

# TAKING NOTE OF THE FMLA'S NOTICE REQUIREMENTS

## WHAT EMPLOYERS NEED TO KNOW TO COMPLY

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The Family and Medical Leave Act of 1993 ("FMLA") was hailed by some as the most progressive legislation since the New Deal but denounced by business as the most intrusive. The FMLA applies to employers with 50 or more employees and guarantees eligible employees twelve weeks of leave each year for serious illness, to care for a seriously ill family member or upon the birth or adoption of a child. Employers must maintain employees' health benefits during leave and return employees to the same or a substantially equivalent job at the conclusion of leave.

Because employees need to be aware of their rights before they can be exercised, employers are charged with notifying employees of their FMLA rights and responsibilities. Employees, in turn, must provide employers with notice of the need for leave so that disruption to business operations is minimized. Employers who fail to take note of the FMLA's notice requirements frequently find the consequences expensive.

### **The Employer's Responsibilities**

Employers must provide general notice to all employees about rights and responsibilities under the FMLA and about the employer's own internal policies and procedures implementing the FMLA. In addition, each employee who requests FMLA must be given specific notification.

#### Posters

As with most other labor laws, the FMLA requires employers to conspicuously post notices advising employees of their rights and responsibilities under the FMLA. Approved notices are available from the Department of Labor.

#### Handbooks

Because employers have some discretion in the way FMLA policies are implemented, employers must provide clearly written guidance to its employees concerning FMLA rights and the employer's own policies for exercising these rights. This information must be included in employee manuals, handbooks or similar publications.

#### FMLA Notices

It is critical for employers to ensure that each individual employee who requests FMLA qualifying leave is fully apprised, in writing, of his or her rights and responsibilities at the time the leave is requested. Employees requesting leave must be told if the employer requires employees to: obtain medical certifications, substitute accrued paid leave, pay health care premiums during leave or obtain medical certifications to return to work. Employers must inform employees requesting leave of the FMLA's job guarantee and must also advise employees of the ramifications of failing to return to work.

Finally, employers must "promptly" notify an employee that his or her leave is being counted against annual FMLA entitlements. Employers often find themselves in court simply for failing to provide this basic information. "Prompt" usually means within two business days. If the employer fails to designate the leave, the leave cannot be counted against the employee's annual twelve-week allowance.

### **The Employee's Responsibilities**

To minimize disruption in the workplace, the FMLA requires employees to provide "reasonable" notice of the need for leave. Where an employee can anticipate leave, "reasonable" means 30 days. If the employee does not provide this notice, an employer may delay the leave. However, this option is only available to employers who have notified employees of this requirement.

Where the need for leave is unexpected, employees must give notice as soon as is "practicable." What is "practicable," both in terms of the timing of the notice and its content, depends upon the facts and circumstances of each case.

An employee need not refer to the FMLA by name, but must provide enough information to put the employer on notice that the leave may be covered under the FMLA. This requirement is usually satisfied where the employee requests leave for "health reasons" or a "family emergency." It is the employer's burden to request additional information when unsure if the leave qualifies for FMLA protection.

### **Conclusion**

An employer's failure to abide by the FMLA's notice requirements can meet with harsh results, including the imposition of money damages. To protect themselves, employers should:

- Post FMLA Notices
- Include FMLA Policies and Procedures in Employee Handbooks
- Create a Specific FMLA Notification Sheet
- Have Employees Verify Receipt of All FMLA Notices
- Designate FMLA Leave

An employer can often best defend FMLA claims by showing that its employees are informed of their rights and responsibilities. Thereafter, an employee's failure to abide by clearly communicated policies is likely to rest squarely on the employee.

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