

## **Family Medical Leave Act (FMLA)**

### ***Are you complying with the new rules?***

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After years of critique and comment, the Department of Labor (DOL) finally released changes to the FMLA. These changes took effect on January 16, 2009, and apply to organizations with 50 or more employees working within a 75-mile radius. FMLA is available to employees who have worked at least 1,250 hours within 12 months preceding the leave, and is available for the following reasons:

- For the birth and care of a newborn child of the employee
- For placement with the employee of a son or daughter for adoption or foster care
- To care for a spouse, son, daughter, or parent with a serious health condition
- To take medical leave for the employee's own serious health condition when they are unable to work

FMLA provides certain employees with up to 12 workweeks of unpaid, job-protected leave a year (with some exceptions for “key” employees), and requires group health benefits to be maintained during the leave as if the employee was still working. While there are additional rules and rights for Military Family Leave, they will not be covered in this article.

Some of the major changes/clarifications are detailed below:

#### The 75-mile radius rule

*Employees who work from home are considered to work “in the office to which they report and from which assignments are made”.*

#### The 12-month employment rule:

*The 12-month period does not need to be consecutive (unless there was a break in service for seven years or more).*

#### Employee eligibility

*If an employee requests additional leave (when full 12 weeks have not yet been used) within the same 12-month period **and** for the same reason – they do not need to re-qualify regarding their number of hours worked. The employee can also still take leave even if the employer now has fewer than 50 employees.*

#### Employer designation of FMLA

*It falls to the employer to designate time off as FMLA. Employers now have five business days to notify the employee whether or not they are eligible for FMLA.*

***Special Note: if employee also qualifies for California Family Rights Act (CFRA), this notice must be given within two business days.***

### Intermittent leave

*FMLA may be taken in increments no greater than the shortest period of time that the employer uses for other forms of leave (up to one hour increment maximum). For example; if your other leave policies (e.g. sick leave, personal leave, etc.) allow employees to take leave time in increments of 30 minutes, then intermittent leave for your FMLA policy would follow the same 30 minute rule.*

### FMLA for pregnancy or birth

*When on leave to care for a spouse for pregnancy-related disabilities, FMLA protections only apply to “husbands”, not “fathers” (e.g. boyfriend, fiancé, domestic partner, etc.).*

### Medical recertification

Annual medical certifications are now allowed in cases where a serious health condition extends beyond a single leave year.

Please keep in mind that California organizations covered by FMLA also must comply with the California Family Rights Act (CFRA), and that in many instances the two leaves can (and should) run at the same time. For more information regarding CFRA, please visit <http://www.dfeh.ca.gov/about/cfraDescription.aspx>.

For more information regarding FMLA, please visit <http://www.dol.gov/esa/whd/fmla/>.

*This article is an outline of the basic responsibilities of employers under FMLA. We recommend, because of the complexity and potential liability of FMLA, legal advice or other expert assistance should be obtained.*

**Monique – could you please have the graphic artist place a checkbox in front of each number?**

### **CONDUCTING AN IN-HOUSE FMLA AUDIT**

1. Establish or review your existing FMLA policy. Be sure to designate which method you will be using to calculate the 12-month period during which leave can be taken (e.g. calendar year, fiscal year, anniversary date, rolling 12-month, etc.). In addition, be sure to state whether or not employees will be required to use any accrued paid leave while taking FMLA leave.
2. Post the FMLA notice in a conspicuous place where employees congregate. If you do not have an employee handbook with a written policy, give a notice to each new employee upon hire. *See toolkit for sample notice.*
3. Employees are generally required to provide 30-day advance notice of the need to take FMLA (whenever possible). When notified of a request for leave (or obtain knowledge) that may qualify an employee for FMLA, within five business days provide them with a completed Notice of Eligibility and Rights & Responsibilities., and a request for medical certification (if required by your organization). *See toolkit for sample forms.*
4. Within five business days of receiving completed request and supporting documentation (if required), or at least 15 calendar days of not receiving requested information, provide employee with a Designation Notice to let the employee know whether or not the leave will be designated as FMLA. *See toolkit for sample form.*
5. Continue to provide any group health benefits at the same level to employees on FMLA, and make arrangements to collect any portion of the premium the employee normally contributes.
6. Obtain medical release for return to work (if your organization requires it). Upon return from FMLA, reinstate the employee to the same or comparable position (special exceptions may apply for “key” employees).

*This overview is an outline of the basic responsibilities of employers under FMLA. We recommend, because of the complexity and potential liability of FMLA, legal advice or other expert assistance should be obtained.*