick day.
6. *Eligibility Based on Employment Status.* For purposes of eligibility for paid leave days, employees are identified as:
 - a. *Full-Time Employees*—Employees scheduled to work in one position at least 1,387.50 hours per leave year. Eligibility for full-time status treatment based on combinations of positions is subject to prior written approval of the administrator.
 - b. *Part-Time Employees*—Employees who are contracted to work at least nine months in the leave year and who are scheduled to work at least 20 hours per week. Except as otherwise specified, part-time employees are provided paid leaves on a pro rata basis measured against a 1,387.50 hour work year (185 days x 7.5 hours).
 - c. *Ineligible Employees*—Employees who are not full-time or part-time employees, as defined above, including any employees employed on a substitute or temporary basis. Ineligible employees are not eligible for any paid leaves.
 - d. *New Classified Employees*—Employees who have been employed with ESU #13 less than 60 calendar days are not eligible for paid leaves. Upon reaching the 60 day employment anniversary, the employee becomes eligible for paid leaves for the remainder of the leave year.
7. *Unused Days.* Unused vacation and sick leave may be carried over from one leave year to the next succeeding leave year. Unused vacation leave may be carried over to a maximum of 240 hours based on 1.0 FTE, and unused sick leave may be carried over to a maximum of 480 hours based on 1.0 FTE. Once the maximum is accumulated, no further leave days will be available or granted for the ensuing leave year or years until the accumulated number of days is less than

the maximum, and then only to the extent necessary to restore the total number of available leave days to the maximum days.

Legal Reference:	Nebraska Statutes: §§ 48-1228 to 48-1232 (Wage Payment and Collection Act)
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E. FMLA

Family and medical leaves shall be allowed under the terms and conditions of the Family and Medical Leave Act of 1993 (FMLA) as amended.

The “leave year” for purposes of the FMLA shall be a “rolling” 12 month period, measured backward from the date of any FMLA leave usage.

FMLA leave is unpaid except to the extent that an employee has accumulated paid leave under other applicable leave provisions of ESU #13’s policies. Forms of accrued paid leave such as vacation and sick leave shall be substituted for unpaid leave so long as accrued time is available according to the rules. In determining whether leave has been accrued or earned, ESU #13 will apply the provisions of the respective paid leave policy and procedures, including any restrictions. What this means is an employee’s existing “bank” of paid leave will run concurrently (at the same time) with the 12 work weeks of FMLA leave, i.e., they will be counted and used together. When an employee has exhausted all paid leave, all remaining FMLA leave will be unpaid. The use of accrued paid leave as a concurrent part of FMLA leave is mandatory.

Example: Employee requires a 12 week leave under FMLA and has accrued three weeks of paid vacation leave pursuant to ESU #13’s policies. The employee’s other forms of paid leave have already been exhausted. Accordingly, the first three weeks of FMLA, leave would be paid from the employee’s accrued “bank” of vacation pay and the remaining nine weeks would be unpaid leave.

ESU #13 will continue group health benefits on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA period. ESU #13 will pay the employer’s share of the health insurance premium and any share of health plan premiums which have been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA period.

All employees who are actively at work or on paid leave, such as vacation leave or sick leave, will continue to accrue paid leave benefits provided by ESU #13. Employees on unpaid leave are not entitled to continue accruing paid leave benefits. Employees on unpaid military leave of absence and unpaid leave under FMLA are also not eligible for accruals of paid leave.

Employees shall be required to submit medical certifications to support a request for FMLA leave because of a serious health condition, or a sick leave, when such leave is for a duration in excess of five successive days, and in such other cases as deemed appropriate by the

administrator or the Board based on the nature of the illness or other circumstances surrounding the leave. Second and third medical opinions may, at the administrator's or the Board's discretion, be required. Employees shall be required to report periodically, at such times as requested by the administrator or the Board, on their intent to return to work from FMLA leaves and other leaves. Employees shall be required to submit a fitness for duty certification from their health care provider as a condition of returning to work from an FMLA leave taken because of the employee's serious health condition or from a sick leave taken by reason of the employee's illness, when such leave was of a duration in excess of five successive days, and upon request of the administrator or the Board when such is deemed appropriate by the administrator or the Board based upon the nature of the illness or other circumstances surrounding the leave.

An "equivalent position" for FMLA restoration purposes shall, in the case of certificated employees, be any administrative, teaching, or instruction related position for which the employee is qualified by reason of endorsement, college preparation, or experience; and in the case of other employees or positions, be in a position with or at equivalent pay, benefits, and working conditions, involving similar or related duties, as determined by the administrator or the Board.

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F. Employee Military Service Leave

ESU #13 employees who are members of the National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, State Guard, or under obligation to perform service for any of the Uniformed Services of the United States are entitled to a leave of absence, without loss of pay, on all days during which they are employed under the orders or authorization of competent authority in the active service of the State or United States. Such leaves of absence will be without loss of pay for a period not to exceed 15 work days in any one calendar year. Such leave of absence will be in addition to any leave provided by ESU #13 through policy or negotiated agreement. Any such leave which extends beyond 15 work days in any one calendar year shall be without pay from the remaining contract payments.

If the Governor of the State of Nebraska declares a state of emergency, any of the above ESU #13 employees who are ordered to active service shall receive an additional leave of absence until such member is released from the active service by competent authority. During this additional leave of absence, the ESU #13 employee shall receive such portion of his/her salary or compensation as will equal the loss he/she may suffer while in the active service of the State. The loss he/she may suffer while in the active service of the State is defined as the differential between military salary and district compensation.

Employees who are required to leave a position other than temporary for training with the armed forces of the United States or to undertake military duty in the active service of the State are entitled to a leave of absence for such period, not to exceed five years, plus any additional period

as provided by law, without loss of status and without loss of pay during the first 15 work days, which pay for the first 15 work days is not in addition to that described above.

Upon an honorable discharge from active service, such employee shall be entitled to a return to a comparable position as provided by law as long as he/she:

1. has given advance notice of the need for military leave (unless notice is precluded by military necessity or is otherwise unreasonable);
2. has not been absent from his/her job for more than five years; and
3. returns to work as outlined below.

The following periods and conditions of return to work apply to the employee who was absent:

1. If absent less than 31 calendar days, the employee must report back to work by the beginning of the next regularly scheduled work period after a reasonable amount of time to arrive home, rest and report to work.
2. If absent more than 30 calendar days but less than 181 calendar days, the employee must submit an application for reemployment within 14 calendar days after the completion of service.
3. If absent more than 180 calendar days, by submitting an application for reemployment within 90 calendar days after the completion of service.

Such person shall not be discharged without justifiable cause within one year after reinstatement if the person's period of military service before the reemployment was more than 180 calendar days. Such person shall not be discharged without justifiable cause within 180 calendar days after the date of reemployment if the person's period of military service before the reemployment was more than 30 calendar days but less than 181 calendar days.

An employee reemployed after military leave will be treated as not having incurred a break in service. Absence for any of the reasons stated above shall not affect the employee's right to receive normal vacation, sick leave, advancement and other advantages of the employee's employment normally to be anticipated in the employee's particular position.

Employees requesting to take family military leave under the Nebraska statutes must notify the administrator at least 14 days in advance of taking such a leave if the leave will be for five or more consecutive days, consult with their supervisor to schedule the leave so as to not unduly disrupt operations of the Unit. For leaves of less than five days, the employee is to notify the administrator of the leave request as soon as practicable.

Family military leave under the FMLA will be provided in accordance with that law and subject to the provisions of the Board policy pertaining to FMLA leave.

Legal Reference:	Neb. Rev. Stat. §§ 55-160 to 55-166 Neb. Rev. Stat. §§ 55-501 to 55-507 29 U.S.C. §§ 2611, et seq.; 29 CFR Part 825 (FMLA) 38 U.S.C. §§ 4301 to 4333; 20 CFR Part 1002 (USERRA)
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