

Family and Medical Leave Act (FMLA)

NORTHLAND MEDICAL MANAGERS

MONTHLY MEETING

May 10, 2011

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FAMILY AND MEDICAL LEAVE ACT



- **Employees Entitled to:**

- **12 weeks unpaid leave in 12 month period for Employee; Must have worked for Employer at least 1250 hours in previous 12 months.**
- **Employee restored to previous (or comparable) position with same benefits, compensation, duties, conditions, status, privileges, bonus opportunities.**
- **May be taken by Employee with Serious Health Condition & Employee's Family Member with Serious Health Condition.**
- **Employee must satisfy requirements & follow proper procedures.**



Background



- **Signed into Law Aug. 5, 1993 by President Bill Clinton**
 - **In Effect 18 Years.**
- **Prior to enactment of law, regular occurrences of job discrimination against female employees & caretakers (sick parents, children).**
 - **No mandatory accommodation for time off for pregnancy.**
 - **No allowance for parents to take extended time to care for sick children, or elderly/sick parents.**
- **FMLA Enforced by US Department of Labor's Employment Standards Administration, Wage & Hour Division.**
 - **Also allows private cause of action—employees may sue for violations.**

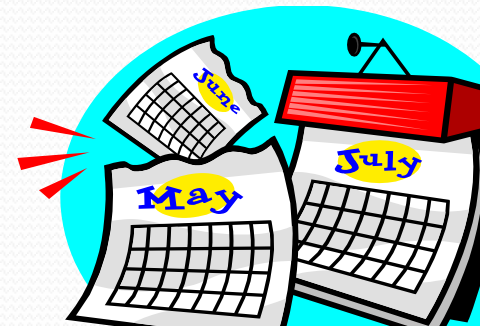
Amendments to Regulations



- **Regulations amended under President George W. Bush; Final Rule published Nov. 17, 2008.**
 - **Clarification of Regulations.**
 - **Expansion of coverage and benefits for military service members & their families. Up to 26 weeks of leave in single 12-month period to care for spouse/child/parent/family member of injured service member.**
 - **Allows Eligible Employees with Covered Family Service Member in National Guard or Reserves for “Qualifying Exigency”.**

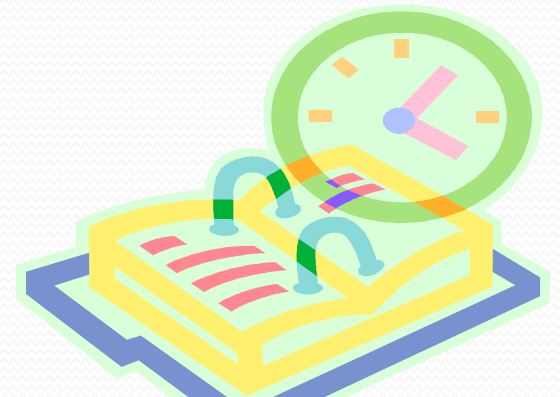
FMLA Leave Entitlement for Eligible Employee

- Employee or Family Member with Serious Health Condition.
 - Employee must be caring for such Family Member.
- 12 weeks unpaid leave within a 12 month period.
 - 26 work-weeks during a single 12 month period to care for covered Military Service Member with serious injury/illness.
- Applies to Spouse, child, parent, next of kin of Employee.
- Inclusive Definition of Parents/Children.



Requirements to take FMLA

- Be employed by Covered Employer at least 12 months and worked at least 1250 hours during the 12 month period immediately preceding leave.
 - Covered Employer = Public Agencies, Schools, all State, Local, Federal Employers; Private Sector Employers who employ 50+ employees.
 - Employee must work at a location with at least 50 or more employees within 75 mile area.



Qualifying Reasons for Leave

Employee may take FMLA for:

- Birth & Care of Newborn Child of Employee;
 - Combined total of 12 weeks for Spouses working for same Employer.
- Placement of Child for Adoption or Foster Care w/Employee;
- To Care for Immediate Family Member (spouse, child, parent) with Serious Health Condition; or
- Employee's Own Serious Health Condition.

Definition of Family Member

- **Spouse**—husband or wife as defined by state law, including common law.
- **Parent**—Biological, Adoptive, Step, Foster (but NOT in-laws)
- **Son, Daughter**– Biological, Adoptive, Step, Foster, Legal Ward, In Loco Parentis.
- **“IN LOCO PARENTIS”**: Employee may take leave to care for a child with whom employee stands in loco parentis.
 - Does not have to be biological, adoptive, or foster child.
 - Question is whether the Employee is in a parent-like relationship with child.
- Employee may take leave to care for **adult** who was “in loco parentis” with Employee when Employee was a child.
- **Documentation** – **simple statement** regarding the relationship. But all other FLMA Requirements must be met.

Serious Health Condition

Definition:

- Illness, injury impairment or physical/mental condition that involves either:
 - Any period of incapacity/ treatment connected w/inpatient care at hospital, hospice or residential medical facility & subsequent treatment; OR
 - Continuing treatment by health care provider which includes period of incapacity due to health condition lasting more than 3 consecutive days & subsequent treatment relating to same condition that also includes:
 - Treatment 2+ times by health care provider; OR
 - One treatment by a health care provider w/continuing regimen.

Serious Health Condition Cont.

- Pregnancy & Chronic Serious Health Conditions: Visit to health care provider NOT necessary for each absence.
- “Health Care Provider” – M.D., D.O., podiatrists, dentists, nurse practitioner, nurse midwife, psychologist, clinical social worker, Any health care provider recognized by Employer or Employer’s group health plan..



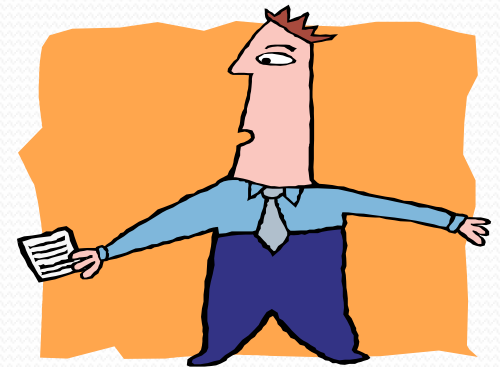
Maintenance of Health Benefits & Job Restoration

Covered Employer Must:

- Maintain group health insurance coverage for employee on FMLA.
 - May require Employee to pay his/her share of premium.
- Restore Employee to Original Job, or to Equivalent Position with equivalent pay, benefits & other terms/conditions of employment.

Employee Notification Requirements

- **Foreseeable Leave vs. Unforeseeable Leave.**
- **Employee needing FMLA must follow Employer's usual & customary call –in procedures for reporting absence.**
 - **Unless unusual circumstances.**





Medical Certification Process

- Employer's representative contacting health care provider may NOT be Employee's direct supervisor.
 - May be HR professional, leave administrator, health care provider or management official.
- If medical certification incomplete or insufficient, Employer must specify in writing what information is lacking & give 7 days to cure deficiency.
- Employers may seek re-certification of ongoing condition every 6 mos.

Employer Notification Requirements

- Employers must provide notice of FMLA Rights to Employees:
- General Notice (poster, handbook);
- Eligibility Notice;
- Rights & Responsibilities Notice; &
- Designation Notice.
 - Must provide notices within 5 days.



Concurrent Leave

- Employer may require:
 - Substitution of Paid Leave.
 - E.g., Employee to Exhaust PTO first.
 - Use FMLA Concurrently with PTO--
 - Can't tack on FMLA at the end of PTO, unless Employer allows.
 - Employer must designate PTO as FMLA in order to require concurrent leave.



Military Leave



Military Caregiver Leave:

- Expansion of coverage and benefits .
- Up to 26 weeks of leave in single 12-month period .
- Employee must be spouse/child/parent/family member of injured military service member.
- To care for service member.
- Also Allows Eligible Employees with Covered Family Service Member in National Guard or Reserves for “Qualifying Exigency”:
 - E.g., Short notice deployment; military events & related activities; child care & school activities; financial & legal arrangements; counseling, rest & recuperation; post deployment activities; additional activities as agreed to by employer & employee.

Intermittent Leave

- Allowed whenever medically necessary to care for: seriously ill family member or because employee unable to work.
- Defined as: Leave taken in separate blocks of time due to single qualifying reason.
 - Examples: Chemotherapy, Dialysis, Pregnancy, Chronic Health Condition.
- May result in:
 - Reduced number of hours worked;
 - Going from full to part-time
- Requires medical need for intermittent leave or reduced work schedule.
- Treatment Regimen in Medical Certification must Support Intermittent Leave.

SUMMARY

