



Minnesota Counties Intergovernmental Trust

Family and Medical Leave Act

Association of Minnesota Social Service Supervisors

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Introduction To

FAMILY AND MEDICAL LEAVE ACT

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Today's Presentation

- What is the Family and Medical Leave Act?
- Who is Covered?
- What is Covered?
- Employer Considerations
- Types of Leave

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Family and Medical Leave Act

- Federal law enacted in 1993
- Purpose is to allow employees to take time away from work to deal with family and personal business
- Without worry about losing job
- Allows employees to be more productive when they return to work

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FMLA-eligible Employees

Employees must have worked:

- For the employer for at least 12 months and
- 1,250 hours within that period
- At a location where at least 50 employees are employed by the employer within 75 miles

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Family and Medical Leave Act

- Permits eligible employees to take 12 weeks of unpaid leave for certain qualified events
- Applies to all public employers, regardless of the number of employees

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Is FMLA Paid or Unpaid Leave?

- The employee can elect, or
- The employer can require an employee to substitute accrued paid leave for any part of an employee's FMLA leave
 - *In accordance with the employer's applicable paid leave policy*
- But employer cannot substitute paid leave when employee is on workers' compensation leave

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Additional Information

- For questions about workers' compensation claims and related leave, contact MCIT
- For specific questions about your county's policies, contact:
 - Human Resources Department
 - County Attorney
 - Other Legal Counsel for Labor or Employment Laws

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Family and Medical Leave Act

BENEFITS

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What Benefits Does FMLA Provide?

For the employee:

- Return to same/similar position held before the leave
- Retention of accrued benefits
- Unconditional pay increases, if any, during the leave
- Other pay increases (conditioned on seniority, length of service or work performed) must follow policy or practice for non-FMLA qualifying leave
- The law does not require paid time off for eligible events

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FMLA Leave Qualifying Events

- Birth of a child
- Placement of a child for adoption or foster care
- To care for the employee's spouse, son, daughter or parent with a "serious health condition"
- A "serious health condition" that renders the employee unable to perform the essential functions of his or her job

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FMLA Leave Qualifying Events

- To care for the employee's spouse, son, daughter, parent or next of kin with a serious injury or illness incurred during active duty military service (entitled to up to 26 weeks of leave)
- Qualifying exigency related to employee's spouse, son, daughter or parent's active duty in the military (or has been notified of an impending call to active duty) in support of a contingency operation

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Qualifying Exigencies Example

- Short-notice deployment
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation
- Post-deployment activities
- List not exclusive

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How Does FMLA Protect Injured Workers?

- Provides for intermittent leave
- Allows reduced leave schedule
- Takes into consideration medical necessity
- Allows light duty work
- Employee maintains right to reinstatement to pre-leave position until end of the applicable 12-month period (12 months calendar or rolling forward)

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Family and Medical Leave Act

EMPLOYER CONSIDERATIONS

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Employer Protections

Employer can require:

- Medical certification to support the request for leave
- A second opinion at the employer's expense from a health care provider designated by the employer, if the medical certification is questioned
- Certification from a third health care provider jointly approved by both employee and employer at employer's expense if there is disagreement between the first two providers

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What Information Can the Employer Require?

- Periodic reports regarding the employee's status and intent to return to work
- Pursuant to a uniformly applied practice or policy, certification from the employee's health care provider that the employee is able to resume work
- No second or third opinions on a fitness for duty certification may be required

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When Can Employer Contact the Health Care Provider Under FMLA?

- For clarification and authentication of the certification for leave, or
- Fitness for duty certification after the employer has given the employee the opportunity to cure any deficiencies as to incomplete or insufficient information
- The employee's direct supervisor may not contact the employee's health care provider

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SERIOUS HEALTH CONDITION

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Serious Health Condition

A serious health condition is defined as an “illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.”

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“Continuing” Treatment

If there is:

- A period of incapacity of more than three consecutive, full calendar days plus treatment by a health care provider twice within 30 days of the first day of incapacity (excluding extenuating circumstances), or
- one treatment by a health care provider with a continuing regimen of treatment

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“Continuing” Treatment (Continued)

- Any period of incapacity related to pregnancy or prenatal care
- Any period of incapacity or treatment for a “chronic serious health condition”
 - Requires periodic health care visits (at least twice a year) for treatment
 - Continues over an extended period
 - May be episodic (e.g., asthma, diabetes, epilepsy)

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“Continuing” Treatment (Continued)

- A period of incapacity for permanent or long-term conditions for which treatment may not be effective (e.g., severe stroke, Alzheimer’s disease, end stages of a terminal disease)
- Any period of incapacity to receive multiple treatments (including recovery from those treatments) for restorative surgery or for a condition that would likely result in an incapacity for more than three consecutive, full calendar days absent medical treatment

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TYPES OF FMLA LEAVES

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FMLA: Intermittent and Part-time Leave

- Leave for employee's serious health condition can be taken intermittently, or
- On a reduced leave schedule
- When medically necessary (health care provider opinion, not the employee's)

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Intermittent Leave: Reduced Schedule Example

- Must be done in a manner that does not unduly disrupt employer's operations
- Frontline supervisor might not know reason for leave, only that the employee's need must be accommodated

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FMLA: Light Duty

- Light duty work: An employer may offer light duty work to an employee recovering from a serious health condition
- If employee accepts light duty assignment in lieu of continuing on FMLA leave, the employee's right to be reinstated to the same position held before the leave continues until the end of the applicable 12-month period

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FMLA: Concurrent Leave

- Relationship to paid leave: Employee can elect or the employer can require an employee to substitute accrued paid leave for any part of an employee's FMLA leave in accordance with the employer's applicable paid leave policy
- When an employee is on workers' compensation leave, an employer may not require an employee to substitute other paid leave for the time because it's not unpaid

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MILITARY CONSIDERATIONS

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Military Caregiver Leave

Family members are allowed up to 26 workweeks of leave to care for a member of the armed forces, including National Guard and Reserves, who is undergoing medical treatment, recuperation, therapy or is otherwise on the temporary disability retired list for a serious injury or illness.

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Military Exigency Leave

Employee may take FMLA leave for any qualifying exigency arising out of a family member on active duty or notified of an impending call to active duty in the armed forces in support of a contingency operation.

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Exigencies Include

- Short notice deployment
- Military events
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation
- Post-deployment activities
- Additional activities to which employer and employee agree

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2013 Changes to Military Leave

- Expanded definition of service members to include veterans
- Altered definition of "serious injury"
- Allows all health care providers to certify service members as covered
- Increased rest and recuperation leave from five to 15 calendar days

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2013 Changes Continued

- Employer is not allowed to set time limits for intermittent leave, and employee can only take what is necessary
- Employers must track FMLA leave using smallest increments of time used for other forms of leave subject to one-hour maximum
- Physically impossible limitations must be applied in limited circumstances

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Process to Certify Family Member

- Certification from health care provider outlining treatment, cause of injury, dates of care needed and estimated frequency of intermittent care
- Documentation of enrollment in VA Program of Comprehensive Assistance for Family Caregivers

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CAUTIONS

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FMLA Caution

- Remember it is the employer's right/obligation to designate the leave as FMLA
- If a supervisor receives notice that an employee's leave may qualify as FMLA, inform the department head or human resources department

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Consequences of Failing to Place Employee on FMLA

- Can restrict an employer's ability to terminate the employee
- Can create liability if an adverse employment action is taken against the employee when he or she is due protected leave

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Contact with Health Care Provider

Employer may contact the health care provider for purposes of clarification or authentication of the document

- Employee must have an opportunity to cure any of the deficiencies in the document first
- Employee's direct supervisor may not contact health care provider

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ADMINISTRATION

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FMLA: Second Opinion

Employer may request a second opinion:

- Employer must pay
- Employer may choose medical provider: May not be one routinely employed by employer

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Third Medical Opinion?

- May be required if the first and second opinions differ
- Must be conducted by a health care provider jointly designated by the employer and employee, again at the employer's expense
- Is final and binding

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Tracking Leave

- Typically not an issue if taken as a block leave
- If intermittent leave:
 - Employee may have FMLA and non-FMLA absences
 - Employer has to track the various leaves adequately
 - Liability may arise if leaves are categorized incorrectly

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Recertification

Permissible:

- Where serious health condition extends past one year
 - Yearly certifications are considered “new certifications”
- When employee is missing more work than physician initially indicated
- When employee’s current certification form is no longer valid (doctor authorized release to work with no restrictions)

Fitness for Duty

- May request fitness for duty prior to returning to work
- Must notify at the time leave is designated that it will be required and provide a list of essential functions of the job
- May only certify as to the illness or injury that necessitated the leave

FMLA and Americans with Disabilities Act (ADA)

- If “serious health condition” is also a “disability,” additional leave may be required by law
- Will be determined through the ADA interactive process



Ask Questions and Share Ideas

DISCUSSION