


## 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.




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## 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


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## 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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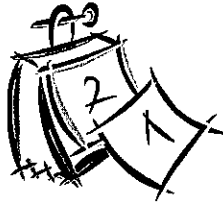
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## Leave Entitlement Under FMLA

- 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




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## 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.




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## 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




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## 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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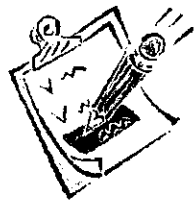
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## Notice Requirements



**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

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### Enforcement

If employer violates FMLA:

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



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### Remedies



If employee's rights violated, eligible for:

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

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## 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


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## 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




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## 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




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## 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](http://www.dol.gov/esa/whd/fmla)
- Federal law, regulations, compliance assistance, opinion letters



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