

**The Vanguard School**  
**POLICY: Vanguard GCACBF – Family and Medical Leave Act (FMLA)**  
**POLICY ADOPTED: 8-15-17**

BELOW IS THE LISTED POLICY:

**Family and Medical Leave Act (FMLA) includes qualifying exigency and military caregiver leave Policy**

The Vanguard school will provide Family and Medical Leave (FML) to its eligible employees. The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict with this procedure and the applicable law, employees will be afforded all rights required by law.

If you have any questions, concerns, or disputes with this policy, you must contact the Human Resources Specialist in writing.

**A. General Provisions**

Vanguard will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a calendar year to eligible employees. The leave may be paid, unpaid, or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

**B. Eligibility**

To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

- 1) The employee must have worked for Vanguard for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement stating Vanguard's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
- 2) The employee must have worked at least 1,250 hours during the calendar year immediately preceding the commencement of the leave. The 1,250 hours do not include time spent on paid or unpaid leave. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

**C. Type of Leave Covered**

To qualify as FMLA under this policy, the employee must be taking leave for one of the reasons listed below:

- 1) The birth of a child and in order to care for that child.
- 2) The placement of a child for adoption or foster care and to care for the newly placed child.

- 3) To care for a spouse, child, or parent with a serious health condition (described below).
- 4) The serious health condition (described below) of the employee

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

The policy covers illness of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Employees with questions about what illnesses are covered under this FMLA policy or under Vanguard's sick leave policy are encouraged to consult with the Human Resources Specialist.

- 5) Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter, or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following:

- a. Short-notice deployment
- b. Military events and activities
- c. Child care and school activities
- d. Financial and legal arrangements
- e. Counseling
- f. Rest and recuperation
- g. Post-deployment activities, and
- h. Additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the

temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.

In order to care for a covered service member, an eligible employee must be the spouse, son, daughter, parent, or next of kin of a covered service member.

- a. A “son or daughter of a covered service member” means the covered service member’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member stood in loco parentis, and who is of any age.
- b. A “parent of a covered service member” means a covered service member’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered service member. This term does not include parents “in law.”
- c. Under FLMA, a “spouse” means a husband or wife. As of March 27, 2015 employees with legal, same-sex marriages, regardless of where they live, have the same rights as those in opposite-sex marriages to federal job-protected leave under the FMLA to care for a spouse with a serious health condition.
- d. The “next of kin of a covered service member” is the nearest blood relative, other than the covered service member’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same leave of relationship to the covered service member, all such family members shall be considered the covered service member’s next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member’s only next of kin. Vanguard may require an employee to provide confirmation of covered family relationship to the covered service member.

“Covered active duty” means:

- a. “Covered active duty” for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country.
- b. “Covered active duty or call to covered active duty status” in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation.

The leave may commence as soon as the individual receives the call-up notice. Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except the person does not have to be a minor. This type of leave would be counted toward the employee’s 12-week maximum of FMLA leave in a calendar year.

- 6) Military caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran.

An employee whose son, daughter, parent, or next of kin is a covered service member may take up to 26 weeks of leave in a single calendar year to care for that service member.

Next of kin is defined as the closest blood relative of the injured or recovering service member.

The term "covered service member" means:

- a. A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- b. A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy.

The term "serious injury or illness" means:

- a. In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and
- b. In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period with the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness incurred by a covered service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating.
- c. Outpatient status, with respect to a covered service member, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

#### **D. Amount of Leave**

An eligible employee can take up to 12-weeks for the FMLA circumstances (1) through (5) above under this policy during any calendar year. Vanguard will measure the calendar year as January through December. Each time an employee takes leave, Vanguard will compute the amount of leave the employee has taken under this policy in the calendar year and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for the FMLA circumstance (6) above (military caregiver leave) during a single calendar year. For this military caregiver leave, Vanguard will measure the calendar year as January through December. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

If a husband and a wife both work for Vanguard and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a

serious health condition, the husband and wife may only take a combined total of 12 weeks of leave. If a husband and wife both work for Vanguard and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

#### **E. Employee Status and Benefits During Leave**

While an employee is on leave, Vanguard will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If an employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, Vanguard will require the employee to reimburse Vanguard the amount it paid for the employee's health insurance premium during the leave period.

Under current Vanguard policy, the employee pays a portion of the health care premium. While on paid leave, Vanguard will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail.

The payment must be received in the Business Office by the 15<sup>th</sup> day of each month. If payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave.

Vanguard will provide 15 days notification prior to the employee's loss of coverage.

If the employee contributes to a life insurance plan, Vanguard will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or Vanguard may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If Vanguard maintains the coverage, Vanguard may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

#### **F. Employee Status After Leave**

An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from the health care provider. This requirement will be included in Vanguard's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits, and other employment terms. The position will be the same or one which is virtually identical in terms of pay, benefits, and working conditions. Vanguard may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

#### **G. Use of Paid and Unpaid Leave**

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid vacation, personal, and sick leave prior to being eligible for unpaid leave. Sick leave may run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave policy.

Sick bank leave for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA.

An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation and personal leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid vacation, personal leave, and sick leave (as long as the reason for the absence is covered by the sick leave policy) prior to being eligible for unpaid leave.

#### **H. Intermittent Leave or a Reduced Work Schedule**

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstance, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a calendar year).

Vanguard may temporarily transfer an employee to an available position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption, or foster care of a child, Vanguard and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption, or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with Vanguard before taking intermittent leave or working a reduced work schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

#### **I. Certification for the Employee's Serious Health Condition**

Vanguard will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition.

Vanguard may directly contact the employee's health care provider for verification or clarification purposes using a health care professional, a HR professional, leave administrator or management official. Vanguard will not use the employee's direct supervisor for this contact. Before Vanguard makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, Vanguard will obtain the employee's permission for clarification of individually identifiable health information.

Vanguard has the right to ask for a second opinion if it has reason to doubt the certification. Vanguard will pay for the employee to get a certification from a second doctor, which the company will select. Vanguard may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, Vanguard will require the opinion of a third doctor. Vanguard and the employee will mutually select the third doctor, and Vanguard will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

#### **J. Certification for a Family Member's Serious Health Condition**

Vanguard will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition.

Vanguard may directly contact the employee's family member's health care provider for verification or clarification purposes using a health care professional, a HR professional, leave administrator, or management official. Vanguard will not use the employee's direct supervisor for this contact. Before Vanguard makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, Vanguard will obtain the employee's family member's permission for clarification of individually identifiable health information.

Vanguard has the right to ask for a second opinion if it has reason to doubt the certification. Vanguard will pay for the employee's family member to get a certification from a second doctor, which the company will select. Vanguard may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, Vanguard will require the opinion of a third doctor. Vanguard and the employee will mutually select the third doctor, and Vanguard will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

#### **K. Certification of Qualifying Exigency for Military Family Leave**

Vanguard will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 12 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave.

#### **L. Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave**

Vanguard will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 12 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Serious Injury or Illness of Covered Service Member.

#### **M. Recertification**

Vanguard may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly, or if Vanguard receives information casting doubt on the reason given for the absence, or if the employee seeks an extension to his or her leave. Otherwise, Vanguard may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. Vanguard may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

#### **N. Procedure for Requesting FMLA leave**

All employees requesting FMLA leave must provide written notice of the need for the leave to the Human Resources Specialist. Within five business days after the employee has provided this notice, the Human Resources Specialist will complete and provide the employee with the DOL Notice of Eligibility and Rights.

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with Vanguard's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

#### **O. Designation of FMLA Leave**

Within five business days after the employee has submitted the appropriate certification form, the Human Resources Specialist will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice.

#### **P. Intent to Return to Work From FMLA Leave**

On a basis that does not discriminate against employees on FMLA leave, Vanguard may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.