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FMLA: How the Law Works Part 1 of 3

The Family and Medical Leave Act of 1993 (FMLA) entitles eligible employees to take up to 12 or 26 weeks of unpaid leave of absence in a 12-month period for certain medical and family reasons.

COVERAGE Employers with 50 or more employees during 20 or more workweeks in the current or preceding calendar year are covered by the FMLA. All employees, even employees who are “jointly” employed (e.g. leased employees in many cases), or part time, must be included when determining if an employer employs 50 or more employees.

ELIGIBLE EMPLOYEES Employees are eligible for FMLA leave if they have been employed for at least 12 months (not necessarily consecutive) and have worked at least 1,250 hours during the 12 months prior to the need for leave. The time an individual spends working for an organization as a temporary employee through a temporary employment agency generally must be counted toward the 12-month/1250 hour eligibility test. In considering whether an employee has worked for the employer for 12 months, the employer must consider any time worked for the employer in the past seven years (rehires). An employee is not eligible for FMLA where there are less than 50 employees within 75 miles of the employee’s worksite.

REASONS FOR TAKING FMLA LEAVE Employers covered by the FMLA must grant unpaid leave to an eligible employee for any of the following reasons:

- a. The birth of a son or daughter, and to care for the newborn child;
- b. The placement of a son or daughter with the employee for adoption or foster care;
- c. To care for the employee’s spouse, son, daughter or parent with a serious health care condition;
- d. Because of a serious health condition that makes the employee unable to perform the essential functions of the employee’s job.
- e. Because the employee has a spouse, son, daughter, or parent who is a servicemember on covered active duty and needs to address certain qualifying exigencies which may include attending certain military events, arranging for alternative child-care, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember or veteran during a single 12-month period.

LENGTH OF LEAVE An eligible employee is entitled to a maximum of 12 weeks of unpaid family and medical leave during any 12 month period. The 12-month period is determined in one of four ways: a) calendar year; b) a fixed 12-month “leave year” such as a fiscal year; c) a 12-month period measured forward from the date an employee’s first FMLA begins; or d) a “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.

Employers should expressly choose one of those methods for its workforce and communicate it in the FMLA policy. Employees are entitled to up to 26 weeks of leave in a single 12-month period measured forward for leave to care for a covered servicemember.

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INTERMITTENT OR REDUCED LEAVE SCHEDULE An employee is entitled to take FMLA leave on an intermittent or reduced schedule basis when the leave is medically necessary for their own serious health condition or to care for a spouse, child or parent with a serious health condition. An employee may request, but the employer does not have to grant, intermittent or reduced leave schedule for the birth or placement of a child. An employee who requests intermittent or reduced leave for foreseeable medical treatment may be temporarily transferred by the employer to another job with equivalent pay and benefits that better accommodates the need for leave.

NOTICE AND CERTIFICATION An employee must give at least 30 days notice before an FMLA leave is to begin if the reason for the leave is reasonably foreseeable. If the need for the leave is not reasonably foreseeable, the employee must give notice as soon as practicable. Employees do not have to specifically request or mention specifically FMLA to meet their notification obligations. They do, however, have to provide their employer with enough information so that it can be inferred that the leave may be covered under the FMLA. An employer may require an employee to provide written certification from a health care provider of the employee's serious medical condition or the serious medical condition of the employee's spouse, child or parent. FMLA leave may be delayed until proper notice or certification is provided by the employee under certain circumstances.

USE OF PAID TIME OFF The employer may require an employee to use paid vacation or paid personal leave during any FMLA leave. An employer can also require an employee to use sick days as part of any FMLA leave based on a serious medical condition of the employee, spouse, child, or parent as long as the employer's sick pay plan allows pay for these purposes. Any paid leave that qualifies as FMLA, including short-term disability and workers' compensation leave, may be counted as FMLA provided such is stated clearly in the employer's FMLA policy.

CONTINUATION OF MEDICAL BENEFITS For the duration of FMLA leave, the employer must maintain the employee's health coverage under any group health plan under the same conditions that coverage would have been provided if the employee had continued working. Employees can be required to continue making the same copayments during the leave that they were making before the leave starts. If the employee does not return to work after FMLA leave, the employer may recoup (in some cases) all payments made by the company to continue the employee's health coverage while the employee was on leave.

REINSTATEMENT Upon return from an FMLA leave, an employee must be reinstated to the same position the employee held when the leave started or to a position with equivalent pay, benefits, and other terms and conditions of employment. This is a strict standard essentially requiring reinstatement to the same job, pay and working conditions. If the employer offers, and an employee accepts, a light duty position, the time spent in the light duty position does not count against the employee's 12 weeks of reinstatement or leave rights.

NOTICE OF FMLA REQUIREMENTS A poster explaining the Family and Medical Leave Act must be posted in a conspicuous place where it can be seen by employees and applicants for employment. Information concerning an employee's rights and obligations and the employer's FMLA leave policies must also appear in the employee handbook or be given to an employee at the time the employee requests FMLA leave. A Designation Notice may be used to designate whether or not the requested leave is FMLA qualifying. This may be given at the time FMLA is requested if the employer has sufficient information, or within five days of receipt of a certification. The best practice is to use the forms provided by the Department of Labor.

RECORDKEEPING Records of all FMLA leaves (including payroll records, medical certifications, record of group health premiums collected, record of FMLA hours used, etc.) must be kept for three years.

UNLAWFUL ACTS BY EMPLOYERS The FMLA makes it unlawful for an employer to interfere with, restrain or deny any right provided by the FMLA; or discharge or discriminate against any person for opposing practices made unlawful by the FMLA or for participating in any proceeding relating to the FMLA.

Coming Soon!

Watch for the on-line
FMLA Resource Guide
To be located on the
Medical Mutual website.

