



FAMILY & MEDICAL LEAVE ACT OF 1993

Presented

by

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DISCUSSION TOPICS

- ❖ Purpose
- ❖ Eligible Employees
- ❖ Leave Entitlement
- ❖ Reasons for Leave
- ❖ Definition of a Serious Health Condition

DISCUSSION TOPICS

- ❖ Limitation of Leave
- ❖ Calculating the 12-month period
- ❖ Compensation for Leave
- ❖ Designating FMLA
- ❖ Medical Certification
- ❖ Employer's Notice Obligation

DISCUSSION TOPIC

- ❖ Employee's Notice Obligation
- ❖ Types of FMLA Leave
- ❖ Benefits Continuation
- ❖ Payment of Health Premiums
- ❖ Reinstatement
- ❖ Recordkeeping Requirements

DISCUSSION TOPIC

- ❖ Unlawful Acts by Employer
- ❖ Enforcement

PURPOSE

- ❖ Balance demands of workplace with the needs of families
- ❖ Promote national interests in preserving family integrity
- ❖ Promote the stability and economic security of families
- ❖ Employee' s job protection

ELIGIBLE EMPLOYEES

- ❖ Must meet all of the following conditions:
- ❖ Must have worked for the employer for at least 12 months with past 7 years - need not be consecutive
- ❖ Must have physically worked 1250 hours over the past 12 months
- ❖ Works at a location with 50 or more employees within 75 mile radius

LEAVE ENTITLEMENT

- ❖ FMLA provides up to 12 weeks (450 hours) of unpaid, job protected leave to eligible employees.

REASONS FOR LEAVE

- ❖ For ones own serious health condition;
- ❖ To care for the employee' s child after birth, or placement for adoption or foster care;
- ❖ To care for ones spouse, child or parent;
- ❖ For incapacity due to pregnancy, prenatal care or child birth;
- ❖ Certain military qualifying exigencies.

MILITARY EXIGENCIES

- ❖ Provide 12 weeks of leave for:
- ❖ Includes, attending certain military events
- ❖ Arranging for alternative childcare;
- ❖ Addressing certain financial and legal arrangements;
- ❖ Attending certain counseling sessions;
- ❖ Attending post-deployment reintegration briefings

MILITARY EXIGENCIES

- ❖ Military Caregiver Leave: (covers parents, child, spouse and next of kin)
- ❖ Includes a special 26 week entitlement for a covered service member who has an injury or illness incurred in the line of active duty that renders the service member medically unfit to perform (service members is in medical treatment, recuperation, therapy or is in outpatient status or on temporary disability retired list.

KEY DEFINITIONS

- ❖ Spouse – means a husband or wife as defined under State law for purposes of marriage where the employee resides, including common law marriages.
- ❖ Parent – means biological or an individual who stood *in loco parentis* to an employee – does not include parent in-law.
- ❖ Child – son, daughter, biological/adopted/foster/or stepchild, legal ward, who is under the age of 18 or age 18 or older and incapable of self-care because of a mental or physical disability.

DEFINITION OF SERIOUS HEALTH CONDITION

- ❖ Defined as an illness, injury, impairment or physical or mental condition that involves:
- ❖ Overnight in-patient care in a medical care facility; or
- ❖ Absence of more than 3 consecutive calendar days with continuing treatment by or under the supervision of a health care provider.

DEFINITION OF SERIOUS HEALTH CONDITION

- ❖ Continuing treatment by or under the supervision of a health care provider for a chronic or long-term condition (e.g., chemotherapy or radiation for cancer, dialysis for kidney disease or physical therapy for arthritis).
- ❖ Chronic but not debilitating condition that generally cause episodic periods of incapacity (e.g., diabetes, epilepsy, asthma, morning sickness due to pregnancy) these episodes qualify even if they are for less than 3 days – a health care provider visit is not necessary for each absence.

CONTINUING TREATMENT

A period of incapacity of more than three consecutive calendar days involving;

a) two or more treatments by or under the orders of a health care provider within 30 days of the first day of incapacity (unless there are extenuating circumstances) or,

CONTINUING TREATMENT

b) treatment on at least one occasion that results in a supervised regimen of continuing treatment (for example, prescription medications or specialized therapy);

The first treatment under a) or b) must take place within seven days of the first day of incapacity

SERIOUS HEALTH CONDITION

Any period of incapacity due to pregnancy (does not require treatment during the absence, e.g. staying home due to severe morning sickness);

3) A chronic health condition (newly defined as requiring at least two visits a year, over an extended period of time, but may be episodic, such as asthma, diabetes, or epilepsy) (also does not require treatment during the absence, e.g., staying home on high pollen count days);

SERIOUS HEALTH CONDITION

- ❖ 4) A condition that is permanent or long-term because treatment may not be effective (Alzheimer's, a severe stroke, or the terminal stages of a disease); and

SERIOUS HEALTH CONDITION

Any period of absence to receive multiple treatments for:

- a) restorative surgery after an accident or other injury, or
- b) a condition that is likely to result in a period of incapacity of more than three consecutive calendar days if left untreated, such as physical therapy for severe arthritis or chemotherapy for cancer.

SERIOUS HEALTH CONDITION

- ❖ Under normal conditions, the common cold, flu, earaches, upset stomach, minor ulcer, headaches are not “ordinarily” serious health conditions unless complications arise; however, such conditions are covered if they otherwise meet the definition of a serious health condition.
- ❖ Please note that mental illness from stress or allergies is covered.

SUMMARY OF SERIOUS HEALTH CONDITIONS – 6 AREAS

- ❖ Hospital Care
- ❖ Absence plus treatment
- ❖ Pregnancy
- ❖ Chronic conditions requiring treatments
- ❖ Permanent/long-term conditions
- ❖ Multiple treatments

LIMITATIONS OF LEAVE

- ❖ For birth or adoption expires at the end of the 12-month period.
- ❖ Leave taken for the birth or placement of a child may not be taken intermittently or on a reduced leave schedule unless the employer and the employee agrees.
- ❖ Spouses of the same employer for the birth/adoption or for the care of a sick parent share 12-weeks.

CALCULATING 12-MONTH PERIOD

- ❖ Calendar year
- ❖ Any fixed 12-month period, beginning and ending at the same time each year, e.g., employee's anniversary date.
- ❖ 12-month period beginning when employee first takes leave
- ❖ Rolling back 12-month period

COMPENSATION FOR LEAVE

- ❖ FMLA is unpaid
- ❖ Employer may require use of paid time off to run concurrently with FMLA

ORDER OF LEAVE USAGE

- Sick leave/Family sick leave
- Accrued leave (vacation time)
- Dock pay
- Employee cannot be compelled to use comp-time; however if they wish to use it, it cannot be counted as FMLA

DESIGNATING FMLA

- ❖ It is always the employer's responsibility/
right to designate leave as FML
- ❖ Must be made with 5 business days

MEDICAL CERTIFICATION

- ❖ Employee may be required to certify the need for leave.
- ❖ Employee has 15 calendar days to provide certification.
- ❖ Employer may deny leave if the medical certification is incomplete or insufficient.
- ❖ Employee has 7 days to remedy deficiency.

MEDICAL CERTIFICATION

- ❖ The employer may contact the employee's provider directly in order to seek authentication or clarification of the medical certification. But:
 - 1) Under no circumstances may the employee's direct supervisor contact the employee's healthcare provider; and
 - 2) The Employer may not ask health care providers for additional information beyond that required by the certification form.

MEDICAL CERTIFICATION

- ❖ May be requested every 30 days unless condition has been defined for a longer period of time.

EMPLOYEE'S NOTICE OBLIGATION

Old Rule : Allowed employees to provide notice to an employer of the need for FMLA leave up to two full business days after an absence, even if they could have provided notice more quickly.

New: Employees may be required to follow the employer's established call-in procedures for reporting an absence, if not, leave can be denied.

EMPLOYER'S NOTICE OBLIGATION

The required notices include:

- ❖ A general notice about the FMLA (through a poster, and either an employee handbook or upon hire);
- ❖ An eligibility notice;
- ❖ A rights and responsibilities notice (in conjunction with the eligibility notice);
and
- ❖ A designation notice.

EMPLOYER'S NOTICE OBLIGATION

- ❖ Big picture: written notice should detail the employer's expectations, the obligations of the employee, and the consequences of failing to meet those obligations.
- ❖ May include other information, e.g., whether the employer will require periodic reports of the employee's status and intent to return to work.
- ❖ May include any required certification form(s).

EMPLOYER'S NOTICE OBLIGATION

- ❖ Employer must notify the employee if the leave is not designated as FMLA leave because of insufficient information or a non-qualifying reason, if not, the leave may become FML.
- ❖ Employer has 5 business days to notify employee of designation.

EMPLOYEE' S NOTICE OBLIGATION

- ❖ Must notify employer when the need for leave is foreseeable, typically 30 days prior to the need for leave; or
- ❖ As soon as practicable, but within 2 business days of learning leave is necessary.
- ❖ Verbal or written notice is acceptable.
- ❖ Notice can be given by the employee' s spokesperson.

FITNESS FOR DUTY

New: Employer may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job.

New: Where reasonable job safety concerns exist, an employer may require a fitness-for-duty certification before an employee may return to work when the employee takes intermittent leave.

TYPES OF FMLA LEAVE

- ❖ Continuous – blocks of time off (weeks)
- ❖ Reduced schedule leave – decrease number of work hours
- ❖ Intermittent leave – hours or weeks at a time
- ❖ There is no requirement to grant intermittent or reduced schedule leave for the birth or placement of a child. Leave may be granted for one's own or child, spouse, or parent serious health condition, if medically necessary.

BENEFITS CONTINUATION

- ❖ Health insurance must be continued.
- ❖ The employee may be required to pay their portion of health care premiums.
- ❖ Employer must all employee participation in voluntary benefits.
- ❖ Employer does not have to continue accrual of annual and sick leave while employee is on FMLA.
- ❖ Seniority may continue to accrue.

REINSTATEMENT

❖ Must be restored to the same or an equivalent position, to include:

❖ Geographic work location, pay (including overtime), benefits, working conditions, perks, privileges, status, duties and responsibilities, skills, effort, and authority.

RECORDKEEPING

- ❖ Must be kept for a minimum of 3 years:
- ❖ Payroll data
- ❖ Dates FMLA was taken
- ❖ All documents related to notice requirements (benefits, policies, practices, etc.)

UNLAWFUL ACTS

- ❖ An employer is prohibited from interfering with, restraining, or denying the exercise of any rights provided by FMLA.
- ❖ Employer is prohibited from discriminating against an employee for opposing or complaining about unlawful practices.
- ❖ Cannot use the taking of FML for discipline.
- ❖ Cannot deny promotional opportunities due to the taking of FML.

ENFORCEMENT

The Department of Labor has a website dedicated exclusively to their Final FMLA Regulations. It contains a wealth of resources, including links to the actual regulations, a fact sheet summarizing key changes, and model forms and notices.

<http://www.dol.gov/esa/whd/fmla/finalrule.htm>



QUESTIONS/DISCUSSION