

Pay close attention to FMLA policies

Managing employee leaves and the laws that surround them can be a challenge for any business. Successful navigation of state and federal leave and disability law can be aided by a quality employee handbook that clearly outlines the company's policies related to these laws, guidelines and procedures for administering leave and qualified staff who understand the laws and how to administer them. Sound leave policies provide a work-life balance that provides economic security to families that will improve employee morale and increase worker productivity.

To help a company determine how these laws apply to them and their employees it helps to understand the basic provisions that allow you to 1. determine if the law applies to your company and 2. what you need to do in order to be in compliance. Some states, like California, have additional leave laws that further expand federal leave provisions. and for multi-state employers it's important to ensure that you are complying with the federal and state leave laws. For the purposes of this article we will only be discussing private-sector employer regulations in relation to the federal leave laws.

The most common medical or disability leave law is the Federal Family and Medical Leave Act (FMLA). FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave. Requests for FMLA can come as a result of an injury or illness which occurred either within or outside of the work place.

A covered employer is one with 50 or more employees in 20 or more workweeks in the current or preceding calendar year in a work location within a 75 mile radius.

Eligible employees are those who work for a covered employer and have worked at least 1,250 hours during the 12-month period immediately preceding the leave.

If you are an eligible employee working for a covered employer, you are entitled to take up to 12 work weeks of unpaid leave in a 12-month period for one or more of these reasons:

- For a serious health condition that



**Sarah
Sommers
Diana
Albiniano**

makes the employee unable to perform the essential functions of his or her job;

- Birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care;

- To care for a spouse, son, daughter, or parent who has a serious health condition; or

- For any qualifying emergency arising out of the fact that a spouse, son, daughter or parent is a military member on covered active duty or call to covered active duty status. When the employee is the spouse, son, daughter, parent or next of kin of the service member they are entitled to take up to 26 work weeks of leave in a single 12-month period when caring for a covered service member with a serious injury or illness.

- When medically necessary, employees may take leave intermittently or on a reduced schedule basis. In addition employers may require employees to run concurrently any accrued paid leave, such as paid time off, sick or vacation leave, to cover some or all of the FMLA leave period. Provisions such as these would need to be clearly outlined in an employer's handbook of policies and procedures.

- The employer must post a general notice explaining the rights and responsibilities under FMLA and include information about FMLA leave in its employee handbooks or provide information to new employees upon hire.

- Employees must comply with their employer's usual and customary requirements for requesting leave (foreseeable 30 days / unforeseeable ASAP) and provide their employer with enough information for them to reasonably determine whether FMLA applies to the leave request.

- When leave is being requested due to a serious health condition, the employer may require certification (within 15 calendar days of request) in support of the leave from a health care provider. An employer may also require second or third medical opinions (at the employer's expense) and periodic recertification from a health care provider.

- It is the employers' responsibility to determine if the leave request qualifies under the FMLA, and they are required to provide the employee with notice concerning his or her eligibility for FMLA leave within five calendar days of the request and his or her rights and responsibilities under FMLA. It is very important to timely notify

the employee of their acceptance or denial of FMLA status. If you do not timely notify the employee that they are on FMLA you may be required to extend a new FMLA 12 work week leave at a later date possibly within the 12-month period protecting their position if they make a new request. The employer must also notify the employee of the amount of leave that will be deducted from the employee's leave entitlement, include any substitution of paid leave, medical premium payment arrangements, required medical certifications, the 12-month period, job-restoration requirements and maintenance of benefit rights.

When an employee returns from FMLA leave they must be restored to their original job or to an equivalent job with equivalent pay, benefits and other terms and conditions of employment. You can't count the time taken against the employee if you have a "no-fault" attendance policy, and you must maintain their group health benefits during the duration of their FMLA leave under the same terms and conditions as if the employee had not taken leave.

New laws are coming into play all the time that affect FMLA and other labor laws and it's important to keep up with those changes. Most recently, the Supreme Court struck down the Defense of Marriage Act that defined a spouse as a husband and wife of the opposite sex. This is an example of how new regulations can create significant changes to labor law provisions and administration. The courts are still determining the effects of this new finding on labor laws like FMLA and employers responsible for complying with FMLA should be on the lookout for final court and case law decisions in this matter.

It's also good to note that the FMLA regulations can also overlap with or interplay with other laws such as the Americans with Disabilities Act, Workers' Compensation and pregnancy disability. Managing FMLA requirements as well as the other laws that may coincide with the FMLA is where a clear employee handbook comes into play as well as a process for managing and tracking leaves of absences. This often requires the skills of a seasoned human resource professional.

For additional information about FMLA you can visit the Wage and Hour Division website at www.wagehour.dol.gov.

Sarah Sommers is chief executive officer of Solutions At Work and Diana Albiniano is the director of HR Operations at Solutions At Work, a Reno-based human resources consulting firm that provides payroll services and HR consulting to businesses and non-profit organizations. Contact them at 775-827-9675 or sarah@mysolutionsatwork.com and Diana@mysolutionsatwork.com.

QUOTE OF THE WEEK

“I have discovered that all human evil comes from this, man's being unable to sit still in a room.”

Blaise Pascal