

Port Administration & Legal Issues Seminar

Employment and Human Resource Issues in 2015

Legal Jeopardy:

Leave and Leave Benefit Entitlements Under Federal Laws

(FMLA, ADA, USERRA & More)

FMLA: The Basics

FMLA: The Basics

Covered Employers in Private & Public Sector

- 50 or more employees for each working day during each 20 or more calendar workweeks (private sector)
- Employed at worksite where 50 or more employees are employed by employer within 75 miles of worksite (private sector)
- All public sector employees are covered

FMLA: The Basics

Eligible Employee

- Employed for at least 12 months by employer
 - Need not be consecutive
- Worked at least 1,250 hours of service with employer during the previous 12 months



FMLA: The Basics

Record Keeping

In the event an employer does not maintain an accurate record of hours worked by an employee, including for employees who are exempt from FLSA's requirement that a record be kept of their hours worked (e.g., bona fide executive, administrative, and professional employees as defined in FLSA), the employer has the burden of showing that the employee has not worked the requisite hours.

FMLA:

Basics for Leave Entitlement



Types of FMLA Leave:

- For the birth and care of a newborn child;
- For placement with the employee of a son or daughter for adoption or foster care;
- To care for a spouse, son, daughter, or parent with a serious health condition;
- To take medical leave when the employee is unable to work because of a serious health condition;
- For Military Exigency Leave;
- For Military Caregiver Leave

FMLA Scenario

Employee “John” informs you that he intends to take FMLA leave for the birth of his friend’s child (baby Danny). The biological parents, Amy and Mike, are teen parents and John informs you that he will raise baby Danny. John states that he will not adopt Danny as he does not want Amy and Mike to lose parental rights.

- Is John a “parent” under the FMLA with respect to baby Danny?

Who is “Family” Under the FMLA?

The FMLA defines a “son or daughter” as:

- Biological Child;
- Adopted Child;
- Foster Child;
- Stepchild;
- Legal Ward; or
- A child of a person standing “in loco parentis”

AND

- Under 18 years old
- Over 18 years old & incapable of self-care due to mental or physical disability



Who is “Family” Under the FMLA?

The FMLA Defines “parent” as:

- Biological, adoptive, step or foster father or mother,
- Any other individual who stood in loco parentis to the employee



Note:

- Term “parent” does not include parents “in law.”
- Neither the statute nor the regulations restrict the number of parents a child may have under the FMLA!

Who is “Family” Under the FMLA?

In Loco Parentis

- A person who has put himself in the situation of a lawful parent by assuming the obligations incident to the parental relation without going through the formalities necessary to legal adoption.
- Congress concluded the reality is that many children in the United States today do not live in traditional ‘nuclear’ families with their biological father and mother
- To be “construed to ensure that an employee who actually has day-to-day responsibility for caring for a child is entitled to leave even if the employee does not have a biological or legal relationship to that child.

Who is “Family” Under the FMLA?

“Intend to be In Loco Parentis”

- The same principles apply to leave for the birth of a child and to bond with a child within the first 12 months following birth or placement.
- An employee who will share equally in the raising of a child with the child’s biological parent would be entitled to leave for the child’s birth because he or she will stand in loco parentis to the child.

FMLA Guidance – In Loco Parentis Status:

- Day-to-Day Care; or
- Financial Support

Who is “Family” Under the FMLA?

Situations that May Give Rise to In Loco Parentis:

- Grandparents caring for child in parents’ absence;
- Child of Boyfriend / Girlfriend;
- Child of Same Sex Partner



FMLA Family Status Documentation

New Revisions to the Family Medical Leave Act Expand Coverage to Same-Sex Couples Under Place of Celebration Rule

On February 25, 2015, the U.S. Department of Labor finalized a rule which extends the Family Medical Leave Act's ("FMLA") protections to married same-sex couples. The rule, originally proposed in June 2014, implements necessary policy changes resulting from the U.S. Supreme Court's landmark *United States v. Windsor* decision which overturned the section of the Defense of Marriage Act barring the federal government from recognizing same-sex marriages.

Immediately following the *Windsor* decision, the Department of Labor announced what the then-current definition of "spouse" under the FMLA allowed: Eligible employees could take leave under the FMLA to care for a same-sex spouse, but only if the employee resided in a state that recognizes same-sex marriage. In order to ensure consistent application of FMLA rights from state to state, this new rule amends the regulatory definition of "spouse."

The Department of Labor has adopted a "place of celebration rule" which allows all legally married couples, whether opposite-sex or same-sex, to receive FMLA rights regardless of where they live. The revised definition also includes those employees in lawfully recognized same-sex and common law marriages entered into outside of the United States as long as they could have been entered into in at least one state.

FMLA Family Status Documentation

New Revisions (continued)

Additionally, the amended regulations have utilized gender-neutral terms where possible. With these changes, eligible employees, regardless of their residence, will be able to take FMLA leave to care for their lawfully married same-sex spouse with a serious health condition, take qualifying exigency leave for their lawfully married same-sex spouse's covered military service or take military caregiver leave for their lawfully married same-sex spouse. FMLA leave will now be afforded to eligible employees to care for their stepchildren regardless of whether the *in loco parentis* requirement is satisfied.

The Department estimates that this definitional revision will result in 6222 new instances of FMLA leave taken to care for an employee's same-sex spouse, stepchild or stepparent; 990 new instances for qualifying exigency purposes; and 990 new instances for military caregiver purposes.

The effective date of the new rule was March 27.

States Block FMLA Same-Sex Spouse Rule Change

A group of state attorneys general on Thursday won their bid to block the U.S. Department of Labor from enacting a new rule under the Family and Medical Leave Act that would extend protections to same-sex couples when a Texas federal judge granted a preliminary injunction.

U.S. District Judge Reed O'Connor found that Texas Attorney General Ken Paxton, who was joined by the attorneys general for Nebraska, Arkansas and Louisiana, had shown a likelihood of prevailing on his claim that a change in the federal law's definition of spouse would force Texas employers into the position of choosing between breaking federal or state laws, according to Thursday's ruling.

The new version of the rule would have required employers to follow the marriage laws of the states where employees were married, rather than where they live, when determining benefits, according to the Labor Department. The FMLA requires employers to grant leave for workers to provide care for a sick family member, or after giving birth.

Judge O'Connor found that the original meaning of spouse in the law and subsequent acts of Congress show that legislators intended to keep a "traditional" definition of marriage, and that the agency was exceeding its authority in changing the rule, according to the order.

"It is clear that Congress intended to give marriage its traditional, complementarian meaning," Judge O'Connor wrote in Thursday's decision. "Congress further intended to preserve a state's ability to define marriage in this way without being obligated under the laws of another jurisdiction which may define it differently."

The decision also issued a stay of the rule, which the DOL published Feb. 25, that would have gone into effect Friday.

The state prosecutors filed suit earlier this month, arguing that it is in direct opposition to the U. S. Supreme Court's decision in *United States v. Windsor*, the landmark case that struck down the federal Defense of Marriage Act, and which the state argued leaves the decision of same-sex marriage up to the states, rather than a federal agency.

The government argued that the states hadn't established a case because they hadn't shown any immediate plan to deny a request for spousal leave on the basis of the sex of the marital partners, court records show. But the states argued the rule would have forced them to violate state laws, Paxton said.

The case is *State of Texas v. United States of America et al.*, case number 7:15-cv-00056 in the U.S. District Court for the Northern District of Texas.

FMLA Family Status Documentation

What Type of Documentation is Needed to Verify Family Status?

- For purposes of confirmation of family relationship, the employer may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship.
- This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, etc.

FMLA Guidance:

- A simple statement asserting that the requisite family relationship exists is all that is needed in situations such as in loco parentis where there is no legal or biological relationship.
- The employer is entitled to examine documentation such as a birth certificate, etc., but the employee is entitled to the return of the official document.

FMLA: “Serious Health Conditions”

An illness, injury, impairment, or physical or mental condition that involves:

- 1) Inpatient care and subsequent treatment
 - An overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity

- 2) Continuing treatment by a health care provider, including:
 - More than 3 consecutive days of incapacity **AND**
 - 2 or more visits to health care provider **OR**
 - 1 treatment by health care provider with continuing regimen of treatment

If 2 or more visits, under the 2009 FMLA regulations...

- Both visits must occur within 30 days of the incapacity
- First visit must occur within 7 days of the start of incapacity

FMLA:

“Serious Health Conditions”

An illness, injury, impairment, or physical or mental condition that involves:

3) Pregnancy or Prenatal care

4) Incapacity or Treatment for Chronic Serious Health Condition

- Under 2009 regulations, periodic visits must be at least 2 times a year.

5) Permanent or Long-term Incapacity

- Condition for which treatment may not be effective.
- The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
- Examples: Alzheimer's, severe stroke, or the terminal stages of a disease

6) Absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

Angelina

- 41 Year-Old Salaried Sales Manager
- Married to Brad, a Sergeant First Class in the U.S. Army
- 4 Children



Angelina's Voicemail



“Hi Tom. This is Angie. Listen, I am feeling awful this morning, so I am not coming into work. I will let you know when I feel better.”

Angelina's Voicemail



“Hi Tom. This is Angie. Listen, I am feeling awful this morning, so I am not coming into work. I will let you know when I feel better.”

FMLA POSTER

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For the incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for 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 the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying expenses. Qualifying expenses may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a service injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability status list.

Benefit and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent position with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 1 consecutive calendar day combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use the leave entitlement in one block. Leave can be taken incrementally or on a scheduled basis when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying expenses may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employer's rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility. Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

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 or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employer may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersedes any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2616) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.500(a) may require additional disclosures.



For additional information:
1-866-487-WAGE (1-866-487-3243) TTY: 1-877-488-6527
WWW.WAGEHOUR.DOL.GOV

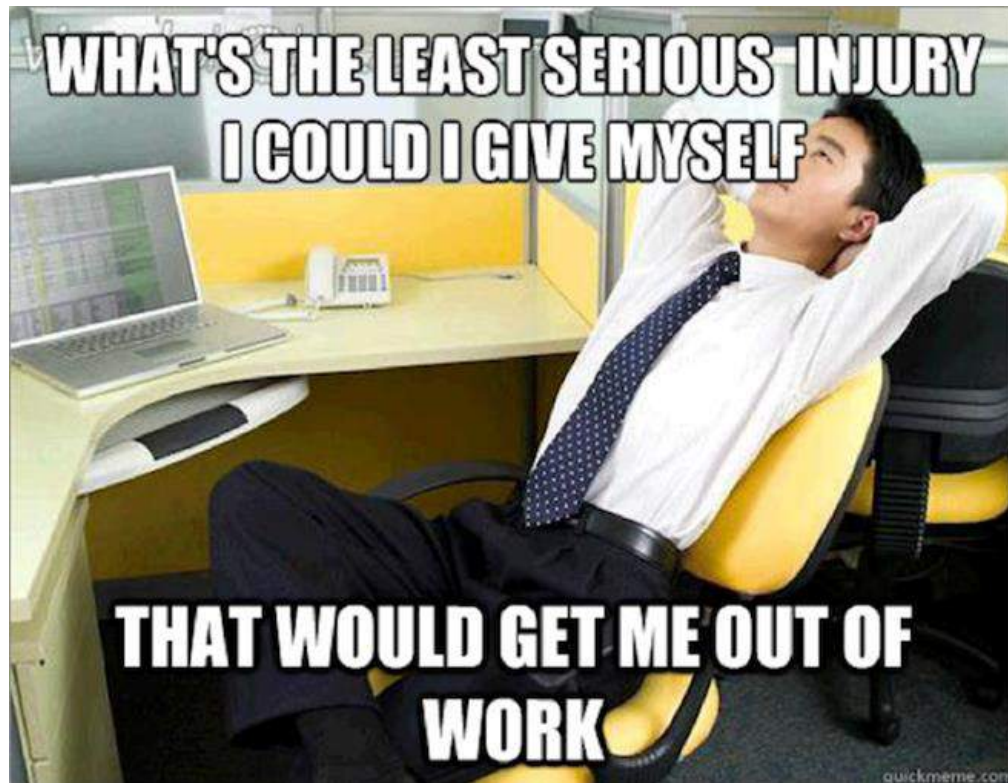


U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division | 100 Bulletin 102, Revised January 2009

FMLA POSTER

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What is Sufficient Notice of a Serious Health Condition?





If Brad calls in and tells you that he is intoxicated and suffering from a nervous breakdown, is this sufficient to trigger FMLA leave?

Scobey v. Nucor Steel-Arkansas

MAYBE NOT

What is Sufficient Notice?

- Must explain the reasons for the needed leave **“so as to allow the employer to determine that the leave qualifies under the Act.”**
- Not necessary to “expressly assert rights under the Act or even mention the FMLA.”
- “The critical question is whether the information imparted to the employer **is sufficient to reasonably apprise it of the employee’s request to take off for a serious health condition.**”

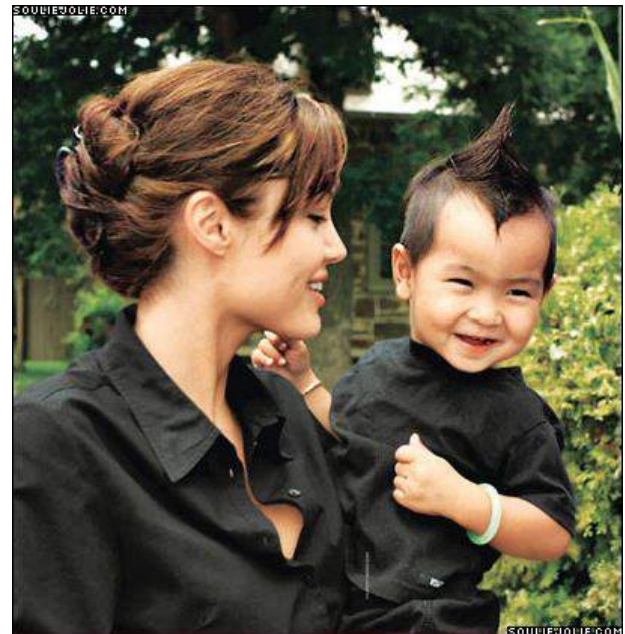
Brad's Voicemail



“Hi Joe. This is Brad. As you know, Angelina has had a really bad back for a few years now. This morning it flared up, and she can’t get out of bed. She needs my help, so I am not coming in. I’ll bring in a note from her doctor if you need me to.”

What if Angelina requests leave to care for son Maddox who has been diagnosed with a serious illness.

What Would You Do?



Same-Sex Relationship

- What if Angelina submits a leave form indicating she is requesting leave to care for a child who has a serious health condition.
- You have worked with Angelina for 12 years and you are almost positive that she doesn't have any children.
- You have heard that Angelina is in a same-sex relationship and lives with her partner and her partner's four-year-old child. If that's the case, and Angelina otherwise qualifies for FMLA leave, is she entitled to take FMLA leave to care for the child?

Same-Sex Relationship

Well-versed in the FMLA, you know that it allows an employee to take leave to care for her child with a serious medical condition. You also know that some states provide certain rights and benefits for domestic partners and prohibit discrimination on the basis of sexual orientation. Nevertheless, You are not entirely clear about whether you should grant Angelina's request. To complicate matters, you are concerned about asking Angelina questions about her personal life and her relationship to this child. Should you grant Angelina's request for FMLA leave? Maybe.

FMLA: Military Leave

First Amendment to FMLA

- The National Defense Authorization Act of 2008 (“NDAA”), amended the FMLA to provide two types of military family leave: “qualifying exigency leave” and “military caregiver leave.”

National Defense Authorization Act of 2010

- Expands Scope of 2008 Amendments



FMLA: Military Exigency Leave

Military Leave – Exigency:

- Up to 12 weeks of FMLA job protected leave

Exigency Leave – Old Law

- Under the initial 2008 NDAA, employees are entitled to 12 weeks of leave for “exigent circumstances” arising from military deployment of a spouse parent, son or daughter in National Guard or Reserves

Exigency Leave – Current Law

- Under the 2010 Amendments coverage is expanded to employee’s spouse, son, or daughter, or parent in covered active duty in Armed Forces, National Guards and Reserves when deployed to a foreign country



What Constitutes Exigent Circumstances?

1) Short notice deployment

- i.e., deployment on seven or less days of notice for a period of seven days from the date of notification;

2) Military events and related activities

- such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;

3) Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member,

- such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;

What Constitutes Exigent Circumstances?

4) Making or updating financial and legal arrangements to address a covered military member's absence;

5) Counseling

- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;

6) Rest & Recuperation

- Taking up to five days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;

What Constitutes Exigent Circumstances?

7) Post-Deployment Activities

- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member;

8) Any other event that the employee and employer agree is a qualifying exigency.



Military Caregiver Leave

Employee who is a spouse, son, daughter, parent, or next of kin of a “covered servicemember”

- Next of kin = nearest blood relative of that individual.
- If there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously

Provides up to 26 weeks of leave during a 12 month period

Military Caregiver Leave

New Law (2010 Amendments)

- Expands coverage to include veterans
- Veteran must be undergoing medical treatment, recuperation, or therapy, for a serious injury or illness
- Must have been a member of Armed Forces (including National Guard or Reserves) at any time during the period of 5 years preceding the date of treatment, recuperation, or therapy

Military Caregiver Leave

“Serious Injury or Illness”

- Expanded by 2010 Amendments



New Law

- Retains prior law and also includes preexisting conditions that were aggravated during service
 - a serious injury or illness that “existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces” that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.

Military Caregiver Leave

Military Caregiver Leave Considerations:

- For Military Caregiver leave - must use the correct 12 month period
 - You may not use calendar year approach
 - Military Caregiver Leave begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established by the employer for other types of FMLA leave.
- An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the “single 12-month period.”
- Only 12 of the 26 weeks total may be for a FMLA-qualifying reason other than to care for a covered service member

Substitution of Paid Leave

- FMLA Leave is Unpaid Leave
- Substitution of Paid Leave
 - Employees may take, or Employer May Require employees to take accrued paid vacation, personal, family, medical, or sick leave concurrently with FMLA leave
- Current FMLA regulations
 - All forms of paid leave are treated the same
 - Must follow same terms and conditions of the employer's policy that apply to other employee's use of leave

Bonuses, Awards, & The FMLA

- Employers may deny a “perfect attendance” and performance awards to an employee who does not have perfect attendance because of his/her taking FMLA leave so long as employer treats employees taking non-FMLA leave in the same way.
- For example if employer’s policy does not prohibit an attendance award to an employee who takes vacation leave, then the employer cannot deny the award to an employee who substitutes paid vacation leave for FMLA leave.

FMLA Medical Certification

Medical Certification Requirements

- Employer may require leave due to a serious health condition of employee or a covered family member be supported by a certification from a health care provider.
- Employer may require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition.

⚠ CAUTION

- Employee's direct supervisor may not contact the employee's physician
- Employer must use health care provider, HR professional, leave administrator, or a management official
- Employer may not ask information of health care provider beyond that on the certification form

Military Caregiver Leave

- Employer must allow employee at least 15 calendar days to return certification form
- If employer deems a medical certification to be incomplete/deficient must:
 - Specify in writing what information is lacking
 - Give employee 7 calendar days to cure deficiency
- Employers may request re-certification every six months for ongoing condition
- Storage
 - Generally, FMLA documentation should be kept in a separate confidential medical file and not with general personnel records
 - Mandatory to maintain documentation at least 3 years

FMLA Medical Certification

Fitness-For-Duty Certification



- Employer can have uniformly-applied policy requiring employees returning from their own serious health condition to submit certification of fitness for duty
- Employer may require that certification specifically address the employee's ability to perform the essential functions of the employee's job

FMLA Employer Notice Requirements

General Notice

- Must provide employees a general posted notice of FMLA rights
 1. through a poster and
 2. employee handbook or other written notice at hire.
- Employer may distribute handbook or other notice electronically.

Eligibility Notice

- Response to employees requesting FMLA leave. States whether employees is eligible for leave, and at least one reason if denied. 2009 FMLA regulations allow employers up to 5 business days to provide this. (Form WH-381)

Employer FMLA To-Do List

- Post FMLA Notices
- Include FMLA Policies and Procedures in Employee Handbook or other notice
- Have employees verify in writing receipt of all FMLA Notices
- Designate FMLA leave appropriately
- Keep meticulous time records (for proof of eligibility /ineligibility for leave and amount of leave time used)
- Inform employees in writing that certification will be required and the consequences for failure to comply
- Promptly notify employees of certification deficiencies and allow 7 calendar days to cure
- Apply all policies and procedures uniformly!

The Americans With Disabilities Act and FMLA

- Say an employee has exhausted all available FMLA and other leave. Can you flatly deny additional leave?
- No. You must evaluate the circumstances. Additional leave may be necessary as a “reasonable accommodation.”
- Employers should consider revising FMLA policies to give the employee the burden of specifically requesting additional leave under the ADA.

What Can You Do?

Don't dwell on the definition of "disability."

- Prior to the ADA Amendments Act, there were many instances in which an employer could reliably determine that a condition was not a covered disability.
- Now, employers generally should presume that any physical or psychological difficulty that manifests itself at work may be covered.

Document policies, problems and decisions.

- The focus in litigation is shifting away from whether an employee is "disabled," and toward whether the employer had good reasons for its action or inaction.
- Decisions based on documented facts and policies will be easier to defend.
- The "interactive process" is even more important now, so document your participation and the employee's response.

Train front line supervisors.

- Not to raise disability-related issues without consulting first with management.
- To recognize requests for accommodation.
- Not to retaliate or make hostile comments regarding accommodations.
- To be consistent in applying rules.

The Problem Areas

Question – Be Careful of Retaliation

Jane Doe is a member of the National Guard Reserves, and although she has just moved into a new position, she has volunteered to do two trainings with the Guard during the first six months of the year. Her performance is mediocre, but her supervisor is really put out about this. He asks if he can terminate or demote her. What is the answer?

The Problem Areas

Answer

No, Jane's supervisor cannot terminate or demote her although this volunteer duty was chosen on her own volition. This would constitute retaliation under USERRA. Under USERRA, the term "service in the uniformed services" includes not only active duty, but also includes active duty for training, whether on a voluntary or involuntary basis. The Act was clearly broadly written for those who choose to serve in the military, and could potentially protect an employee who signs up for numerous voluntary trainings every year as a member of the Reserve.