

FMLA – DEEP DIVE

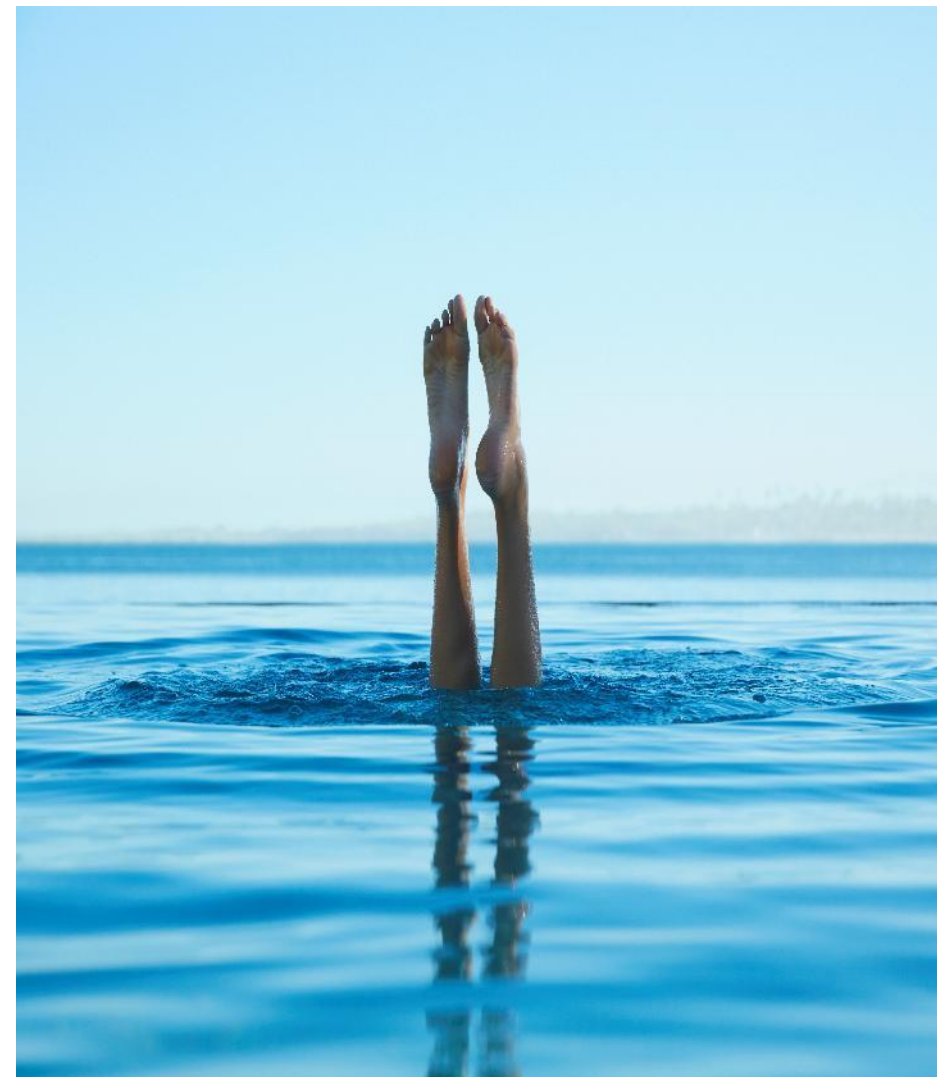
APRIL 22, 2026

By:

Barbara A. Erickson

Hodges, Lozzi, Eisenhammer,

Rodick & Kohn, LLP



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Initial Thoughts



***“I’m sorry to hear this.
Please, have a seat so we
can talk and you can
explain to me more about
your needs and how
I MAY BE ABLE TO
HELP YOU.”***



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

What's in Your Toolbox?



- Law
- Board Policy
- Contract/Practice
- Employee Handbooks



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Family and Medical Leave Act

What is it?



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FMLA 101 – What Does FMLA Do?

Allows eligible employees up to 12 workweeks of unpaid leave in a 12-month period for:

- Birth or placement of a child for adoption or foster care
- Care for a spouse, son, daughter, or parent with a serious health condition
- Employee's own serious health condition
- Qualifying exigencies related to the employee's family member's deployment to a foreign country



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FMLA 101 - What Does FMLA Do?

- Allows eligible employees up to 26 workweeks of unpaid leave in a “single 12-month period” for military caregiver leave
- Mandates continuation of group health benefits under the same conditions as if the employee did not use leave
- Mandates employers return employees to work at the same or virtually identical job at the end of the leave period
- Protects employees from interference and retaliation



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FMLA 101 – Who is Eligible?

To be eligible for FMLA, at the time the employee's FMLA leave will start, the employee must:

- Work for the covered employer
- Work at a worksite where the employer employs at least 50 employees within 75 miles
- Have worked for the employer in total at least 12 months (not necessarily continuous)
- During the previous 12 months, worked at least 1,000 hours (for full-time teachers this is a rebuttable presumption)



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FMLA 101 – Meaning of 1,000 Hours

- To be eligible for FMLA, the employee must have worked at least 1,000 hours in the immediately prior 12 months.
- For full-time teachers this is a rebuttable presumption.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FMLA 101 – The 12-Month Period

FMLA allows eligible employees up to 12 workweeks of unpaid leave in a 12-month period. Four options:

- Calendar year
- Any fixed 12-month leave year
- A 12-month period measured forward
- A rolling 12-month period measured backward

Military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FMLA 101 – The 12-Month Period



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

12-MONTH PERIOD MEASURED FORWARD

This is described as the 12-month period measured forward from the first date an employee takes FMLA leave. The next 12-month period would begin the first time FMLA leave is taken after completion of the prior 12-month period.

For example:

- Samantha's FMLA leave begins on November 6, 2024. Under this method, her 12-month period is November 6, 2024, through November 5, 2025.

FMLA 101 – The 12-Month Period

ROLLING 12-MONTH PERIOD MEASURED BACKWARD

12-month period measured backward from the date an employee uses any FMLA leave. Under the “rolling” 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example:

Tina needs two weeks of FMLA leave beginning on November 1, 2025...



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FMLA 101 – The 12-Month Period

ROLLING 12-MONTH PERIOD MEASURED BACKWARD

Employer looks back 12 months (from November 1, 2025, back to November 2, 2024) and sees that Tina has already taken 11 weeks of FMLA leave in the 12-month period:

- 4 weeks of FMLA leave beginning January 1, 2025,
- 4 weeks beginning March 1, 2025, and
- 3 weeks beginning June 1, 2025.

Tina can therefore take only one week of FMLA-protected leave available until January 1, 2026, as the days of her previous January leave “roll off” the leave year.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FMLA 101 – The 12-Month Period

Other Facts About the 12 – Month Period

- Employers may select any one of the four methods.
- Must apply it uniformly.
- 60 day notice required prior to changing to a different method.
- If an employer fails to select one of the 12-month period method, must use the 12-month period method that is the most beneficial to the employee.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FMLA 101 – Calculating 12 Workweeks

FMLA allows eligible employees **up to 12 workweeks** of unpaid leave in a 12-month period.

- FMLA leave is measured in “workweeks.”
- When less than one full workweek is used, determined as a proportion of the employee’s actual workweek.
- When a holiday falls during a “full” FMLA week, the entire week is counted as FMLA leave. But if part of the week is worked, then holiday does not count.
- If an employer stops business activities or the employee was not expected to work for one or more weeks, the time is not counted as leave (e.g., teachers and winter break, spring break).



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FMLA – Employee Notice



- Must give a reason for the leave...no magic language, but must be enough info for the employer to know that FMLA may be applicable. Employer can have a procedure.
- At least 30 days' notice is required for *foreseeable* leaves they should work with you to schedule the leave so as not to unduly disrupt operations
- If *unforeseeable*, employee must give notice as soon as practicable



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

How Leave May be Taken

- Continuous Block of Time
- Reduced Schedule
- Intermittently



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Intermittent or Reduced Schedule Leave

- Employee is entitled to take FMLA leave in separate blocks of time, or intermittently, or on a reduced schedule, by working fewer hours each day or week, for:
 - Employee's or family member's serious health condition when the leave is medically necessary
 - Covered servicemember's serious injury or illness when the leave is medically necessary
 - A qualifying exigency arising out of a military member's covered active duty status
- Leave to bond with a child after the birth or placement can be intermittent or reduced schedule leave, but only if the employer agrees



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Intermittent/Reduced Schedule for Planned Medical Treatment

- Employee should schedule planned treatments to minimize disruption to employer operations
- Employer may transfer employee (temporarily) to vacant job with equivalent pay and benefits leave when leave is foreseeable based on planned medical treatment, if the position better accommodates recurring periods of leave.
 - Union Contracts
 - Board Policy



IASPA

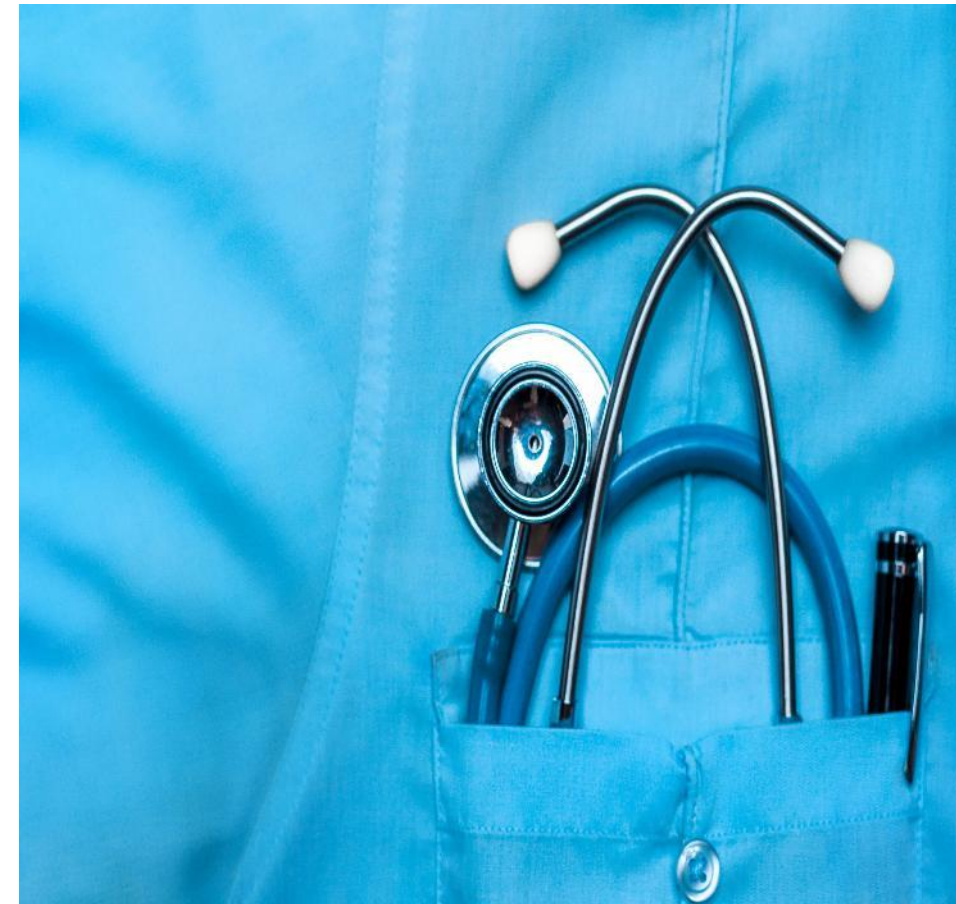
Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Intermittent/Reduced Schedule Leave

- Employer must use the shortest increment the employer uses for other types of leave BUT may not use increments greater than one hour.
- Meaning, if employee needs 1 hour for physical therapy, employer cannot force half or full day even if a half day is the shortest increment used for sick leave.
- Can only charge against FMLA actual FMLA time.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Special rules for schools

- Special leave use rules generally apply to instructional employees of public and private elementary and secondary schools
- Instructional employees are those whose primary duty is to teach and instruct students
 - Teachers
 - Coaches
 - SPED assistants
- But regular classroom aides, counselors and other types of specialists usually do not fall within this category



IASPA

Illinois
Association of
School
Personnel
Administrators

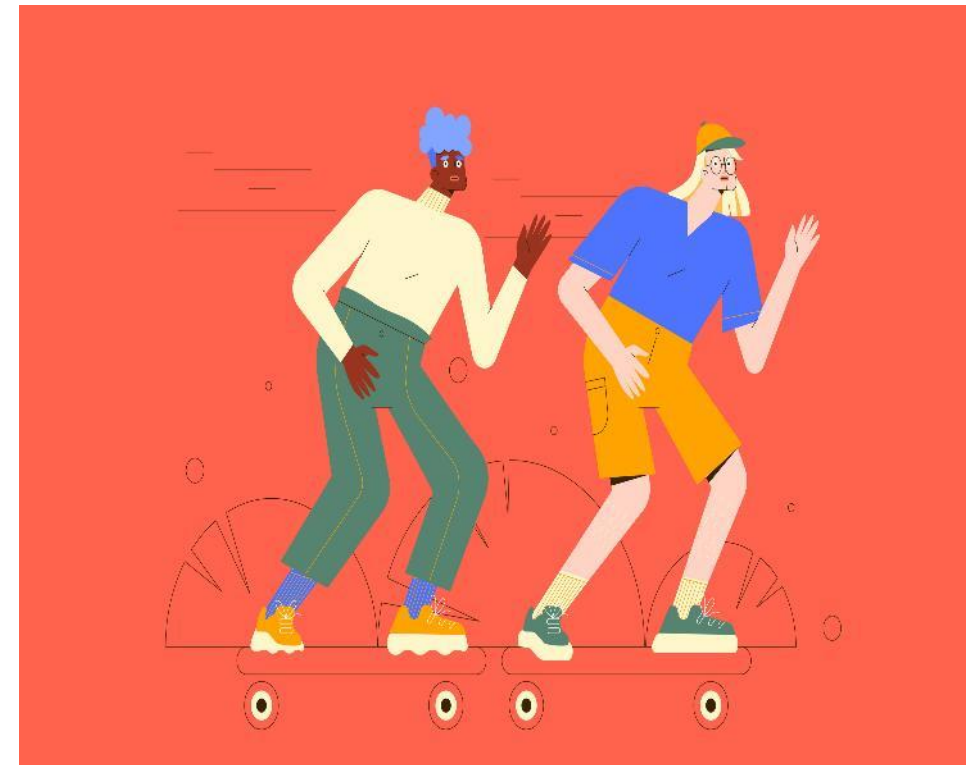
IASPA.org

 @_IASPA_

Special rules for schools intermittent leave

When an instructional employee needs intermittent or reduced schedule FMLA leave for more than 20 percent of the total number of working days over the period the leave would extend that is foreseeable based on planned medical treatment, the employee may be required to choose between:

- Taking leave for a set period not greater than the duration of the leave need, rather than intermittently, or
- Transferring temporarily to an available alternative position



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Special rules for schools leave near the end of an academic term



Instructional employees starting leave near the end of an academic term may be required to continue taking leave until the end of the term under certain circumstances



Generally, whether the employee may be required to continue leave depends upon how close to the end of the term the leave begins and how much leave the employee needs.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Employer Notice Requirements

1

Post the general notice, and provide general notice in employee handbook or other written guidance to employees.

- Electronic posting and distribution permitted.

2

Provide Eligibility Notice, and Rights and Responsibilities Notice (see DOL model WH-381).

3

Provide Designation Notice (see DOL Model WH-382).

4

Translate notices where significant portion of workers are not literate in English (DOL has Models).



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

@_IASPA_

Notice of Eligibility & Rights/Responsibilities

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-381.pdf>

Notice of Eligibility & Rights and Responsibilities under the Family and Medical Leave Act U.S. Department of Labor Wage and Hour Division **WHD** WAGE AND HOUR DIVISION

DO NOT SEND TO THE DEPARTMENT OF LABOR. PROVIDE TO EMPLOYEE. OMB Control Number: 1215-0001 Expires: 6/30/2023

In general, to be eligible to take leave under the Family and Medical Leave Act (FMLA), an employee must have worked for an employer for at least 12 months, meet the hours of service requirement in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. §§ 825.300(b), (c) which must be provided within five business days of the employer notifying the employer of the need for FMLA leave. Information about the FMLA may be found on the WHD website at www.dol.gov/agencies/whd/fmla.

Date: _____ (mm/dd/yyyy)
From: _____ (Employer) To: _____ (Employee)
On _____ (mm/dd/yyyy), we learned that you need leave (beginning on _____ (mm/dd/yyyy)) for one of the following reasons. (Select as appropriate.)

- The birth of a child, or placement of a child with you for adoption or foster care, and to bond with the newborn or newly-placed child
- Your own serious health condition
- You are needed to care for your family member due to a serious health condition. Your family member is your:
 Spouse Parent Child under age 18 Child 18 years or older and incapable of self-care because of a mental or physical disability
- A qualifying exigency arising out of the fact that your family member is on covered active duty or has been notified of an impending call or order to covered active duty status. Your family member on covered active duty is your:
 Spouse Parent Child of any age
- You are needed to care for your family member who is a covered servicemember with a serious injury or illness. You are the servicemember's:
 Spouse Parent Child Next of kin

Spouse means a husband or wife as defined or recognized in the state where the individual was married, including in a common law marriage or same-sex marriage. The terms "child" and "parent" include in loco parentis relationships in which a person assumes the obligations of a parent to a child. An employee may take FMLA leave to care for an individual who assumed the obligations of a parent to the employee when the employee was a child. An employee may also take FMLA leave to care for a child for whom the employee has assumed the obligations of a parent. No legal or biological relationship is necessary.

SECTION I - NOTICE OF ELIGIBILITY

This Notice is to inform you that you are:

- Eligible** for FMLA leave. (See Section II for any Additional Information Needed and Section III for information on your Rights and Responsibilities.)
- Not eligible** for FMLA leave because: (Only one reason need be checked.)
 - You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately: _____ (months) towards this requirement.
 - You have not met the FMLA's 1,250 hours of service requirement. As of the first date of requested leave, you will have worked approximately: _____ (hours of service) towards this requirement.

Page 1 of 4 Form WH-381, Revised June 2020

Employee Name: _____

- You are an airline flight crew employee and you have not met the special hours of service eligibility requirements for airline flight crew employees as of the first date of requested leave (i.e., worked or been paid for at least 60% of your applicable monthly guarantee, and worked or been paid for at least 504 duty hours.)
- You do not work at and/or report to a site with 50 or more employees within 75-miles as of the date of your request.

If you have any questions, please contact: _____ (Name of employer representative) at _____ (Contact information).

SECTION II - ADDITIONAL INFORMATION NEEDED

As explained in Section I, you meet the eligibility requirements for taking FMLA leave. Please review the information below to determine if additional information is needed in order for us to determine whether your absence qualifies as FMLA leave. Once we obtain any additional information specified below we will inform you, **within 5 business days**, whether your leave will be designated as FMLA leave and count towards the FMLA leave you have available. **If complete and sufficient information is not provided in a timely manner, your leave may be denied.**

(Select as appropriate.)

- No additional information requested. If no additional information requested, go to Section III.
- We request that the leave be supported by a certification, as identified below.
 - Health Care Provider for the Employee Health Care Provider for the Employee's Family Member
 - Qualifying Exigency Serious Illness or Injury (Military Caregiver Leave)Selected certification form is attached / not attached.

If requested, medical certification must be returned by _____ (mm/dd/yyyy) (Must allow at least 15 calendar days from the date the employer requested the employee to provide certification, unless it is not possible despite the employee's diligent, good faith efforts.)

- We request that you provide reasonable documentation or a statement to establish the relationship between you and your family member, including in loco parentis relationships (as explained on page one). The information requested must be returned to us by _____ (mm/dd/yyyy). You may choose to provide a simple statement of the relationship or provide documentation such as a child's birth certificate, a court document, or documents regarding foster care or adoption-related activities. Official documents submitted for this purpose will be returned to you after examination.
- Other information needed (e.g. documentation for military family leave): _____ The information requested must be returned to us by _____ (mm/dd/yyyy).

If you have any questions, please contact: _____ (Name of employer representative) at _____ (Contact information).

SECTION III - NOTICE OF RIGHTS AND RESPONSIBILITIES

Part A: FMLA Leave Entitlement

You have a right under the FMLA to take unpaid, job-protected FMLA leave in a 12-month period for certain family and medical reasons, including up to **12 weeks** of unpaid leave in a 12-month period for the birth of a child or placement of a child for adoption or foster care, for leave related to your own or a family member's serious health condition, or for certain qualifying exigencies related to the deployment of a military member to covered active duty. You also have a right

Page 2 of 4 Form WH-381, Revised June 2020

Role of Employer Leave Certification, Generally

- Employer may request certification for:
 - serious health condition;
 - qualifying exigency; or
 - serious injury or illness of a covered servicemember
- Employer must notify employee of certification need in writing within 5 days of knowledge of the needed FMLA
- Employee has at least 15 calendar days to submit completed certification
- Employee is responsible for cost
- Optional DOL forms WH-380-E, WH-380-F, WH-384, WH-385 and WH-385-V



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Role of Employer

FMLA Serious Health Condition Certification

Additional Considerations



- If insufficient or incomplete, must notify employee what additional info is needed and give employee 7 days to supplement
 - Authentication and clarification only; and only HR, not direct supervisor
 - If employer questions the validity of the certification, may require a second opinion
 - May require a third opinion if the first and second opinions differ but at employer's cost
 - Recertification if need continues for an extended period or if it changes significantly



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

@_IASPA_

Serious Health Condition Certification

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-E.pdf>


Employee Name: _____
Health Care Provider's name (print): _____
Health Care Provider's business address: _____
Type of position / Medical specialty: _____
Telephone: () _____ Fax: () _____ E-mail: _____

PART A: Medical Information
List your response to the medical condition(s) for which the employee is seeking FMLA leave. Your answers should be your best estimate based upon your medical knowledge, experience, and examination of the patient. After completing Part A, complete Part B to provide information about the amount of leave needed. Note: For FMLA purposes, "incapacity" means the inability to work, attend school, or perform regular daily activities due to the condition, treatment of the condition, or recovery from the condition. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1625.3(f), genetic services, as defined in 29 C.F.R. § 1625.3(g), or the manifestation of diseases or disorders in the employee's family members, 29 C.F.R. § 1625.3(h).

(1) State the approximate date the condition started or will start: _____ (month/year)
(2) Provide your best estimate of how long the condition lasted or will last: _____
(3) Check the box(es) for the question below, as applicable. For all box(es) checked, the amount of leave needed must be provided in Part B.

- Inpatient Care:** The patient has been / is expected to be admitted for an overnight stay in a hospital, hospice, or residential medical care facility on the following date(s): _____
- Incapacity due to Treatment:** (e.g. requires surgery, long-term care)
Due to the condition, the patient has been / is expected to be incapacitated for more than three consecutive, full calendar days from _____ (month/year) to _____ (month/year).
The patient was / will be seen on the following date(s): _____
The condition has / has not been treated in a course of continuing treatment under the supervision of a health care provider (e.g. prescription medication (other than over-the-counter) or therapy requiring special equipment)
- Pregnancy:** The condition is pregnancy. List the expected delivery date: _____ (month/year)
- Chronic Condition:** (e.g. asthma, migraine headaches) Due to the condition, it is medically necessary for the patient to have treatment visits at least twice per year.
- Permanent or Long-Term Condition:** (e.g. Alzheimer's, amputee, organ failure) Due to the condition, incapacity is permanent or long-term and requires the continuing supervision of a health care provider (even if active treatment is not being provided).
- Conditions requiring Multiple Treatments:** (e.g. chemotherapy, radiation, reconstructive surgery) Due to the condition, it is medically necessary for the patient to receive multiple treatments.
- None of the above:** If none of the above condition(s) were checked, (i.e., inpatient care, pregnancy) no additional information is needed. Go to page 4 to sign and date the form.

Page 2 of 4 Form WH-380-E, Revised June 2020

Certification of Health Care Provider for Employee's Serious Health Condition under the Family and Medical Leave Act U.S. Department of Labor Wage and Hour Division 
OMB Control Number: 1216-0048 Expires: 12/31/2015

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR. RETURN TO THE PATIENT.

The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protection because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. 29 U.S.C. §§ 2613, 2614(a)(1); 29 C.F.R. § 825.305. The employer must give the employee at least 15 calendar days to provide the certification. If the employee fails to provide complete and sufficient medical certification, his or her FMLA leave request may be denied. 29 C.F.R. § 825.313. Information about the FMLA may be found on the [WHD website at www.dol.gov/eisaoia/whd/fmla](http://www.dol.gov/eisaoia/whd/fmla).

SECTION I - EMPLOYER

Either the employee or the employer may complete Section I. While use of this form is optional, this form asks the health care provider for the information necessary for a complete and sufficient medical certification, which is set out at 29 C.F.R. § 825.306. You may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Additionally, you may not request a certification for FMLA leave to bond with a healthy newborn child or a child placed for adoption or foster care.

Employers must generally maintain records and documents relating to medical information, medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel file and in accordance with 29 C.F.R. § 1630.146(a)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1625.9, if the Genetic Information Non-Discrimination Act applies.

(1) Employee name: _____
First Middle Last
(2) Employer name: _____ Date: _____ (month/year)
(For date certification requested)
(3) The medical certification must be returned by _____ (month/year)
(Date allow at least 15 calendar days from the date requested, unless it is not feasible to require the employee's employer, post (not after))
(4) Employee's job title: _____ Job description is / is not attached.
Employee's regular work schedule: _____
Statement of the employer's essential job functions: _____
(The essential functions of the employee's position are determined with reference to the position the employee held at the time the employee notified the employer of the need for leave or the leave started, whichever is earlier.)

SECTION II - HEALTH CARE PROVIDER

Please provide your contact information, complete all relevant parts of this Section, and sign the form. Your patient has requested leave under the FMLA. The FMLA allows an employer to require that the employee submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to the serious health condition of the employee. For FMLA purposes, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. For more information about the definition of a serious health condition under the FMLA, see the chart on page 4.

You may, but are not required to, provide other appropriate medical facts including symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment. Please note that some state or local laws may not allow disclosure of private medical information about the patient's serious health condition, such as providing the diagnosis and/or course of treatment.

Page 1 of 4 Form WH-380-E, Revised June 2020

Serious Health Condition Certification



Employee Name: _____

(4) If needed, briefly describe other appropriate medical facts related to the condition(s) for which the employee seeks FMLA leave. (e.g., see question 4b above) _____

PART B: Amount of Leave Needed
For the medical condition(s) checked in Part A, complete all that apply. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "infrequent," "occasional," or "intermittent" may not be sufficient to determine FMLA coverage.

(5) Due to the condition, the patient had / will have planned medical treatment(s) (scheduled medical visits) (e.g., psychotherapy, physical therapy) on the following date(s) _____

(6) Due to the condition, the patient was / will be referred to other health care provider(s) for evaluation or treatment(s).
State the nature of such treatment(s): (e.g., chemotherapy, physical therapy) _____
Provide your best estimate of the beginning date _____ (month/year) and end date _____ (month/year) for the treatment(s).
Provide your best estimate of the duration of the treatment(s), including any period(s) of recovery (e.g., 3 days/week) _____

(7) Due to the condition, it is medically necessary for the employee to work a reduced schedule.
Provide your best estimate of the reduced schedule the employee is able to work. From _____ (month/year) to _____ (month/year) the employee is able to work: (e.g., 3 hours/day, up to 22 hours a week) _____

(8) Due to the condition, the patient was / will be incapacitated for a continuous period of time, including any time for treatment(s) and/or recovery.
Provide your best estimate of the beginning date _____ (month/year) and end date _____ (month/year) for the period of incapacity.

(9) Due to the condition, it was / is / will be medically necessary for the employee to be absent from work on an intermittent basis (periodically), including for any episodes of incapacity (i.e., episodic flare-ups). Provide your best estimate of how often (frequency) and how long (duration) the episodes of incapacity will likely last.
Over the next 6 months, episodes of incapacity are estimated to occur _____ times per _____ (day / week / month) and are likely to last approximately _____ (hours / days) per episode.

Page 3 of 6 Form WH-380-F, Revised June 2020

Employee Name: _____

PART C: Essential Job Functions
If provided, the information in Section I question #4 may be used to answer this question. If the employer fails to provide a statement of the employee's essential functions or a job description, answer these questions based upon the employee's own description of the essential job functions. An employee who must be absent from work to receive medical treatment(s), such as scheduled medical visits, for a serious health condition is considered to be not able to perform the essential job functions of the position during the absence for treatment(s).

(10) Due to the condition, the employee was not able / is not able / will not be able to perform one or more of the essential job function(s). Identify at least one essential job function the employee is not able to perform: _____

Signature of Health Care Provider: _____ Date: _____ (month/day/year)

Definitions of a Serious Health Condition (See 29 C.F.R. §§ 825.111-113)	
Inpatient Care	
<ul style="list-style-type: none"> An overnight stay in a hospital, hospice, or residential medical care facility. Inpatient care includes any period of incapacity or any subsequent treatment in connection with the overnight stay. 	
Continuing Treatment by a Health Care Provider (any one or more of the following)	
Incapacity Plus Treatment: A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves either: <ul style="list-style-type: none"> Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity, or, At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider. For example, the health care provider might prescribe a course of prescription medication or therapy requiring special equipment. 	
Pregnancy: Any period of incapacity due to pregnancy or for prenatal care.	
Chronic Condition: Any period of incapacity due to or treatment for a chronic serious health condition, such as diabetes, asthma, or severe backaches. A chronic serious health condition is one which requires visits to a health care provider (or care supervised by the provider) at least twice a year and recurs over an extended period of time. A chronic condition may occur episodically rather than a continuing period of incapacity.	
Permanent or Long Term Condition: A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider, such as Alzheimer's disease or the terminal stages of cancer.	
Condition Requiring Multiple Treatments: Restorative surgery after an accident or other injury; or, a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days if the patient did not receive the treatment.	

FAIRWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT
If selected, it is mandatory for the employee to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.106. Penalties are set against an employer in regard to the collection of information unless it displays a currently valid OIG's annual notice. The Department of Labor estimates that it will take an average of 15 minutes for respondents to complete the collection of information, including the time for entering, reviewing, searching, creating data records, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, send them to the Administration, Paperwork Reduction Project (3045-0047), U.S. Department of Labor, Room 33340, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR. RETURN TO THE PATIENT.

Page 4 of 6 Form WH-380-F, Revised June 2020

IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Role of Employer Designation Notice

- Must be in writing and include:
 - designation determination;
 - substitution of paid leave information;
 - fitness for duty information;
 - amount of leave that will be counted against the FMLA leave entitlement, if known.
- If leave not FMLA qualifying, notice may be a simple written statement - leave does not qualify
- Retroactive designation permitted if no harm to employee from failure to timely designate
- Timing and other considerations of Designation Notice
 - provide within 5 business days of having enough information to determine if FMLA qualifying;
 - provide one time for each FMLA-qualifying reason per applicable 12-month period;
 - provide additional notice if any changes in notice information.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Designation Notice

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-382.pdf>

Designation Notice
under the Family and Medical Leave Act

U.S. Department of Labor
Wage and Hour Division

WHD
WAGE AND HOUR DIVISION

DO NOT SEND TO THE DEPARTMENT OF LABOR.
PROVIDE TO EMPLOYEE.

OMB Control Number: 1215-0041
Expires: 6/30/2011

Leaves covered under the Family and Medical Leave Act (FMLA) must be designated as FMLA-protected and the employer must inform the employee of the amount of leave that will be counted against the employee's FMLA leave entitlement. In order to determine whether leave is covered under the FMLA, the employer may require that the leave be supported by a certification. If the certification is incomplete or insufficient, the employer must state in writing what additional information is necessary to make the certification complete and sufficient. While use of this form is optional, a fully completed Form WH-382 provides employers with the information required by 29 C.F.R. §§ 825.309(a), 825.301, and 825.305(c), which must be provided within five business days of the employer having enough information to determine whether the leave is for an FMLA-qualifying reason. Information about the FMLA may be found [at www.DOL.gov](http://www.DOL.gov) or www.dhs.gov.

SECTION I – EMPLOYER

The employer is responsible in all circumstances for designating leave as FMLA-qualifying and giving notice to the employee. Once an eligible employee communicates a need to take leave for an FMLA-qualifying reason, an employer may not delay designating such leave as FMLA leave, and neither the employer nor the employee may decline FMLA protection for that leave.

Date: _____ (month/year)

From _____ (Employee) To _____ (Employee)

On _____ (month/year) we received your most recent information to support your need for leave due to:
(Select all that apply)

The birth of a child, or placement of a child with you for adoption or foster care, and to bond with the newborn or newly-placed child.

Your own serious health condition.

The serious health condition of your spouse, child, or parent.

A qualifying exigency arising out of the fact that your spouse, child, or parent is on covered active duty or has been notified of an impending call or order to covered active duty with the Armed Forces.

A serious injury or illness of a covered servicemember whose you are the servicemember's spouse, child, parent, or next of kin (Military Caregiver Leave).

We have reviewed information related to your need for leave under the FMLA along with any supporting documentation provided and decided that your FMLA leave request is: (Select all that apply)

Approved. All leave taken for this reason will be designated as FMLA leave. Go to Section III for more information.

Not Approved. (Select all that apply)

The FMLA does not apply to your leave request.

As of the date the leave is to start, you do not have any FMLA leave available to use.

Other: _____

Additional information is needed to determine if your leave request qualifies as FMLA leave. (Go to Section II for the specific information needed. If your FMLA leave request is approved and no additional information is needed, go to Section III.)

SECTION II – ADDITIONAL INFORMATION NEEDED

We need additional information to determine whether your leave request qualifies under the FMLA. Once we obtain the additional information requested, we will inform you within 5 business days if your leave will or will not be designated as FMLA leave and count towards the amount of FMLA leave you have available. Failure to provide the additional information as requested may result in a denial of your FMLA leave request.

If you have any questions, please contact: _____ at _____
(Name of employer FMLA representative) (Contact information)

Incomplete or Insufficient Certification

The certification you have provided is incomplete and/or insufficient to determine whether the FMLA applies to your leave request. (Select all that apply)

The certification provided is incomplete and we are unable to determine whether the FMLA applies to your leave request. "Incomplete" means one or more of the applicable criteria on the certification have not been completed.

Page 1 of 2 Form WH-382, Revised June 2010

Employee Name: _____

The certification provided is insufficient to determine whether the FMLA applies to your leave request. "Insufficient" means the information provided is vague, unclear, ambiguous or non-responsive.

Specify the information needed to make the certification complete and/or sufficient: _____

You must provide the requested information no later than _____ (month/year), unless it is not practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied.

Second and Third Opinions

We request that you obtain a (second / third opinion) medical certification at our expense, and we will provide further data if at a later time. Note: The employer or the employee's family member may be requested to authorize the health care provider to release information pertaining www.dhs.gov to the relevant health condition at issue.

SECTION III – FMLA LEAVE APPROVED

As explained in Section I, your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA leave and will count against the amount of FMLA leave you have available to use in the applicable 12-month period. The FMLA requires that you notify us as soon as practicable if the dates of scheduled leave change, are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against the total amount of FMLA leave you have available to use in the applicable 12-month period: (Select all that apply)

Provided there is no change from your anticipated FMLA leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: _____

Because the leave you will need will be **unscheduled**, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period after leave was taken in the 12-month period.

Please be advised: (Select all that apply)

Some or all of your FMLA leave will not be paid. Any unpaid FMLA leave taken will be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.

Based on your request, some or all of your available paid leave (e.g., sick, vacation, PTO) will be used during your FMLA leave. Any paid leave taken for this reason will also be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.

We are requiring you to use some or all of your available paid leave (e.g., sick, vacation, PTO) during your FMLA leave. Any paid leave taken for this reason will also be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.

Other: _____ (e.g., illness or long-term disability, workers' compensation, state medical leave law, etc.) Any time taken for this reason will also be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.

Return-to-work requirements. To be returned to work after taking FMLA leave, you (will be / will not be) required to provide a certification from your health care provider (fitness-for-duty certification) that you are able to resume work. This request for a fitness-for-duty certification is only with regard to the particular serious health condition that caused your need for FMLA leave. If such certification is not timely received, your return to work may be delayed until the certification is provided.

A list of the essential functions of your position (is / is not) attached. If attached, the fitness-for-duty certification must address your ability to perform the essential job functions.

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

It is mandatory for employers to inform employees in writing whether leave requested under the FMLA has been determined to be covered under the FMLA. 29 U.S.C. § 2617; 29 C.F.R. § 825.306(d). It is mandatory for employers to retain a copy of this document in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.300. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administration, Wage and Hour Division, U.S. Department of Labor, Room 5-3002, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND THE COMPLETED FORM TO THE DEPARTMENT OF LABOR, EMPLOYEE INFORMATION.

Page 2 of 2 Form WH-382, Revised June 2010

FMLA Record Keeping Requirements

- Basic payroll information;
- Copies of leave notices;
- Documents describing benefits/leave policies;
- Premium payments for employee benefits;
- Dates of FMLA leave (hours of leave if leave is taken in less than one full day);
- Disputes; and
- Documents relating to medical conditions, certifications, and histories must be maintained as confidential medical records.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Employee Protections Job Restoration

- After FMLA leave, employee has the right to return to work in the same job, or one that is nearly the same:
 - duties;
 - responsibilities;
 - status;
 - level of skill and effort;
 - responsibility and authority;
 - identical pay, including premium pay, overtime and bonus
 - identical benefits, such as life insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.
- Employees are not entitled to anything other than those benefits they would have been entitled to had they not taken FMLA leave.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Employee Protections Job Restoration

- No job restoration right under following circumstances:
 - Employee uses all available FMLA leave and is not able to return to work.
 - Employer denies key employee return to work to prevent substantial and grievous injury to operations.
 - Employment changes such as a layoff or reduced hours that would have occurred without FMLA leave.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Employee Protections Use of Paid Leave Benefits During FMLA Leave

- Employees may choose or employers may require employees to use accrued paid leave, such as vacation or sick leave, if applicable, at the same time FMLA leave is used.
 - Board Policy
 - Collective Bargaining Agreements
- Other benefits or disability conditions coordinate while using FMLA leave, including:
 - Workers' compensation
 - Short-term disability
 - Leave provided as an accommodation under the Americans with Disabilities Act (ADA)
 - Paid leave mandated under state or local law



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Employee Protections Continuation of Health Insurance Coverage

An employee has a right to continuation of group health insurance coverage during FMLA leave on the same terms as if they had continued to work.

During FMLA leave, the employee will need to continue to pay whatever share of plan premiums they typically paid before FMLA leave to maintain coverage during leave.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Employee Protections

Continuation of Health Insurance Coverage



Employee may cancel group health insurance coverage during FMLA leave

reinstate upon return from FMLA.



Continuation of coverage does not apply if employee:

is laid off or terminated unrelated to the FMLA;
chooses not to return to work for the employer;
or
is unable to return to work after FMLA ends.



Consolidated Omnibus Budget Reconciliation Act (COBRA) or State continuation may apply.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Employee Protections Fitness-for-Duty Certification

- For an employee's own serious health condition, employers may require certification that the employee is able to resume work
 - pursuant to uniformly-applied policy or practice of requiring fitness-for-duty certification for all similarly-situated
- CBA or local or State law could impact ability
- Employee must have notice it is required
- Authentication and clarification is allowed
- Employee responsible for any cost



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Employee Protections

Prohibited Employer Actions

- Employers cannot:
 - Interfere with, restrain, or deny employees' FMLA rights;
 - Discriminate or retaliate against an employee for having exercised FMLA rights;
 - Use FMLA leave as a negative factor in employment actions;
 - Discharge or in any other way discriminate against an employee because of involvement in any proceeding related to the FMLA.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

TURNING FROM THE FMLA

Coordination with other leaves

Coordination with workers compensation

Pension and other benefit issues

Employees wanting to “stack” leave

Intermittent leave issues

Next steps when FMLA runs out and employee still cannot return

Needing an employee in the “seat”



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

HYPOTHETICALS



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Leave Me Alone

Ben Darules, a custodian in the District, has been using his sick leave off and on for months – calling in with chronic back pain. He is about to exhaust all of his paid sick days. You, as HR, are worried about him, so out of the goodness of your heart, you send him a status letter. Ben takes it wrong and comes into the office with his Union rep and threatens to file a grievance if you harass him about using his sick leave. After all- he has not used more than three days in a row. “I don’t need your help!” he exclaims as he leaves your office.

A month later, Ben runs out of sick leave and continues to call in and the Principal tells you he is going to start writing him up for absenteeism.

What do you tell the Principal?

What if during the discipline meeting, Ben asks for FMLA or some other assistance?



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

HOW CAN I HELP YOU?

- Employee Needs Something?
 - What do they need/want?
 - What is in your toolbox?



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Putting It All Together

- Consider
 - Law?
 - Contract / Practice?
 - Board Policy? (Anything special here?)
 - Medical Proof?



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Leave Me Alone

What if during the discipline conference Ben tells the Principal that he hurt his back from the chronic back and forth movements of the mop and lifting the trash bins about three months ago?

What changes?



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

HOW CAN I HELP YOU?

- Employee Needs Something
 - What do they need/want?
 - Is he asking for (or otherwise need) leave?
 - Is he requesting a work accommodation or FMLA?
 - What can you do?
 - Options?????



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Putting It All Together

- Consider
 - Law?
 - Contract / Practice?
 - Board Policy? (Anything special here?)
 - Medical?



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FAMILIAR SCENARIOS

Employee suffers from a sleeping issue and can't always get up in time for work or sleeps through alarm. He says it is a chronic issue and will likely continue to occur sporadically as many as 2 or 3 times a week but is unpredictable. He wants an accommodation. He is a bus driver. He has sick leave available.

HOW CAN I HELP YOU?

- Employee Needs Something
 - What do they need/want?
 - Is he asking for (or otherwise need) leave? Can you make his leave
 - Is he requesting a work accommodation or FMLA?
 - Do you need medical documentation?



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FAMILIAR SCENARIOS

Employee's child has asthma and Employee frequently takes off work to care for child when he has an attack. She hasn't said anything about it but you only know that her child is sick because of workplace gossip. It is time for her evaluation and you are going to ding her on attendance. What happens if she brings this issue up now? What should you do? She is a first year teacher and never worked at the District before this year.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 [@_IASPA_](https://twitter.com/_IASPA_)

HOW CAN I HELP YOU?

- Employee Needs Something
 - What do they need/want?
 - Is she asking for (or otherwise need) leave? Can you make her leave
 - Is she requesting a work accommodation or FMLA?
 - Do you need medical documentation?



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FAMLIAR SCENARIOS

Employee has a pattern of absences and his custodial supervisor is really getting upset. He thinks he is drinking but can't tell for sure. He was about to write the employee up when he came in one morning – said he is an alcoholic, found God over the weekend and was going sober and needed time off to enter this new treatment facility in Los Cabos. He has worked for you for 5 years full time.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

HOW CAN I HELP YOU?

- Employee Needs Something
 - What do they need/want?
 - Is he asking for (or otherwise need) leave? Can you make his leave
 - Is he requesting a work accommodation or FMLA?
 - Do you need medical documentation?



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FAMILIAR SCENARIOS

You hear that an Employee spent the weekend in the hospital following a car accident and is not at work today. Next steps?



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

FAMILIAR SCENARIOS

Employee's grandmother in Mexico is sick and Employee needs leave of absence to care for her. Employee has sick leave and just wants to use her sick leave and nothing else – she demands she has a right under the law to go – her grandma has a chronic illness. It is in the middle of the school year and this is a physics teacher. Does it change if the person who is sick is her mother?



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 [@_IASPA_](https://twitter.com/_IASPA_)

QUESTIONS?



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_

Barbara A. Erickson ▪
berickson@hlerk.com

This is intended solely to provide information to the school
community.

It is not legal advice or a substitute for legal counsel.
It is intended as advertising but not as a solicitation of an
attorney/client relationship.



IASPA

Illinois
Association of
School
Personnel
Administrators

IASPA.org

 @_IASPA_