

Procedure for Dealing with FMLA

The Family and Medical Leave Act provides employees with up to 12 weeks of unpaid leave to facilitate the need to with serious personal medical issues, the care of a family member (generally, a spouse, parent or child with a serious health issue), or to care for a newborn, foster, or adopted child. To be eligible for FMLA leave, an employee must achieve 12 months of employment with the same employer and to have worked at least 1,250 hours during that 12 month period. Moreover, it is only applicable for employers with 50 or more employees.

Employees are not required to submit a request for FMLA leave eligibility. Once a person with supervisory authority becomes aware of a possible health condition that might require time off, the employer must provide the employee with certain forms within five days of notice or reasonable notice. Therefore, all matters related to FMLA leave should be immediately routed through the businesses Human Resources department. These matters are both private and time-sensitive. The employer should also require that the employee provides a Medical Certification as proof that he/she is eligible for leave, if the FMLA request is based on a medical condition. The employee then has 15 days to provide the necessary paperwork with an additional seven-day grace period. Upon receipt of the necessary paperwork, the employer then has five more days to designate the leave time necessary.

An employer can require an employee to use accrued paid leave along with the FMLA leave. In these instances, the employer's manual/handbook provided to employees should include the necessary information that accrued time will be used along with FMLA leave. This should be indicated on the Designation Form, which is available on the Department of Labor Website, www.dol.gov. The employee may also voluntarily substitute accrued paid leave time.

If the employer believes that the FMLA request is not legitimate, they can request a second opinion. If the second opinion differs from the first, a third opinion must then be obtained. An employer can request recertification every thirty days unless the employee's medical documentation clearly states a longer period of time is needed before the employee is to return to work.

If an employee needs to take intermittent leave, an employer may require that the employee transfers to an alternative available position, as long as it is equivalent in pay and benefits and better accommodates the needed recurring leave. An employee must make a reasonable effort to schedule intermittent medical treatment to avoid disruption to the employer's business operations.

Failure to comply with the FMLA requirements, of which many more exist than are addressed herein, may result in liability of the employer to the employee, including that the employer pays the employee's legal fees.

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