

**AGREEMENT
BETWEEN
THE GIBRALTAR SCHOOL DISTRICT
AND
THE GIBRALTAR CUSTODIAL/MAINTENANCE
ASSOCIATION MEA/NEA**

July 1, 2013 June 30, 2017

June 27, 2013

AGREEMENT

This Agreement is entered into by and between the Board of Education of the Gibraltar School District, Wayne County, Michigan, hereinafter called the "Board" or the "Employer" and the Gibraltar Custodial - Maintenance Association/MEA herein called the "Union".

ARTICLE 1

RECOGNITION

1. The Board recognizes the Union as certified by Michigan Employment Relations Commission in Case No. D85-1-2217, as the sole and exclusive bargaining representative for all custodial and maintenance employees, including master mechanic and lunch truck driver, employed by the Gibraltar School District; but excluding probationary and temporary employees, office clerical employees, supervisors, foreman, and all other employees.
2. All reference to employees in this Agreement designates both sexes, and wherever the male gender is used, it shall be construed to include male and female employees.

ARTICLE 2

RIGHTS OF THE BOARD

The Board retains the sole right and shall have the right to manage and conduct its obligations in accordance with the laws of the State of Michigan subject only to the condition that it shall not do so in any manner which constitutes an express violation of the Agreement.

The Union recognizes the Employer's right to manage its affairs and direct its work force and within the existing framework of the Statutes of the State of Michigan to maintain the School District in the County of Wayne as efficiently and at the lowest cost consistent with fair labor standards.

ARTICLE 3

AGENCY SHOP

1. Any employee who is a member of the Union, or who has applied for membership, shall sign and deliver to the Board, an assignment authorizing deduction of monthly dues in the Union which sum shall be designated by the Union in writing. Such authorization shall continue in effect from year to year unless revoked in writing thirty (30) days prior to the termination date of this Agreement. Pursuant to such authorization, the Board shall deduct one twenty-sixth (1/26th) of the dues from the each regular salary check of the employee each month.
2. Any employee who is not a member of the Union or who does not make application for membership within fifteen (15) calendar days from the date of receiving permanent employee status from the Board shall, as a condition of employment pay as service charge to the Union, an amount equal to the monthly dues of the Union, provided, however, that the employee shall authorize payroll deduction for such charge in the same manner as provided in the preceding paragraph. In the event that an employee shall not pay such service charge directly to the Union or authorize payment through payroll deductions, as provided in the preceding paragraph, the Board shall cause the termination of employment of such employee provided all procedures required by this article and by applicable law are fulfilled.
3. The procedure in all cases of discharge for violation of this provision shall be in conformity and compliance with the paragraphs hereinafter cited.
 - a. The Union shall notify the employee of noncompliance by certified mail, return receipt requested. Said notice shall detail the noncompliance and shall provide ten (10) days for compliance, and shall further advise the recipient that a request for discharge may be filed with the Board in the event compliance is not effected.
 - b. If the employee fails to comply, the Union may file charges in writing, with the Board, and shall request termination of the employee's employment. A copy of the notice of noncompliance and proof of service shall be attached to said charges.
 - c. The Board only upon receipt of said charges and request for termination, shall conduct an investigation of said charges, and if all

requirements are met, then termination notice will be given.

4. **Remittance of dues to Financial Officer.** Deductions for any calendar month shall be remitted to the designated financial officer of the local union with a list from whom dues have been deducted as soon as possible after the 15th day of the current month. The Union agrees to hold the Board harmless and without liability from any claims of erroneous deductions for any amount of dues or fees deducted by the Board and paid to the Union.

5. The Union agrees to assume the legal defense of any suit or action brought against the Board regarding paragraphs 2 through 5 of this Article. The Union further agrees to indemnify the Board for any costs or damages which may be assessed against the Board as the result of said suit or action, including reimbursement to the Board for any Unemployment Compensation paid by reason of action taken by the Board for the purpose of complying with this Article subject to the following conditions:
 - a. The damages have not resulted from the negligence, misfeasance or malfeasance of the Board or its agents.

 - b. The Union, after consideration with the Board, has the right to decide whether to defend any said action or whether or not to appeal the decision of any court or other tribunal regarding the validity of this Article or the damages and costs which may be assessed against the Board by the Court of Tribunal.

 - c. The Union shall have the right to compromise or settle any claim made against the Board under this Article.

ARTICLE 4

REPRESENTATION

1. The Union will furnish in writing the names of the Union officers no later than July of each year and within a reasonable time thereafter should there be any changes.

2. The Employer shall recognize up to three (3) employees designated to handle problems and communications with the Employer. Said employees shall be the local union officials who may file and present grievances. The

Local Union President or a Steward may, upon receiving approval from the Supt's designated representative, investigate and present grievances to the employer without loss of time or pay. Should it become necessary for an employee to leave his work place in order to investigate a grievance, said employee shall obtain prior permission from the supervisor and give the name of the employee he is going to see. Said employee shall notify the Supervisor upon his return to work. This provision should not be abused by any employee and normally investigations shall be conducted outside business hours.

3. Should the Union representatives be required to attend any meetings with the administration during working hours, said Union representatives shall be released from work responsibilities without loss of pay.
4. The Union shall be provided ten (10) days release time for use by the Union President or designee to be used for Union purposes. The Union shall arrange use of such days forty-eight (48) hours in advance with the Superintendent or designee,

ARTICLE 5

DISCRIMINATION

1. The Board and the Union will not discriminate against any employee with respect to hours, wages, terms or conditions of employment by reason of this membership or not-membership or participation or not-participation in the activities of the Union.
2. The Union agrees to continue to admit persons to membership without discrimination on the basis of race, creed, color, sex, national origin or age.
3. The Employer will not aid, promote, or finance any labor group or organization which purports to engage in collective bargaining or make any agreement with any such group or organization for the purpose of undermining the Union during the term of this Agreement.

ARTICLE 6

SPECIAL CONFERENCES

Special conferences for important matters will be arranged between the Local President and the Employer or its designated representative upon request of either party. Such meetings shall be between at least two representatives of the Employer and at least two representatives of the Union. Arrangements for such special conferences shall be made in advance and an agenda of the matters to be taken up at the meeting shall be presented at the time the conference is requested. Matters taken up in special conferences shall be confined to those included in the agenda. The members of the Union shall not lose time or pay for time spent in such special conferences. This meeting may be attended by a representative of the MEA.

ARTICLE 7 GRIEVANCE AND ARBITRATION PROCEDURE

1. Any grievance or dispute which may arise between the parties concerning the application, meaning or interpretation of this Agreement shall be settled in the following manner:

Any employee having a grievance shall first take up the matter with his immediate supervisor informally within ten (10) working days following the alleged contract violation or it shall be considered invalid. The Union Steward may be present, if so requested by the employee. The Supervisor shall have a maximum of ten (10) working days to resolve the issue.

The Union shall have the right to initiate a grievance on its behalf at the second step of this grievance procedure for disagreements which cannot be resolved by the individual employee procedure.

STEP 1. In the event the grievance is not resolved informally, the grievance shall be signed by the employee and union representative and presented in writing specifying the Article and Section of the Agreement from which the alleged grievance arises, to the immediate Supervisor of Maintenance within ten (10) working days following the Supervisor's informal disposition or lack of same. The Supervisor shall attempt to adjust the matter and shall respond to the representative or employee in writing within ten (10) working days.

STEP 2. If the grievance still remains unresolved it shall be presented by the Union Representative or Union Grievance Committee to the

Superintendent of Schools or his/ her designee in writing as in Step 1 within seven (7) working days after response of the Supervisor is due. Either party may request and shall be granted a meeting at Step 2. The grievant, grievance committee and representative of MEA may attend meetings at Step 2. The superintendent or his/her designee shall attempt to adjust the matter and shall respond in writing to the Union Steward, Union Representative, or Grievance Committee, with a copy of the response to the Local President within fifteen (15) working days.

STEP 3. If the grievance is still unsettled, the Union may, within fifteen (15) working days after the Superintendent's response is due, by written notice to the other party, request arbitration. The parties shall attempt to mutually agree upon the arbitrator within fifteen (15) calendar days after notice has been received. If the parties are unable to mutually agree upon an arbitrator within fifteen (15) calendar days, the arbitrator shall be selected in accordance with the rules of the A.A.A. (American Arbitration Association). Expenses for the arbitrator's service and the proceedings shall be borne 60% by the losing party and 40% by the prevailing party; however, each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such record to be made, provided it pays for the record. Copies shall be made available to the other party provided the other party bears half the cost.

The Arbitrator will not have the power to add to, subtract from, change, or amend any of the terms of this contract, but shall concern himself only with the interpretations and application of the terms of this Agreement; nor will he insert his judgment for that of the Employer. If the Arbitrator's decision is within the scope of his authority, it will be binding on the union, its members and the employee or employees involved and the Employer.

The Arbitrator must render his decision on the matter before him not later than thirty (30) calendar days from the final day of the hearing (s). Upon mutual agreement of the parties, an arbitrator may issue his decision verbally, immediately following conclusion of the hearing(s).

2. The time limits of this procedure may be extended by mutual consent in writing.
3. No decision on or adjustment of a grievance shall be contrary to any provision of this agreement.

4. Failure at any step of this procedure by the Employer to communicate the decision of a grievance within the specified time limit shall permit the lodging of an appeal at the next step of this procedure. Failure to file a grievance or appeal a decision at any step within the specified time limit shall be deemed a withdrawal of the grievance and it shall not be reinstated.

ARTICLE 8

DISCIPLINE & DISCHARGE

1. The employer shall not discipline or discharge any employee without just cause.
2. Discipline shall be defined as any oral or written reprimand, oral or written warning, suspension, or disciplinary layoff. With the exception of oral discipline or discharge proceedings the Board will include in the written disciplinary document the following:

"You are hereby notified that you have the right to consult with your Union Representative relative to this disciplinary action and object via the grievance procedure."

In the event of written disciplinary action, the employee shall sign the document acknowledging only that he has read and received said document.

Acknowledging that discipline is a constructive tool to improve behavior of an employee the Board will proceed in the following manner in its dispensing of discipline:

- a) Issue an oral warning.
- b) Issue a written warning.
- c) Issue suspension without pay as follows:
First suspension -- three (3) days.
Second suspension -- five (5) days.
If behavior is not corrected, more severe suspensions may occur or the employee may be discharged.
- d) Prior to any discharge, the Board shall suspend the employee for five (5) days without pay.

Nothing herein shall prevent the Board from commencing discipline at any appropriate step should circumstances warrant. Disciplinary records more

than two (2) years old will not be considered in new instances of discipline unless required by law.

The employer shall notify the employee of their right to have a Union representative present at any meeting which may lead to discipline. The employee may have a Union representative present at any meeting at which discipline is dispensed.

3. **Discharge.** When an employee's behavior or work performance warrants discharge the employee and his representative will be notified in writing that the employee has been discharged at the time of discharge. The Union shall have the right to take up a discharge as a grievance at the second (2) step in the grievance procedure, and the matter shall be handled in accordance with that procedure through the arbitration step if deemed necessary by either party.

Any employee found to be unjustly discharged shall be reinstated with full compensation and recoverable benefits for all lost time, if determined so by the settlement or the Arbitrator.

No claim for back wages shall exceed the amount of wages the employee would otherwise have earned at his regular rate, unless overtime was involved in the case.

ARTICLE 9 **PROBATIONARY EMPLOYEES / NEW EMPLOYEES**

1. New employees hired shall be considered as probationary employees until the Board formally approves the permanent hiring of such employees at its first regularly scheduled meeting next following completion of 90 work days of employment. The purpose of the probationary period is to allow management time to evaluate their ability to become a permanent employee. When an employee completes the probationary period by being formally hired by the Board, he shall be entered on the seniority list of the unit from the first date of employment in the classification covered by the bargaining unit. There shall be no seniority among probationary employees.
2. During the probationary period, probationary employees shall not be members of the bargaining unit and with the exception of the **New Employee Wage Schedule** listed in Appendix A, shall not receive any of the benefits or have access to the grievance procedure provided by this

Agreement. All fringe benefits (health insurance, dental, vision, and life insurance) shall begin on the 91st day of work.

ARTICLE 10

SENIORITY

1. As of the effective date of this agreement, seniority ranking shall be as previously agreed to by the parties in the seniority list dated February, 1976 for all existing personnel. From that date forward, seniority shall be determined by the provisions of the Article.

Seniority shall be on a school district-wide basis within the bargaining unit and defined as dating from the first day worked in classification covered by this bargaining unit subject to certain provisions subsequently outlined i.e. probationary employees, promotions out of the bargaining unit, etc.

In the event of conflicts arising due to identical employment starting dates ranking shall occur by the last four digits of the respective Social Security numbers, the one with the higher number being a higher seniority rank. For example:

Employee #1	9-1-76	SS# 367-20-6000
Employee #2	9-1-76	SS# 558-30-5999

2. Seniority shall be a required principle in determining promotions. Ability and job experience shall also be considered. If ability and job experience are equal, seniority shall be the deciding factor.
3. Seniority shall be granted for time spent away from the job on involuntary service with the United States Armed Services.
4. An employee returning from service with the Armed Forces of our country within ninety (90) days of honorable discharge date shall be granted the privilege of exercising his seniority within the bargaining unit.
5. Seniority ranking shall be brought up to date once a year with mutual agreement of both administration and union and a copy sent to each employee.

6. If an employee is transferred or promoted to a position under the Employer not included in the bargaining unit, he shall be given a trial period of up to ninety (90) calendar days, during which time he shall be entitled to transfer back to his former job status and location. If the employee fails to return to the bargaining unit within 90 calendar days, the employee's seniority within the Custodial/Maintenance bargaining unit shall be frozen from the day the employee left the department and shall remain frozen until such time as the employee:

- a) Returns to the bargaining unit or,
- b) Is no longer employed by the district.

Upon a transferred employee's return to the Custodial/Maintenance department, the employee shall be entitled to bumping rights within the department to any position their frozen seniority affords them under #9 of this article.

Only members of the Gibraltar Custodial/Maintenance Association/MEA shall accumulate seniority within the custodial/maintenance department.

7. An employee shall lose his/her seniority for the following reasons:

- a) He/she quits.
- b) He/she is discharged for just cause.
- c) He/she is absent for three (3) days without notifying the appropriate administrator.
- d) He/she fails to return from a Board authorized leave-of-absence on the date specified.
- e) He/she is laid off for a period in excess of his accumulated seniority at time of layoff.

8. The seniority of an employee shall not be lost because of an approved absence.

9. An employee who is bumped by another employee with greater seniority shall have the right to select the highest position in the bargaining unit for which he/she is qualified by seniority, provided that no employee may displace another employee in a different job classification regardless of seniority, unless he himself is qualified to perform the duties of that

classification.

10. There shall be no seniority among probationary employees. Upon completion of probationary period by formal Board hiring as defined in Article 9 the employee shall be entered on the seniority list of the bargaining unit and shall rank for seniority from the first (1st) day of employment in the classification covered by the bargaining unit.
11. The President of the Union and two (2) stewards shall be assigned regular, full-time positions, provided work is available and they can perform the work. Full-time shall mean a regular forty-hour position.

Any job assignment scheduled for less than forty (40) hours per week shall be offered to the least senior employee working, and if said employee refuses, he or she shall be allowed to request being placed on layoff status, and the most senior person on layoff shall be recalled.

- 12 The parties do hereby agree to the following execution of right of seniority and will hereby consider it policy.
 - a. District-wide seniority will prevail at each work site within each classification when pertaining to Job Preference.

ARTICLE 11

LAYOFF - RECALL

1. The word "layoff" means a reduction in working force.
2. If it becomes necessary for a layoff, seasonal or part-time employees will be laid off first, then probationary employees will be laid off. Seniority employees will be laid off last according to seniority as covered in Article 10. Any seniority employee laid off shall be given a notice of layoff no less than two weeks prior to the effective date of layoff.
3. If an employee is laid off due to a reduction in the work force, he/she may be granted pay in lieu of any vacation days he has earned.
4. When the working force is increased after layoff, employees will be recalled according to seniority as covered in Article 10. Notice of recall to work shall be sent to the employee, at his/her address of record on file at the

Board Office, by registered or certified mail. It is the responsibility of the employee to keep the Board informed of his/her correct address.

5. If an employee fails to report for work within ten (10) working days from date of mailing of Notice of Recall, the employee shall be considered to have resigned. Extension may be granted by the Employer in proper cases. In every case of recall and in the case of an extension of time for an employee, the Board may require a complete physical examination at Board expense, prior to such recall or extension.
6. Laid-off seniority employees shall have first right to any seasonal or part-time employment opportunities. Wages and benefits for such employment shall be as contained in this Article.
 - a) Any laid-off seniority employee performing seasonal or part-time employment and having worked more than thirty (30) consecutive days shall be reinstated on Blue-Cross/Blue-Shield for the period of continued employment.
 - b) Any laid-off seniority employee called back for vacation or sick leave fill in shall be paid at his/her appropriate step of that classification he/she temporarily fills.
 - c) Any laid-off seniority employee called back for part-time or temporary help shall accumulate vacation days accruing at the rate of 1/12th of vacation per month of part-time or temporary work (or fraction) thereof. This formula should be applied to the amount of vacation to which the employee would have been entitled on the basis of his/her seniority the following July 1 had he/she not been laid off.
 - d) Any laid-off seniority employee called back for part-time or temporary work shall have access to the grievance procedure.
 - e) Any laid-off seniority employee shall accumulate seniority when called back to part-time or temporary help.
 - f) Any laid-off seniority employee performing seasonal/part-time work shall be entitled to all holiday compensation consistent with Article 20, Section 4, providing the employee worked the work day before and after the holiday. The holiday shall be counted toward the thirty

(30) consecutive days pursuant to Section 6.a. above.

7. VOLUNTARY LAYOFF

Whenever a reduction of personnel is necessary, the following additional procedure will be implemented to offer seniority personnel an opportunity to accept layoff on a voluntary basis. The number of participants on voluntary layoff shall not exceed the number of positions on layoff.

- a) Any participant on voluntary layoff under this agreement shall continue to accrue seniority for the school year for which the layoff was affected.
- b) Any bargaining unit member that wishes to participate in the voluntary layoff shall notify the Employer and the Union in writing no later than ten (10) working days after notification by the employer. No member will be considered for this program who has not so indicated in writing. Voluntary layoffs are only available to members not otherwise laid off.
- c) Consideration for participation in this program shall be on a seniority basis, with the most senior members being given the voluntary layoff first.
- d) Except for the manner in which the member became laid off, the laid off member shall be treated as any other member on layoff except as specifically stated in this section.
- e) Should the member who is on voluntary layoff refuse a position during the period of voluntary layoff, then that member shall be automatically placed on a layoff leave for the remainder of the term and shall return from the layoff-leave as any other person on leave returns at the end of the term. Members on layoff-leave shall continue to accrue seniority for the remainder of the term. Once recalled from layoff and a layoff-leave status, unemployment eligibility ceases.
- f) Applications for participation in the voluntary layoff must be renewed in writing every four (4) months.
- g) After four (4) months of voluntary layoff, a member may return to the position he/she previously held, providing that the position is still

available. If that position is no longer available, then that member shall have the right to bump a less senior member.

ARTICLE 12

RETIREMENT

1. Employees who retire while under contract who have served the District successfully for a period of:

15 - 20 years of service = \$25.00 per year

20+ years of service = \$45.00 per year.

In lieu of the above stated payment, an employee who retires before his 65th birthday with 30 or more years of service will receive a lump sum payment of \$2,000 on the next regularly scheduled payroll.

The employee must be eligible to retire under the MPSERS system for retirement to qualify for either incentive.

ARTICLE 13

BULLETIN BOARD

1. The Board will provide each building a bulletin board on which the Union shall have access for posting notices of the following types:

- a) Notices of Union recreational and social events
- b) Notices of Union elections.
- c) Notices of Union meetings.
- d) Notices of results of Union elections.

2. Except as permitted in Section 1 of the Article, there shall be no distribution or posting by employees or by the Union or its members or representatives, of any pamphlets or advertising for a political matter of the local district or related matters.

ARTICLE 14

FUNERAL LEAVE

In the event of death in the immediate family of an employee, the employee shall be entitled to leave without loss of pay for a period not to exceed three (3) days, if the funeral is held within 300 miles of the school district for the purpose of preparing for and/or attending the funeral.

- a) If the funeral services are held between 300-500 miles from the school district, one (1) additional day shall be allowed or a total of four (4) days without loss of pay.
- b) If the funeral services are held beyond a distance of 500 miles, two (2) additional days shall be allowed or a total of five (5) days without loss of pay.
- c) The immediate family of an employee is defined as follows: spouse, children, parents, step children, parents-in-law, step parents, grandchildren, grandparents, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, and other live-in dependents. Step children/parents only applies to current spouse.

ARTICLE 15 LEAVE

ABSENCE

1. **Absence Days.** At the beginning of every fiscal year, each Custodial/Maintenance employee shall be credited with ten (10) days to be used for the employee's personal business/illness/injury, if he/she has one (1) year of continuous employment prior to the beginning of the fiscal year, otherwise the days will be prorated. Employee may bank up to fifteen (15) absence days to be used for personal illness or injury only in future years. Annually, the employee may sell back any unused absence days at a rate of \$37.50 per day.

The day immediately prior to a regularly scheduled school holiday or vacation day and the day immediately following a regularly scheduled school holiday or vacation day, shall not be used for Absence Days.

Short-term disability leave benefits beyond the first ten (10) days (“modify fill”) shall be provided by an income protection insurance policy which shall be maintained by the School Board. This policy shall include the following benefits:

- a) Full premium paid by the School District for income protection insurance policy.
 - b) Coverage to start effective the eleventh (11th) consecutive day of sickness.
 - c) Benefits to be 70% of base salary at time of sickness for the first year, and 60% of the base salary thereafter to a maximum of \$2,500/month but not beyond the age stipulated by the current insurance contract.
2. To avoid misuse of the provisions of this Article, employees may be required to provide a doctor's certification of illness or injury, if requested, after three (3) consecutive days of absence for illness or injury, should their attendance record be in question.

All employees while under the income protection policy as defined in Section 1 of this article shall be entitled to all employee benefits listed in Article 31 for two (2) years.

ARTICLE 16 PERSONAL LEAVE OF ABSENCE

A. PERSONAL LEAVE OF ABSENCE

1. Upon written request, an employee having completed one year of service may be granted up to one (1) year leave of absence without loss of seniority by the Board of Education or its designee.
2. The Board may grant an extension of such leave, but the extension itself and the duration thereof will be the prerogative of the Board and will be based on the evidence submitted to establish the necessity of such extension.
3. All such leaves shall be without pay or benefits unless covered under FMLA.
4. All employees returning to employment from such a leave shall

receive all pay raises and benefits including seniority applicable during the period of absence

5. Reinstatement shall be granted to the employee's former job which he/she held at the time the leave commenced; or if the job is no longer in existence, to a job to which the employee could bump, in accordance with his seniority.
6. During the period of time that the bargaining unit member has elected a Personal Leave of Absence, the Board may temporarily fill the vacancy created, in accordance with Article 23, Section 2.

B. FAMILY MEDICAL LEAVE

The Board will provide family medical leave as mandated by the federal Family Medical Leave Act. This leave is without pay but with benefits for up to twelve (12) weeks within a twelve (12) month period.

ARTICLE 17

LEAVES - JURY DUTY

1. All school employees who are called to jury duty shall notify the Superintendent as soon as notice is received. Employees shall request the Court to defer jury duty whenever possible to the summer months. The Superintendent will confirm and support such requests when necessary.
2. Employees who cannot obtain a deferment or whose employment extends through the summer months shall be released for jury duty. Such employees shall receive the difference between his/her regular daily wages and pay received for jury duty on those days when juries are in session by Court Rule or local custom.
3. Upon submission of a subpoena, an employee required to appear in Court either as principal or witness in a third party case shall suffer no loss of pay or leave days.
4. Abuses will be mutually investigated.

ARTICLE 18

HOLIDAYS

The following days shall constitute paid holidays for which each seniority employee will receive time off with pay subject to the conditions to this Article for the number of hours in the employee's normal work day, not to exceed eight (8) hours. Probationary, seasonal, or part-time employees shall not be entitled to holiday pay.

Friday prior to Labor Day	Day before New Year's
Labor Day	New Year's Day
Thanksgiving Day	Good Friday
Friday following Thanksgiving Day	Memorial Day
Day before Christmas	Independence Day
Christmas Day	

In the event that any of the designated holidays fall other than during the regular work week, the following rules shall apply:

1. Should the holiday fall on Saturday, Friday shall be considered the holiday. For the Tuesday-Saturday employee, should the holiday fall on Sunday, Saturday shall be considered the holiday.
2. Should the holiday fall on Sunday, Monday shall be considered the holiday. For the Tuesday-Saturday employee, should the holiday fall on Monday, Tuesday shall be considered the holiday.
3. Both 1 and 2 above are subject to the provision that no day when school is in session shall ever be considered a holiday. In the event either 1 or 2 would result in placing observance of the holiday on a day when school is in session, then the following would apply:

Employees shall receive either an extra day's pay or be given the equivalent amount of release time as determined by the administration. Released time shall be taken only at times designated by the administration. The administration shall consider the wishes of the employees in this matter, to the extent of polling the employees and discussing the matter with the representatives of the Union, but

the final decision will rest with the administration.

4. All regular employees will be paid for the above holidays provided they work on the scheduled work days previous to and following the holiday, unless vacation or sick leave is taken or just cause can be established for not reporting to work.

ARTICLE 19

VACATIONS

1. Seniority employees whose job assignment extends over the full year, twelve (12) months, shall be entitled to vacation with full pay. Employees whose job assignments are probationary, seasonal, or substitute, are not eligible for a paid vacation.
2. Vacation pay will be based on the regular weekly pay of the employee exclusive of overtime.
3. In the first year of employment all regular employees shall accrue one (1) day of vacation per full month of employment to a maximum of ten (10) days to be taken the following fiscal year after completing the probationary period. After completing one (1) year of service, seniority employees shall receive two (2) weeks vacation in the succeeding fiscal year.

ADDITIONAL VACATIONS

4. Commencing with the 4th vacation entitlement, each regular employee shall be entitled to two weeks plus one day of vacation. Commencing with the 5th vacation entitlement each regular employee shall be entitled to two (2) weeks, plus two (2) days vacation, etc., to a maximum of twenty-(20) days for each regular employee hired prior to ratification of this agreement. The maximum number of days for any employee hired after the ratification of this agreement (January, 2010) shall be fifteen (15) days.
5. Any employee who leaves the employment of the Employer during the year as a result of dismissal with just cause shall forfeit all vacation rights.
6. If an employee is laid off, voluntarily quits, is on Worker's Compensation Leave or retires, he/she shall receive unused vacation credit. A recalled

employee who received such credit at the time of layoff will have credit deducted.

7. Any employee eligible for vacation who misses work during the year due to Leave of Absence shall be entitled to only a prorated vacation with pay during the next vacation period on the following basis:

Total 1 month absence - 90% of vacation pay
Total 2 month absence - 80% of vacation pay
Total 3 month absence - 60% of vacation pay
Total 4 month absence - 50% of vacation pay
Total 5 month absence - 40% of vacation pay
Total 6 month absence - 30% of vacation pay
Total 7 month absence - 20% of vacation pay
Over 7 months absence - 0% of vacation pay

Any employee eligible for vacation who misses work during the year due to sickness or injury covered by the short-term disability plan shall continue to accrue full vacation entitlement for up to six (6) months of such absence.. For absences between six months one day up to one year, the employee shall accrue fifty percent (50%) of his/her vacation entitlement with no entitlement thereafter.

8. The vacation year shall be from July 1 to June 30. Vacations will be granted during the year as suitable considering both the wishes of the employee to the extent possible and the efficient operation of the department concerned.
9. Employees will submit vacation requests for the next school year by June 1st, provided the district calendar has been published and the Director of Maintenance has provided employees with their vacation allotment. The vacation schedule shall be established on the basis of seniority and job classification at each work site by the Director of Maintenance. Once the schedule is set, the Director of Maintenance shall meet with all employees on a building basis to address problems with vacation schedules. Employees may submit vacation change requests after June 1st, but at least one (1) month in advance. Except in emergencies, the schedule shall be adhered to by the parties.
10. Vacation days shall not be cumulative. If earned vacation is not made available by the administration during the vacation period, the employee

shall have the option of receiving vacation pay or a vacation as approved by the Superintendent.

ARTICLE 20

ACT OF GOD DAYS

Employees covered by this Agreement will not be penalized or "docked" due to time lost due to an "Act of God"

All day shift employees shall make every reasonable effort to report to work on such days and to contact the School District if they are unable to report. All other bargaining unit members shall make every reasonable effort to report to work on such days when requested. When an employee does report for work, compensatory time off shall be granted on non-school days by the Director of Maintenance.

If more than one consecutive Act of God day is called, the Director of Maintenance will contact by seniority the necessary staff needed to report to work on the second day.

ARTICLE 21

JOB PREFERENCE

1. a. If a permanent vacancy or a new job occurs in the bargaining unit and if the Board determines to fill such position, the position shall be posted on the bulletin board for a period of five (5) working days during which period, seniority employees may make a written application for such job to the department supervisor. Bid notice will contain location and shift. Notice of applications from members of the bargaining unit shall be furnished to the Local President. Employees failing to submit a written application within the five (5) working day posting period shall be considered as having refused to apply for such vacancy.

Prior to leaving on vacation, an employee must notify the Director of Maintenance in writing with a copy to the Superintendent, or his designee, of their interest in receiving any job bids and a phone number where they can be reached. The Union shall be responsible for notifying members of job bids during any other absences covered under the contract.

- b. Such vacancy shall be filled on the basis of applicants meeting minimum ability and job experience requirements and when these are equal, seniority shall prevail. Notice of successful applicant will be given to employee and

Local President upon awarding of bid. Should no written job application be received during the five (5) working day posting period, the Board may fill the vacancy by hiring a new employee or by the transfer first of probationary employees and then of the least senior employee.

- c. The successful bidder to a classification not previously held in accordance with the procedure set forth above shall undergo a trial period of up to 90 working days. If it is found that such employee does not meet the requirements or responsibilities of the position to which he has bid during the trial period, then such employee shall be notified in writing of the deficiencies and shall be restored to his former position. The employer in such case shall have the right to require the employee to remain on the job until such time as the job is again posted and filled but not in excess of 30 calendar days. If the employee's former position has been discontinued, he shall bump back to the former classification or lower classification in accordance with the seniority provisions of this contract. During the trial period, the successful bidder will receive the rate of pay for the job he is performing.
2. a. In the event of temporary openings as a result of extended sick leave known in advance to exceed thirty (30) calendar days, or a leave of absence due to health, maternity or personal requiring approval by the Board of Education, and if the Board determines to fill such job, it will be available for temporary bidding in accordance with the following procedures:
 - b. The job will be posted for temporary bids for a five (5) working day period of time. Seniority employees of the bargaining unit interested in applying for a posted temporary opening must do so in writing to the Department Supervisor within the five (5) working day posting period. At the conclusion of that period, the vacancy shall be temporarily filled by the most senior applicant meeting the minimum ability and job experience requirements
 - c. The successful applicant will fill the temporary opening until such time as the employee originally assigned to the job returns from the authorized absence. At the time of such return, the successful applicant for the temporary opening will be replaced by the original employee on the job and the successful applicant will return to the job that he or she was performing prior to the time that the opening occurred and will not have any right to remain on the job he or she filled on a temporary basis.

- d. It is understood that for the interim period including the five (5) working day posting period and as a replacement for the successful applicant, the school district may assign the least senior qualified employee to fill vacancy occurring.
- e. Other temporary openings occurring shall be filled by assignment of the least senior qualified employee or a temporary substitute.

3. **TRAINEE POSITIONS.** The parties acknowledge that certain job functions within the bargaining unit call for the application of certain skills such as Maintenance Persons, Head Mechanic-Maintenance Person, or the Assistant Mechanics. Whenever the Board has need to fill such a position, a trainee position may be created. Such Trainees must meet certain basic requirements such as scoring minimum requirements (60 percentile or better or an equivalent score under other systems such as raw score) on a mechanical aptitude test, or job related test to be administered by the Board and show minimum ability and job experience requirements. When test scores meet requirements and minimum ability and job experience requirements are equal, the senior applicant shall be granted the training position. The Board will notify applicants of the time and place of testing at least five (5) working days prior to the administration of tests. The Trainee will be evaluated every three months by the Director of Maintenance by means of observation and interview if deemed necessary by the Director. When evaluated to be sufficiently trained but no sooner than 6 months or longer than 18 months the Trainee will advance to the regular classification held when made Trainee according to seniority.

- 4. Any position in the bargaining unit having a major change in scheduled hours of three (3) or more hours at one time will be handled as follows:
 - a) If an employee currently holds this position, he/she will be given the option of:
 - 1) Accepting the scheduled hours change and retaining his/her position.
 - 2) Bumping back into the work force where his/her seniority will take him/her in accordance with Article 10.
 - b) If the employee holding the position chooses to bump back into the

work force, this position will become a permanent opening in the bargaining unit and will be bid as such in accordance with Article 23.

5. All transfers or reassignments of job locations will be instituted when and if there is a mutual consent between both the Employer and the Union.

If and when an emergency situation* arises requiring an employee to be temporarily reassigned to a different job location, the Board will temporarily relocate employees(s) starting with the least senior employee in the unit. It is further agreed that the definition of emergency situation does not include avoiding overtime or in lieu of paying overtime.

ARTICLE 22

OVERTIME

1. All hours worked in excess of eight (8) hours in any one work day shall be considered overtime and paid at the rate of time and one-half. Overtime shall be assigned to employees by job classification on as equitable a basis as possible. Whenever building use occurs during non-school hours and a custodian is not on duty, those persons using the building will not perform chores normally regarded to be custodial work performed by members of this bargaining unit; when overtime is assigned at least one of the employees assigned will, if possible, be from the regular staff of that building.
2. When an employee is asked to work overtime on an activity sponsored by an outside group, the employee's first responsibility shall be to be available for such assistance as the group may require. Any work assignment given to the employee shall take into consideration this primary responsibility. (Work assignments shall be issued at the time the overtime is assigned, however, shall be subject to change by management when necessary and any disputes arising from work assignments may be channeled through the regular grievance procedure).
3. Maintenance and custodial employees called back after completing their work day shall be guaranteed a minimum of one and one-half (1 1/2) work hours plus time worked. This applies only to an emergency call back for a specific job. When an employee is called into work under this provision he shall be required to perform only those duties for which he was called, and shall not be required to stay on the job beyond completion of those duties.
4. The maintenance of all overtime hours and records shall be the responsibility

of the Director of Maintenance. These records will be based on reports submitted by the head custodians with each payroll to the maintenance department office. Overtime hour records shall be kept as follows:

- a) All overtime hours will be credited to the employee earning them on the basis of the overtime compensation rate i.e., time and one-half or double time.
- b) All overtime will first be offered to the regular seniority employees. In the event no regular seniority employee accepts the overtime assignment, probationary employees may be used to fill the overtime assignment. This does not preclude the employment of substitutes after regular seniority and probationary employees have been contacted.
- c) Refusal of overtime will be credited to an employee as overtime worked, unless sick, on the basis of the overtime compensation rate i.e., time and one-half or double time.
- d) Overtime lists agreeable to both parties will be posted in appropriate buildings on July 1 of each year. These lists will be updated on the Tuesday preceding each Friday payday. One list shall be for all maintenance and custodial personnel and the other for bus mechanics. Personnel will appear only on one list.
- e) Maintenance employees working on a job during regular hours shall be entitled to work overtime on this specific job if requested by the Director of Maintenance if it amounts to four (4) hours or less, regardless of his status on the overtime list.
- f) A call-in list of employees' phone numbers will be on file at the Board Office for the purpose of calling employees to fill overtime jobs when the employees are not already at work. It will only be necessary to call these specific number-proceeding on to the next eligible employee if the first employee called is not available.
- g) The Maintenance Trainee shall be entered on the maintenance overtime list however; he will be eligible for overtime only when more than one (1) maintenance man is required. In other words, maintenance overtime will be granted only to Maintenance Person

unless more than one (1) person is required in which case the Trainee's position on the overtime list will be considered.

- h) The Head Mechanic - Maintenance Person shall not be eligible for overtime in the maintenance area unless no other Maintenance Person qualified to perform the work responds to the overtime request.
 - i) The lunch truck driver shall be treated as grounds person for purposes of overtime.
 - j) Overtime hours for all new employees shall be equal to the average number of overtime hours for all bargaining unit employees on the date the employee becomes eligible to accept overtime (after the probationary period and board approval).
5. Compensation for work performed on Sunday shall be at the rate of double time (X2). Compensation for work performed on Holidays shall be at the rate of double time (X 2) plus holiday pay. For all bargaining unit members except the Tuesday-Saturday cleaner, compensation for work performed on Saturday shall be at time and one-half (1 ½). For the Tuesday-Saturday cleaner, compensation for work performed on Monday shall be at time and one-half (1 ½).
6. Overtime for scheduled activities, such as weekend use of buildings which is known in advance, should be arranged and employees concerned notified, no later than 24 hours prior to reporting time.
7. Alarm Calls and Building Inspections –
At the discretion of the Director of Maintenance, alarm calls shall be handled by either the Director of Maintenance or the most senior custodian in the affected building or facility, if available. If the senior custodian is unavailable, the assignment shall be offered to the remaining custodians assigned to that building in seniority order. When no building custodian is available for alarm calls or when weekend or holiday building inspections are required, this work shall be done by maintenance in accordance with the overtime provisions in this article. The employee assigned will be credited with one and one-half (1 ½) hours work time for each call. A building check form will be developed by administration with input from the union. The building check form must be completed for each building check or alarm call and submitted to the Director of Maintenance on the next regular work

day scheduled after the alarm call or building inspection. Payments for this work will be included in the next regular pay.

ARTICLE 23

FLEX TIME

The parties agree to a program known as flex time allowing custodial and maintenance employees to occasionally reschedule a portion of all of their shift hours as specified below:

- a) Flex time may be scheduled upon request and approval of the Director of Maintenance and/or Building Principal. In the absence of the Director of Maintenance, the Finance Manager may approve flex time. Such request shall be made at least forty-eight (48) hours in advance of the desired schedule change.
- b) Flex time will be scheduled during the following periods:
 - 1) Monday through Thursday - between the closing and opening of the specific work facility.
 - 2) Friday - After school till Monday prior to start of school. Such hours will be at the straight time rate and are not to be considered as overtime under provisions of Article 24.5.
- c) Flex time may not be taken for hours when school is in session or when activities are scheduled in the building affected. Normally, all regularly scheduled employees will be present for scheduled activities subject to the discretion of the Director of Maintenance.
- d) The Administration and the Union will meet each year to review the program. This article is not subject to the grievance procedure.

ARTICLE 24

NO STRIKE OR LOCKOUT CLAUSE

The parties recognize that strikes (as defined by P.A. 336 of 1947, as amended, of Michigan Public Employees Relations Act) are contrary to law and public policy. The Employer and the Employees subscribe to the principle that differences should be resolved by good-faith bargaining in keeping with the highest standards of

Municipal government without interruption of essential governmental services. Accordingly, the Union agrees that during the term of this Agreement, it shall not direct, instigate, participate in, encourage, or support any such strike of any interference with the operation of the school district.

No lockout of employees shall be instituted by the Employer during the term of this Agreement.

ARTICLE 25

SAFETY APPAREL

The Board may require its employees to wear any safety equipment necessary to insure safety to its employees at all times. Failure to comply shall constitute reasonable cause for discipline up to and including discharge. Such equipment shall be purchased by the Board.

ARTICLE 26

SAFETY COMMITTEE

The Board and Union shall jointly establish a safety committee for the purpose of advising the Board of possible safety hazards with recommendations on correction. The resolution of these recommendations shall rest with the Board. The committee shall be made up of 2 members of management and 2 members of the union and the Committee shall meet annually, if requested by the union.

ARTICLE 27

TEMPORARY EMPLOYEES

The Board shall have the right to employ seasonal employees when regular school is not in session. In addition, substitute employees may be employed to fill in for any absences.

ARTICLE 28

LUNCH AND REST PERIODS

Employees shall be permitted a 30 minute paid lunch period to be taken at the half-way point of their 8 hour shift. In addition, rest periods of 15 minutes may be taken in the middle of each half of the 8 hour shift. Employees shall not be permitted to leave the premises during the lunch or rest periods without prior approval of the Supervisor of Custodians and Maintenance. In the event of emergency operations affecting the health, safety, and welfare of the school district, the scheduling of lunch and rest periods may be aborted or rearranged by the Supervisor of Custodians and Maintenance.

ARTICLE 29

MISCELLANEOUS

1. **Work Uniforms:**

By August 15 of each school year, the district will provide each member of the bargaining unit with five (5) work uniform shirts. The style and color of said work uniform shirts shall be mutually agreed upon between the parties.

Uniforms shall be worn in a presentable condition whenever the employee is on duty.

2. **Medical Examination:**

The school district shall pay for medical examinations required by the Board, retaining the right to designate a doctor of its choice when in its opinion this is deemed necessary.

3. The Union president shall appoint its representative on the district's **Facilities Sub-Committee and Finance Committee.** There shall be no district paid release time.

4. **Winter Break Days**

On Winter Break Days as scheduled in accordance with the negotiated school district calendar, all employees are off with pay during the one (1) scheduled day-of the break attached to the weekend unless directed to report to work by the Director of Maintenance. The Director of Maintenance must provide forty-eight (48) hours notice to the affected employees. These employees shall be provided compensation time for all time worked on these

days. This time must be taken when school is not in session.

ARTICLE 30

INSURANCES

HEALTH

Years 2013-2017

For the life of the contract, eligible employees covered by this Agreement may participate in the group health insurance plan provided by the employer. The Board may negotiate with other carriers for the lowest cost figure to achieve comparable coverage as provided by Blue Cross/Blue Shield as follows:

Eligible Members shall have a choice of either MESSA Choices with the following coverage:

\$5 Office Visit Copay/\$10 Urgent Care Copay

\$25 Emergency Room Copay

\$100 member/\$200 family Deductible

\$0 Mental Health Copay

Hearing Aid Rider HCA

Unlimited Preventive Care Services

Prescription Drug Card: \$10 Generic/ \$20 Brand Name D.C. Continuation Rider (dependents 19 to 25 years of age)

Or MESSA ABC Plan 1 with \$1,250/\$2,500 deductible with the Employer fully funding the HAS deductible.

All employees hired after ratification of this agreement shall receive the ABC Plan 1 only.

The District shall pay eighty percent (80%) of the health care premium and deductible for the health plan and the Employee shall pay twenty percent (20%) of the health care premium and the District paid deductible, where applicable. These contributions shall be made on a tax free basis.

The parties agree to reopen the health coverage if it is impacted by the Affordable Care Act.

Any employee who elects not to be covered by the medical insurance provided by the school district may, upon the presentation of an Affidavit of Coverage by the employee's spouse that medical insurance is being provided through alternate sources, may receive cash in lieu payment of \$1,800 for each year the employee elects not to receive hospital insurance coverage and presents an Affidavit of Alternate Coverage.

LIFE

Seniority employees, who are classed as full-time employees (40 hours per week) shall be entitled to term life insurance coverage of \$50,000 upon formal application for the coverage by the employee.

DENTAL

Seniority employees who are classified as full-time employees (40 hours per week), shall be provided, at no cost to the employee, a dental program by a reputable company comparable to Delta Dental 80-80-80 with an orthodontic rider 0-1 (50%).

VISION

Seniority employees, who are classed as full-time employees (40 hours per week), shall be provided at Board expense, a vision plan offered by a reputable company in this field of underwriting, comparable to MESSA Plan 1.

ARTICLE 31

WORK WEEK

1. All positions with the exception one (1) High School Cleaner position, shall be Monday through Friday forty (40) hour positions.
2. The one high school cleaner position shall be a forty (40) hour position, Tuesday through Saturday.

3. All of these positions are eight (8) hours per day.
4. Summer Work Schedule
 - A. During the summer months the work hours per day may be modified in order to allow for a four (4) day, ten (10) hour per day workweek. The 4-day work week will begin the first Monday after the teachers' last work day and end the third Friday in August. All buildings except for the Memorial Building will be closed Fridays during this time.
 - B. All ten (10) hour vacation, personal and sick days used will be counted as 1.25 days for each absence. The only exception to this will be the week of July 4th when employees return to 8 hour work days. The Fourth of July holiday will be an 8 hour paid holiday. Vacation, personal and sick leave days will count as eight (8) hour days during this week.
 - C. All employees will be paid at the wage scale for the position held prior to the summer work schedule change, regardless of work assignment.
 - D. Two (2) forty (40) hour cleaner positions (8 hours/5 days per week) will be temporarily created for the summer. These positions will be posted and awarded temporarily based on seniority for the Memorial Building.
 - E. No grievances will be supported by the Association or filed by employees with regard to failure to pay overtime for more than eight (8) hours of work on a given day and/or the four (4) day schedule rather than a five (5) day schedule.

Any time worked over the ten (10) hours per day shall be paid as overtime provided it is at the direction of the Director of Maintenance. **ARTICLE 32**

TERMINATION OF AGREEMENT

This Agreement shall remain in full force and effect until June 30, 2017. It shall be automatically renewed from year to year, unless either party shall notify the other party, in writing, at least ninety (90) days prior to June 30, 2017 that it desires to revise or modify this Agreement. In the event that such notice is given, negotiations shall begin not later than sixty (60) days prior to the anniversary date.

This Agreement shall remain in full force and be in effect during the period of

negotiations and until notice of termination of this Agreement is provided to the other party in the manner set forth in the following paragraph:

In the event that either party desires to terminate this Agreement, written notice must be given to the other party not less than ten (10) days prior to the desired termination date, which shall not be before the anniversary date set forth in the preceding paragraph.

Board of Education of the
Gibraltar School District

James H. Cropper

President

Susan Deuel

Secretary

July 9, 2013

Date

Board Ratification

7/9/2013

Gibraltar Custodial-Maintenance
Association/MEA

Kelly Greenhalgh

President

Tim [unclear]

x Bob Esoldi

Negotiation Team Member

x Kerri Saunders

Negotiation Team Member

x Dore [unclear]

Negotiation Team Member

Helen Brisk

MEA Representative

7-9-13

Date

Custodial/Maintenance Wage Schedule					
2013-2017					
	7/1/2013	7/1/2014	7/1/2014	7/1/2015	7/1/2016
	2.00%	1.00% off scale	1.00% off scale	Wage Reopener	Wage Reopener
Maintenance					
Head Mechanic	22.54	0.23	22.77		
Mechanic	21.94	0.22	22.16		
Ass't mechanic	21.04	0.21	21.25		
Maintenance	21.94	0.22	21.16		
Handyman Trainee	21.21	0.21	21.43		
Heat/Cool/Maint	22.88	0.23	23.12		
Grounds Person	21.04	0.21	21.25		
Head Mechanic/Maint	22.25	0.22	22.48		
Groundsperson/Maint	21.50	0.22	21.72		
Lunch Truck Driver	21.04	0.21	21.25		
Custodial					
Head - CHS	21.77	0.22	22.00		
Head - SMS	21.45	0.21	21.66		
Head - Elementary	21.26	0.21	21.48		
Cleaner/Shift Leader**	20.97	0.21	21.18		
Cleaner	20.67	0.21	20.89		

Section 1.a: All employees, with the exception of the mechanic, in their first (3) years of employment shall be paid in accordance with the following schedule:

First six (6) months----- 65% of top cleaner rate
Second six (6) months----- 70% of top cleaner rate
Second year----- 80% of top cleaner rate
Third year ----- 100% of top cleaner rate

- b. In order to be qualified for a mechanic opening, an employee must be either state or ASE (Automotive Service Excellence) certified. Any new employee hired as a mechanic shall be paid in accordance with the above schedule using the mechanic rate rather than the top cleaner rate.**

Section 2: Each employee classified as Maintenance Person will receive a yearly tool allowance of \$390. In addition, the District will replace tools that a Maintenance Person uses and breaks while in the course of performing his job assignment for the school district.

Section 3: Shift differentials – Employees working on the afternoon and midnight shifts shall receive a shift differential of \$0.20 and \$0.25 respectively when duties on these shifts are assigned and worked.

Section 4: Employees required to drive personal vehicles on school business shall be paid mileage at the board policy rate, but not less than \$0.20/mile.

**** Shift leader applies only to Middle School and High School positions**

APPENDIX B

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
(Revised January 2009)

Fact Sheet #28: The Family and Medical Leave Act of 1993

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employee and some federal employees. Most federal and certain congressional employees are also covered by the law anare subject

The FMLA became effective on August 5, 1993 for most employers and entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. Amendments to the FMLA by the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, expanded the FMLA to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any "qualifying exigency" arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a "single 12-month period" to care for a covered service member with a serious injury or illness.

EMPLOYER COVERAGE

FMLA applies to all public agencies, including state, local and federal employers, local education agencies (schools), **and** private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee **must**:

- work for a covered employer;
- have worked for the employer for a total of 12 months;
- have worked at least 1,250 hours over the previous 12 months; and
- work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

While the 12 months of employment need not be consecutive, employment periods prior to a break in service of **seven** years or more need not be counted unless the break is occasioned by the employee's fulfillment of his or her National Guard or Reserve military obligation (as protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA)), or a written agreement, including a collective bargaining agreement, exists concerning the employer's intention

to rehire the employee after the break in service. *See, special rules for returning reservists under USERRA.*

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of **12 workweeks** of **unpaid** leave during any 12-month period for one or more of the following reasons:

- for the birth and care of a newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for a spouse, son, daughter, or parent with a serious health condition;
- to take medical leave when the employee is unable to work because of a serious health condition; or
- for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation.

A covered employer also must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness up to a total of **26 workweeks** of **unpaid** leave during a "single 12-month period" to care for the service member. *See* Fact Sheet 28A for specific information regarding military family leave.

Spouses employed by the same employer are limited in the **amount** of family leave they may take for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition to a combined total of 12 weeks (or 26 weeks if leave to care for a covered service member with a serious injury or illness is also used). Leave for birth and care, or placement for adoption or foster care, must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently – taking leave in separate blocks of time for a single qualifying reason – or on a reduced leave schedule – reducing the employee's usual weekly or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation. If FMLA leave is for birth and care, or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.

Under certain conditions, employees or employers may choose to "substitute" (run concurrently) accrued **paid** leave (such as sick or vacation leave) to cover some or all of the FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

- Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (*i.e.*, inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; or
- Continuing treatment by a health care provider, which includes:

(1) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:

- treatment two or more times by or under the supervision of a health care provider (*i.e.*, in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); **or**
- one treatment by a health care provider (*i.e.*, an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (*e.g.*, prescription medication, physical therapy); **or**

(2) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; **or**

(3) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; **or**

(4) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; **or**

(5) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave. In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to **before** using FMLA leave, nor be counted against the employee under a "no fault" attendance policy. If a bonus or other payment, however, 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, payment may be denied unless it is paid to an employee on equivalent leave status for a reason that does not qualify as FMLA leave.

An employee has no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed.

NOTICE AND CERTIFICATION

Employee Notice

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day. When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the employer's usual and customary notice and procedural requirements for requesting leave.

Employees must provide sufficient information for an employer reasonably to determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, and/or that the employee or employee's qualifying family member is under the continuing care of a health care provider.

When an employee seeks leave for a FMLA-qualifying reason for the **first** time, the employee need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the employer has previously provided the employee FMLA-protected leave, the employee **must** specifically reference either the qualifying reason for leave or the need for FMLA leave.

Employer Notice

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$110 for each separate offense. Additionally, employers must either include this general notice in employee handbooks or other written guidance to employees concerning benefits, or must distribute a copy of the notice to each new employee upon hiring.

When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA purpose, the employer must notify the employee of his or her eligibility to take leave, and inform the employee of his/her rights and responsibilities under FMLA. When the employer has enough information to determine that leave is being taken for a FMLA-qualifying reason, the employer must notify the employee that the leave is designated and will be counted as FMLA leave.

Certification

Employers may require that an employee's request for leave due to a serious health condition affecting the employee or a covered family member be supported by a certification from a health care provider. An employer may require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition. An employer may use a health care provider, a human resource professional, a leave administrator, or a management official – but not the employee's direct supervisor – to authenticate or clarify a medical certification of a serious health condition. An employer may have a uniformly-applied policy requiring employees returning from leave for their own serious health condition to submit a certification that they are able to resume work. If reasonable safety concerns exist, an employer may, under certain circumstances, require such a certification for employees returning from intermittent FMLA leave.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also be able to bring a private civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules apply to intermittent leave or when leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to an "eligible" employee's use of leave required by FMLA.

**For additional information, visit our Wage and Hour Division Website:
<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8
a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. **U.S. Department of Labor**
Frances Perkins Building 200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact US

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