

APPENDIX A: For inclusion in handbook or individual distribution to employees.

**EMPLOYEE RIGHTS AND RESPONSIBILITIES**  
**UNDER THE FAMILY AND MEDICAL LEAVE ACT (FEDERAL & STATE)**

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**I. Basic Leave Entitlement**

A. Federal

Federal FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

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

B. State

State FMLA requires covered employers to provide, on a calendar year basis, the following unpaid, job-protected leave to eligible employees for the following reasons:

1. Family Leave

- Up to a maximum of six (6) weeks per twelve (12) month period for the birth or adoption of a child. The leave must begin no earlier than 16 weeks before estimated birth or placement and no later than 16 weeks after birth date or placement of the child.
- Up to a maximum of two (2) weeks leave per twelve (12) month period to care for a child, spouse, domestic partner, parent or parent-in-law, or parent of a domestic partner who has a serious health condition

Total maximum time for #1 and #2 is eight (8) weeks per twelve (12) month period.

## 2. Medical Leave

- A maximum of two (2) weeks per twelve (12) month period for the employee's serious health condition.

## **II. Military Family Leave Entitlements**

Under the Federal FMLA, eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

Federal FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

## **III. Benefits and Protections**

During Federal and State 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. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

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

## **IV. Eligibility Requirements**

### A. Federal

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

### B. State

Employees are eligible if they have worked for a covered employer for more than 52 consecutive weeks, for a minimum of 1,000 paid hours, and if at least 50 employees are employed by the employer on a permanent basis.

## V. Definition of Serious Health Condition

### A. Federal

A serious health condition is an illness, injury, impairment, 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.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

### B. State

"Serious health condition" means a disabling physical or mental illness, injury, impairment, or condition which requires inpatient care in a hospital, nursing home or hospice, or outpatient care that requires continuing treatment or supervision by a health care provider.

## VI. Use of Leave

Under some circumstances, employees may take FMLA leave on an intermittent basis. Intermittent leave may be taken in the smallest increment allowed by the employer for any other type of leave.

- Federal leave based on a birth or child placement may only be taken intermittently on a reduced leave schedule if the employer agrees;
- State family leave for birth/placement or care of a child, spouse, domestic partner, parent or parent-in-law, or parent of a domestic partner with a serious health condition may be taken as partial absences from employment if scheduled so not to unduly disrupt the employer's operations.
- Federal leave based on a serious health condition of an employee, employee's child, spouse or parent (including covered servicemembers) may only be taken intermittently or on a reduced-leave schedule when medically necessary, unless the employer agrees otherwise.
- State medical leave for self may be taken in non-continuous increments as medically necessary.

- No leaves will be granted in daily or hourly increments of less than those specified in policies or labor agreements.
- Employees shall make a reasonable effort to schedule medical treatments so they do not unduly disrupt current operations and they shall provide the employer with reasonable advance notice.
- Leave due to qualifying exigencies may also be taken on an intermittent basis.

## **VII. Substitution of Paid Leave for Unpaid Leave**

### **A. Federal**

Employees may choose or employers may require use of accrued paid 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.

### **B. State**

An employee may substitute, for portions of family leave or medical leave, any type of paid leave provided by the employer or choose to take unpaid leave.

## **VIII. Employee Responsibilities**

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

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 a health care provider, or circumstances supporting 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.

## **IX. Employer Responsibilities**

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice 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.

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.

## **X. Unlawful Acts by Employers**

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

## **XI. Enforcement**

### **A. Federal**

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

### **B. State**

An Employee who believes his or her rights have been violated may, within 30 days after the violation occurs, or the employee should reasonably have known that the violation occurred, file a complaint with the Department of Workforce Development, Equal Rights Division.

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 or medical leave rights.