

# EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

**Basic Entitlement** Covered employees are entitled to a regime of continuing treatment, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement or foster care;
- to care for the employee's spouse, son, 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.

**Use of Leave** Leave can be taken intermittently or on a reduced leave schedule 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 exigencies may also be taken on an intermittent basis.

**Military Family Leave Entitlements** Eligible employees who have a spouse, son, daughter or parent on covered active duty or call to covered active duty status may take up to 2-week leave entitlement for certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial matters, attending certain court sessions, and attending certain counseling or reintegrations briefings.

**Substitution of Paid Leave for Unpaid Leave** Employees may choose or employer may require use of accrued 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.

**FMLA Entitlement** Employees are entitled to take up to 26 weeks of leave to care for a member during a single 12-month period. A covered servicemember is (1) a current member of the Armed Forces, including a member of the National Guard or Reserve, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness\*; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness\*.

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. 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 the family member, or 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.

\*The FMLA definition of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".

**Employer Responsibilities** Covered employers must inform employees if they are eligible under FMLA. If they are not eligible, the employer must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

**Benefits 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 positions with equivalent pay, benefits, and other employment terms.

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.

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

**Unlawful Acts by Employers** FMLA makes it unlawful for any employer to:

**Eligibility Requirements** Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months, and are currently employed by the employer. Airline and crew employees are not eligible.

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice prohibited by FMLA.

**Definition of Serious Health Condition** A serious health condition is an illness, injury, 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.

**Enforcement** An employee may file a complaint with the U.S. Department of Labor, which may bring a private lawsuit against an employer.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive days combined with at least two visits to a health care provider or one visit and

FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family and medical leave benefits.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text 29 C.F.R. § 825.300(a) may require additional