

INSIDE THE FAMILY MEDICAL LEAVE ACT



THE FMLA

CSEA Annual Delegates Meeting
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and

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Road Map

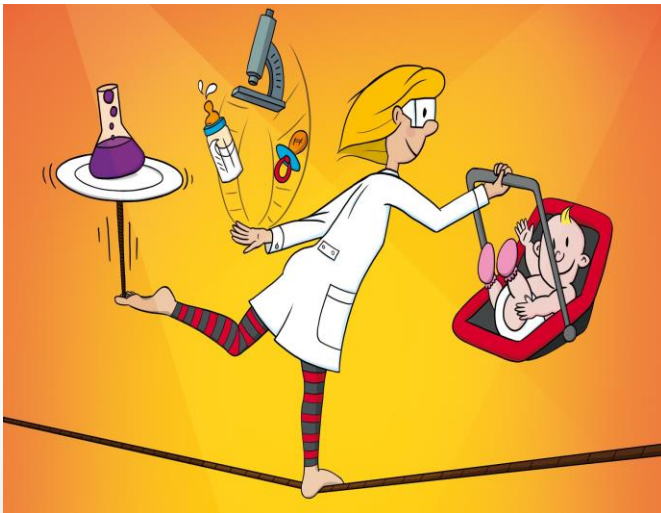
- **Introduction to the FMLA**
 - **Purpose Behind its Legislation when signed by President Clinton**
- **Employer Coverage and Employee Eligibility**
- **Qualifying Reasons for FMLA**
 - **COVID-19 and FMLA**
- **Amount of Leave**
- **Employer/ Employee Rights and Responsibilities**
- **Prohibited Actions**
 - **Disciplinary Actions and FMLA**
- **Comparison with NYS's Paid Family Leave Act**

THE FMLA

- **What is it?** A federal law requiring covered employers to provide employees with job-protected and unpaid leave for qualified medical and family reasons.
- **When was it signed into law?** This piece of federal legislation was signed by President Bill Clinton on February 5, 1993 and took effect on August 5, 1993.
- **Why was it signed into law?** The FMLA was signed to promote work-life balance and adopt flexible practices in the workplace, which will potentially boost productivity, improve morale and help create stability to the economy.

THE FMLA

- **What is the significance of FMLA?** The significance of the FMLA legislation is in its recognition that workers aren't just contributing to the success of the employer, but away from their jobs, they are contributing to the health and well-being of their families.



THE FMLA

Employer Coverage and Employee Eligibility

- **Employer Coverage:**
 - Private Sector Employers with 50 or more employees;
 - Public Agencies;
 - Public and private elementary and secondary schools.

- **Employee Eligibility:**
 - Work for a covered employer
 - Worked for a period of at least 12 months
 - Worked at least 1,250 hours in the 12 months before leave begins

Leave Entitlement

- The FMLA entitles eligible employees to take up to 12 work weeks of **unpaid, job-protected leave** within a 12-month period for one of three reasons.

Reasons for Leave

- To care for and bond with a newborn or placement of a child for adoption or foster care.
- To care for the employee's spouse, son, daughter, or parent with a serious health condition.
- Because of the employee's own serious health condition that makes the employee unable to perform the functions of the employee's job.

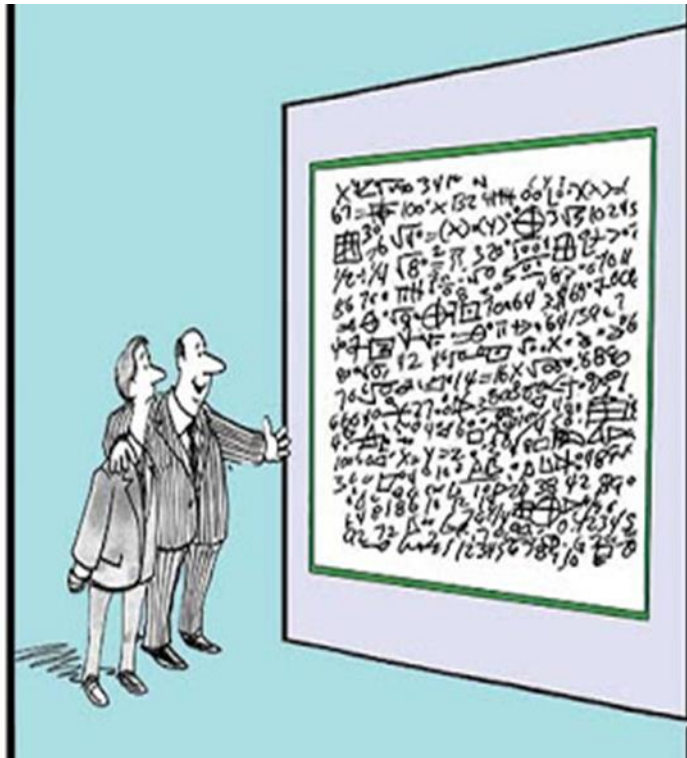


Three Categories of Leave

- **Continuous-** the leave runs continuously, without a break.
- **Intermittent-** taking leave in separate blocks of time for a single qualifying reason.
- **Reduced-** reducing the employee's weekly or daily work schedule for a period of time.

Intermittent Leave

The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule when medically necessary to care for a seriously ill family member, or because of the employee's serious health condition.



“Nice and simple. The way a family leave policy should be.”

Serious Health Condition

A “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; or
- a 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



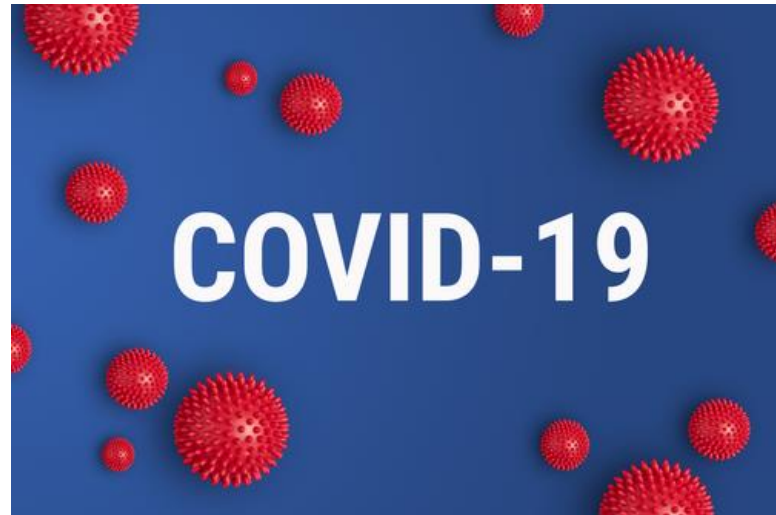
Serious Health Condition (*cont'd*)

- any period of incapacity due to pregnancy, or for prenatal care; or any period of incapacity (or treatment therefore) due to a chronic serious health condition; or
- a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or,
- any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

COVID-19 and FMLA

- An employee is sick with COVID-19:
 - Employee exhausts NYS COVID-19 leave and works for a covered employer and is eligible for FMLA, may qualify as a serious health condition.
- An employee is caring for a family member with COVID-19:
 - Look to the same rules governing FMLA to care for employee's spouse, son, daughter, or parent with a serious health condition.

*****BUT, leave taken by an employee solely for the purpose of avoiding exposure to COVID-19 is not protected under the FMLA.*****



Requesting FMLA

- The request for FMLA leave may be verbal or written.
- The first time the employee requests leave, the employee is not required to specifically mention the FMLA. But, the employee needs to provide info so employer knows it could be covered by FMLA.
- Foreseeable Leave- 30 days notice, or as soon as practicable.



Requesting FMLA (*cont'd*)

- Unforeseeable leave- as soon as practicable
- When the employee has no reasonable excuse for not providing at least 30 days advance notice, the employer may delay the FMLA leave until 30 days after the date notice is provided.



Requesting FMLA (cont'd)

- Provide sufficient information to make employer aware of need for FMLA-qualifying leave
- Specifically reference the qualifying reason or the need for FMLA leave for subsequent requests for same reason
- Consult with employer regarding scheduling of planned medical treatment
- Comply with employer's usual and customary procedural requirements for requesting leave absent unusual circumstances

Medical Certifications

- Medical Certification for Serious Health Condition:
 - Submit within 15 calendar days
 - Employer must identify any deficiency in writing and provide even days to correct or cure
 - Annual certification may be required
- Employer (**not** employee's direct supervisor) may contact health care provider to:
 - **Authenticate:** Verify that the information was completed and/or authorized by the health care provider; no additional information may be requested
 - **Clarify:** Understand handwriting or meaning of a response; no additional information may be requested beyond what is required by the certification form

Second and Third Medical Opinions

- An employer may, at its own expense, require the employee to obtain a second and third medical certification from a health care provider.
- If employer questions the validity of the complete certification, the employer may require a second opinion
- If the first and second opinions differ, employer may require a third opinion that is final and binding

Recertification

Employers may ask for a recertification of a serious health condition, but generally no more often than every 30 days unless:

- Employee requests an extension of leave, or
- circumstances described by the previous certification have changed significantly; or
- the employer receives information casting doubt on the employee's stated reason for leave.

CS449177



"Fill out these 'new patient' forms, but leave 'age' blank, as you may age a year before you're done."

Recertification (cont'd)

- In all cases, employers may request recertification every six months in connection with an employee's FMLA leave for a serious health condition.
- Employers also may require a new medical certification with the first absence in a new 12-month leave year, including the right to seek second and third medical opinions.
- Employee must respond to employer's request for information about status and intent to return to work.

Maintenance of Health Benefits

- An employer is required to maintain group health insurance coverage during the time an employee is on FMLA leave on the same terms as if the employee had continued to work.
- In addition, FMLA leave may not be treated as a break in service for eligibility or vesting requirements in connection with a pension or retirement plan.

Job Restoration

- Same or equivalent job
 - Equivalent pay
 - Equivalent benefits
 - Equivalent terms and conditions



Military Leave under the FMLA

The FMLA military family leave provisions include:

- **Qualifying exigency leave**, which provides up to **12 workweeks** of FMLA leave to help families manage their affairs when a military member has been deployed to a foreign country; and
- **Military caregiver leave**, which provides up to **26 workweeks** of FMLA leave to help families care for covered servicemembers with a serious injury or illness

Generally, FMLA rules and requirements continue to apply

Military Leave (cont'd)

- Also included in the entitlement to 26 weeks of leave are covered family members of veterans who left the military within the previous five years in the case of serious illness or injury incurred in the line of duty that manifested itself before or after the service member became a veteran.
- This leave can be taken only once during a single 12-month period while the employee works for the same employer, but that requirement is per-servicemember and per-injury or illness.
- The leave may be taken intermittently or on a reduced leave schedule. Employees are limited to a combined total of 26 weeks of FMLA leave for all qualifying reasons during that year, with the regular 12-week limit applying to other FMLA reasons for leave

Working from Home with FMLA leave

- **Can an employee work from home during FMLA leave?** An employer could allow, but could not require, an employee to work from home during a FMLA absence.
 - When an employee asks to work during his or her FMLA leave, this should be treated as a request for an intermittent/reduced schedule leave.
 - Any time spent performing work, cannot be counted against the employee's FMLA entitlement for that week.

Prohibited Actions

Employers cannot:

- interfere with, restrain or deny employees' FMLA rights
- discriminate or retaliate against an employee for having exercised FMLA rights
- discharge or in any other way discriminate against an employee because of involvement in any proceeding related to FMLA
- use the taking of FMLA leave as a negative factor in employment actions

Disciplines and FMLA Leave

- Abuse of FMLA, or at least what appears to be abuse, may be grounds for an employer to question FMLA leave.
- Providing false or incorrect information on FMLA paperwork.
- Not utilizing proper procedure for FMLA leave.



NYS's Paid Family Leave

- What is it?
- Most employees who work in NYS for **private employers** are eligible to take Paid Family Leave.
- A **public employer** may elect, or decide to cover its employees, but it is not mandatory. Also, it could be subject for negotiations and covered in a collective bargaining agreement.

Resources

- **Collective Bargaining Agreement (past and present)**
- **CSEA LRS's and Union Officers and Representatives (past and present)**
- **CSEA publications and materials**
- **Department of Labor:**

<https://www.dol.gov/agencies/whd/fmla>

QUESTIONS ???

