

THE FAMILY AND MEDICAL LEAVE ACT OF 1993

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family Medical Leave Act (FMLA) for all private, state and local government employees, and some federal employees. Most federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management or the Congress.

FMLA became effective on August 5, 1993, for most employers. If a collective bargaining agreement (CBA) was in effect on that date, FMLA became effective on the expiration date of the CBA or February 5, 1994, whichever was earlier. FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. The employer elects the designation of the 12-month period. The City of Port St Lucie has established that the first day of commencement of the leave, going forward, will determine the 12-month period for each employee.

The law contains provisions on employer coverage; employee eligibility for the law's benefits; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. The law also requires employers to keep certain records.

EMPLOYER COVERAGE

FMLA applies to all:

- ◆ Public agencies, including state, local and federal employers, local education agencies (schools), **and**
- ◆ Private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year **and** who are engaged in commerce or in any industry or activity affecting commerce – including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee **must meet all of the following**:

1. work for a covered employer;
2. have worked for the employer for a total of 12 months;
3. have worked at least 1,250 hours over the previous 12 months; and
4. work at a location in the U.S. or in any territory or possession of the U.S. where at least 50 employees are employed by the employer within 75 miles.

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of 12 workweeks of **unpaid** leave during any 12-month period for one or more of the following reasons:

- ◆ for the birth and care of the newborn child of the employee;
- ◆ for placement with the employee of a son or daughter for adoption or foster care;
- ◆ to care for an immediate family member (spouse, child, or parent) with a serious health condition; **or**
- ◆ to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a **combined** total of 12 workweeks of family leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth or placement.

“Serious Health Condition” means an illness, injury, impairment, or physical or mental condition that involves:

- ◆ Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; **or**
- ◆ Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:
 - (1) A health condition (including treatment therefor, or recovery therefrom) lasting more than **three consecutive days**, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:
 - ◆ treatment two or more times by or under the supervision of a health care provider; **or**
 - ◆ one treatment by a health care provider with a continuing regimen of treatment; **or**
 - (2) Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; **or**
 - (3) A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; **or**

- (4) A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; **or**
- (5) Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

Health Care Provider - Health care providers who may provide certification of a serious health condition include:

- ◆ Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices;
- ◆ Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law;
- ◆ Nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law;
- ◆ Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
- ◆ Any health care provider recognized by the employer or the employer's group health plan benefits manager;
- ◆ A health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

Intermittent/Reduced Schedule Leave

Under some circumstances, employees may take FMLA leave intermittently or on a reduced schedule – which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

- ◆ If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent/reduced schedule leave is subject to the **employer's approval**.
- ◆ FMLA leave may be taken intermittently/reduced schedule whenever **medically necessary** to care for a seriously ill family member, or because the employee is seriously ill and unable to work.
- ◆ Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave.
- ◆ Employers may account for FMLA leave in the shortest period of time allowed by their payroll system, provided it is one hour or less.

- ◆ Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider.
- ◆ The employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodates recurring periods of leave better than the employee's regular job.

Substitution of Paid Leave

Pursuant to City Of Port St. Lucie's Rules and Regulations regarding use of family and medical leave, employees are **required** to use their accrued **paid** leave (such as sick or vacation leave) to cover their FMLA leave. If their accrued paid leave benefits are exhausted, employees may take unpaid FMLA leave until the conclusion of the approved leave.

Employees on workers' compensation leave that runs concurrently with their FMLA leave are not required to use their accrued paid leave benefits.

The City Of Port St. Lucie will determine if an employee's use of paid leave counts as FMLA leave, based upon information received from the employee.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave. Coverage can be terminated during FMLA leave for failure by the employee to maintain his/her contributions.

In some instances, the employer may recover from an employee, *by deduction from any sums due the employee such as unpaid wages, vacation pay, etc.*, the amount paid in premiums by the employer to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an **equivalent** job with equivalent pay, benefits, and other terms and conditions of employment. Employees will be required to present a fitness-for-duty certification prior to being restored to their job. Restoration will be denied by the employer if the employee fails to provide the required fitness-for-duty certification.

An employee may **voluntarily** return to work by accepting a light-duty assignment. By doing so, however, the employee could exhaust restoration rights under FMLA prior to FMLA time being exhausted.

Also, an employee under a workers' compensation leave that is running concurrently with his/her FMLA leave, could forfeit workers' compensation benefits if he/she refuses a light-duty assignment offered by the employer in conjunction with the workers' compensation claim.

An employee's use of FMLA leave cannot result in the loss of any employee benefit that the employee earned or was entitled to **before** using FMLA leave, nor be counted against the employee under a "no fault" attendance policy.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly paid "**key**" employees after using FMLA leave during which health coverage was maintained. A "**key**" employee is a salaried "eligible" employee who is among the highest ten percent of employees compensated, within 75 miles of the work site.

Benefits and protection under the FMLA leave end if the employee fails to return to work within the 12-week entitlement, therefore, the employee is not entitled to restoration under FMLA.

NOTICE AND CERTIFICATION

Employees seeking to use FMLA leave may be required to provide **30-day advance notice** of the need to take FMLA leave when the need is foreseeable and such notice is practical.

Employers may also **require** employees to provide:

- ◆ **Medical certification** supporting the need for leave due to a serious health condition affecting the employee or his/her spouse, child, or parent;
- ◆ **Second or third medical opinions** (at the employer's expense) and **periodic recertification**;
- ◆ **Periodic reports during FMLA** leave regarding the employee's status and intent to return to work; and
- ◆ **Fitness-for-duty certification** upon their return to work.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. Also, covered employers must inform employees of their rights and responsibilities under FMLA.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also bring civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the “salary basis” requirements for FLSA’s exemption extends only to “eligible” employees’ use of leave required by FMLA.

The FMLA does not affect any other federal or state law that prohibits discrimination, nor supersede any state or local law that provides greater family or medical leave protection. Nor does it affect an employer’s obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan. The FMLA also encourages employers to provide more generous leave rights.

FURTHER INFORMATION

For more information, please contact the nearest office of the **Wage and Hour Division** listed in most telephone directories under U.S. Government, Department of Labor.

Addendum To The City's Family and Medical Leave Act (FMLA) Policy

1. National Defense Authorization Act (H.R. 4986), Section 585

On January 28, 2008, President Bush signed the 2008 National Defense Authorization Act that significantly expanded the Family Medical Leave Act (FMLA) for families of military service members. The Department of Labor (DOL) will publish the implementing final regulations for these provisions in the near future and an updated Addendum to the FMLA policy will be released at that time. These new laws are the first major revision to the FMLA since its enactment in 1993, and include the following:

Family Leave Due to a Call to Active Duty –

An eligible employee may now take up to 12 weeks of unpaid FMLA leave for any “qualifying exigency” (to be defined by regulation) related to a spouse, son, daughter or parent’s active duty or notification of an impending call or order to active duty in the Armed Forces in support of a “contingency operation” (generally a war or similar combat operation). The leave may commence as soon as he or she is notified of an impending call or order. The City will voluntarily extend this leave to qualifying employees, pending the finalization of the regulations by the DOL.

Caregiver Leave for An Injured Service Member –

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member may now take up to 26 weeks of FMLA leave in a single 12-month period, to care for the service member with an injury or illness incurred in the line of active duty that rendered the member unable to perform the duties of the member’s office, grade, rank or rating. This provision of the law is effective as of January 28, 2008.

Most of the provisions of the FMLA remain unchanged and will apply to these new types of FMLA leave, including employer coverage, employee eligibility requirements, health insurance continuation, and reinstatement rights. Employees can utilize the leave on an incremental basis or in quarter hours as tracked by the City’s payroll system.

2. Florida’s New Domestic Violence Leave Law

As of July 1, 2007, Florida employers must provide eligible employees with up to three (3) days of leave in a 12-month period if the employee, a family member, or a household member is a victim of domestic violence. The employee must have worked for the City for a minimum of 3 months. Employees may either use their accrued leave benefits or take the leave as unpaid.

Types of Activities Covered by the Law:

- Seeking an injunction for protection against domestic violence or repeat violence, dating violence, or sexual violence.
- Obtaining medical care or mental health counseling or both for the employee or a family or household member to address injuries resulting from domestic violence.
- Obtaining services from victim services organizations such as domestic violence shelters or rape crisis centers.
- Making the employee’s home secure from the perpetrator of domestic violence or finding a new home to escape the perpetrator.

Seeking legal assistance to address issues arising from domestic violence or attending or preparing for court-related proceedings arising from the act of domestic violence.