

**INTRODUCTION TO  
THE FAMILY & MEDICAL  
LEAVE ACT (FMLA)**



BLA/S/ Legal Staff-00

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**FMLA LEAVE**

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- 12 workweeks of unpaid leave each year for medical or family reasons
- Up to 26 weeks to care for US military with service related injury or illness

INTERNATIONAL UNION, UAW  
LEGAL STAFF  
BLAIR SIMMONS

**WHICH EMPLOYERS ARE  
COVERED?**

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- Private-sector employers with 50 more employees
- Government employers, including federal, state, and local agencies and schools

### EMPLOYEE ELIGIBILITY?

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- Employer employs 50 or more employees at locations within a 75-mile radius
- Worked at least 1,250 hours during the 12 months before the start of your leave?
- Does sick time or vacation time count or union time count?

### WHAT IS THE 12 MONTH PERIOD?

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- Calendar year
- Fixed Year
- 12-month period counted forward
- Rolling 12-month period counted backward

### EMPLOYEE ELIGIBILITY?

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- Worked for employer for at least 12 months
  - Does sick time or vacation time count?
  - Does union time count?

### WHAT IS THE 12 MONTH PERIOD?

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- Measured Forward -
  - FMLA leave starts August 21, 2018.
  - Leave year runs until what date?
  - When does next leave year begin?

### WHAT IS THE 12 MONTH PERIOD?

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Rolling Back -- from each date an employee uses FMLA leave (rolling backward)

### WHAT TYPES OF LEAVE QUALIFY?

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- Service-related leave
  - 12 Weeks (exigencies for when a family member is in the military)
  - 26 Weeks (to care for military related injury or illness)

### WHAT TYPES OF LEAVE QUALIFY?

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- Medical Leave
- Family-care Leave
- New-child Leave
  - And

### WHAT ARE MY BASIC RIGHTS?

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- 12 weeks of leave on a continuous, intermittent, or reduced-schedule basis
- Continued group health plan benefits

### WHAT ARE MY BASIC RIGHTS?

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- Restoration to original or equivalent job
- Employer may not discipline or deny advancement, or count the time under an attendance control policy

### WHAT IS A "SERIOUS HEALTH CONDITION"?

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- Incapacity due to chronic condition
  - What does "chronic condition" mean?
- Incapacity due to pregnancy
- Long-term or permanent incapacity, and

### WHAT IS A "SERIOUS HEALTH CONDITION"?

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- Overnight hospital stay
- More than three consecutive days of incapacity plus continuing treatment
  - What does "continuing treatment mean?"

### WHAT IS A "SERIOUS HEALTH CONDITION"?

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- Absences for multiple treatments for a condition that could lead to incapacity for more than three days.

**WHAT TYPES OF LEAVE ARE AVAILABLE?**

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- **Continuous**
- **Intermittent**
- **Reduced schedule**

**EMPLOYER REQUIREMENTS**

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- **Must additional time be allowed?**
- **Can employer count absences during this time?**
- **What happens if certification is incomplete or insufficient?**
- **Can the employer speak to the provider directly?**

**EMPLOYER REQUIREMENTS**

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- **Request initial certification from a health care provider**
- **Must act within 5 business days**
- **Employee has 15 days to submit**

**EMPLOYER REQUIREMENTS**

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- **Second or Third Opinion?**
- **Can employer require second and third opinions?**
- **When?**

### EMPLOYER REQUIREMENTS

- Recertification?
  - Leave is less than 30 days?
    - Employee requests an extension,
    - Circumstances change, or
    - Employer receives information that casts doubt on the certification

### EMPLOYER REQUIREMENTS

Question:

My employer wants to send my absence record to my provider for comment. Can they?

### EMPLOYER REQUIREMENTS

- Recertification?
  - Leave is 30 days to 6 months?  
Employer cannot request recertification during this period, unless . . .
  - Leave is greater than 6 months?

### WHAT ABOUT APPOINTMENTS?

- You are entitled to time off for appointments (to treat serious conditions) with certain caveats:
  - Try to schedule the appointment outside of working hours
  - Provide advance notice (30 days if possible)
  - If disruptive, attempt to reschedule
  - Consult with employer for a series of appointments

### WHO COUNTS AS "FAMILY"?

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- Sons or Daughters
  - 17 or younger, unless incapable of self care
  - Includes biological, adopted, foster, step, and legal wards.
  - Also includes *in loco parentis* meaning provides day-to-day supervision or financial support. No legal relationship is necessary.
- Spouses
- Parents
  - Includes biological and *in loco parentis*

### EMPLOYEE NOTICE REQUIREMENTS

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- When foreseeable – 30 days notice
  - If employee fails to give proper notice of foreseeable leave, employer can delay leave up to 30 days
- Must provide reason for leave, start date, and duration
- When unforeseeable – as soon as practicable

### WHAT COUNTS AS "CARE"?

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- Assistance with basic functions
  - Taking medication
  - Preparing meals
  - Driving to appointments
  - Insuring safety
  - Changing dressings
  - Psychological support and reassurance

### EMPLOYEE NOTICE REQUIREMENTS

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- Employers can require employees to continue to follow workplace policies, such as a call-in procedure.
- Employees can have other parties provide notice on their behalf.

## SUBSTITUTING ACCRUED LEAVE

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- You are entitled to 15 days of vacation. You plan and pay for a 3-week vacation in August. In June, you take 2 weeks of FMLA because your father had a heart attack. Company pays you vacation for the two week leave in June. That leaves only one week of vacation for August. What happens in August?

## GRIEVANCES

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- The company commits widespread FMLA violations. Can a local union file a class-action lawsuit?
- My company uses an outside company to handle FMLA issues. The outside company commits widespread violations. Can I sue the outside company for FMLA violations?

## GRIEVANCES

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- I accumulate 12 points and am discharged. Can I win a grievance if one of the points should have been classified as FMLA?
- I am fired for accruing 10 attendance points with 2 warnings and a suspension. Union contends the 6<sup>th</sup> absence, which occurred just before my 2<sup>nd</sup> warning, should've been classified as an FMLA warning. Company asserts that I failed to grieve the warning at the time so I can't challenge the point. Who is right?

## EXAMPLE

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In a "last-chance agreement," the union agreed that if Carrol missed work for any reason during the next six months, she could be terminated. Can the company fire Carrol for an FMLA absence?



**ANSWER**

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No. FMLA rights cannot be waived, even if the worker signs an LCA. 29 CFR 825.220(d)

**BARGAINING TOPICS**

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- Can union bargain this clause?
- "All time on FMLA leave shall be considered time worked for purposes of determining seniority."

**BARGAINING TOPICS**

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- Should union incorporate the FMLA in the contract?
- Can the CBA expand the group of relatives included in family care leave?

**THE END**

