



U.S. Department of Labor Issues FMLA Guide for Employers

by Jennifer A. Parda and Laura L. Edwards

The Family and Medical Leave Act ("FMLA" or "Act") provides eligible employees with up to 12 weeks of leave per year and, except in specified circumstances, guarantees employees reinstatement to their same or equivalent position upon return from leave. As anyone who has dealt with the Act is well aware, the FMLA is complex to administer and can be confusing both to employers and employees alike. In an effort to offer compliance assistance, the U.S. Department of Labor ("DOL") from time to time issues guidance addressing and clarifying appropriate application of the FMLA. In one such recent effort, on June 20, 2012, the DOL issued "Need Time? The Employee's Guide to the Family and Medical Leave Act" (hereafter, the "Guide"), a 16-page guide answering common FMLA questions and clarifying who can take FMLA leave and what protections the FMLA provides (available through the DOL's website [here](#)).

As stated in a recent DOL press release, the Guide was created out of DOL's belief that "too many workers don't know about their rights under the FMLA and fail to take advantage of its protections." Of particular importance to employers, however, the Guide impresses upon employees their obligations under the FMLA to cooperate with their employer when they need FMLA leave and clearly describes what is expected of them throughout the leave process—from application for leave to exhaustion of leave. To this end, the Guide will undoubtedly benefit employers in understanding what is required of employees, as well as in impressing upon employees their obligations under the FMLA. Specifically, the Guide:

- Describes information employees must provide to their employer when requesting FMLA leave so that the employer is able to determine whether the requested leave is covered
- Informs employees that they must notify their employer if/when their need for FMLA leave changes while they are on leave and that their employer may lawfully require periodic updates on their status and intent to return to work
- Clarifies that employees (and not employers) are responsible for the costs of obtaining medical certification from a health care provider
- Reminds employees that they must cooperate with their employer to schedule time off for medical appointments so as to prevent workplace disruptions
- Provides a succinct definition of "serious health condition" so that employees better understand that FMLA leave cannot be utilized simply for common and temporary illnesses, such as the sniffles or the flu

In addition to its focus on employee responsibilities under the FMLA, the Guide also contains useful explanations of employer duties and obligations, including:

- A description of employer notice obligations, including those related to employee eligibility and notice of employee rights and responsibilities
- A description of employee reinstatement rights, including that an employee is not entitled to be restored to his/her prior position if s/he is unable to return to work upon the exhaustion of FMLA leave
- A description of the type of job to which an employee is entitled in the event that s/he cannot be returned to his or her same position

The section entitled "The FMLA Leave Process" is especially valuable to employers. A step-by-step guide in the form of several easy-to-follow flowcharts outlining both employer and employee obligations and eligibility requirements, it reminds employers of the required time limits for responding to an employee's request or certification information. In addition, the DOL's explanation of the required medical certification may serve to benefit employers that might otherwise fail to provide specifics in their certification request, thereby resulting in otherwise unnecessary follow up when questions arise about what information is sufficient to support a request for leave.

A clear and concise summary of the FMLA's provisions, the Guide accomplishes its purpose of addressing frequently-asked questions useful to both employers and employees. The Guide does not, however, address many of the complex issues that cause employee confusion and frustrate employers' administration of the FMLA, such as necessary employer considerations in determining how to proceed when an employee indicates s/he is unable to return from FMLA leave. Because the Guide was not intended to answer such "gray area" questions, employers should proceed with caution and, as necessary, with the advice of experienced employment counsel when such areas arise.

If you would like additional assistance concerning the information addressed in this note, please contact Jennifer Parda at (425) 450-0495 or Laura Edwards at (425) 450-3383

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