



## *FMLA - Overview*

# ***HR ALERT***

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**Dot the I's & Cross the T's**  
**- No wonder covered employers [typically those with 50 or more employees] have trouble complying with the FMLA**

**Consider the following 'details':**

- **To be eligible for FMLA leave, the employee must have worked for the employer for at least 12 months, not necessarily 12 consecutive months.**
- **Eligible employees are entitled to unpaid FMLA leave to care for a son, daughter, or parent, but not a parent-in-law, who has a serious health condition.**
- **Eligible employees ordinarily can take up to 12 weeks of FMLA leave in any 12-month period. However, a husband and wife working for the same employer can together take no more than 12 weeks of FMLA leave in a year to care for a newly arrived child or a seriously ill parent. However, each spouse also is eligible to take any unused portion of their 12-week allotment for another eligible purpose, such as his or her own serious health condition or the care of a seriously ill child or the other spouse.**
- **The FMLA's definition of a serious health condition includes any illness, injury, impairment, or physical or mental condition involving either in-patient care or continuing treatment by a health care provider. It also includes illnesses or conditions that result in a period of incapacity of more than 3 consecutive calendar days, or any subsequent treatment or period of incapacity relating to the same condition, which involves: (1) two or more instances of treatment by a health care provider; or (2) at least one treatment by a health care provider that results in a regimen of continuing treatment.**
- **A key employee is a salaried eligible employee who is among the highest paid 10 percent of employees within 75 miles of the worksite.**

### **FMLA – Termination of Coverage**

A U.S. District Court found that an employer violated several of the Family and Medical Leave Act's (FMLA's) requirements regarding group health coverage. Among several violations, the employer retroactively cancelled the employee's coverage without notice when the employee did not return to work. The court noted that if an employee fails to return to work following FMLA leave, and employer may in some circumstances recover its share of the premiums paid for the employee's coverage.

### **FMLA Update – August 30, 2002**

Even though the recent U.S. Supreme Court decision, Ragsdale v. Wolverine Worldwide, ruled that employers are not required to provide more than 12 weeks of unpaid FMLA leave to eligible employees, the court did not rescind the rule that employers must notify the employee of FMLA rights.

### **FMLA News Update – March 2002**

The Family and Medical Leave Act of 1993 (FMLA) guarantees qualifying employees 12 weeks of unpaid leave each year. The Act also encourages businesses to be lenient and to grant employees even more leave if needed. In the case of Ragsdale v. Wolverine Worldwide, Inc. before the U.S. Supreme Court, an employee (Ragsdale) was granted 30 weeks of medical leave by her employer (Wolverine). Wolverine denied Ragsdale her request for additional leave beyond the 30 weeks and refused to allow her to work part-time, terminating her when she did not return to work. Ragsdale filed suit under 20 CFR § 825.700(a), a Labor Department regulation, stating that Wolverine should supply her with 12 additional weeks since they had not informed her that her 30 week leave would count against her FMLA leave. The District Court granted Wolverine summary judgment, finding that the regulation (825.700 (a)) was in conflict with the statute (§2617) and invalid because it required Wolverine to grant Ragsdale more than 12 weeks of FMLA-compliant leave in one year.

The FMLA requires that an employer post notice of FMLA rights on its premises and also punishes an employer if they interfere with the rights of employees to exercise FMLA. The Secretary's regulation also requires that employers give employees written notice that an absence will be considered FMLA leave. However, assuming this regulatory requirement is valid, the Secretary's punishment is contrary to the Act. Section 825.700(a) punishes an employer's failure to provide timely notice of the FMLA designation by denying the employer any credit for leave granted before the notice, and the penalty is unconnected to any prejudice the employee might have suffered from the employer's lapse. The employee will be entitled to 12 additional weeks of leave even if he or she would have acted in the same manner had notice been given and can sue if not granted the additional leave.

The Secretary's regulation instructs courts to ignore §2617's command that employees prove impairment of their statutory rights and resulting harm. Agencies are not authorized to contravene Congress' will in this manner.

### **FMLA - Overview**

The Family and Medical Leave Act (FMLA) entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. The employer may elect to use the calendar year, a fixed 12-month leave or fiscal year, or a 12-month period prior to or after the commencement of leave as the 12-month period.

The law contains provisions on employer coverage; employee eligibility for the law's benefits; entitlement to leave, maintenance of health benefits during leave; and job

restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. The law also requires employers to keep certain records.

FMLA applies to all:

- public agencies, including state, local and federal employers, local education agencies (schools), **and**
- private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year **and** who are engaged in commerce or in any industry or activity affecting commerce — including joint employers and successors of covered employers.

To be eligible for FMLA benefits, an employee **must**:

- (1) work for a covered employer;
- (2) have worked for the employer for at least 12 months;
- (3) have worked at least 1,250 hours over the previous 12 months; **and**
- (4) work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

A covered employer must grant an eligible employee up to a total of 12 workweeks of **unpaid** leave during any 12-month period for one or more of the following reasons:

- for the birth and care of the newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; **or**
- to take medical leave when the employee is unable to work because of a serious health condition.

### **Intermittent Leave**

Employees who have serious health conditions or are caring for family members with serious health conditions have the right to take FMLA leave on an intermittent basis, either in blocks of time, or by reducing their normal weekly or daily work schedule.

### **FMLA Survey Results (Jan. 9, 2001)**

On January 9, 2001, the U.S. Department of Labor released a report on the results of employee and employer surveys on family and medical leave policies, including the 1993 Family and Medical Leave Act (FMLA). The Society for Human Resource Management (SHRM) released its own survey results, the SHRM<sup>®</sup> FMLA Survey, in January, 2001.

### **ADA and FMLA**

Initially, an employer covered by both the ADA and the FMLA should determine an employee's rights under each statute separately, and then consider whether the two statutes overlap regarding the appropriate actions to take.

### **ADA and COBRA (Dec. 19, 1994)**

The Family and Medical Leave Act of 1993 ("FMLA"), P.L. 103-3, imposes certain requirements on employers regarding coverage, including family coverage, under group health plans for employees taking FMLA leave. Many employers have raised questions about how the requirements under FMLA affect their obligation to provide COBRA continuation coverage in accordance with the requirements of section 4980B of the Internal Revenue Code. The IRS provides a notice which addresses a number of the principal questions that have been raised.

### **FMLA Forms and Posters**

There are many forms and associated with the proper administration of an FMLA policy. There are also some FMLA posters which are required by law to be displayed in the workplace.

### **FMLA and Short Term Disability**

Employers who provide their employees with paid sick leave are permitted under the FMLA and its regulations to count any paid sick leave taken towards the unpaid leave allowed the employee under the Act. Before an employer counts an employee's paid leave toward the FMLA allotment, however, it must notify the employee in writing that his or her paid sick leave is being counted toward the twelve weeks under the Act.

### **Other Relevant Documents Available by Annual Subscription in the CLIENTS ONLY section of [WWW.AETHR.COM](http://WWW.AETHR.COM)**

- FMLA Packet which includes:
  - FMLA – Sample Letter to Employees
  - FMLA Acknowledgement – Standard Form
  - FMLA Acknowledgement – With Policy
  - FMLA Poster – Your Rights Under the FMLA (Pub. WH 1420)
  - FMLA Fact Sheet – 028
- FMLA: Intermittent Leave
- FMLA: Survey Results
- FMLA: Compliance Guide Questions and Answers
- FMLA, ADA, and COBRA
- FMLA: DOL Notification Rule Invalid
- ADA - EEOC Guidance: ADA FMLA
- Benefits: Who Pays?
- FMLA Form – WH-380-Certification of Health Care Provider
- FMLA Form – WH-381- Employer Response to Employee Request for FMLA Leave
- FMLA Update – US Supreme Court Decision Overview
- FMLA - U.S. Supreme Court Case – Ragsdale v. Wolverine World Wide, Inc.

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