

## COMPLIANCE CLASSROOM NOTES

### The ABC's of FMLA: Spelling Out the Basics of the Family & Medical Leave Act

#### What is FMLA?

- Family & Medical Leave Act of 1993
- **Purpose:** To provide eligible employees of a covered employer unpaid, job-protected leave to care for themselves or family members for a prescribed period.

#### Who is Eligible for FMLA?

##### Applicability

**Leave is generally available when the following conditions are met:**

- **Eligible employer** = employs 50+ or employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;
- **Eligible employee** = has been employed for 12 months prior to the requested leave and provided at least 1,250 hours of service with employer during the previous 12-month period; and
- The employee works at a site with at least 50 employees within 75 miles.

#### What are Employee Benefits?

##### Benefits

**An eligible employee of a covered employer is \_\_\_\_\_ entitled \_\_\_\_\_ to the following:**

- **Job-protected, unpaid leave** (or sub appropriate paid leave) for total of 12 work weeks in any 12-month period;
- **Maintenance of health benefits** while on leave as if they had continued to work; and
- A right to return to the **same position or an equivalent position** with equivalent pay, benefits, and working conditions at the conclusion of the leave.
- Leave may be taken **consecutively or intermittently** for serious health conditions

#### What are Employer Benefits?

##### Certification

**FMLA also protects the rights of the employer, often documented via various forms.**

- An employer has a right to:
  - **Advance notice** from the employee;
  - Require an employee submit certification to **substantiate the leave**;
  - Require the employee to present a **certification of fitness** to return to work when the absence was caused by the employee's serious health condition; and
  - **Delay restoring the employee** to employment without such certificate relating to the health condition which caused the employee's absence.
- Key employee may temporarily move to same-pay position to better accommodate intermittent leave.
- Spouses take only 12 total weeks for pregnancy or adoption.
- **Employer may establish the timeframe to calculate leave:**
  - Calendar year
  - Anniversary year
  - Moving from date of current request (moving year) prevents stacking of leave from 2 consecutive years.

# What are Employer Responsibilities?

## Designation

### Employer Procedures: Pat's Story

- Pat the employee comes to the employer
- Pat's widowed, elderly mom needs care for stage 4 cancer and Pat is an only child, and Mom lives with Pat.
- **Leave analysis:**
  - Pat informs you as soon as Pat knows Mom will need care
    - By statute, Pat must give no less than 30 days OR as much notice as is practical.
      - Pat is NOT required to specify FMLA leave but is permitted
  - Pat has met **threshold criteria**
    - 12 months of employment
    - 1250 hours of service
  - **Analysis:** Unlikely ADA, STD, LTD, or worker's compensation leave.
  - Mom's serious medical condition likely meets FMLA qualifying event for Pat
- **What about Pat's accrued paid leave?**
  - Employer may require Pat to use, OR Pat may elect to **"substitute"** paid leave to cover unpaid FMLA entitled leave.
    - **"Substitute"** = paid leave will run concurrently with unpaid FMLA leave
- **Recent DOL Opinion Letter (March 15, 2019)**
  - Employer MUST designate leave as FMLA-qualifying in ALL circumstances; and
  - Give notice of designation to Pat (written format) within 5 business days
    - Employer must have enough info to determine whether the leave is being taken for a FMLA-qualifying reason"
  - Employer may **NOT**:
    - Delay designation of FMLA qualifying leave (even if Pat requests it); nor
    - Designate more than 12 weeks of leave as FMLA leave (or 26 for military caregiver leave)
  - Neither Pat nor Employer may decline FMLA protection for that leave.
  - If Pat chooses to substitute paid leave for unpaid FMLA leave, Pat's paid leave counts toward the 12/26 week FMLA entitlement and does not expand it.

## Qualifying Event

### May include the following:

- Birth or care of newborn child;
- Placement of a child for foster care or adoption & care for the same;
- Serious health condition (incapacitation) of the employee's family (spouse, child or parent);
- Serious health condition (incapacitation) of the employee that renders EE unable to perform one or more essential functions of the job
  - **Serious Health Condition** = illness, injury, impairment or physical or mental condition that involves inpatient care in a medical facility or continuing treatment but a health care provider.