

## 1. FMLA SNAPSHOT

After eight years of debate, thirteen votes, and two presidential vetoes, Congress adopted the Family and Medical Leave Act for a third time on February 4, 1993. President Bill Clinton signed the bill. The Act allows eligible employees to take up to 12 weeks of unpaid leave each year for medical or family reasons.

### The FMLA covers:

- Private-sector employers with 50 or more employees
- Public-sector employers, including federal, state, and local government agencies and schools

### You are eligible for FMLA leave if you:

- Work for a covered employer,
- Have worked for this employer for at least 12 months,
- Have worked at least 1,250 hours during the 12 months before the start of your leave, and
- Work at a location where your employer employs 50 or more employees within 75 miles

As an eligible employee, you may take 12 weeks of job-protected leave in a 12-month period to:

- Treat or recover from a serious health condition that makes you unable to perform your job (medical leave)
- Care for a child, spouse, or parent suffering from a serious health condition (family-care leave)
- Care for or bond with a newborn, newly adopted, or new foster child (new-child leave)

**Serious health conditions** include injuries or illnesses that involve medical treatment and incapacitate you or a family member for more than three consecutive calendar days. The FMLA also covers incapacities resulting from chronic ailments or pregnancy. The FMLA does not apply to colds, ear infections, upset stomachs, or other minor health conditions.

**When medically necessary**, you may take time off intermittently or by reducing your work hours.

**Your employer may not deny or delay** you time off because of production needs or because you occupy an important position.

**During your leave**, your employer must maintain your group health plan benefits as if you were working.

**Your employer may request** a certification prepared by a health care provider verifying that your leave is for a purpose recognized by the FMLA. Before returning from a medical leave, you can be required to submit a fitness-for-duty report.

**Your employer does not** have to continue your wages during

your absence. However, if you have accrued paid vacation, annual, or personal leave, you may use it even if you cannot comply with the usual duration or advance notice requirements. Sick pay may be available under your contract or a state program. Unless your contract guarantees employees the exclusive right to schedule vacations, your employer may be able to force you to use vacation leave.

**You may not be warned, suspended, or discharged** for taking FMLA time off. Nor may your employer issue you an adverse evaluation, deny you a promotion, count your absences under an attendance control policy, or take other action against you.

**If your need for time off** is foreseeable 30 days in advance, for example, if your doctor schedules you for an operation, you must give notice at least 30 days in advance. If you have less than 30 days foreknowledge, you must notify your employer as soon as practicable.

**When your leave is completed**, your employer must restore you to your regular job or to an equivalent position with the same pay, benefits, duties, status, terms, and conditions of employment.

**Your employer must post** a notice explaining the FMLA, include FMLA information in benefit documents, answer employee questions, and promptly designate qualifying absences as FMLA leave.

**Under most union contracts**, FMLA rights can be asserted in the grievance procedure.

**The U.S. Department of Labor (DOL)** enforces the FMLA. In the event of a violation, you can file a complaint with the Wage and Hour Division. You may also sue your employer in court.

**Your employer violates** the FMLA if a manager or supervisor:

- Refuses to allow you a qualifying leave
- Orders you to cut short your leave or report for light duty
- Fails to restore you to your former position or its equivalent
- Withholds a benefit or privilege because you have taken FMLA time off
- Uses coercion, threats, or intimidation to discourage you from exercising FMLA rights
- Gives you a poor evaluation or denies you a promotion
- Fires, disciplines, or demotes you because of FMLA absences
- Punishes you for complaining about FMLA violations, telling others about the FMLA, or taking legal action
- Denies you any other rights provided by the FMLA or the Regulations issued by the U.S. Department of Labor

## **SMALL NECESSITIES LEAVE ACT (SLNA)** **(M.G.L.) CHAPTER 149, SECTION 52D**

The Small Necessities Leave Act permits eligible employees to take up to a total of 24 hours of leave within a 12-month period to attend a child's school activity or accompany a child or elderly relative to a doctor's appointment. The legislated effective date of this act is August 4, 1998.

The Small Necessities Leave Act permits an employee leave for the following purposes:

- To participate in school activities directly related to the educational advancement of a son or daughter of the employee, such as a parent-teacher conference or interviewing for a new school;
- To accompany a son or daughter of the employee to routine medical or dental appointments, such as check-ups or vaccinations; and
- To accompany an elderly relative of the employee to routine medical or dental appointments or appointments for other professional services relating to the elder's care, such as interviewing at nursing or group homes.

The 24 hours of leave available under this benefit are in addition to the 12 weeks of leave provided for under the federal Family and Medical Leave Act. The 24 hours may be taken within the 12-month calendar year period and the time may be taken on an intermittent (i.e. 2 hours to attend a parent-teacher conference) or reduced-time schedule.

Attending parent-teacher conferences, interviewing for a new school, routine check-ups or vaccinations, or interviewing at nursing or group homes qualify as acceptable purposes.

An employee is required to provide his/her department with seven (7) days' notice of the need for the leave if the leave is foreseeable. If the necessity for the leave is not foreseeable, the employee is required to provide notice of the leave as soon as practicable.

The law provides for an unpaid leave of absence. An employee may elect to use any available accrued vacation, personal or sick leave benefits provided the use of such time is in accordance with the employee's appropriate collective bargaining agreement. Also, An employer may require the employee to substitute any of the employee's paid vacation leave, personal leave or sick leave for the leave provided for by the Small Necessities Leave Act. In other words, the employer may require that the employee first utilize vacation leave, personal leave or sick leave before taking the unpaid Small Necessities Leave.

A department may require that written certification or documentation support a request for leave under this act.

### **DEFINITIONS**

**Son or daughter ...** any child under 18 who is the biological child of the employee, who is adopted by the employee, or whom the employee supervises on a day to day basis and for whom the employee is financially responsible. A "son or daughter" is also a child over 18 who is incapable of self-care because of a mental or physical disability.

**Elderly relative ...** an individual of at least 60 years of age who is related by blood or marriage to the employee, including a parent.

**School ...** a public or private elementary or secondary school, a Head Start program, or a children's day care facility.

**Federal Act ...** the Family and Medical Leave Act (FMLA) of 1993. Unless this section provides otherwise, the terms of FMLA shall apply to leave under this section.

**Eligible employee ...** an employee must have been employed for 12 months at the time the leave is to begin. Also an employee must have worked for at least 1,250 hours during the 12-month period prior to the beginning of the leave.