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2. When does the Family and Medical Leave Act become effective?

The law becomes effective on August 5, 1993, if there is not an existing collective bargaining agreement. However, if there is a contract, the law becomes effective on February 5, 1994, or when the contract expires, whichever comes first.

3. Which employers must provide this leave?

All public employers and private employers who have 50 or more employees.

4. Which employees are covered?

Employees who have worked for the employer:

- a minimum of one year;
- a minimum of 1,250 hours (an average of 25 hours per week) during the previous 12 months;
- and, the employer employs at least 50 employees within a 75 mile radius.

Each state, city, county and school district is considered an employer under FMLA for purposes of counting the number of employees to determine if an employee is "eligible" for FMLA leave. Therefore, if an agency in a

city, for example, has less than 50 employees, but the city as a whole employs 50 or more employees, the employee will be eligible.

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5. Can I be sure I'll have a job when I return from leave?

The law requires that an employee returning from leave be restored to the position they would have been in if they had not taken the leave. This means you can return to your old job or to an equivalent position with same pay, benefits, and other terms and conditions of employment. However, if, for example, your position was terminated during your leave and you would have been laid-off, you are not entitled to get your job back. ("Key employees" who are among the highest paid 10 percent of employees may be denied reinstatement if necessary to avoid substantial and grievous economic injury to the employer's operation.)

6. What happens to my health care benefits when I am on leave?

You maintain your coverage under the employer's group health plan. For example, if the employer pays 80 percent of the cost and the employee pays 20 percent, that same arrangement will continue during

the unpaid leave period. Employers and employees may negotiate an arrangement in advance which will accommodate both the employer's administrative needs and the employee's financial situation. However, the regulations provide at a minimum, that if an employee does not meet the agreed upon date for payment of the premium, he or she has a 30-day grace period during which provision of health coverage will not be affected.

7. Can the employer require me to provide medical certification when taking leave?

Yes, an employer may require that you provide a certification issued by the health care provider of yours or your son, daughter, spouse, or parent to support your request. Certification should state the date on which the serious health condition commenced; the probable duration of the condition; the appropriate medical facts within the knowledge of the health care provider regarding the condition, as well as other information.

8. If I decide not to return to work after the leave will I have to reimburse the employer for the cost of the

health insurance?

It depends on the reason you do not return. If the reason is the continuation, onset or recurrence of a serious health condition, you will not have to reimburse the employer. Otherwise, the employer can require reimbursement.

9. What happens to my other employment benefits while I am on leave?

Taking leave will not result in the loss of any employment benefit accrued prior to the date the leave begins. Although the law does not entitle you to continue to accrue seniority or other benefits while on unpaid FMLA leave, union employees may negotiate stronger language protecting other benefits such as life insurance and pension rights for employees on unpaid leave.

10. Do I have to give notice to the employer before I take leave?

If the need for leave is foreseeable, the law requires 30 days notice. If the need for leave is not foreseeable 30 days in advance, you should give whatever notice is possible ordinarily within one or two business days of when the employee learns of the need for leave.

If an employee uses paid leave, under circumstances that qualify the FMLA leave, that employee is only required to comply with the notice requirement for use of paid leave, unless the FMLA notice requirement is shorter and then the employee can comply with that notice. Thus, AFSCME councils and locals may want to negotiate less stringent notice or certification requirements for paid leave than those under FMLA.

11. What if I can and want to work part-time rather than taking full leave?

The FMLA does make provision for intermittent leave or leave on a reduced schedule for planned medical treatment or a serious health condition, but not for child care after a birth or adoption. When the need for such leave is foreseeable based on planned medical treatment, the employer can require the employee to transfer temporarily to another position with equivalent pay and benefits if such a move better accommodates the employer's needs during the period of medical treatment or serious health condition. FMLA permits an employee taking leave for birth, adoption or placement of a foster child to take leave intermittently or by working a reduced work-week only with the employer's ap-

proval. Therefore, AFSCME councils and locals may want to negotiate language securing such rights.

12. Can I substitute paid leave, e.g., sick leave or vacation for any part of the unpaid 12 weeks leave?

Yes, under certain circumstances. In fact, the employer can require you to use your paid leave first and then give you the remaining leave unpaid. An employee can use paid vacation or personal leave for any FMLA purpose, without limitation. However, nothing in the Act requires an employer to provide paid sick leave, paid medical leave, or paid family leave in any situation in which the employer would not normally provide any such paid leave. Therefore, AFSCME councils and locals may want to negotiate the broadest type of paid leave language possible.

13. If my sick leave, vacation, personal leave, etc. adds up to more than 12 weeks, am I still entitled to an additional 12 weeks of unpaid leave after I have exhausted my paid leave?

Not if the employer requires you to first use your paid leave for your family and medical leave. Because there is nothing in the Act that either prohibits an employee from using FMLA leave and paid leave consecutively or requires an employee to substitute paid leave for FMLA leave, AFSCME councils and locals may want to negotiate language that allows our members the broadest discretion in deciding whether to take the leave as unpaid or paid leave.

14. *I live in a state which has its own family leave law. Which law applies to me?*

It depends on which one is better. If your state law provides family and medical leave rights superior to the federal law, the state law applies. If the FMLA is better, it applies.

15. *My union has negotiated family leave for the members. Once FMLA has become effective, how does it affect our agreement?*

If the leave provided by your contract is superior to the FMLA, the FMLA does not affect your contract. If your contract provisions are not as good as that required by the FMLA,

the employer is obligated to comply with the FMLA. There may be gaps in what your contract provides. For example, your contract might include good parenting leave provisions but nothing on leave to care for a spouse, child or parent with a serious health condition. You may want to negotiate language to fill in these gaps. That way, all of the employee's rights to leave can be enforced through the contract, which may be faster and more effective than filing charges with the U.S. Department of Labor.

16. *What Federal agency will enforce the FMLA?*

The Wage and Hour Division of the U.S. Department of Labor is the agency which enforces the Fair Labor Standards Act.

17. *What should I do if my employer denies me the right to take leave?*

Talk with your steward about whether your contract provides such leave. If it does, you and your union can file a grievance. In addition, you and the union can file a complaint with the Wage and Hour Division of the U.S. Department of Labor or file a private lawsuit. The Wage and Hour Division, which has offices in

most major cities will investigate your complaint. Because speedy resolution of complaints is essential, the Division provides an accelerated intake and investigative process that will prevent employees from suffering irreparable harm. The FMLA also gives the Division the right to go to court and get an injunction to keep the employer from withholding wages or employment benefits. The FMLA also gives you and the union the right to go directly to court and file a private lawsuit without first filing with the Wage and Hour Division. You and the union have two years from the FMLA violation, three years if it was a willful violation, to file either a complaint with the Wage and Hour Division or a private lawsuit.

18. What damages can I recover from an FMLA violation?

The employer can be sued by the employee or the Department of Labor to recover wages and benefits lost as a result of the violation, monetary losses sustained, such as the cost of hiring someone to provide care, and interest on the money owed to you. This is in addition to equitable remedies such as reinstatement. In cases where the employer cannot prove that they acted

in a good faith, believing their action was legal, you can recover double the amount of damages.

The Department of Labor has issued detailed regulations covering the Family and Medical Leave Act. The regulations require that covered employers post notices to their employees informing them about their rights under FMLA.



For further information please contact:
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