

Sample FMLA Policy

Purpose

The company does not consider the Family and Medical Leave Act (FMLA) and its amendments to be a separate type of leave. Rather, the company considers it to be job protection while on a leave that is otherwise specified by the company. Please see the leave of absences policy for a complete list of potential leaves.

The law does require the company to recognize certain reasons for a leave for certain employees as eligible for the FMLA job protection. This policy does not create additional leave for any employee. It simply lays out the terms under which an employee will receive job protection while on a leave.

Policy

In accordance with the FMLA, eligible employees are entitled to the following.

Basic Leave Entitlements

The FMLA requires covered employers to provide up to 12 weeks of job-protected leave to eligible employees. The company has chosen the “rolling forward” counting method for the 12-month period.

- for the birth of a child or the placement of a child with the employee for adoption or foster care;
- if the employee is needed to care for a family member with a serious health condition;
- if the employee's own serious health condition renders the employee unable to do his or her job; or
- for any qualifying exigency arising out of the fact that the employee has a spouse, son, daughter, or parent who is on covered active military duty.

Under the FMLA, employers must grant a combined total of 26 weeks of military caregiver leave in a single 12-month period to employees who are the spouse, son, daughter, parent, or next of kin of a covered service member who has sustained a serious injury or illness while on active duty so that the employee can care for the service member. There is no requirement that this leave be paid leave.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent who is on covered military active duty may use their 12 weeks of job-protected leave to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, spending time on rest and recuperation leave, and attending post-deployment reintegration briefings.

For the purposes of qualifying for job protection during an “exigency leave,” covered active duty is defined to mean:

- duty during the deployment of the member with the armed forces to a foreign country, in the case of a member of the regular component of the armed forces; and
- duty during the deployment of the member with the armed forces to a foreign country under a call or order to active duty, in the case of a member of a reserve component of the armed forces.

The FMLA also includes a special entitlement that permits eligible employees to use job protection for a leave or leaves that may take up to 26 weeks to care for a covered service member during a single 12-month period.

Definition of a Covered Service Member:

- 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

- 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 five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

For purposes of leave as a military caregiver, the terms *serious health condition* and *serious injury or illness* are not interchangeable. Plus, the definition of a serious injury or illness differs slightly based on whether the covered service member is a member or a veteran of the armed forces. Specifically:

- In the case of a member of the armed forces, a serious injury or illness is defined as an injury or illness that was incurred by the member in the line of duty on active duty in the armed forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the armed forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.
- In the case of a veteran of the armed forces, a serious injury or illness is defined as an injury or illness that was incurred by the member in the line of duty on active duty in the armed forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the armed forces) and that manifested itself before or after the member became a veteran.

During a single 12-month period, an eligible employee is entitled to a combined total of 26 work weeks of job protection while on leave as a military caregiver or for other FMLA-qualifying reasons.

Eligibility Requirements

Employees are eligible if they have worked for the company for at least 12 months, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed at the site where they work including any other sites within 75 miles.

Definition of a Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility or continuing treatment by a healthcare provider for a condition that either prevents the employee from performing the functions of the employee's job or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three full consecutive calendar days combined with at least two visits to a healthcare provider or one visit and a regimen of continuing treatment; incapacity due to pregnancy; or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

The two healthcare provider visits must occur within a 30-day period, which begins with the first day of incapacity, absent extenuating circumstances that prevent the follow-up visit from occurring as planned by the healthcare provider. The first visit must occur within seven days of the first day of incapacity.

Benefits and Protections

During any leave that qualifies for FMLA job protection, the company must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

If the employee does not return to work at the expiration of family and medical leave, the company will require the repayment of health insurance premiums it paid on the employee's behalf during the leave period. Reimbursement will not be required if the employee does not return from leave because of the continuance, recurrence, or onset of a serious health condition that prevents the employee from performing his or her job or because of further circumstances that are beyond the employee's control.

Use of FMLA job protection cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

If the employee is designated a key employee, he or she may not be entitled to return to the same job at the conclusion of FMLA-protected leave. A "key employee" is a salaried FMLA-eligible employee who is among the highest paid 10% of all the employees employed by the company within 75 miles of the employee's worksite. Should the company determine that substantial and grievous economic injury would result from reinstatement at the scheduled end of leave, the employee will be notified of that fact in writing and will be given an opportunity to forgo taking the leave if leave has not yet begun or to end the leave and return to work. If the employee remains on leave after receiving notice and the opportunity to return to work, he or she will not have a right to be restored to employment at the end of the leave.

Use of Leave

An employee does not need to use his or her FMLA job protection in one block. It can be used with leaves that are taken intermittently or on a reduced schedule when medically necessary. Employees must make reasonable efforts to schedule any

protected leave for planned medical treatment so as not to unduly disrupt the company's operations. Leave protection due to qualifying exigencies may also be taken on an intermittent basis.

If the employee requests intermittent leave or leave on a reduced schedule that qualifies for FMLA job protection, the company may require that the employee transfer to a temporary, alternative job for which the employee is qualified and that better accommodates the intermittent or reduced schedule leave than does the employee's regular job. The temporary position will have pay and benefits equivalent to the employee's regular job.

Substitution of Paid Leave During Unpaid Periods of Leave

The company requires employees to use accrued paid leave while taking any leave where paid leave is available, regardless of whether the leave is FMLA-protected or not. It is important to note that regardless of whether or not the paid leave is protected under the FMLA, employees must comply with the company's normal paid leave policies.

Employer Notification Requirements

The company will inform employees requesting leave whether they are eligible for FMLA job protection. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the company will provide a reason for the ineligibility.

The company will notify employees of their eligibility for FMLA job protection for a particular leave (or a change in eligibility status) within five business days after they request a leave with FMLA job protection, absent extenuating circumstances.

The company will inform employees if leave is designated as FMLA-protected and the amount of leave counted against the employee's job protection entitlement within five business days. If the company determines that the leave is not FMLA-protected, it will notify the employee. Only one designation notice is required for each FMLA-qualifying reason per leave year, regardless of whether the leave is taken as a continuous block or on an intermittent or reduced schedule basis.

Employee Notification Requirements

Employees must provide 30 days' advance notice of the need to take a leave that would qualify for FMLA job protection when the need is foreseeable. When 30 days' notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the company's normal call-in procedures.

Employees should know that use of FMLA job protection is not discretionary for the company or for the employee. If the reason for the leave qualifies the leave for FMLA protection, neither the company nor the employee can decline the protection.

Employees must provide sufficient information for the company to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a healthcare provider, or circumstances supporting the need for military caregiver leave. Employees also must inform the company if the requested leave is for a reason for which FMLA-protected leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the qualifications for protection while on leave. Employees may be required to provide fitness-for-duty certification prior to returning from leave, showing that they are able to resume work.

Unlawful Acts by Employers

The FMLA makes it unlawful for the company to:

- interfere with, restrain, or deny the exercise of any right provided under the FMLA; or
- discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for the involvement in any proceeding under or relating to the FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

Compliance

The Family and Medical Leave Act is law, but it is changing over time through amendments, regulations, rules, and court decisions. The company makes every reasonable effort to keep this policy in compliance with all of these; however, if there is any place where this policy does not agree with the law and its interpretation, it is the company's intent to follow the law and may vary practice from this policy to do so.

Policy approved by:

Date: