



Family and Medical Leave Act: The Basics

A Presentation by
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for the Littleton Public Schools

September 6, 2011

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FMLA Overview

- Family and Medical Leave Act of 1993
- FMLA entitles eligible employees of covered employers to take up to 12 workweeks of unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

FMLA Eligibility: Covered Employers and Employees

- Applies to public employers and private-sector employers with 50 or more employees
- Applies to employees who:
 - work for a covered employer;
 - have worked for that employer for a total of 12 months (need not be consecutive);
 - have worked at least 1,250 hours over the previous 12 months, and;
 - Work at a location in the U.S. or a U.S. territory or possession where at least 50 employees are employed by employer within 75 miles.



FMLA Eligibility: Reasons for leave

- Birth and care of employee's newborn child;
- Placement with the employee of a child for adoption or foster care;
- Care of a spouse, son, daughter, or parent with a **serious health condition**;
- Medical leave for employee unable to work due to a **serious health condition**;
- Care of a family member with a serious injury/illness incurred in line of duty (26 weeks), or;
- Qualifying exigencies arising from employee's spouse, son, daughter, or parent being on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation

"Serious Health Condition"

- **Serious health condition:**

- Inpatient care in a hospital, hospice, or residential medical-care facility; or
- Continuing treatment by or under supervision of a health care provider, which includes:
 1. A period of incapacity lasting more than 3 full consecutive days and any subsequent treatment or period of incapacity that **also** includes:
 - Treatment 2 or more times by or under supervision of a health care provider (*i.e.* in-person visits, the first within 7 days and both within 30 days of first day of incapacity); **or**
 - One treatment by a health care provider (*i.e.* in-person visit within 7 days of first day of incapacity) with a continuing regimen of treatment (*e.g.* prescription drugs, PT, etc.); **or**
 2. Any period of incapacity related to pregnancy or for prenatal care; **or**

"Serious Health Condition" (continued)

3. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least 2x/yr.) to a health care provider, and may involve occasional episodes of incapacity; **or**
4. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective; **or**
5. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than 3 days if not treated.

"Serious Health Condition"



Audience participation time:

What about the H1N1 virus?

Is the “swine flu” a “serious medical condition” enabling a qualified employee to take FMLA leave?

Other FMLA Benefits

- Maintenance of health coverage – on same terms as if employee had continued to work
- Job restoration upon return from FMLA leave – on same terms and conditions as prior to leave
- Antidiscrimination – can't interfere with, restrain, or deny employees the right to exercise any rights under the FMLA

Employee Notices

- Employees must provide at least 30 days advance notice where need for FMLA leave is foreseeable based on expected birth, placement for adoption or foster care, or planned medical treatment
- If 30 days notice isn't possible, notice must be given "as soon as practicable"
- Revised regulations clarify that it should be "practicable" for employee to provide notice of need for leave either the same day or next business day after the start of the leave period
- Employees must follow normal "call-in" procedures when taking FMLA leave/intermittent leave

Employer Notices

- General Notice: must be posted where employees and applicants can see it or provided to each new employee upon hire
- Eligibility Notice: must be provided within 5 business days (absent extenuating circumstances) from employee request for FMLA leave or employer's having reason to believe employee's leave request may qualify for FMLA leave - Notice informs employee that s/he is, is not, or may be eligible for FMLA leave
- Rights and Responsibilities Notice: usually provided at same time as or incorporated into eligibility notice; covers issues such as whether periodic medical certifications will be required, whether the employee will be able or required to use accrued paid leave concurrently with FMLA leave, and how employee's benefits (i.e., health insurance) will be treated during leave
- Designation Notice: informs employee that requested leave will be treated as FMLA leave or, if not, explains reasons why; due to employee within 5 business days after employer has "sufficient information" to make a determination; can be incorporated into eligibility notice if employer has "sufficient information" at that time.

New Medical Certification Forms

- Form for employee's own serious health condition:
www.dol.gov/whd/forms/WH-380-E.pdf
- Form for family member's serious health condition:
www.dol.gov/whd/forms/WH-380-F.pdf

Please note that certification forms go directly to the Town Treasurer's office.

Intermittent Leave

- Revised FMLA regulations require that employer grant intermittent leave in the shortest increment employer uses to track other forms of leave (as distinguished from payroll tracking), up to one hour
- For example, if employer requires employees to use sick or vacation leave in 30-minute increments, it may also do so for FMLA leave; if other leave must be taken in 4 hour blocks, employer may require the use of FMLA leave in one-hour increments
- **NOTE:** Employee must make “reasonable efforts” to avoid scheduling intermittent FMLA leave in a way that disrupts employer’s operations, but “medical necessity” will trump this employee obligation.

Use of Paid Leave

- An employee may substitute accrued paid leave for FMLA leave to insure a revenue stream during leave
- Employer may require such substitution/concurrent use (Littleton does require this.)
- If the employee voluntarily seeks to utilize accrued paid leave concurrently with FMLA leave, employee must follow employer's paid leave policies with respect to that leave
- For example, if employee requests 4 hours of intermittent leave and would like to apply vacation time to this leave, but the employer requires that vacation time be used in full day increments, employee must either use a full day of vacation time for the 4 hour intermittent leave or take the intermittent leave without pay.

Special Rules for

"Instructional Employees": Intermittent Leave

- If such a school employee is seeking intermittent or reduced schedule leave for planned medical treatment and is scheduled to be off more than 20% of the working days during the period of leave, the school may require the employee to choose:
 - To take leave not to exceed the duration of the planned leave (i.e. the entire period of leave is counted as FMLA leave) OR
 - To temporarily transfer to another position with equivalent pay and benefits for which the employee is qualified if the position better accommodates the employee's leave.

Special Rules for

"Instructional Employees": End of Term Leave

- Leave within last 3 weeks of academic term (other than for employee's own serious health condition):
 - School may require continuous leave until the end of term if the period of leave lasts more than 5 working days.
- Leave within last 5 weeks of academic term (other than for employee's own serious health condition):
 - School may require continuous leave until the end of term if:
 - Period of leave is longer than 2 weeks; and
 - Return to work would occur within 2 weeks of end of academic term.
- Leave more than 5 weeks prior to end of academic term:
 - School may require continuous leave until the end of term if:
 - Period of leave is at least 3 weeks; and
 - Return to work would occur within 3 weeks of end of academic term.
- In such cases, only the leave taken until the employee is ready to return to work counts against the employee's 12 weeks of FMLA leave

Littleton-specific Information

- Employee provides written notice of required leave to supervisor; supervisor forwards notice to School Admin.
- School Admin. advises Treasurer's office of request and of paid leave available to the employee.
- Treasurer's office sends required notices (and may require certification by health care provider) and works out benefit payments with employee if there is insufficient paid leave.
- Employee must periodically advise School Admin. of return to work status and must provide a fitness for duty release from health care provider prior to returning to work.
- If an employee remains out of work longer than the FMLA leave period and is not eligible for paid leave, the employee is considered terminated as an active benefit-eligible employee.



Any Questions?

