

123:1-34-12

**Caregiver leave.****(A) Definitions** ~~As used in section 124.1312 of the Revised Code:~~

- (1) "Foster caregiver" means an eligible employee holding a valid foster home certificate issued under section 5103.03 of the Revised Code, and who is caring for a child in place of the child's parents.
- (2) ~~✓~~ "Kinship caregiver" means an eligible employee who is eighteen years of age or older who has signed an attestation to one of the relationships listed below, and is caring for a child in place of the child's parents;
  - (a) The following individuals related by blood or adoption to the child:
    - (i) Grandparents, including grandparents with the prefix "great," "great-great," or "great-great-great";
    - (ii) Siblings;
    - (iii) Aunts, uncles, nephews, and nieces, including such relatives with the prefix "great," "great-great," "grand," or "great-grand";
    - (iv) First cousins and first cousins once removed.
  - (b) Stepparents and stepsiblings of the child;
  - (c) Spouses and former spouses of individuals named in divisions (A)(2)(a) and (A)(2)(b) of this rule;
  - (d) A legal guardian of the child;
  - (e) A legal custodian of the child;
  - (f) Any nonrelative adult that has a familiar and long-standing relationship or bond with the child or the family, which relationship or bond will ensure the child's social ties.
- (3) "Eligible employee" means any permanent full-time or part-time employee paid in accordance with section 124.152 of the Revised Code and each employee listed in division (B)(2), (B)(3), or (B)(4) of section 124.14 or the Revised Code who works thirty or more hours per week. In determining if a permanent part-time employee works thirty or more hours per week, the average number of regular hours worked, which includes all hours of holiday pay and other types of paid leave, during the three-month period immediately preceding the day caregiver leave begins are to be used to determine eligibility for leave under this rule. If

an employee has not worked for a three-month period, the number of hours for which the employee has been scheduled per week during the employee's period of employment are used to determine eligibility for leave under this rule.

(4) "Placement" means:

- (a) For a foster caregiver, the point in time that the foster caregiver is authorized to provide care for a child by a public children services agency as defined in section 5153.01 of the Revised Code or a private child placing agency as defined in section 2151.011 of the Revised Code,
- (b) For a kinship caregiver, the point in time that the child begins living in the kinship caregiver's home for the purpose of the kinship caregiver providing care for a child in place of the child's parents on a permanent or indefinite basis.

(5) "Child" means either of the following: ~~any~~

- (a) Any person under eighteen years of age; or a person under twenty-one years of age who has a physical or mental impairment, mental or psychological disorder such as an intellectual disability, or a psychological disorder or condition.
- (b) Any person who has been adjudicated by a court of competent jurisdiction as incapable of self-care due to a physical or mental impairment, intellectual disability, or developmental disability.

(6) "Incapable of self-care" has the same meaning as set forth in 29 C.F.R. 825.102.

(B) ~~Benefit.~~ For the purposes of determining when the leave provided for in section 124.1312 of the Revised Code begins:

~~Each foster caregiver or kinship caregiver is eligible, on the placement of a child in the person's home, for a maximum of forty hours of caregiver leave with full pay in each calendar year for the duration of the placement.~~

- (1) If a child is placed before or during the foster caregiver's or kinship caregiver's regularly scheduled work hours, eligibility for caregiver leave will begin on the day the placement occurs.
- (2) If a child is placed after the foster caregiver's or the kinship caregiver's regularly scheduled work hours, eligibility for caregiver leave will begin on the next regular work day for the foster caregiver or the kinship caregiver.

- ~~(3) Each foster caregiver or kinship caregiver will receive a maximum of forty hours of caregiver leave in any calendar year regardless of the number of placements or children placed with the foster caregiver or kinship caregiver during the calendar year.~~
- ~~(4) Unused caregiver leave will expire at the end of each calendar year.~~
  - ~~(a) Unused caregiver leave does not carry forward at the end of a calendar year.~~
  - ~~(b) Caregiver leave cannot be converted to cash, even if it remains unused at the end of the calendar year.~~
- ~~(5) Eligibility for this benefit ends when the child is no longer placed in the person's home or if the employee qualifies for parental leave for the same child.~~
- ~~(6) If necessary to enable an eligible employee to receive the full benefit of five work days of caregiver leave, the director may adjust the forty hour maximum discussed elsewhere in this rule upon written request from the appointing authority. Such circumstances will be reviewed on a case-by-case basis.~~

(C) Leave Entitlement.

- (1) Each foster caregiver or kinship caregiver will receive a maximum of five days of caregiver leave in any calendar year regardless of the number of placements or children placed with the foster caregiver or kinship caregiver during the calendar year.
- (2) Unused caregiver leave will expire at the end of each calendar year.
- (3) Unused caregiver leave does not carry forward at the end of a calendar year.
- (4) Caregiver leave cannot be converted to cash, even if it remains unused at the end of the calendar year.
- (5) Eligibility for this benefit ends when the child is no longer placed in the person's home or if the employee qualifies for parental leave for the same child.

~~(C)~~(D) Procedure to Establish Eligibility for Caregiver Leave.

- (1) In order to be eligible to use caregiver leave, a foster caregiver or kinship caregiver will provide the appointing authority with either a valid foster home certificate issued under section 5103.03 of the Revised Code or an attestation of a proper kinship relationship as set forth in paragraph (A)(2) of this rule.

- (a) The appointing authority will request an updated foster home certificate if the certificate on file with the appointing authority expired or is scheduled to expire in the near future. However, such requests have to be in conjunction with a request to use caregiver leave.
  - (b) The appointing authority may request an ~~undated~~-updated attestation of a proper kinship relationship as needed. However, such requests have to be in conjunction with a request to use caregiver leave.
- (2) When possible, the foster caregiver or kinship caregiver will establish eligibility for caregiver leave as set forth in paragraph ~~(E)~~(D)(1), or will give the appointing authority advance notice of the intent to become a foster caregiver or kinship caregiver, prior to their first use of caregiver leave. In other cases, the eligible employee will provide the appointing authority with the documentation set forth in paragraph ~~(E)~~(D)(1) of this rule within two working days of returning to work following their first use of caregiver leave.
- (3) Caregiver leave requested by an eligible foster caregiver or kinship caregiver will be granted by the appointing authority up to the maximum amount of caregiver leave available to the requester at the time of the request. Caregiver leave can be used in units of 1/10 of an hour.
- ~~(D)~~(E) Caregiver leave is active pay status for purposes of determining overtime and receiving other benefits.
- ~~(E)~~(F) Interaction with other types of leave.
- (1) Use of caregiver leave does not impact an employee's eligibility to receive holiday pay.
  - (2) An otherwise eligible employee who is receiving workers' compensation is not eligible to use caregiver leave while receiving workers' compensation benefits.
  - (3) An otherwise eligible employee who is receiving disability leave or parental leave benefits is not eligible to use caregiver leave while receiving disability leave or parental leave benefits. An otherwise eligible employee is not eligible to use caregiver leave during an employee's waiting period for disability leave ~~or~~ ~~parental leave~~ benefits.
  - (4) An otherwise eligible employee who is receiving occupational injury leave or salary continuation is not eligible to use caregiver leave while receiving occupational injury leave or salary continuation benefits.

(5) Caregivers who are also eligible for FMLA leave will have their caregiver leave count concurrently as FMLA leave only in circumstances described below:

- (a) Bonding with recently placed foster child: Caregiver leave will count concurrently as FMLA leave for foster caregivers who use caregiver leave to bond with a recently placed foster child, within twelve months of the child's placement. Caregiver leave used by kinship caregiver to bond with a recently placed child will not count concurrently as FMLA leave.
- (b) To provide for a foster child or a child under kinship care with a serious health condition: Caregiver leave will count concurrently as FMLA leave for foster caregiver or a kinship caregiver who uses leave to care for a child with a serious health condition who has been placed in the employee's care as described in paragraph (A)(~~4~~1) of this rule.

Effective:

Five Year Review (FYR) Dates: 10/2/2023

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Certification

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Date

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