

# **WHAT YOU SHOULD KNOW ABOUT THE FAMILY AND MEDICAL LEAVE ACT (FMLA)**

## **What is FMLA?**

The Family and Medical Leave Act is a federal law established in 1993 that allows "eligible" employees of a covered employer to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months because of the birth of a child and to care for the newborn child, because of the placement of an adopted or foster child, to take care of an immediate family member (child, spouse, parent) with a serious health condition, or because of the employee's own serious health condition which makes the employee unable to perform their job.

## **What is the purpose of the Act?**

FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for medical reasons, birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition.

## **When did the Act become effective?**

The Act became effective on August 5, 1993 for most employers. If a collective bargaining agreement was in effect on that date, the Act's effective date was delayed until February 5, 1994 or the date when the Agreement expired, whichever date occurred sooner.

## **What employers are covered by the Act?**

Any employer who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year is considered a covered employer.

## **What notice is required to your employer?**

The employer has a right to 30 days advance notice from the employee where practicable. The employer also has the right to request certification from a health care provider that the leave is due to a serious health condition of the employee or immediate family member. The employer can also require a certification that the employee is fit to return to work when the absence was caused by the employee's serious health condition.

### **Which employees are “eligible” to take leave under FMLA?**

You must have been employed for at least 12 months and for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, and employed at a worksite where the employer within 75 miles of that worksite employs 50 or more employees.

### **Can you be forced to exhaust your vacation and personal leave days for FMLA purposes?**

A recent Supreme Court decision was rendered on January 14, 2008 which sided with the Unions, ruling that the FMLA does not allow carriers to force employees to substitute paid vacation and personal leave for unpaid leave when existing collective bargaining agreements give the employees—not the carriers—the right to decide when to use their paid leave. However, if the provision is not in your collective bargaining agreement, the employer can require substitution of paid leave.

### **What effect will this have on your health benefits?**

An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work instead of taking the leave. The employee would still be responsible for his or her share during the leave period. The employer may recover its share only if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's immediate family member, or another reason beyond the employee's control.

### **What about returning to your job?**

An employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions at the conclusion of the leave. The taking of FMLA leave cannot result in the loss of any benefit that accrued prior to the start of the leave.

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