

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

LEAVE ENTITLEMENTS

Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within 1 year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

The Unified Judicial System uses a 12-month period measured forward from the date an eligible employee's first FMLA leave begins.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies. The UJS requires employees to use paid leave before unpaid leave, unless otherwise allowed under the Personnel Rules.

Child is defined as under the age of 18, unless a child 18 years of older is incapable of self-care because of a mental or physical disability. The terms "child" and "parent" include *in loco parentis* relationships in which a person assumes the obligations of a parent to a child. No legal or biological relationship is necessary to the child; however, the individual must assume day-to-day activities and financial responsibilities.

BENEFITS & PROTECTIONS

While employees are on FMLA leave; employers must continue health insurance coverage as if the employees were not on leave. During your leave, the State will continue to pay the State's portion of your health insurance premiums and you must also pay your share of the health insurance premiums. If you fail to pay your premiums, your health insurance coverage will cease. If you are on unpaid leave, you must submit your share of the health insurance premiums by check or money order to the Bureau of Human Resources Benefits office before 5:00 p.m. on Friday of the week in which you would have been paid.

Upon return from FMLA leave, most employees must be restored to the same job or equivalent job with the same pay, benefits, working conditions, and other employment terms. You do not have return-to-work rights under the FMLA if you need leave beyond the amount of FMLA leave you have available to use.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

If you do not return to work after your leave ends, you may be expected to reimburse the State for its share of the health insurance premiums paid on your behalf. You will not be required to reimburse the State for the health insurance premiums if you are precluded from returning to work by a serious health condition. You will be required to provide the State with medical certification of the serious health condition. Further, you will not be required to reimburse the State if you did not return to work because of circumstances beyond your control.

ELIGIBILITY REQUIREMENTS

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave; * and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

*Special "hours of service" requirements apply to airline flight crew employees.

REQUESTING LEAVE

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

EMPLOYER RESPONSIBILITIES

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

ENFORCEMENT

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer. In addition, an employee may file an internal complaint in accordance with UJS Personnel Rule 6.4 (L). The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.