



AFSCME's Guide to the Family and Medical Leave Act (FMLA)

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Workshop Objectives



- Understand basic federal FMLA law.
- Know rights & responsibilities of employees & employers.
- Be aware of bargaining expanded options.





What is FMLA?

- Federal law
- Effective August 5, 1993
- Purpose to "balance the demands of the workplace with the needs of families"
- Provides eligible employees with up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons




Is Your Employer Covered?

- All public agencies – federal, state and municipal
- Private employers (including non-profit agencies) with 50 or more employees



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Which Employees Are Eligible?

Eligible employees have worked:


- ✓ At least one year
- ✓ At least 1,250 hours during the 12 months prior to the start of FMLA leave
- ✓ At a location where –
 - at least 50 employees are working or
 - the number of workers within 75 miles is 50 or more

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Leave Entitlement Under FMLA

- 12 work-weeks
- Unpaid leave
- In a 12-month period



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Leave Entitlement Under FMLA cont'd

For one or more of the following reasons:

- birth and care of a newborn child;
- placement with the employee of a child for adoption or foster care and to care for the newly placed child;
- care for an immediate family member with a serious health condition;
- employee's own serious health condition and
- "any qualifying exigency" arising from fact that spouse, parent or child is on or has been called to active duty





FMLA Expansion January 2008

NEW: "SERVICE MEMBER FAMILY LEAVE"

Allows eligible employees to take up to 26 weeks of leave to care for a spouse, child, parent or next of kin who is a covered service member recovering from a serious illness suffered in the line of active duty.





Serious Health Condition

An illness, injury, impairment, or physical or mental condition that involves:

- Inpatient care
- Absence of more than 3 days plus treatment
- Pregnancy (incapacity or prenatal care)
- Chronic conditions requiring treatments
- Permanent/long-term conditions requiring supervision
- Multiple treatments for conditions that if left untreated would result in absence of more than 3 days






The Leave Year

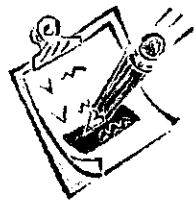
- Employer chooses
- Four methods:
 1. Calendar year
 2. Another fixed year
 3. 12-months measured from date of first FMLA leave
 4. 12-months measured backward from each date employee uses FMLA leave



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Notice Requirements




Employee:

- Foreseeable: 30 day notice
- Not foreseeable: must follow employer's usual call-in rules and procedures

Employer:


- FMLA posters/handbooks
- Notice about specific rights/obligations
- Notice of FMLA leave designation

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Additional Requirements

- Maintain group health plan benefits
 - ✓ Same rate
 - ✓ Continue employee portion
- No modified or light-duty job assignments
- Restore to original position or equivalent job




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Substitution of Paid Leave

- Employers may impose paid leave (unless barred by contract)
- Employer policies govern substitution of accrued paid leave






Enforcement


If employer violates FMLA:

- Contract grievance
- File complaint with Department of Labor
- File a private lawsuit







Remedies



If employee's rights violated, eligible for:



- Job back
- Up to double lost wages and benefits
- Legal fees and costs







Common Employee/Employer Complaints

- Employees unable to afford to take the unpaid leave
- Employees want leave to apply to additional family members
- Employers feel employees are abusing unforeseeable, intermittent leave





Expanding FMLA Protections



Use contract clauses to expand FMLA:


- Enforce the FMLA through the CBA
- Restrict employer's substitution of paid leave
- Expand definition of family members





Expanding FMLA Protections, (Continued)

- Intermittent/reduced schedule leaves for childbirth and newborn care
- Expand eligibility to entire bargaining unit
- Count unpaid FMLA time towards seniority





For More Information

AFSCME

- *The Family and Medical Leave Act: AFSCME's Comprehensive Guide*
<http://www.afscme.org/publications/1199.cfm> (will be updated some time in near future)
- Call AFSCME Research and Collective Bargaining Department (Mary Meeker 202-429-1058)

U.S. Department of Labor

- www.dol.gov/esa/whd/fmla
- Federal law, regulations, compliance assistance, opinion letters