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FMLA: Family and Medical Leave Act

An overview of the Act signed into law in 1993

THE FAMILY MEDICAL LEAVE ACT (FMLA) was introduced into Congress in 1985, vetoed in 1991 and 1992, and signed into law by President Clinton in 1993. It was a reflection of the changing demographics in our workforce. At the time, there was an influx of young women and mothers into the workforce and aging baby-boomer employees who were concerned with medical leaves, medical care costs, and insurance coverage. FMLA was designed to help employees balance work and life responsibilities. As written, it allowed individual states to expand the leave rights beyond the federal statute. Basic elements of the Act follow:

- applies to all public agencies and all private sector employers involved with commerce with fifty or more employees in twenty or more workweeks in the current or preceding calendar year. It provides a limited amount (480 hours) of unpaid, job-protected leave when the employee has a qualifying event.
- cites an eligible employee as one who worked for a covered employer for at least twelve months; for at least 1250 hours over the previous twelve months; at a location where at least fifty employees are employed by the employer within seventy-five miles.
- declares that a covered employer must grant an eligible employer up to a total of twelve workweeks of unpaid leave during any twelve month period for the birth or placement of a child, for adoption or foster care; to care for an immediate family member with a serious health concern, or to take medical leave when the employer is unable to work because of a serious health concern. Spouses employed by the same employer are granted a combined total of twelve weeks leave.
- provides that the covered employer maintain group health coverage during FMLA leave if it was provided before the leave. Upon return to work, an employee must be restored to her original job or an equivalent with equivalent pay, benefits, terms and conditions.
- may require employees seeking leave to provide thirty days advance notice when the need is foreseeable; medical certification supporting the need for leave; second or third medical opinions and recertification; and periodic reports regarding an employee's status and intent to return to work.
- allows some covered employees to take intermittent leave rather than one block of leave.
- underwent some important changes in 2009: Employers are required to post FMLA notices; employers may now require employees to take all types of paid leave concurrently with FMLA, those who do so may be required to call in every morning. There are new regulations about holiday and bonus pay while on FMLA leave; recertification can be requested by the employer more frequently; and fitness-for-duty certification may be required in order to return to work. Now time is given to employees who care for a covered service member during a single twelve-month period.

That's a general overview of a very important act. To look at it more personally, let's talk about Sue who worked for a large employer and whose mother was diagnosed with a serious illness. Taking her mom to doctor appointments and hospital stays had consumed all her paid leave. She had

Other resources:

- www.paidfamilyleave.org
- www.dol.gov
- www.nationalpartnership.org
- Womensrights.change.org
- www.wagehour.dol.gov



fulfilled all the eligibility requirements for FMLA and was asked about her experience in the application process. According to Sue, she and her mother's doctors completed some forms and she was able to take unpaid, intermittent FMLA with little trouble.

Other's stories are different. Virginia's small employer (under fifty employees) was not subject to FMLA so she was not a covered employee when serious illness struck her. Rose had not been at her

new employer the requisite time before she discovered she was pregnant so she was not eligible for leave.

FMLA leaves employees at companies with under fifty employees, about forty-two percent of the American workforce, uncovered. Since the leave is unpaid, many employees cannot take it if they have no paid leave—about fifty-three percent of employees in the private sector. FMLA does not cover everyone; maybe someday it will. ☞