

# Family and Medical Leave Act of 1993



## FMLA Summary

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division  
February 1993

The Family and Medical Leave Act of 1993 (FMLA) becomes effective on August 5, 1993, through special rules apply where a collective bargaining agreement is in effect. The Secretary of Labor must prescribe regulations implementing the Act in early June.

The FMLA requires private sector employers of 50 or more employees, and public agencies to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are "eligible" if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles. Similar provisions also apply to federal and congressional employees.

### Reasons for Taking Leave...

An employer must grant unpaid leave to an eligible employee for one or more of the following reasons:

- for the care of the employee's child (birth, or placement for adoption or foster care);
- for the care of the employee's spouse, son or daughter, or parent who has a serious health condition; or,
- for a serious health condition that makes the employee unable to perform their job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

### Definition of Serious Health Condition...

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;
- any period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or,

- continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days, and for prenatal care.

### Advance Notice and Medical Certification...

The employee may be required to provide advance leave notice and medical certification.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition.
- An employer may also require medical certification if the employee is unable to return from leave because of a serious health condition.

### Intermittent or Reduced Leave...

- An employee may take intermittent leave or may work a reduced leave schedule to reduce the usual number of hours per day or work week.
- Intermittent or reduced leave schedules are subject to employer approval unless medically necessary.

### **Job and Benefits Protection...**

- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay and benefits, and other employment terms. Employers may deny restoration to certain highly compensated employees, but only if necessary to avoid substantial and grievous economic injury to the employer's operation.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrues prior to the start of an employee's leave.
- The use of unpaid FMLA leave cannot affect the exempt status of bona fide executive, administrative and professional employees under the Fair Labor Standards Act.

### **Medical Insurance Coverage...**

- For the duration of FMLA leave, the employer must maintain the employee's medical insurance coverage under any "group health plan," under the conditions coverage would have been provided if the employee had continued working.
- In some cases, the employer may recover premiums paid for maintaining an employee's health coverage if the employee fails to return to work from FMLA leave.

### **Unlawful Acts by Employers...**

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA; and
- discharge or discriminate against any person because of involvement in any proceeding under or related to FMLA.

### **Miscellaneous Provisions...**

- Special rules apply to employees of local education agencies.

- Employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. Any employer who willfully violates this requirement may be subject to a fine of up to \$100 for each separate offense.
- A "Commission on Leave" will conduct a comprehensive study of existing and proposed policies relating to leave, and submit a report to Congress within two years.

### **FMLA Does Not...**

- affect any federal or state law prohibiting discrimination;
- supersede any state or local law which provides greater family or medical leave rights;
- diminish an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan, nor may the rights provided under FMLA be diminished by such agreement or plan; nor
- discourage employers from adopting policies more generous than required by FMLA.

### **Enforcement...**

- The Secretary of Labor is authorized to investigate and attempt to resolve complaints of violations, and may bring an action against an employer in any federal or state court of law.
- FMLA's enforcement procedures parallel those of the federal Fair Labor Standards Act. The FMLA will be enforced by the department's Wage and Hour Division.
- An eligible employee may bring a civil action against an employer for violations.
- Employers who act in good faith and have reasonable grounds to believe their actions did not violate FMLA may have any damages reduced to actual damages at the discretion of a judge.

**For more information, please contact the nearest office of the Wage and Hour division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.**