

FAMILY MEDICAL LEAVE ACT

**DEPARTMENT OF
COMMERCE**

What is FMLA?



- ◉ Leave entitlement program
- ◉ Enacted on August 5, 1993 by Congress
- ◉ Balance workplace and family needs
- ◉ Promote stability & economic security of families
- ◉ Minimize employment discrimination

FMLA Benefit

- ◉ 12 workweeks/480 hrs job-protected leave
 - > not prorated for part-time employees
 - > unpaid (may simultaneously use paid leave)
 - > 12-month period
 - Example: January 12, 2010 until January 12, 2011

Note: If a husband and wife are both employed with the State, each employee will be eligible for 12 weeks leave during a 12 month period. State policy does not limit their benefit to a combined total of 12 weeks, as allowed by federal policy.

FMLA Benefit

◉ Health insurance coverage

- Commerce continues to pay employer portion
- Employee continues to pay his/her share of premium if applicable
- Commerce may recover premium payment if employee does not return to work
 - * Exception - continued serious health condition or other circumstance beyond the employee's control

FMLA Benefit

- Re-employment in same or equivalent position with equivalent pay
- ⊕ Exception – FMLA benefits cease upon separation due to Reduction In Force

Eligibility Requirements

- ◉ Employed with the State for 12 months
 - > State government is a single employer
 - > Not figured like Total State Service for Longevity
 - Does include EPA state service
 - Does include temporary employment with Commerce if paid by Commerce.
 - > Does not have to be consecutive months

Eligibility Requirements

- Full time employees - In pay status for 1040 hours during previous 12 months
- Temporary, Intermittent, and Part-time employees – 12 months with the state = 1250 hours

Eligibility Requirements

- ◉ Eligibility is based on date leave is to commence - not date leave is requested
- ◉ Paid leave can be used to meet eligibility requirements – if approved by management
- ◉ Commerce must notify employee when eligibility requirements will be met.
- ◉ Military Leave (paid or unpaid) should be credited

Circumstances for Granting FML

- ◉ Serious health condition of employee, spouse, child or parent
 - > Inpatient care (an overnight stay)
 - > Continuing treatment by a health care provider
 - Incapacity of more than 3 consecutive calendar days that requires subsequent treatment (2 or more times)
 - Chronic serious condition (Asthma, Diabetes)
 - Long-term condition (Alzheimer's, stroke)
 - Multiple treatments (chemotherapy, radiation, physical therapy, kidney dialysis)

Circumstances for Granting FML

- ◉ Non qualifying health condition
 - > Common cold
 - > Flu
 - > Ear ache
 - > Headaches (other than migraine)
 - > Routine physical, eye, dental examinations
 - > Self diagnosis treatment
 - > Cosmetic treatments (acne, plastic surgery not requiring hospitalization)



Qualifying Circumstances for Granting FML

- Substance Abuse (Alcohol & Drug)
 - > Treatment is covered
 - > Abuse is not protected by FML
 - > Drug Free Workplace Policy
- Depression
- Anxiety
- Severe Arthritis
- Asthma
- Cancer
- Heart Condition



Circumstances for Granting FML



- ◉ Childbirth
 - > Pre-natal care
 - > Incapacity due to pregnancy
 - > Care for newborn child
 - Within 12 months of birth
- ◉ Adoption/Foster Care
 - > Placement
 - > Care for child (within 12 mos. of placement)

Intermittent Leave or Reduced Work Schedule

- ◉ May be used for serious health condition
- Employee, spouse, child, parent
- ◉ Can be taken in 15 minute increments.
- ◉ May not require a Dr's note with every occurrence.

Intermittent Leave or Reduced Work Schedule

- ◉ Temporary transfer to an alternative position
 - > employee must qualify
 - > equivalent pay (same hourly rate)
 - > equivalent benefits
 - > cannot create a hardship on the employee
- ◉ Paid leave may be substituted to make up difference.
 - > Only actual time taken may be counted toward the 12 weeks of leave

Paid Leave Options

If an employee is using paid leave and does not give notice of FML qualifying absence, the agency shall (after 10 workdays) request sufficient information to establish whether the leave is for FMLA qualifying reason.

Employee Notice Requirements

- Written Application
 - > Request leave – Verbally
 - > Notice of time & duration of leave
 - > Explain reason for leave
 - > Provide sufficient information to establish FMLA-qualifying reason



Medical Certification



- Required for serious illness of the employee, spouse, parent, son or daughter.
- Required if using paid sick leave for childbirth
- Allow at least 15 calendar days
- Notify of consequences if not provided
- WH-380E Form - no additional information may be required.
- Employee's expense

Medical Certification

- ◉ Validity of Certification?
 - > 2nd opinion –
 - Commerce expense (includes travel)
 - > 3rd opinion
 - Commerce option (if 1st & 2nd opinion differ)
 - Commerce expense
 - Final and binding

Note: Employee is provisionally entitled to the benefits during this process.

Return to Work

○ Employee's Responsibility

- > Report periodically on status and intent to return to work.
- > Notification of change in circumstances (within 2 business days)
- > Provide fitness for duty certification if required
 - Copy given to Human Resources for file
 - Not required if FML was taken for family member or adoption
- > **The employee should contact HR or BEACON to ensure benefits are reinstated.**

Unable to Return to Work

- ◎ Contact Division/Commission HBR at least one week prior to end of FML
 - > LWOP (Leave without Pay) Must have approval
 - Manager
 - Human Resource Director OR apply for
 - > STD (Short Term Disability)

Note: Employee may be denied LWOP and scheduled for pre-disciplinary conference if this step is missed.



An employee's wife has been diagnosed with cancer; her physician has requested the employee stay home with her on Tuesday and Thursdays to take her to chemotherapy, help her bathe, and take her to physician appointments. No one else in the family is available to assist.

Would this qualify for FMLA?



Yes

This would be considered intermittent FML/FIL, assuming the request is filed timely, and the Application and Health Provider Certification form is filed with the Human Resources office and approved.



An employee has been employed with Commerce, with no prior state service, for 6 months and has worked 1,500 hours. The employee goes into labor and gives birth to a baby.

Is the employee eligible for FML?



No

The employee must be employed at least one year, and have worked at least 1,040 hours during the previous 12 months.

Family Illness Leave

An Extension of FML

What is Family Illness Leave?

- ◉ Leave entitlement program
- ◉ Enacted by the General Assembly in 2002
- ◉ Office of State Personnel Manual Section 5-27.1
- ◉ Extension of benefits provided under FMLA for serious illness of spouse, child or parent (not employee's illness)
- ◉ Employee may choose whether to use FIL or FMLA.

FIL Benefit

- ◎ 52 workweeks job-protected leave
 - > unpaid (may substitute paid leave)
 - > 5-year period
 - Measured forward from the date leave begins
- Example: Leave begins January 1, 2003 using 24 weeks. Balance is 28 weeks to be used until January 1, 2008. New 5 year period would begin when another LWOP begins for this purpose

FIL Benefit

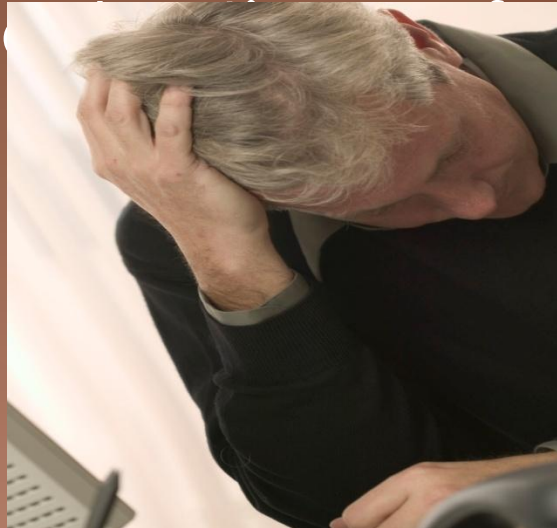
- Health Insurance Coverage
 - > Using paid leave - employer continues to pay their portion with employee paying their share
 - > Unpaid leave - employee pays entire premium to maintain coverage
- Re-employment in same or equivalent position with equivalent pay. *Reduction in Force

Eligibility Requirement

Same as FMLA except Temporary, intermittent and part-time (less than half-time) are not eligible

Circumstance for Granting FIL

- ⦿ Serious health condition of spouse, child, or parent
- ⦿ Cannot be used for employee's illness, child birth, or foster care



Intermittent Leave or Reduced Work Schedule

- ◉ Intermittent - must be used in units of 1 hour or more
 - > Example: 2 hours or 3 days = 1 week FIL
- ◉ Reduced - cannot span more than a 52-week period.

Example: 40 hr employee changing to 20 hours = 52 weeks (not 104 weeks) in a 5 year period

Paid Leave Options

- ◉ May choose to exhaust all or any portion of the following:
 - > Vacation
 - > Bonus
 - > Sick
 - > Compensatory Leave

Designating Leave as FIL

52 weeks of leave includes all periods of leave, with or without pay, used for FIL. This includes leave taken under the Voluntary Shared Leave Policy.

Employee Responsibility

- Must apply for leave in writing
- Provide medical certification/recertification
- Give notice of intention to return to work at least 30 days prior to end of leave
- return to duty at end of time granted
- notify Commerce of decision not to return

Employee Appeal Rights

Employees can appeal denial of leave requested under the State Personnel Act. Guidelines should be included in the agency/university grievance policy