



FAMILY MEDICAL LEAVE ACT (FMLA)



WHAT IS FMLA?

- The Family Medical Leave Act (FMLA) provides eligible employees up to 12 work weeks of *unpaid* leave per year and requires group health benefits to be maintained during the leave
- Employees are entitled to return to their same or an equivalent job at the end of their FMLA leave (same shift or general work schedule, geographically similar worksites, substantially similar duties/responsibilities/status, same general level of skill/effort/responsibility/authority, identical pay and benefits)
- There are some special exceptions for military – see www.dol.gov for additional information
- FMLA applies to all:
 - public agencies, including local, state, and federal employers, and local education agencies (schools)
 - private employers who employ 50 or more employees for at least 20 work weeks in the current or preceding calendar year
- To be an eligible for FMLA, an employee must:
 1. work for a covered employer
 2. have worked 1,250 hours during the 12 months prior to the start of leave (special rules for airline flight crew members – see www.dol.gov for additional information)
 3. work at a location where the employer has 50 or more employees within a 75 mile radius
 4. have worked for employer for 12 or more months (doesn't have to be 12 consecutive months)

WHEN CAN AN ELIGIBLE EMPLOYEE USE FMLA LEAVE?

- For the birth of a child, and to bond with the newborn child or adopted/foster child (must conclude within 12 months after birth/placement) – both mother and father have the same right to take FMLA leave for a newborn child
- To care for an immediate family member with a serious health condition – “family member” includes a spouse, parent, or child if under 18 years of age or over 19 and “incapable of self-care because of a mental or physical disability”
- To take medical leave when the employee is unable to work because of a serious health condition
- Qualifying exigencies arising out military status

CAN I TAKE LEAVE INTERMITTENTLY OR WORK A REDUCED SCHEDULE?

- Yes, if it is medically necessary
- For planned medical treatment, employees must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations
- An employee may also take leave intermittently to bond with or care for a newborn or recently placed adopted/foster child, but only with the employer's approval and the leave must conclude within 12 months of the birth/placement

WHAT IS A "SERIOUS HEALTH CONDITION" THAT QUALIFIES FOR FMLA?

- If it requires an overnight stay in a hospital or other medical care facility
- If it incapacitates you or a family member for more than three consecutive days and requires ongoing medical treatment
- Chronic conditions that cause occasional periods when you or family members are incapacitated and require treatment by a health care provider at least twice a year
- Pregnancy – this can be a normal pregnancy or one in which there are medical issues

WHAT IF MY EMPLOYER ASKS FOR CERTIFICATION OF MY SERIOUS HEALTH CONDITION?

- An employer may require certification issued by a health care provider
- An employer must allow at least 15 calendar days for an employee to obtain the certification
- If the certification is incomplete, the employer must state, in writing, what additional information is needed and must allow at least seven calendar days (unless not practicable)
- An employer may require a 2nd or 3rd opinion (at the employer's expense)
- An employee does not have to give the employer all of his/her medical records
- An employer may, with authorization from the employee, contact an employee's healthcare provider for authentication or clarification of certification, but must comply with HIPAA regulations and in no case may the employee's direct supervisor contact the healthcare provider

WHAT ARE THE NOTICE REQUIREMENTS FOR FMLA?

- An employee must provide a 30-day notice of the need to take FMLA when it is foreseeable and notice is practicable
- If the leave is foreseeable less than 30 days prior to the start of the leave, an employee must provide notice as soon as practicable under the circumstances
- An employee must provide sufficient information for the employer to reasonably determine whether FMLA applies
- An employee must continue to follow the *employer's normal call-in procedures* when taking FMLA leave unless unusual circumstances prevent the employee from doing so, even for extended periods of leave time (Example: If you would not normally have to call in every day during a three-month period of leave, you do not have to call in every day when taking three months of FMLA; however, if you would normally be required to call in daily, you must also do so when taking FMLA unless there are unusual circumstances as discussed above)

***** DISCLAIMER: This is not intended as legal advice, but rather for informational purposes only. Always consult a lawyer if you have questions about your legal rights. *****

References:

Disability Law Colorado – www.disabilitylawco.org
U.S. Department of Labor – www.dol.gov