

PASCO COUNTY, FLORIDA
INTER-OFFICE MEMORANDUM

TO: ALL EMPLOYEES

DATE: 5/17/10

FILE: IN10-485


FROM: Jane M. Calano
Risk Manager

SUBJECT: FAMILY AND MEDICAL LEAVE
ACT OF 1993

REFERENCE:

The Family and Medical Leave Act of 1993 (FMLA) became effective on August 5, 1993 and has been a source of confusion since its inception.

Under this Federal law, most employees must be allowed to take up to 12 weeks of leave for reasons outlined in the questions and answers which follow.

The following frequently asked questions will provide an overview of the law and its effect as well as the procedures to be followed from the employee as well as the employer standpoint in ensuring that the law is applied fairly and appropriately for the employees of Pasco County.

Q 1. Does the law apply to all employees?

A 1. No. The law applies only to employees who have been employed by the current employer for at least 12 months and worked a total of 1,250 hours (25 hours per week) during the last 12 months.

Q 2. What are the reasons for taking Family and Medical Leave?

- A 2 a. The employee's own serious health condition which renders the employee unable to perform his/her job.
- b. The spouse, child (under age 18 years of age or 18 years of age or older and incapable of self care because of a mental or physical disability) or parent of the employee has a serious health condition requiring care.
- c. The birth of a child, the placement of a child for adoption or foster care.
- d. The employee's spouse, son, daughter or parent is on active duty (or has been notified of a call or order to active duty) in the National Guard or Reserves in support of a contingency operation.
- e. The employee's spouse, son, daughter, parent or next of kin (nearest blood relative) of a covered servicemember is entitled to take up to 26 workweeks of leave during a 12 month period to care for the servicemember. A covered servicemember is a member of the Armed Forces (including the National Guard or Reserves) who is undergoing medical treatment, recuperation, therapy, is an outpatient, or is on the temporary disability retired list for a serious injury or illness (an injury or illness incurred in line of duty on active duty in the Armed Forces that may render the servicemember medically unfit to perform his/her duties).

Q 3. What is a "serious health condition"?

A 3. The law defines a serious health condition as "an illness, injury, impairment or physical or mental condition that involves:
(A) inpatient care in a hospital, hospice or residential medical care facility; or
(B) continuing treatment by a health care provider."

Q 4. How much time off must be granted?

A 4. Up to 12 workweeks during a 12 month period (dependent on physician certification. NOTE: the referenced 12 month period is a "rolling" 12 months which means we "look back" at the preceeding 12 months to determine if any FMLA time was utilized; the approval of time is based upon the results of this "look back". Example: An employee uses 2 weeks of FMLA in January and applies for 12 weeks in September – only 10 weeks would be approved in September because 12 months had not elapsed.

In the event that the leave is for childbirth, adoption or placement and both parents are county employees, the total leave allowed is 12 weeks. (If mother takes 12 weeks, father would not have FMLA available to him)

Q 5. Must the 12 weeks be used consecutively?

A 5. If the reason for the leave is birth, adoption or foster care placement, the employer may require the leave to be taken all at once. (Also, in this situation the leave must be taken within a year after the birth, adoption or placement).

If the reason for the leave is a serious illness, however, the leave may be taken consecutively, intermittently or on a reduced hour schedule. A "reduced hour schedule" is defined as a leave schedule that reduces the usual number of hours per workweek or hours per workday of an employee.

Q 6. Are these 12 weeks off in addition to existing sick leave or vacation leave?

A 6. Under the law, employers may require that existing sick and vacation leave be exhausted as part of the 12 weeks prior to using "unpaid" leave.

IT IS THE POLICY OF PASCO COUNTY THAT SICK AND VACATION LEAVE BE USED AS PART OF THE FAMILY AND MEDICAL LEAVE PRIOR TO UNPAID LEAVE.

Q 7. What procedures must be followed to apply for FMLA leave?

A 7. In the event that an employee expects to be off for a period of time, and the qualifications of FMLA are met, application must be made for the use of sick and/or annual leave.

If the employee expects to be off for a period in excess of their accumulated sick and vacation leave, he/she must submit a request for leave without pay for the period of time in excess of their accrued leave. The request must be sent through their division manager and department director, then routed to their Assistant County Administrator for approval.

Q 8. Must advance notice be given by the employee?

A 8. Yes, if the reason for the leave is "foreseeable", as in the case of a birth, adoption or planned medical treatment.

Q 9. How much advance notice must be given by the employee?

A 9. When the leave is foreseeable, the employee is required to provide reasonable prior notice of at least 30 days and attempt to schedule the leave so as not to unduly disrupt the employer's operations.

If the leave is not foreseeable, the Act requires that notice be provided as soon as is reasonably possible. FMLA may be denied for untimely notice.

NOTE: In cases of late applications (after the absence has begun) if the leave is approved, we will issue the approval on a retroactive basis to the date that the employee began losing time.

Q 10. Must proof of a serious illness be provided?

A 10. Yes, physician certification is required whether the leave is for the employee's own serious health condition or that of a spouse, child or parent.

Q 11. What becomes of the medical information furnished as proof of a serious illness as defined by the Act?

A 11. All medical information is maintained, in a confidential manner, in the Risk Management office and is not subject to public inspection.

Q 12. What happens to an employee's health benefits while on FMLA?

A 12. The law requires that the employer maintain the employee's health insurance benefits (if such benefits are provided under a group health plan) under the same terms that the coverage would have been provided had the employee not taken the leave.

Pasco County continues to pay premiums for the employee while he/she is on approved FMLA. If an employee has deductions for dependent or family health coverage, dental coverage, life, disability, accidental AD&D and/or AFLAC coverage, the same cost must be paid by the employee while on leave.

If an employee fails to return from FMLA leave, the employer may recover from the employee the health insurance premium paid by the employer for the employee during the leave; therefore, the employee should not request leave if they do not intend to return to work after their absence.

Q 13. How does this affect an employee's participation in the Pre-tax premium program?

A 13. If the employee is in a pay status, his/her deductions would continue on a pre-tax basis.

If the employee is taking "unpaid" FMLA leave this would constitute a "Qualifying Status Change Event" and the employee would have the option to cancel the portion of the coverage for which they have payroll deductions – or – remit payments on an after-tax basis.

Please Note: If an employee cancels the coverage as allowed above, the employee's return to work would constitute a second "Qualifying Status Change Event" and would allow the employee to re-apply for the coverage and to start payroll deductions again.

Q 14. Does the employee continue to accrue sick, vacation and retirement benefits while on FMLA leave?

A 14. If the employee is in a pay status benefits continue to accrue.

If the employee is taking "unpaid" leave OR medical leave pool, benefits would not accrue until he/she had returned to a "pay" status.

Q 15. How will an employee's position be affected upon returning from a qualifying FMLA leave?

A 15. The Act requires that an employee returning from Family and Medical Leave must be restored to his or her previous position, or to an "equivalent" position. The Act provides that an equivalent position must have equivalent benefits, pay and conditions of employment. There must be a correspondence to the duties of the previous position as well as correspondence in pay, benefits and hours.

Q 16. Will an employee's seniority be affected by utilizing an "unpaid" FMLA leave?

A 16. No. If an employee had 5 years seniority prior to the leave, the employee will have 5 years seniority upon his/her return.

Q 17. Will an employee's anniversary/merit date be affected by utilizing an "unpaid" FMLA leave?

A 17. Yes, as in the case of any "unpaid" leave, if the period exceeds two weeks, there will be a corresponding adjustment of anniversary and classification dates.

Q 18. Will the employee be required to furnish a medical release in order to return to work?

A 18. In the case of an employee's serious illness which prohibits the employee from performing his/her job, a release will be required. The same practice applies to all employees, presently, returning from an absence of three (3) days or longer for medical reasons.

The employee is required to communicate to his/her department that the leave is related to FMLA when using the time on an intermittent or reduced hour basis.

Application packets are on file in the Risk Management office.

The Act is subject to enforcement by the Department of Labor, which is authorized to conduct investigations and compliance reviews.

Should you have any questions, feel free to contact me at extension 8535.

JMC/

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

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.

Military Family Leave Entitlements

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.

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.

Benefits and Protections

During 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. 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.

Eligibility Requirements

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.

Definition of Serious Health Condition

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.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

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.

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.

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.

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.

Enforcement

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

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.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.



Application packets are available in the Risk Management office.
Should you have any questions, please call extension 8535.