

On February 5, 1993, President Clinton signed into law the Family and Medical Leave Act (FMLA). In accordance with this law which was effective August 5, 1993, employees are eligible to take up to 12 weeks of unpaid family/medical leave within any 12 month period and be restored to the same or an equivalent position upon return provided that:

- (1) the employee has worked for the State for at least 12 months, and for at least 1250 hours in the last 12 months; and
- (2) are employed at a worksite that has 50 or more employees within a 75 mile radius.

**For our purposes, the 12 month period during which the 12 weeks leave may be taken will be counted as a "rolling" 12 month period.** Further, since the State is considered a single public employer under FMLA, all our worksites are covered.

### **REASONS FOR FAMILY/MEDICAL LEAVE**

Under the law, employees may take family/medical leave for any of the following reasons:

- (1) the birth of a son or daughter and to care for the newborn child;
- (2) for placement of a son or daughter with the employee for adoption or foster care;
- (3) to care for the employee's spouse, son, daughter, or parent with a serious health condition; and
- (4) because of the employee's own serious health condition that renders the employee unable to perform the job functions.

Leave because of birth, adoption or placement must be completed within the 12-month period beginning on the birth or placement. In addition, spouses employed by the Judiciary who request leave because of their child's birth, adoption, or placement, or to care for an ill parent, may only take a combined total of 12 weeks leave during any 12 month period.

### **LEAVE NOTICE REQUIRED**

The employee must give the Administrative Official 30 days prior written notice if the need for family/medical leave is foreseeable. If this is not possible, the employee must at least give notice as soon as practicable (within 1 to 2 business days of learning of the need for leave). Failure to provide such notice may be grounds for delay of leave.

Where the need for leave is not foreseeable, the employee is expected to notify the Administrative Official within 1 to 2 business days of learning of the need for leave, except in extraordinary circumstances. Family/Medical Leave Request Forms are available from the Administrative Official or the Judiciary Human Resources Department. Employees should use these forms when requesting leave. When an employee's request for time off qualifies under FMLA, the Administrative Official is required to give him/her a written notice detailing what must be done, and explaining the consequences for failing to comply with these requirements.

## **MEDICAL CERTIFICATION REQUIRED**

**If leave is requested for the employee's or a covered relation's serious health condition, the employee and the relevant health care provider must supply appropriate medical certification.** Medical Certification forms may be obtained from the Administrative Official or the Judiciary Human Resources Department. When the employee requests leave, the Administrative Official will notify the employee of the requirement for medical certification and when it is due (within 15 calendar days of the employee's request for leave). Failure to provide requested medical certification in a timely manner may result in the denial of leave until certification is provided.

If doubts exist about the medical certification provided by the employee, an examination may be required by a second health care provider designated and paid for by the employer. If the second health care provider's opinion conflicts with the original medical certification, a third, mutually agreeable health care provider may be required to conduct an examination and provide a final and binding opinion at the employer's expense. Subsequent medical recertification may be required on a reasonable basis.

## **RECERTIFICATION OF MEDICAL CONDITION**

The employee must furnish recertification for absences due to a serious health condition every 30 days unless the minimum duration of the period of incapacity specified on the most recent medical certification is more than 30 days. For example, if the most recent certification states the period of incapacity is six to eight weeks then the employee would furnish recertification at six weeks duration. Recertification can be required more frequently than stated above if:

- (1) the employee requests an extension of leave;
- (2) circumstances described by the previous certification have changed significantly (e.g. the duration of the illness, the nature of the illness, complications); or
- (3) the employer receives information that casts doubt upon the continuing validity of the certification.

## **REPORTING WHILE ON LEAVE**

If an employee takes leave because of the employee's own serious health condition or to care for a covered relation, the employee must contact the Administrative Official, or the Administrative Official's designee, on the first and third Monday of each month regarding the status of the condition and the employee's intention to return to work.

Further, an employee is prohibited from accepting other employment during the employee's normal work hours while on FMLA leave.

## **PAID AND UNPAID LEAVE**

Family/medical leave is unpaid, although for work-related injuries, the employee may be eligible for worker's compensation benefits. **If the employee requests leave for any qualifying FMLA event, sick, annual, and personal leave first will be substituted, in that order, for any unpaid family/medical leave.** All categories of accrued paid leave will be combined with

FMLA to make up the 12-week period. After any paid leave is exhausted, the remainder of the 12-week period will be granted as leave-without-pay. The substitution of paid leave time for unpaid leave time does not extend the 12-week leave period.

### **MEDICAL AND OTHER BENEFITS**

During an approved family/medical leave, the employee's health benefits will be maintained as if the employee was actively employed. If paid leave is substituted for unpaid family/medical leave, the employee's portion of the health plan premium will be deducted as a regular payroll deduction. If the leave is unpaid, the employee will be billed for their portion of the premium.

**The health care coverage will cease if the premium payment is more than 30 days late.** If the employee elects not to return to work at the end of the leave period, the employee will be required to reimburse the State for the cost of the premiums paid by the State for maintaining coverage during the leave, unless the employee cannot return to work because of a serious health condition or other circumstances beyond the employee's control.

### **INTERMITTENT AND REDUCED LEAVE SCHEDULE**

Leave because of a serious health condition may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced leave schedule (reducing the usual number of hours the employee works per week or day) if medically necessary. However, when leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. Employees needing intermittent FMLA leave or leave on a reduced schedule must attempt to schedule their leave so as not to disrupt the employer's operations. In addition, while the employee is on an intermittent or reduced leave schedule, the Administrative Official may transfer the employee to an alternative position which better accommodates the recurring leave and which has equivalent pay and benefits. If leave is unpaid, the employee's salary will be reduced based on the amount of time taken under FMLA.

### **RETURNING FROM LEAVE**

If the employee takes leave for their own serious health condition, the employee is required to provide medical certification that the employee is fit to resume work. The Return to Work Medical Certification form may be obtained from the Administrative Official or the Judiciary Human Resources Department. Employees failing to provide the Return to Work Medical Certification Form will not be permitted to resume work until it is provided.

### **DEFINITIONS**

For purposes of this policy, the following definitions apply:

**"Spouse"** means husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides.

**"Parent"** means biological parent or an individual who stands or stood in loco parentis to an employee. This term does not include parent-in-law.

**"Son"** or **"daughter"** means a biological, adopted, foster child, stepchild, legal ward or a person standing in loco parentis, who is either under age 18 or age 18 or older and incapable of self care because of a mental or physical disability.

- (1) Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living.
  - (a) Activities of daily living include caring for one's grooming and hygiene, bathing, dressing and eating.
  - (b) Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.
- (2) Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual.
- (3) Persons who are in loco parentis include those with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, who had such responsibility for the employee when the employee was a child.

**"Serious health condition"** means any illness, injury, impairment, or physical or mental condition that involves:

- (1) Inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility including any period of incapacity, or any subsequent treatment in connection with such inpatient care; or
- (2) Continuing treatment by a health care provider which involves any one or more of the following:
  - (a) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g. physical therapist) under orders of, or on referral by a health care provider; or
  - (b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. [Please note that a regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed- rest, drinking fluids, exercises, and other similar activities that can be initiated without a visit to a health care provider is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.]
- (3) Any period of incapacity due to pregnancy, or for prenatal care;

- (4) A chronic condition which:
- (a) requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
  - (b) continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - (c) may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, migraines, etc.).
- (5) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. [The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.]
- (6) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

**"Health care provider"** includes: licensed MD's and OD's, podiatrists, dentists, clinical psychologists, optometrists, chiropractors authorized to practice in the State, nurse practitioners, nurse-midwives and clinical social workers authorized under State law, and Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

**"Needed to care for"** a family member encompasses: (1) physical and psychological care; and (2) where the employee is needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home.

The above definition includes situations where the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc. The term also includes providing psychological comfort and reassurance, which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

**"Unable to perform the job functions"** where the health care provider finds that the employee is: (1) unable to work at all; or (2) unable to perform any one of the essential functions of the employee's position. The term "essential functions" is borrowed from the Americans with Disabilities Act (ADA) to mean "the fundamental job duties of the employment position", and does not include the marginal functions of the position.