Sec. 1. GENERAL PROVISIONS

a) *Family and Medical Leave*

The Family and Medical Leave Act ("FMLA") provides eligible employees with unpaid leave for certain family and medical reasons during a 12-month period. During this leave, employees are entitled to continue group health plan coverage as if they had continued to work. At the conclusion of the leave, subject to some exceptions, employees generally have the right to return to the same or an equivalent position, equivalent pay, benefits and working conditions.

b) *Employment Eligibility Criteria*

An "eligible employee" is one who:

1. Has been employed by Midland Academy Charter for at least 12 months (which need not be consecutive);
2. Has been employed by Midland Academy Charter for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave; and
3. Works at a Midland Academy Charter facility where at least 50 employees are employed within 75 miles.

i. *Events Entitling Employees to FMLA Leave*

An eligible employee shall be entitled to FMLA leave for one or more of the following:

1. For the birth of a son or daughter of the employee and to care for the newborn child.
2. For placement of a son or daughter with the employee for adoption or foster care.
3. To care for the employee's spouse, son or daughter, or parent with a serious health condition.
4. Because of a serious health condition that makes the employee unable to perform the functions of his or her position.
5. Because of any Qualified Exigency (defined below) arising out of the fact that the employee's spouse, son or daughter, or parent is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.
6. To care for a covered servicemember with a serious injury or illness incurred in the line of duty if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

ii. *Qualifying Exigency FMLA Leave*

An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

1. Short-notice deployment.
2. Military events and related activities.
3. Childcare and school activities.
4. Financial and legal arrangements.
5. Counseling.
6. Rest and recuperation.
7. Post-deployment activities.
8. Parental care.
9. Additional activities, provided that Midland Academy Charter and the employee agree that the leave shall qualify as an exigency and agree to both the timing and duration.

iii. *Pregnancy or Birth*

Both parents are entitled to FMLA leave to be with a healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. In addition, the expectant mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. The expectant mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health-care provider during the absence and even if the absence does not last for more than three consecutive calendar days. A spouse is entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated, during her prenatal care, or following the birth of a child if the spouse has a serious health condition.

Sec. 2. SECTION II: LEAVE ENTITLEMENT AND USE

a) *Maximum Amount of FMLA Leave Within a 12-Month Period*

Except in the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during a 12-month period for any one or more of the qualifying reasons.

Spouses who are employed by Midland Academy Charter may be limited to a combined total of 12 workweeks of leave during any 12-month period if the leave is taken for birth of a son or daughter, the placement of a child for adoption or foster care, or to care for a parent with a serious health condition. Each spouse may be entitled to additional FMLA leave for other FMLA-qualifying reasons, but not more than a total of 12 workweeks per person.

b) *Determining the 12-Month Period*

Except with respect to military caregiver leave, Midland Academy Charter may choose any one of the following methods for determining the "12-month period" in which the 12 weeks of leave entitlement occurs:

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

1. The calendar year;
2. Any fixed 12-month "leave year," such as a fiscal year or a year starting on an employee's "anniversary date";
3. The 12-month period measured forward from the date any employee's first FMLA leave begins; or
4. A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

i. *Military Caregiver Leave*

In the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a "single 12-month period." The "single 12-month period" is measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins, regardless of the method used by Midland Academy Charter to determine the 12-month period for other FMLA leaves. During the "single 12-month period," an eligible employee's FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason.

Spouses who are employed by Midland Academy Charter may be limited to a combined total of 26 weeks of FMLA leave during the "single 12-month period" if leave is taken as military caregiver leave, for the birth of a son or daughter, for the placement of a child for adoption or foster care, or to care for a parent with a serious health condition.

ii. *Summer Vacation and Other Extended Breaks*

If Midland Academy Charter's activity temporarily ceases and employees generally are not expected to report for work for one or more weeks – e.g., a school closing for Spring Break or for the Christmas/New Year holiday – those days do not count against an employee's FMLA leave entitlement. Similarly, the time during summer vacation when the employee is not required to report to work does not count against the employee's FMLA leave entitlement.

c) *Intermittent or Reduced Work Schedule Leave*

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. "Intermittent leave" is FMLA leave taken in separate blocks of time due to a single qualifying reason. A "reduced leave schedule" is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.

For leave taken because of the employee's own serious health condition, to care for a parent, son, or daughter with a serious health condition, or military caregiver leave, there must be a medical need for leave, and it must be that such medical need can be best accommodated through an

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

intermittent or reduced leave schedule. Leave due to a qualifying exigency may also be taken on an intermittent or reduced schedule basis.

When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently, or on a reduced leave schedule, only if Midland Academy Charter agrees.

i. *Transfer to an Alternative Position*

If an employee requests intermittent or reduced schedule leave that is foreseeable based on planned medical treatment, Midland Academy Charter may require the employee to transfer temporarily to an available alternative position for which the employee is qualified, and which better accommodates recurring periods of leave than does the employee's regular position.

ii. *Calculating Leave Use*

When an employee takes leave on an intermittent or reduced schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. Midland Academy Charter must account for intermittent or reduced schedule leave using an increment no greater than the shortest period of time that Midland Academy Charter uses to account for use of other forms of leave, provided the increment is not greater than one hour.

d) *Special Rules for Instructional Employees*

Special rules affect leave taken intermittently or on a reduced schedule, or taken near the end of an academic term (semester) by instructional employees.

"Instructional employees" are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

i. *Failure to Provide Notice of Foreseeable Leave*

If an instructional employee does not give required notice of foreseeable leave to be taken intermittently or on a reduced schedule, Midland Academy Charter may require the employee to take leave of a particular duration or to transfer temporarily to an alternative position. Alternatively, Midland Academy Charter may require the employee to delay the taking of leave until the notice provision is met.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

ii. *Twenty Percent Rule*

If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered servicemember, or for the employee's own serious health condition; the leave is foreseeable based on planned medical treatment; and the employee would be on leave for more than 20% of the total number of working days over the period the leave would extend, Midland Academy Charter may require the employee to choose:

1. To take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
2. To transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

"Periods of a particular duration" means a block or blocks of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave. If an employee chooses to take leave for "periods of a particular duration" in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

iii. *Leave at the End of a Semester*

As a rule, Midland Academy Charter may not require an employee to take more FMLA leave than the employee needs. The FMLA recognizes exceptions where instructional employees begin leave near the end of a semester. As set forth below, Midland Academy Charter may in certain cases require the employee to take leave until the end of the semester.

The school semester, or "academic term," typically ends near the end of the calendar year and the end of spring each school year. In no case may Midland Academy Charter have more than two academic terms or semesters each year for purposes of the FMLA.

If Midland Academy Charter requires the employee to take leave until the end of the semester, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. Any additional leave required by Midland Academy Charter to the end of the semester is not counted as FMLA leave; however, Midland Academy Charter shall maintain the employee's group health insurance and restore the employee to the same or equivalent job, including other benefits, at the end of the leave.

iv. *More than Five Weeks Before the End of the Semester*

Midland Academy Charter may require an instructional employee to continue taking leave until the end of the semester if:

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

1. The employee begins leave more than five weeks before the end of the semester;
2. The leave will last at least three weeks; and
3. The employee would return to work during the three-week period before the end of the semester.

v. *During the Last Five Weeks of the Semester*

Midland Academy Charter may require an instructional employee to continue taking leave until the end of the semester if:

1. The employee begins leave during the last five weeks of the semester for any reason other than the employee's own serious health condition or a qualifying exigency;
2. The leave will last more than two weeks; and
3. The employee would return to work during the two-week period before the end of the semester.

vi. *During Last Three Weeks of the Semester*

Midland Academy Charter may require an instructional employee to continue taking leave until the end of the semester if the employee begins leave during the three-week period before the end of the semester for any reason other than the employee's own serious health condition or a qualifying exigency.

e) *Substitution of Paid Leave Time*

Generally, FMLA leave is unpaid leave. However, an employee may choose to substitute accrued paid leave for unpaid FMLA leave. If an employee does not choose to substitute accrued paid leave, Midland Academy Charter may require the employee to do so. The term "substitute" means that the paid leave provided by Midland Academy Charter, and accrued pursuant to established policies of Midland Academy Charter, will run concurrently with the unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of Midland Academy Charter normal leave policy.

i. *FMLA and Workers' Compensation*

A serious health condition may result from injury to the employee "on or off" the job. If Midland Academy Charter designates the leave as FMLA leave, the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, neither the employee nor Midland Academy Charter may require the substitution of paid leave. However, Midland Academy Charter and an employee may agree, where state law permits, to have paid leave supplement workers' compensation benefits.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

If the health-care provider treating the employee for the workers' compensation injury certifies that the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline Midland Academy Charter's offer of a "light duty job." As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or Midland Academy Charter may require the use of accrued paid leave.

f) ***Maintenance of Health Benefits***

During any FMLA leave, Midland Academy Charter must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

An employee may choose not to retain group health plan coverage during FMLA leave. However, when the employee returns from leave, the employee is entitled to be reinstated on the same terms as before taking leave without any qualifying period, physical examination, exclusion of pre-existing conditions, and the like.

i. *Payment of Premiums*

During FMLA leave, the employee must continue to pay his or her share of group health plan premiums. If premiums are raised or lowered, the employee would be required to pay the new premium rates.

ii. *Failure to Pay Premiums*

Unless Midland Academy Charter has an established policy providing a longer grace period, Midland Academy Charter obligations to maintain health insurance coverage cease if an employee's premium payment is more than 30 days late. In order to terminate the employee's coverage, Midland Academy Charter must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. Coverage for the employee may be terminated at the end of the 30-day grace period, if the required 15-day notice has been provided.

Upon the employee's return from FMLA leave, Midland Academy Charter must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed. The employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

iii. *Recovery of Benefit Cost*

If an employee fails to return to work after FMLA leave has been exhausted or expires, Midland Academy Charter may recover from the employee its share of health plan premiums during the employee's unpaid FMLA leave, unless the employee's failure to return is due to one of the reasons set forth in the regulations. Midland Academy Charter may not recover its share of health insurance premiums for any period of FMLA leave covered by paid leave.

g) *Right to Reinstatement*

On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave began, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. However, an employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.

i. *Moonlighting During FMLA Leave*

The Superintendent and/or designee may develop a uniformly applied policy governing outside or supplemental employment during FMLA leave. If the Superintendent/and or designee does not develop such a policy, Midland Academy Charter may not deny FMLA benefits on the basis of outside or supplemental employment unless the FMLA leave was fraudulently obtained.

ii. *Reinstatement*

The Superintendent and/or designee shall develop a policy governing the determination of how an employee is to be restored to "an equivalent position" upon return from FMLA leave. Such a policy must be in writing, must be made known to the employee before the taking of FMLA leave, must clearly explain the employee's restoration rights upon return from leave, and must provide substantially the same protections as provided in the FMLA.

iii. *Pay Increases and Bonuses*

An employee is entitled to any unconditional pay increases that may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with Midland Academy Charter policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then an employee who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

iv. *Key Employees*

Midland Academy Charter may deny job restoration to a key employee, as that term is defined in law, if such denial is necessary to prevent substantial and grievous economic injury to the operations of Midland Academy Charter.

Sec. 3. NOTICES AND MEDICAL CERTIFICATION

a) *Required Notices*

The Superintendent shall ensure that a notice explaining the FMLA and containing information regarding the procedures for filing complaints with the Department of Labor's Wage and Hour Division is posted prominently at each campus where it is readily visible to employees and applicants for employment. The Superintendent shall also ensure that such notice is included in Midland Academy Charter's Employee Handbook and distributed to each new employee upon hiring.

If a significant portion of Midland Academy Charter's workforce is not literate in English, the Superintendent shall provide the general notice in a language in which the employees are literate.

The Superintendent may use Department of Labor form WHD 1420 or another form of notice, so long as the notice includes, at a minimum, all of the information contained in form WHD 1420.

i. *Eligibility Notice*

When an employee requests FMLA leave, or when Midland Academy Charter learns that an employee's leave may be for an FMLA-qualifying reason, the employee's immediate supervisor shall notify the employee of his or her eligibility to take FMLA leave. For purposes of this policy, the immediate supervisor of a teacher and assistant principal shall be the Principal. If the employee is not eligible for FMLA leave, the notice must explain why the employee is not eligible.

The employee's immediate supervisor shall provide the eligibility notice within five business days, absent extenuating circumstances. Midland Academy Charter shall translate the notice in any situation in which it is required to translate the general notice.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

ii. *Rights and Responsibilities Notice*

Midland Academy Charter shall provide a written notice of rights and responsibilities each time an eligibility notice is provided to an employee. This notice must include the information required by 29 CFR 825.300(c)(1). The notice may be distributed electronically if it meets the other requirements of this section. Midland Academy Charter shall translate the notice in any situation in which it is required to translate the general notice.

iii. *Designation Notice*

When Midland Academy Charter has enough information to determine whether leave is being taken for an FMLA-qualifying reason, Midland Academy Charter must notify the employee whether the leave will be designated as FMLA leave. If Midland Academy Charter determines that the leave will not be designated as FMLA-qualifying, Midland Academy Charter must notify the employee of that determination. Absent extenuating circumstances, the designation notice must be provided within five business days. The notice must include the information required by 29 CFR 825.300(d)(1), (d)(3), and (d)(6). Midland Academy Charter shall translate the notice in any situation in which it is required to translate the general notice.

iv. *Retroactive Designation*

Midland Academy Chartermay retroactively designate leave as FMLA leave, with appropriate notice to the employee, if Midland Academy Charter's failure to timely designate leave does not cause harm or injury to the employee. Midland Academy Charter and an employee may also agree that leave will retroactively be designated as FMLA leave.

b) *Requests for FMLA Leave*

An employee giving notice of the need for FMLA leave must state a qualifying reason for the leave and otherwise satisfy the requirements for notice of foreseeable and unforeseeable leave, as described below. The employee need not expressly assert rights under the Act or even mention the FMLA.

Employees should request FMLA leave by notifying the Director of Human Resources or designee, and must complete the Department of Labor's form WH-380-E (or WH-380-F as appropriate) made available from the Department of Labor or Midland Academy Charter's administrative offices. Completed forms should be returned to the Superintendent.

i. *Foreseeable Leave*

An employee must provide his or her immediate supervisor at least 30 days' advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth,

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered service member. If 30 days' notice is not practicable, the employee must give notice as soon as practicable, generally on the same day as or next business day after the reason for the leave is known. For leave due to a qualifying exigency, the employee must provide notice as soon as practicable regardless of how far in advance the leave is foreseeable.

When planning medical treatment, the employee must consult with his or her immediate supervisor and make a reasonable effort to schedule the treatment so as not to disrupt unduly Midland Academy Charter operations, subject to the approval of the health-care provider.

ii. *Unforeseeable Leave*

When the approximate timing of leave is not foreseeable, an employee must provide notice to his or her immediate supervisor as soon as practicable under the facts and circumstances of the particular case. If an employee does not comply with usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied.

iii. *Compliance with Midland Academy Charter Requirements*

Midland Academy Charter may require an employee to comply with its usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. If an employee does not comply with usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied.

c) *Certification of Leave*

Midland Academy Charter may require that an employee's FMLA leave be supported by certification, as described below. Midland Academy Charter shall give notice of a requirement for certification each time certification is required. At the time Midland Academy Charter requests certification, Midland Academy Charter must advise the employee of the consequences of failure to provide adequate certification.

i. *Timing*

In most cases, the employee's immediate supervisor will request certification at the time the employee gives notice of the need for leave or within five business days thereafter or, in the case of unforeseen leave, within five business days after the leave commences. Midland Academy Charter may request certification at a later date if Midland Academy Charter later has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification to his or her immediate supervisor within 15 calendar days after Midland Academy Charter's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

ii. *Incomplete or Insufficient Certification*

Midland Academy Charter shall advise an employee if it finds a certification incomplete or insufficient and shall state in writing what additional information is necessary to make the certification complete and sufficient. Midland Academy Charter must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent, good faith efforts) to cure any such deficiency.

A certification is "incomplete" if one or more of the applicable entries have not been completed. A certification is "insufficient" if it is complete, but the information provided is vague, ambiguous, or non-responsive. A certification that is not returned to Midland Academy Charter is not considered incomplete or insufficient, but constitutes a failure to provide certification.

iii. *Medical Certification of Serious Health Condition*

When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, Midland Academy Charter may require the employee to obtain medical certification from a health-care provider. Midland Academy Charter may use the U.S. Department of Labor ("DOL") optional form WH-380-E when the employee needs leave due to the employee's own serious health condition and optional form WH-380-F when the employee needs leave to care for a family member with a serious health condition. Midland Academy Charter may not require information beyond that specified in the FMLA regulations.

An employee may choose to comply with the certification requirement by providing Midland Academy Charter with an authorization, release, or waiver allowing Midland Academy Charter to communicate directly with the health-care provider.

For the definition of "health-care provider," see 29 CFR 825.125.

iv. *Genetic Information*

When requesting medical certification, Midland Academy Charter shall comply with all requirements for requesting medical information under the Genetic Information Nondiscrimination Act ("GINA") as contained in 29 CFR 1635.8(b)(1)(i)(A).

v. *Authentication and Clarification*

If an employee submits a complete and sufficient certification signed by the health-care provider, Midland Academy Charter may not request additional information from the health-care provider. However, Midland Academy Charter may contact the health-care provider for purposes of clarification and authentication of the certification after Midland Academy Charter has given the employee an opportunity to cure any deficiencies, as set forth above. To make such contact,

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Midland Academy Charter must use a health-care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances may the employee's direct supervisor contact the employee's health-care provider.

"Authentication" means providing the health-care provider with a copy of the certification and requesting verification that the information on the form was completed and/or authorized by the health-care provider who signed the document; no additional medical information may be requested.

"Clarification" means contacting the health-care provider to understand the handwriting on the certification or to understand the meaning of a response. Midland Academy Charter may not ask the health-care provider for additional information beyond that required by the certification form. The requirements of the Health Insurance Portability and Accountability Act ("HIPAA") Privacy Rule must be satisfied when individually identifiable health information of an employee is shared with Midland Academy Charter by a HIPAA-covered health-care provider.

vi. *Second and Third Opinions*

If Midland Academy Charter has reason to doubt the validity of a medical certification, Midland Academy Charter may require the employee to obtain a second opinion at Midland Academy Charter's expense. If the opinions of the employee's and Midland Academy Charter's designated health-care providers differ, Midland Academy Charter may require the employee to obtain certification from a third health-care provider, again at Midland Academy Charter's expense.

vii. *Foreign Medical Certification*

If the employee or a family member is visiting another country, or a family member resides in another country, and a serious health condition develops, Midland Academy Charter shall accept medical certification as well as second and third opinions from a health-care provider who practices in that country. If the certification is in a language other than English, the employee must provide Midland Academy Charter with a written translation of the certification upon request.

viii. *Recertification*

Midland Academy Charter may request recertification no more often than every 30 days and only in connection with an absence by the employee, except as set forth in the FMLA regulations. Midland Academy Charter must allow at least 15 calendar days for the employee to provide recertification.

As part of the recertification for leave taken because of a serious health condition, Midland Academy Charter may provide the health-care provider with a record of the employee's absence pattern and ask the health-care provider if the serious health condition and need for leave is consistent with such a pattern.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

ix. *Certification—Qualifying Exigency Leave*

The first time an employee requests leave because of a qualifying exigency, Midland Academy Charter may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service.

Midland Academy Charter may also require that the leave be supported by a certification that addresses the information at 29 CFR 825.309(b). Midland Academy Charter may use DOL optional form WH-384, or another form containing the same basic information, for this certification. Midland Academy Charter may not require information beyond that specified in the regulations.

x. *Certification—Military Caregiver Leave*

When an employee takes military caregiver leave, Midland Academy Charter may require the employee to obtain a certification completed by an authorized health-care provider of the covered servicemember. In addition, Midland Academy Charter may request that the employee and/or covered servicemember address in the certification the information at 29 CFR 825.310(c). Midland Academy Charter may also require the employee to provide confirmation of a covered family relationship to the seriously injured or ill servicemember.

Midland Academy Charter may use DOL optional form WH-385, or another form containing the same basic information, for this certification. Midland Academy Charter may not require information beyond that specified in the regulations. Midland Academy Charter must accept as sufficient certification "invitational travel orders" ("ITOs") or "invitational travel authorizations" ("ITAs") issued to any family member to join an injured or ill servicemember at his or her bedside.

Midland Academy Charter may seek authentication and/or clarification of the certification under the procedures described above. Second and third opinions, and recertifications, are not permitted for leave to care for a covered servicemember.

d) *Intent to Return to Work*

The Superintendent may develop a uniformly applied policy or practice that requires an employee on FMLA leave to report periodically on the employee's status and intent to return to work. Such a policy may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

i. *Fitness for Duty Certification*

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

The Superintendent may develop a uniformly applied policy or practice that requires all similarly situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health-care provider that the employee is able to resume work. The Superintendent may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job.

ii. *Failure to Provide Certification*

If the employee fails to provide Midland Academy Charter a complete and sufficient certification, despite the opportunity to cure, or fails to provide any certification, Midland Academy Charter may deny the taking of FMLA leave. This provision applies in any case where Midland Academy Charter requests a certification, including any clarifications necessary to determine if certifications are authentic and sufficient.

Sec. 4. MISCELLANEOUS PROVISIONS

a) *Record Maintenance*

The Superintendent and/or designee shall make, keep, and preserve records pertaining to its obligations under the FMLA in accordance with the recordkeeping requirements of the Fair Labor Standards Act ("FLSA") and the FMLA regulations. Midland Academy Charter shall keep these records for no less than three years and make them available for inspection, copying, and transcription by representatives of the Department of Labor upon request. Such records may be kept in computer form, so long as they are made available for transcription or copying.

If the GINA is applicable, records and documents created for purposes of FMLA leave that contain family medical history or genetic information shall be maintained in accordance with the confidentiality requirements of GINA, which permit such information to be disclosed consistent with the requirements of the FMLA. If the Americans with Disabilities Act ("ADA") is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements, except as excepted by the FMLA.

b) *Prohibition Against Discrimination and Retaliation*

Midland Academy Charter shall not interfere with an employee's rights under the FMLA, or with legal proceedings or inquiries relating to an employee's rights. Specifically, Midland Academy Charter shall not:

1. Interfere with, restrain, or deny the exercise of (or attempts to exercise) any rights provided by the FMLA.
2. Discharge or in any other way discriminate against any person (whether or not an employee) for opposing or complaining about any unlawful practice under the FMLA.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

3. Discharge or in any other way discriminate against any person (whether or not an employee) because that person has:
   a. Filed any charge, or has instituted (or caused to be institute) any proceeding under or related to the FMLA;
   b. Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under the FMLA; and/or
   c. Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.