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The Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act (FMLA) is a federal law passed in 1993. It requires that certain employers permit up to twelve weeks of unpaid leave per twelve-month period for:

- *The birth or adoption of a child;*
- *Recovery from the employee's "serious health condition"; or*
- *Care of a close family member with a "serious health condition."*

1. Who is eligible?

An employee is eligible for FMLA if he or she:

- Has completed twelve months of total service (not necessarily consecutively);
- Has worked more than 1,250 hours during the twelve-month period immediately preceding the leave; and
- The employer has more than 50 employees within 75 miles of the worksite.

2. What is a "serious health condition"?

To be eligible for leave, an employee must have a "serious health condition" rendering him or her incapable of performing job duties. A "serious health condition" includes:

- Any period of incapacity or treatment in or consequent to inpatient care in a hospital or residential care facility;
- Any period of work of other regular daily activities of more than three consecutive calendar days or any period of incapacity that involves two or more visits to a healthcare provider or other medical personnel or one visit to a health care provider resulting in subsequent supervised continuing treatment; and/or
- Any period of incapacity or treatment due to a "chronic" serious health condition that requires periodic visits to a healthcare provider, continues over an extended period of time, and may cause episodic rather than continuing periods of incapacity.

*** This publication contains legal information, not legal advice. ***
For legal advice about a specific situation you must consult an attorney.

3. What type of leave is an employee entitled to?

- An employee does not necessarily have to take all twelve weeks of leave at one time.
- FMLA leave may be taken as “intermittent leave” or reduced schedule leave if it is “medically necessary.”
- Intermittent leave is taken in separate “blocks of time” as short as one hour or as long as several weeks for such things as medical appointments or periods of recovery.
- If FMLA leave is taken as intermittent leave, the employer has the right to transfer the employee temporarily to an available, alternative position for which the employee is qualified and which better accommodates recurring periods of leave. The position must provide equal pay and benefits, although not necessarily equivalent duties.

4. What information can an employer require about an employee as a condition of FMLA leave?

Certification

- An employer may require written certification from a health care provider of a “serious health condition.”
- An employer can also challenge certification and, at its own expense, require a physical examination by a second healthcare provider. If there is a conflict between the two providers, a third provider who is agreed upon by both the employer and the employee is consulted and the third opinion is final.

Notice

- An employer is entitled to thirty days’ notice for FMLA leave, or as much notice as is “practicable” under the circumstances.

5. Compensation and benefits during FMLA leave

The employer must maintain an employee’s group health insurance coverage for the duration of the FMLA leave at the level and under conditions of coverage that would have been provided if the employee were not on leave.

6. Return and reinstatement

At the end of FMLA leave, an employee must be returned to the “same” or an “equivalent” position with the same seniority rights and benefits as when the FMLA leave commenced. An equivalent position is defined as “virtually identical pay, benefits, and working conditions” and the “same or substantially similar duties and responsibilities.”

7. Additional things to know about the FMLA

- An employer may require that an employee substitute paid vacation, personal leave, or sick or medical leave for the unpaid leave under the FMLA.
- If an employee fails to return from FMLA leave, an employer can obtain reimbursement from the employee for group health insurance premiums if: 1) the reason for not returning is not related to the health condition, or 2) the reason for not returning is within the employee’s control.
- An employer who violates the FMLA may be liable in civil court in a civil action for monetary damages and injunctive relief. An employee may also file a complaint with the United States Department of Labor Wage and Hour Division.