Fact Sheet #28A: Employee Protections under the Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles eligible employees who work for covered employers to take unpaid, job-protected leave for specified family and medical reasons. Eligible employees may take up to 12 workweeks of leave during any 12-month period for certain family and medical reasons and up to 26 workweeks of leave during a single 12-month period for military caregiver leave. See Fact Sheet 28F: Qualifying Reasons for Leave under the FMLA and Fact Sheet 28M: The Military Leave Provisions under the FMLA. This fact sheet describes the protections the FMLA affords to employees while taking FMLA leave and upon returning to work from FMLA leave.

PROTECTIONS DURING FMLA LEAVE

Group Health Insurance Benefits

If an employee is provided group health insurance, the employee is entitled to the continuation of the group health insurance coverage during FMLA leave on the same terms as if he or she had continued to work. If family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. The employee must continue to make any normal contributions to the cost of the health insurance premiums.

If paid leave is substituted for FMLA leave, the employee’s share of group health plan premiums must be paid by the method normally used during paid leave (usually payroll deduction). An employee on unpaid FMLA leave must make arrangements to pay the normal employee portion of the insurance premiums in order to maintain insurance coverage. If the employee’s premium payment is more than 30 days late, the employee’s coverage may be dropped unless the employer has a policy of allowing a longer grace period. The employer must provide written notice to the employee that the payment has not been received and allow at least 15 days after the date of the letter before coverage stops.

In some instances, an employer may choose to pay the employee’s portion of the premium, for example, in order to ensure that it can provide the employee with equivalent benefits upon return from FMLA leave. In that case, the employer may require the employee to repay these amounts. In addition, the employer may require the employee to repay the employer’s share of the premium payment if the employee fails to return to work following the FMLA leave unless the employee does not return because of circumstances that are beyond the employee’s control, including a FMLA-qualifying medical condition.

Benefits Other than Health Insurance

An employee’s rights to benefits other than group health insurance while on FMLA leave depend upon the employer’s established policies. Any benefits that would be maintained while the employee is on other forms of leave, including paid leave if the employee substitutes accrued paid leave during FMLA leave, must be maintained while the employee is on FMLA leave.
**Substitution of Paid Leave**

FMLA entitles eligible employees to take unpaid leave. Under certain conditions, employees may “substitute,” or run at the same time as their FMLA leave, accrued **paid** leave (such as sick or vacation leave) to cover some or all of the period of FMLA leave. An employer may also require employees to substitute accrued paid leave for unpaid FMLA leave even when the employee has not elected to do so. In order to substitute accrued paid leave, the employer must follow the employer’s normal rules for the use of that type of leave, such as submitting a leave form or providing advance notice. If an employee does not meet the requirements to take paid leave under the employer’s normal leave policies, the employee may still take unpaid FMLA leave. Paid leave taken for reasons that do not qualify for FMLA leave does not count against the employee’s FMLA leave entitlement.

**PROTECTIONS UPON RETURN FROM FMLA LEAVE (JOB RESTORATION)**

When an employee returns from FMLA leave, he or she must be restored to the same job or to an "equivalent job." The employee is not guaranteed the actual job held prior to the leave. An equivalent job means a job that is virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions (including shift and location).

Equivalent pay includes the same or equivalent pay premiums, such as a shift differential, and the same opportunity for overtime as the job held prior to FMLA leave. An employee is entitled to any unconditional pay increases that occurred while he or she was on FMLA leave, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted only if employees taking the same type of leave for non-FMLA reasons receive the increases. Equivalent pay includes any unconditional bonuses or payments. If an employee does not meet a specific goal for achieving a bonus because of taking FMLA leave, however, the employer must only pay the bonus if employees taking the same type of leave for non-FMLA reasons receive it. For example, if an employee is substituting accrued paid sick leave for unpaid FMLA leave and other employees on paid sick leave are entitled to the bonus, then the employee taking FMLA-protected leave concurrently with sick leave must also receive the bonus.

All benefits an employee had accrued prior to a period of FMLA leave must be restored to the employee when he or she returns from leave. An employee returning from FMLA leave cannot be required to requalify for any benefits the employee enjoyed before the leave began.

**LIMITATIONS TO FMLA PROTECTIONS**

An employee on FMLA leave is not protected from actions that would have affected him or her if the employee was not on FMLA leave. For example, if a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours. If an employee is laid off during the period of FMLA leave, the employer must be able to show that the employee would not have been employed at the time of reinstatement.

An employer may also deny restoration to a “key” employee under certain circumstances. A key employee is a salaried, FMLA-eligible employee who is among the highest-paid 10 percent of all of the employer’s employees within 75 miles. To deny restoration to a key employee, an employer must have determined that substantial and grievous economic injury to its operations would result from the restoration, must have provided notice to the employee that he or she is a key employee and that restoration will be denied, and must provide the employee a reasonable opportunity to return to work.
ENFORCEMENT

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the 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 the FMLA. See Fact Sheet 77B: Protections for Individuals under the FMLA. The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us
SECTION I: For Completion by the EMPLOYER
INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees’ family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: ________________________________

SECTION II: For Completion by the EMPLOYEE
INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form to your employer. 29 C.F.R. § 825.305.

Your name: ________________________________

First  Middle  Last

Name of family member for whom you will provide care: ________________________________

First  Middle  Last

Relationship of family member to you: ________________________________

Date of birth: ________________________________

Describe care you will provide to your family member and estimate leave needed to provide care:

______________________________

______________________________

______________________________

______________________________

______________________________

______________________________

Employee Signature ________________________________

Date ________________________________

Page 1

CONTINUED ON NEXT PAGE

Form WH-380-F Revised May 2015
SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as “lifetime,” “unknown,” or “indeterminate” may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), or genetic services, as defined in 29 C.F.R. § 1635.3(e). Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider’s name and business address:

Type of practice / Medical specialty:

Telephone: (_______) __________ Fax: (_______)

PART A: MEDICAL FACTS

1. Approximate date condition commenced:

Probable duration of condition:

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility? 

No   Yes. If so, dates of admission:

Date(s) you treated the patient for condition:

Was medication, other than over-the-counter medication, prescribed?  No   Yes.

Will the patient need to have treatment visits at least twice per year due to the condition?  No   Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?  No   Yes. If so, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy?  No   Yes. If so, expected delivery date:

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
PART B: AMOUNT OF CARE NEEDED: When answering these questions, keep in mind that your patient’s need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care.

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? __No __Yes.

   Estimate the beginning and ending dates for the period of incapacity: ________________________________

   During this time, will the patient need care? __ No__ Yes.

   Explain the care needed by the patient and why such care is medically necessary:

   _______________________________________________________________________________________

   _______________________________________________________________________________________

   _______________________________________________________________________________________

   _______________________________________________________________________________________

5. Will the patient require follow-up treatments, including any time for recovery? __No __Yes.

   Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

   _______________________________________________________________________________________

   Explain the care needed by the patient, and why such care is medically necessary:

   _______________________________________________________________________________________

   _______________________________________________________________________________________

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery? __ No__ Yes.

   Estimate the hours the patient needs care on an intermittent basis, if any:

   ______ hour(s) per day; _______ days per week from __________ through __________

   Explain the care needed by the patient, and why such care is medically necessary:

   _______________________________________________________________________________________

   _______________________________________________________________________________________

   _______________________________________________________________________________________
7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities?  ____No  ____Yes.

   Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

   Frequency: ____ times per ____ week(s) ____ month(s)

   Duration: ____ hours or ____ day(s) per episode

   Does the patient need care during these flare-ups?  ____ No  ____ Yes.

   Explain the care needed by the patient, and why such care is medically necessary: ________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ADDEDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   ___________________________________________________________________________________________

   Signature of Health Care Provider __________________________ Date ____________

   PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

   If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.
AUTHORIZATION TO RELEASE MEDICAL INFORMATION

I hereby authorize the physician, ________________________________
(Please print the name of your physician)

to speak with Sybil Bailey, Director of Human Resources, and/or her designee, for the

purpose of obtaining medical information that involves my ability to perform the

functions of my job.

Please list:

________________________________________
Your Physician’s Street Address, City, State, Zip Code

________________________________________
Your Physician’s Phone Number

________________________________________
Employee’s Signature

________________________________________
Date

HUMAN RESOURCES
Providence City Hall | 25 Dorrance Street, Room 401, Providence, Rhode Island 02903
401 421 7740 ph | 401 273 9510 fax
www.providenceri.com

Rev. 10.10.13