Employee Rights Under the Family and Medical Leave Act

The UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

LEAVE ENTITLES

Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child born within 1 year of the child’s birth or placement;
- To care for the employee’s own child 17 or younger who is sick or has a serious health condition;
- For the employee’s own qualifying serious health condition that makes the employee unable to perform the employee’s job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee’s spouse, child, or parent;

An eligible employee who is a covered servicemember’s spouse, child, or parent, or of may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness. An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer’s normal paid leave policies.

BENEFITS & PROTECTIONS

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave. Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

Employer may not interfere with individual’s FMLA rights or retaliate against someone for using or trying to use FMLA leave, or for being involved in any proceeding under or related to the FMLA.

ELIGIBILITY REQUIREMENTS

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave.

- The employee must:
  - Have worked for the employer for at least 12 months; and
  - Have at least 1,250 hours of service in the 12 months before taking leave and;
  - Work at a location where the employer has at least 50 employees within 75 miles of the employee’s workplace.

“Special ‘hours of service’ requirements apply to airline flight crew employees.”

REQUESTING LEAVE

Every employee has the right to take up to 10 days of advance notice of the need for FMLA leave. It is not possible to give 10 days’ notice, an employee must notify the employer as soon as possible and, generally, follow the employer’s usual procedures.

Persons do not have a medical diagnosis, but must provide enough information to the employee so it can determine if the employee is eligible for FMLA protection. Sufficient information could include informing an employer that an employee is ill or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer of the need for leave is for a reason which FMLA leave was previously taken or certified.

Employers may require a certification or periodic recertification in order to establish the need for leave. If the employee determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

EMPLOYER RESPONSIBILITIES

An employee is entitled to the protection of FMLA leave for a reason if the employee is not eligible for FMLA leave, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employees must notify its employees if leave will be designated as FMLA leave, if so, how much leave will be designated as FMLA leave.

ENFORCEMENT

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a civil action against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supervene any state or local or collective bargaining agreement that provides greater rights or more favorable terms or conditions.

To practice the Complainant, see the U.S. Department of Labor, Wage and Hour Division, or may bring a civil action against an employer.

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