

# Roadmap on the Family Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Below, TPM will provide general information about which employers are covered by the FMLA, when employees are eligible and entitled to take FMLA leave, and what rules apply when employees take FMLA leave.



## COVERED EMPLOYERS

In the private sector, a covered employer is a business with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer.

## ELIGIBLE EMPLOYEES

Only eligible employees are entitled to take FMLA leave.

An eligible employee is one who:

- ▲ Is employed by a covered employer;
- ▲ worked at least 12 months;
- ▲ has at least 1,250 hours of service during the 12 months before leave begins;
- ▲ Is employed at a work site with 50 or more employees within 75 miles.

The 12 months of employment do not have to be consecutive. Any time previously worked for the same employer (including seasonal work) could, in most cases, be used to meet the 12-month requirement.

## LEAVE ENTITLEMENT

Eligible employees may take up to 12 workweeks of FMLA leave for:

- ▲ For the birth or placement of a child for adoption or foster care;
- ▲ To care for a spouse, son, daughter, or parent with a serious health condition;
- ▲ For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or

Up to 26 workweeks may be taken for military caregiver leave under FMLA:

- ▲ Because of a qualifying reason arising out of the covered active duty status of a military member who is the employee's spouse, son, daughter, or parent (**qualifying exigency leave**)
- ▲ To care for a covered servicemember with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember (**military caregiver leave**)

## WHAT IS A QUALIFYING HEALTH CONDITION?

Illness, injury, impairment or physical or mental condition involving:

- ▲ Inpatient Care, or
  - ▲ Continuing Treatment by a Health Care Provider
- Examples: restorative surgery, chronic conditions, pregnancy, etc.

## WHAT IS NOT TYPICALLY COVERED?

The FMLA doesn't definitively state that particular illness or diseases are always, or never, serious

health condition. Nonetheless, there are certain ailments that don't **typically** qualify as serious health conditions, including: colds and flu, earaches, upset stomachs and minor ulcers, headaches (other than migraines), or routine dental or orthodontic problems or periodontal disease, and cosmetic treatments (other than for restorative purposes), unless complications arise or inpatient care is required.

### **GIVING NOTICE**

Employees generally must request leave 30 days in advance when the need for leave is foreseeable and provide enough information for their employer to reasonably determine whether the FMLA may apply to the leave request. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances. When an employee seeks leave for a FMLA-qualifying reason for the first time, the employee need not expressly assert FMLA rights or even mention the FMLA.

### **EMPLOYER RESPONSIBILITIES**

Covered employers must:

1. Post a notice explaining rights and responsibilities under the FMLA (and may be subject to a civil money penalty of up to \$110 for willful failure to post);
2. Include information about the FMLA in their employee handbooks or provide information to new employees upon hire;
3. When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA-qualifying reason, provide the employee with notice concerning his or her eligibility for FMLA leave and his or her rights and responsibilities under the FMLA; and
4. Notify employees whether leave is designated as FMLA leave and the amount of leave that will be deducted from the employee's FMLA entitlement. This is done through a designation notice, a sample of which can be found at <http://www.dol.gov/whd/forms/WH-382.pdf>.

### **CERTIFICATION**

When an employee requests FMLA leave due to his or her own serious health condition or a covered family member's serious health condition, the employer may require certification in support of the leave from a health care provider.

### **JOB RESTORATION**

Upon return from FMLA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot be counted against the employee under a "no-fault" attendance policy.

### **HEALTH BENEFITS**

Employers are also required to continue group health insurance coverage for an employee on FMLA leave under the same terms and conditions as if the employee had not taken leave.

- ▲ Employee must pay his/her share of the premium.
- ▲ Even if employee chooses not to retain coverage during leave, employer obligated to restore same coverage upon reinstatement.

### **PROHIBITED EMPLOYMENT 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.

FMLA can quickly become a daunting set of regulations as employers try to navigate the many facets of the law. However, if you use the previous guidelines as a basis for your administration of leave, the aspects of handling medical leave with your employees should flow smoothly. See the graphic on page 14 for help with decision making regarding the FMLA process. If you have questions or concerns regarding FMLA, don't hesitate to contact the TPM office at 509-535-4646.



# THE EMPLOYER'S ROAD MAP TO THE FMLA



Covered Employer

1

Display the FMLA poster & provide General Notice

2

Employee asks for FMLA or the employer learns the employee's leave may be for an FMLA qualifying reason

3

Determine if the employee is eligible

4

Provide Eligibility and Rights & Responsibilities Notices to the employee

5

**Certification Process**  
Optional →  
None Required ↘

EXIT

Let the employee know that a Certification will be required

6

Grant or deny the leave request & provide Designation Notice to the employee

8

Determine if the leave request is for an FMLA-qualifying reason

7

Maintain Health Benefits during the leave

9

Restore the employee to the same or an equivalent position at the end of the leave

10

Maintain records properly

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