



Serving Educational Leaders,
Inspiring Student Success

FMLA: Fundamentals of the Family Medical Leave Act

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ATTEMPTING TO PUT THE “FUN”
IN FUNDAMENTAL...APOLOGIES
IN ADVANCE.

Overview of the Family and Medical Leave Act, including:

- eligibility;
- reasons for taking leave;
- how leave is counted;
- everyone’s favorite, paperwork;
- and more!



**REFLECT ON A PARTICULARLY HAIRY
FMLA STRUGGLE YOU'VE HAD.**

What do you need
clarification on today?

THE FAMILY AND MEDICAL LEAVE ACT (FMLA)

FMLA is a federal law that provides eligible employees of covered employers with unpaid, job-protected leave for specified family and medical reasons.

FMLA prevents **interference** with job-protected leave and **retaliation** for taking job-protected leave.



COVERED EMPLOYER

The FMLA applies only to “covered” employers.

Covered employers must provide FMLA benefits and protections to eligible employees and comply with other responsibilities required under the FMLA.

Public schools are covered employers under the FMLA regardless of the number of employees they employ.



ELIGIBLE EMPLOYEES

Who is eligible?

12 months of service

Need not be continuous 12 months

However, after 7-year break in service = start over

Unless break in service caused by National Guard/Reservist duty

Worked 1250 hours during the 12 months immediately preceding the leave

Must credit hours s/he “would have” worked but for military service

AND is employed at a worksite where 50 or more employees are employed by employer within 75 miles of worksite

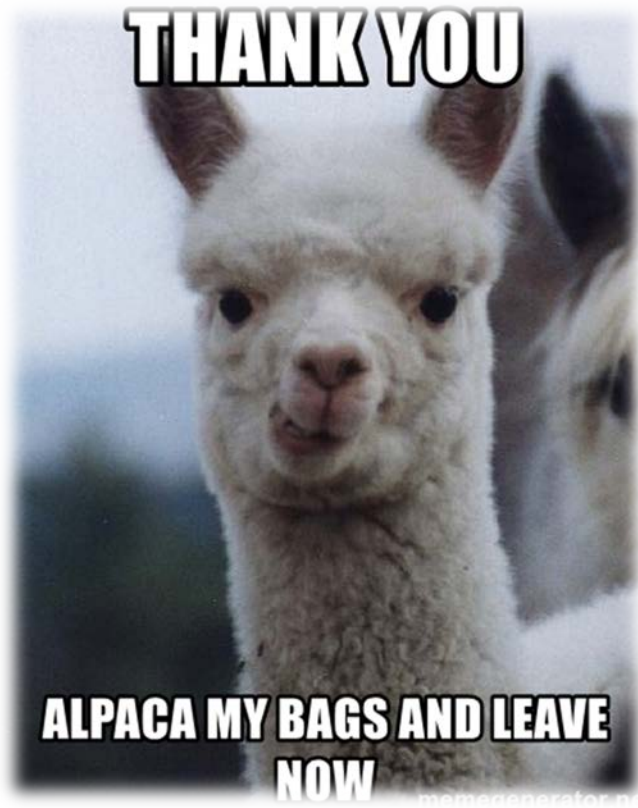


SPECIFIED FAMILY AND MEDICAL REASONS

Eligible employees may take up to 12 workweeks of leave in a 12-month period for one or more of the following reasons:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care, and to bond with the newborn or newly-placed child;
- To care for a spouse, son, daughter, or parent who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

WHAT ARE “EXIGENCY CIRCUMSTANCES”?



- short-notice deployment
- attending certain military events
- arranging for alternative childcare
- addressing certain financial and legal arrangements
- attending certain counseling sessions
- rest and recuperation
- attending post-deployment reintegration briefings
- additional activities as agreed by the employer and covered employee



THE EXCEPTION: CARING FOR A COVERED SERVICE MEMBER

Leave is available for eligible employees to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

Eligible employees are, for this reason only, entitled to a combined total of 26 work weeks of leave during a 12-month period

COVERED SERVICE MEMBER DEFINITIONS

“Covered active duty” means--

(A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

(B) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty...

“Covered servicemember” means--

(A) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy...

POP QUIZ: G.I. JOE'S TOES

Your middle school science teacher, Joe Smith, just got back from active military duty in Afghanistan.

He has been gone for the last 13 months. Now that he has returned, you discover that he has sustained injuries during service requiring reconstructive surgery to his right foot and toes.

Is he eligible for FMLA for this surgery and recovery? If so, how many weeks?



DEFINITIONS OF FAMILY MEMBERS

Spouse means husband or wife as defined or recognized under state law.

“Parent” means a biological, adoptive, step or foster father or mother or an individual who stands or stood in loco parentis to an employee when the employee was a minor.

“Son” or “daughter” means a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis, who is either under the age of 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time the leave commences.



SERIOUS HEALTH CONDITION



Serious health condition is defined as:

- Illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

SERIOUS HEALTH CONDITION

Inpatient care means an overnight stay in a hospital, hospice or residential medical care facility.

- Includes any period of incapacity or any subsequent treatment in connection with the overnight stay.

Continuing Treatment by a Health Care Provider

- A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves
 - Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity; or,
 - At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider.

SERIOUS HEALTH CONDITION



Pregnancy

- Any period of incapacity due to pregnancy or for prenatal care.

Chronic Conditions

- Any period of incapacity due to or treatment for a chronic serious health condition, such as diabetes, asthma, migraine headaches.
- A chronic serious health condition is one which requires visits to a health care provider at least twice a year and recurs over an extended period of time.
- A chronic condition may cause episodic rather than a continuing period of incapacity.



SERIOUS HEALTH CONDITION

Permanent or Long-term Conditions

- A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider, such as Alzheimer's disease or the terminal stages of cancer.

Conditions Requiring Multiple Treatments

- Restorative surgery after an accident or other injury; or
- A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days if the employee or employee's family member did not receive the treatment.



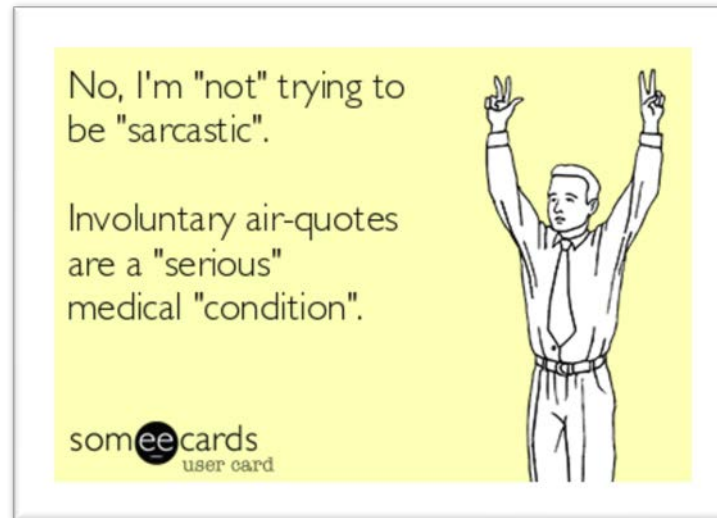
POP QUIZ: GRAM'S FAM

Your food service director requests leave to take her grandson to daily radiation treatments to fight his cancer.

Would this leave potentially qualify for FMLA leave?



WHAT IS A “SERIOUS HEALTH CONDITION”?



Examples of a “serious health condition” include heart attacks, most cancers, back conditions that require extensive therapy, strokes, spinal injuries, certain respiratory conditions, severe arthritis and injuries resulting from accidents. Pregnancy-related morning sickness, bed rest, prenatal care, childbirth and recovery from childbirth may also qualify.

LEAVE FOR PREGNANCY OR BIRTH



The right to take leave under FMLA applies equally to male and female employees.

- A father, as well as a mother, can take leave for the birth, placement for adoption, or foster care of a child.

However, only a husband—not a boyfriend or a fiancé who is the father of the child—may take leave to care for the pregnant mom because of her serious health condition.

LEAVE FOR PREGNANCY OR BIRTH

A husband and wife who are both employed by the same district may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for any of the following:

- Birth and care of the employee's newborn child;
- Placement for adoption or foster care or to care for the child after placement,
- Care for the employee's parent with a serious health condition.

If one spouse is ineligible for FMLA leave, the other is entitled to a full 12 weeks of FMLA leave.



LEAVE FOR ADOPTION OR FOSTER CARE



Leave for adoption or foster care may take place *before* actual birth or adoption.

INCREMENTS OF LEAVE



The employee may use FMLA leave in the smallest increment of time the employer allows for the use of other forms of leave, as long as the smallest increment is no more than one hour.

AMOUNT OF LEAVE



Except in the case of leave to care for a covered service member with a serious injury or illness, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period.

The employer is permitted to choose one of several methods of determining the 12-month period in which the 12 weeks of leave entitlement occurs:

- The calendar year;
- Any fixed 12-month “leave year” such as a fiscal year;
- The 12-month period measured forward from the date any employee's first FMLA leave begins; or
 - For military caregiver leave, it is measured by the first date the leave begins. It looks forward, regardless of the school district's method for calculating other types of leave.
- A “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.

HOLIDAYS — FULL WEEK OF LEAVE

If an employee takes a full week of FMLA and a holiday falls during that week, the employer may deduct the holiday from the employee's leave entitlement.



HOLIDAYS — LESS THAN FULL WEEK OF LEAVE

POP QUIZ: If an employee takes less than a week of FMLA leave and a holiday falls within the partial week of leave may the holiday be deducted from FMLA?

Answer: The holiday hours do not count against FMLA if the employee was not required to work on the holiday

Example: I take leave FMLA leave on the Wednesday before Thanksgiving and am not required to work on Thursday or Friday — deduct one day of leave only

WHEN BUSINESS ACTIVITY HAS TEMPORARILY CEASED AND . . .

Employees are not expected to report for work for one or more weeks

- School closing for winter break, spring break, and summer vacation

The days the employer's activities have ceased do not count against the employee's FMLA leave entitlement



INTERMITTENT OR REDUCED LEAVE SCHEDULE

FMLA leave may be taken intermittently or on a reduced leave schedule if it is medically necessary to take care of a qualified family member who has a serious health condition or because of the employee's own serious health condition.

- However, FMLA leave taken in connection with the birth, adoption or foster care of a child cannot be taken intermittently or on a reduced leave schedule unless the employee and employer agree.
- An employee using leave for a planned medical treatment must make "reasonable efforts" to schedule the treatment to not unduly disrupt the employer's operations.



I'll be back
... at
some point

TRANSFERS DURING INTERMITTENT LEAVE

If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment or if the employer agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employer may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position.

Transfer to an alternative position may require compliance with any applicable collective bargaining agreement. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced schedule leave.

The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties.

- The employer may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job.
- The employer may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary.

SCHOOL RULES

Certain special rules apply to employees of local educational agencies, including public school boards and elementary and secondary schools under their jurisdiction, and private elementary and secondary schools. The special rules do not apply to other kinds of educational institutions, such as colleges and universities, trade schools, and preschools.

The special rules affect the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees.

- Instructional employees are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting.
- This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.



LIMITATIONS ON INTERMITTENT LEAVE, VERSION SCHOOL.0

Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement.

If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered servicemember, or for the employee's own serious health condition, which is **foreseeable** based on planned medical treatment, and the employee would be on leave for **more than 20 percent** of the total number of working days over the period the leave would extend, the employer may require the employee to choose either to:

- (i) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- (ii) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

LIMITATIONS ON INTERMITTENT LEAVE, VERSION SCHOOL.0, CONTINUED...

These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends.

- For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave per week over a period of several weeks, the special rules would apply.
- Employees taking leave which constitutes 20 percent (in this case, one day) or less of the working days during the leave period would not be subject to transfer to an alternative position.
- Periods of a particular duration means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave.

If an instructional employee does not give required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the employer may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position.

Alternatively, the employer may require the employee to delay the taking of leave until the notice provision is met.

LIMITS ON LEAVE NEAR THE END OF A TERM

There are also different rules for instructional employees who begin leave more than five weeks before the end of a term, less than five weeks before the end of a term, and less than three weeks before the end of a term. Regular rules apply except in circumstances when:

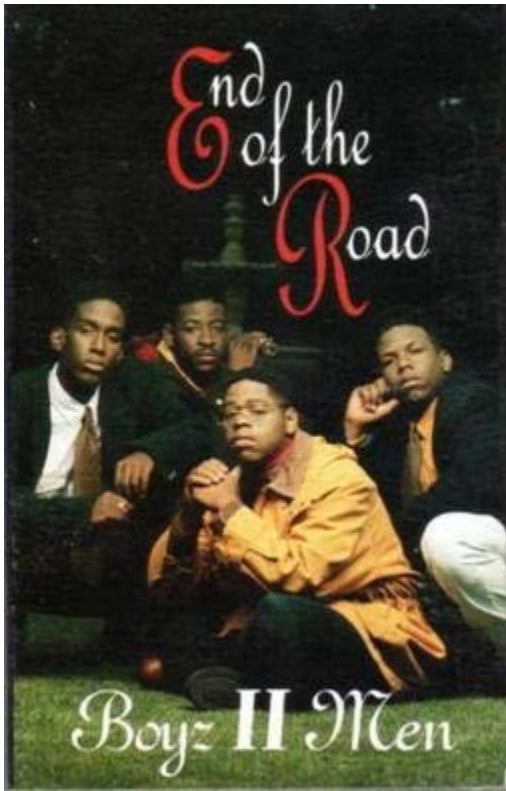
(1) An instructional employee begins leave more than five weeks before the end of a term. The employer may require the employee to continue taking leave until the end of the term if --

(i) The leave will last at least three weeks, and

(ii) The employee would return to work during the three-week period before the end of the term.



LIMITS ON LEAVE NEAR THE END OF A TERM



(2) The employee begins leave during the five-week period before the end of a term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember. The employer may require the employee to continue taking leave until the end of the term if--

(i) The leave will last more than two weeks, and

(ii) The employee would return to work during the two-week period before the end of the term.

LIMITS ON LEAVE NEAR THE END OF A TERM

(3) The employee begins leave during the three-week period before the end of a term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember. The employer may require the employee to continue taking leave until the end of the term if the leave will last more than five working days.

For purposes of these provisions, academic term means the school semester, which typically ends near the end of the calendar year and the end of spring each school year.

- An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employer could require the employee to stay out on leave until the end of the term.

DURATION OF FMLA LEAVE, VERSION SCHOOL.0

If an employee chooses to take leave for periods of a particular duration in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

In the case of an employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The employer has the option not to require the employee to stay on leave until the end of the school term. Therefore, any additional leave required by the employer to the end of the school term is not counted as FMLA leave; however, the employer shall be required to maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.

POP QUIZ: SUMMER BUMMER

You have a first year second grade teacher who will likely deliver a baby around February 1st.

Would she be eligible for FMLA leave?

If she was eligible, and her 12 weeks were up in early May, are you obligated to put her back in the classroom for the last 2-3 weeks of school?



RUNNING FMLA LEAVE CONCURRENTLY WITH PAID LEAVE



Generally, FMLA leave is unpaid.

However, an eligible employee may choose, or an employer may require the employee, to substitute accrued paid leave for FMLA leave.

- Substitute means that the accrued leave will run concurrently with the unpaid FMLA leave.



MAINTENANCE OF BENEFITS

During any FMLA leave, an employer must maintain the employee's coverage under any group health plan on the same basis as coverage would have been provided if the employee had been continuously employed during the leave period.

The employee must continue to pay whatever share of group health plan premiums that the employee paid prior to the FMLA leave.

HOW TO REQUEST OR BEGIN FMLA LEAVE?

If the need for leave is known to the employee, such as surgery or child birth, 30 day advance notice is required.

If the need is an emergency, notice must be given by employee as soon as possible.

Full details are not required, but the employer needs to know the leave may qualify as FMLA so they can begin the calculations and give the employee notice that the 12 week calculation has begun.



WHEN DO I NEED TO PROVIDE FMLA FORMS?

The employee does not have to specifically request FMLA leave. The burden is on the employer once you know of a qualifying reason for the leave.

Under the regulations, an employer must notify an employee whether the leave will be designated as FMLA within five business days of learning that the leave is being taken for a FMLA-qualifying reason.



BIG THREE: EMPLOYER NOTICE REQUIREMENTS

DOL regulations provide three employer notices:

- A poster entitled “Employee Rights and Responsibilities”
- A “Notice of Eligibility and Rights and Responsibilities” (Form WH-381); and
- A form entitled “Designation Notice” (Form WH-382)

HOW DO I NOTIFY THE EMPLOYEE?

Send the employee DOL form WH-381 with the appropriate certification form for them to complete & return

- WHO-380E – employer's own serious health condition
- WHO-380F – family member's serious health condition
- WH-384 – Qualifying Exigency for Military Leave
- WH-385 – Serious Illness or Injury of Current Servicemember for Military Caregiver Leave
- WH-385V – Serious Illness or Injury of Veteran for Military Caregiver Leave

NOTICE OF ELIGIBILITY AND RIGHTS & RESPONSIBILITIES (WH-381)



What's included:

- Explanation that leave may be designated and counted as FMLA if qualifying event
- 12 month period used to track FMLA leave usage
- Requirements to provide medical certification
- Employee's right to substitute paid leave, whether employer will require substitution, and right to unpaid leave if doesn't qualify for paid leave
- Whether employee is considered "key employee"
- Employee's right to maintain benefits and how to pay premiums
- Job restoration rights
- Consequences for employee if fails to meet obligations

HOW LONG DO I GIVE THEM TO RETURN THE CERTIFICATION FORM?



The employee must be given 15 calendar days to return the certification form.

If the medical certification is deficient, the employer should identify any deficiencies in writing and ask for corrected information within 7 calendar days.

If there are questions regarding the certification, the employer could contact the medical provider for clarification.

The employer could also seek its own medical certification at its own expense if it questions the validity of the certification. If the two opinions differ, the employer can require a 3rd opinion at the employer's expense.



If the certification is not provided within the timelines set forth on the previous slide, the request may be denied.



The employer must either grant or deny the FMLA leave, using the form WH-382 (attached).

WHAT DO I DO AFTER REVIEWING THE CERTIFICATION?

DESIGNATION NOTICE (WH-382)

Once employer has sufficient notice to determine whether an employee's leave is FMLA qualifying, an employer has five business days (absent extenuating circumstances) to provide the employee with a notice stating that the leave (specifying the amount) has been designated as FMLA qualifying; or

If additional information (such as an additional medical opinion at employer expense) is needed in order to determine whether the leave is FMLA qualifying, and explain what additional information is needed.



DESIGNATION NOTICE (WH-382)

If an employer wants an employee returning from FMLA leave to provide a fitness-for-duty (FFD) certification, a statement to that effect must be included in the designation notice, along with a list of the employee's essential job functions, which will be provided to the physician responsible for completing the FFD certification.

EMPLOYER POSTING REQUIREMENTS

Post FMLA notices in conspicuous places where notices to employees & applicants are usually posted

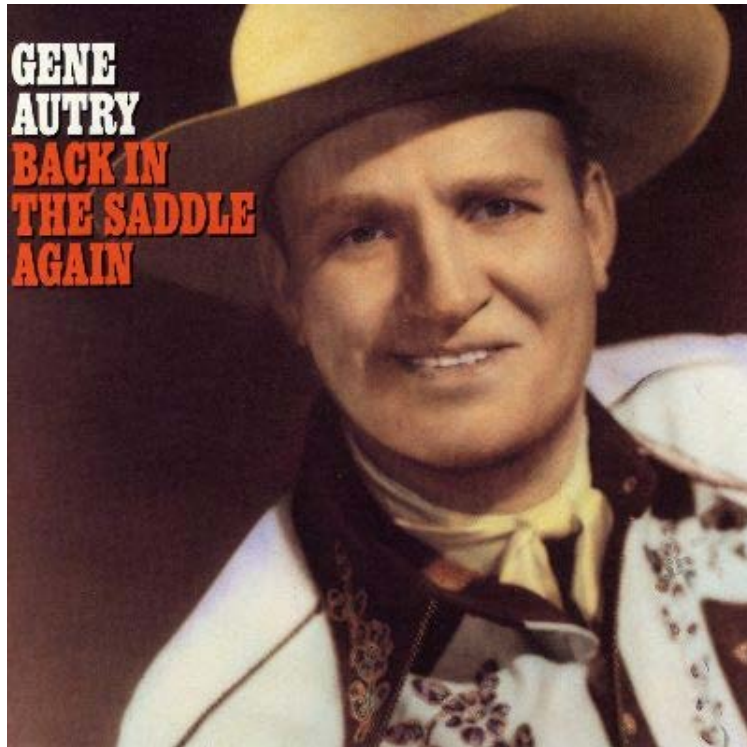
- Electronic posting that meets requirements above is okay – all employees & applicants must have access

If employers have a handbook, it must include the FMLA general notice

- If not, all new employees must be given the notice
- If significant portion of work force is not literate in English, translate the notice

Fine is now \$110 per violation

RETURNING TO WORK



If the employee is able to return to work, the employer must restore him or her to the same or “equivalent position.” There are few, narrowly defined, exceptions. If the employee is not able to return to work, he or she is not entitled to job restoration under the FMLA, BUT, the school district needs to examine whether additional leave would be a reasonable accommodation under the Americans with Disabilities Act or whether the employee would be entitled to an additional unpaid leave of absence under district policies or negotiated agreement.

POP QUIZ: YOU HAVE A NEW EMPLOYEE THAT CROSSED THE 12 MONTH EMPLOYMENT THRESHOLD WHILE ON NON-FMLA LEAVE. IS THIS EMPLOYEE ELIGIBLE FOR FMLA LEAVE?



Yes. A Florida court found that, in determining whether an employee has worked 12 months for FMLA purposes, you must look at whether the employee was on the payroll for any part of a week, including periods of paid or unpaid leave (such as sick leave). *Porcillo v. Vistar Corp.*, No. 3:08-1090, 2010 U.S. Dist. LEXIS 8143 (M.D. Fla., Feb. 1, 2010).



CONSEQUENCES FOR FAILURE TO IMPLEMENT OR INCONSISTENT APPLICATION OF FMLA

Giving more than 12 weeks of leave in a year

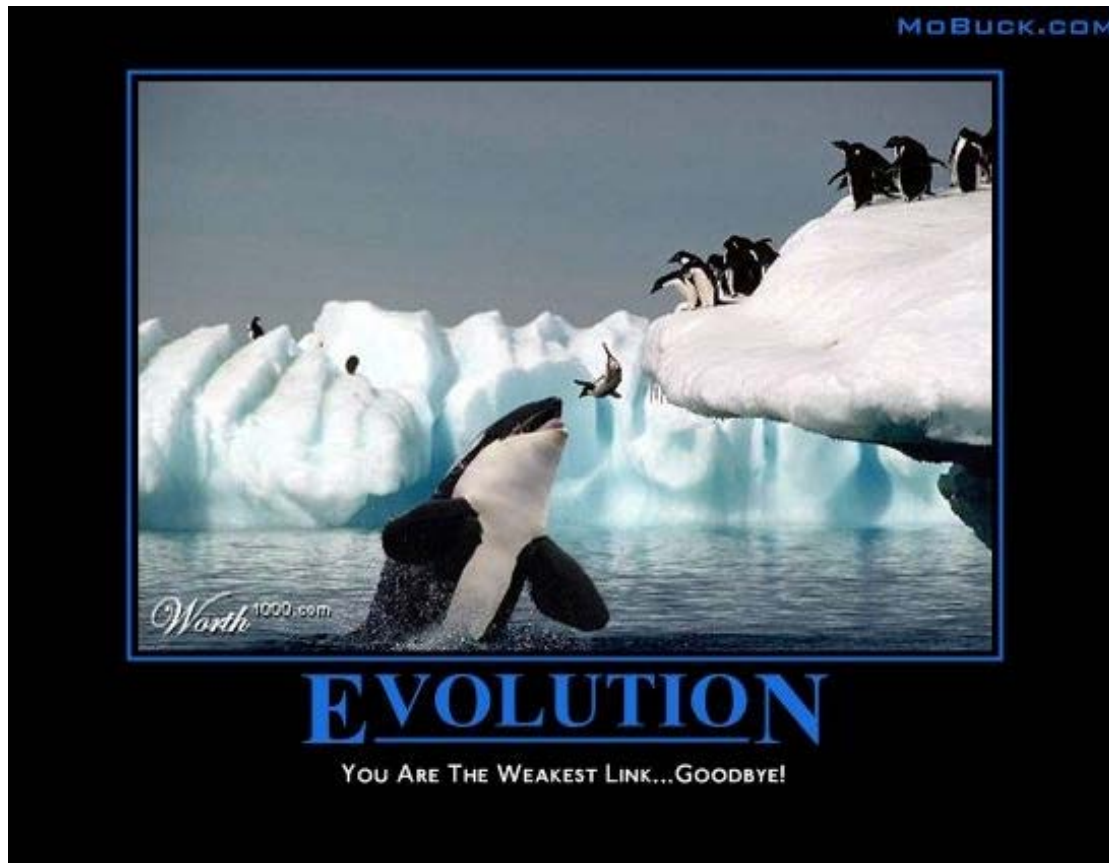
Complaint with Department of Labor

Investigation

Litigation

Damages – FMLA authorizes an award of damages – not only against the employer, but also against responsible individuals. The damages can include:

- Lost wages
- Employment benefits (for instance, if an employee is fired for taking FMLA leave and is out of work)
- Attorneys fees
- Reinstatement and promotion
- Damages for related claims



If you have someone under your supervision who is receiving HR-approved FMLA leave:

- Allow employees to take leave that has been approved by HR.
- Do not consider FMLA leave as a negative factor in any employment action, such as hiring, firing, promotion or discipline.

EMPLOYEES ON FMLA LEAVE

PRACTICAL TIPS

Have supervisors alert HR when an employee:

- Advises that he or she is undergoing a medical procedure, regardless of whether it will require time away from work
- Appears to have a chronic situation requiring continual time away from work or if an employee is absent more than 3 days from the work place
- Advises that they need to be out of the work place for personal medical reasons
- Advises that they need to be out of the work place to care for a medical condition of a spouse, parent or child
- Advises that they need to be out of the work place for the birth of a child, or adoption of a child, or the placement of a foster child
- Advises that another employee is ill

ADDITIONAL FMLA RESOURCES

FMLA Forms on DOL website:

- www.dol.gov/whd/fmla/index.htm#Forms

Employer's Guide to the Family Medical Leave Act:

- www.dol.gov/whd/fmla/employerguide.htm

FMLA Regulations

- <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=abbd92cdf37c5d32de741cc5ccc1e81&rqn=div5&view=text&node=29:3.1.1.3.54&idno=29>



What you want baby I got it What you need
you know I got it All I'm askin' for is a little
respect.

(Otis Redding)



QUESTIONS

1-800-432-2471

OR

ASTALLBAUMER@KASB.ORG

OR

LSOBBA@KASB.ORG

ANSWERS