

CLIENT ALERT

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Periodically, we like to remind our clients of issues that while not directly related to health insurance, are important for HR staff.

One of those issues is FMLA and for our New Jersey based clients, the NJ Family Leave Act.

Know your obligations under FMLA....

EMPLOYERS - FMLA applies to all public agencies, local education agencies and private sector employers who employed 50 or more employees in 20 or more workweeks per year in the current or preceding calendar year. Any employee whose name appears on the employer's payroll, including part-time employees, is considered employed each working day of the calendar week and is counted even if he does not receive compensation for that week.

EMPLOYEES - To be eligible for FMLA benefits, an employee must:

- Work for a covered employer
- have worked for the employer for at least 12 months (not necessarily consecutively);
- have worked for the employer for at least 1,250 hours in the previous consecutive 12-month period; AND
- work at or is assigned to a worksite that has 50 or more employees or which is within 75 miles of worksites that taken together have a total of 50 or more employees

Special rules apply to reservists as protected under USERRA

DID YOU KNOW THAT.... If you are aware that the reason for an employee's absence from work qualifies under the FMLA, information must be provided to the employee even if the employee does not request an FMLA leave by name.

Below is an excerpt from the following Q & A, <http://www.dol.gov/whd/fmla/finalrule/NonMilitaryFAQs.pdf>

Employer Notice Requirements

Q. What are an employer's posting and general notice requirements?

A. Employers must post a general notice explaining the FMLA's provisions and providing information regarding procedures for filing a claim under the Act in a conspicuous place where it can be seen by employees and applicants. Under the regulations, this posted notice includes additional information regarding the definition of a

serious health condition, the new military family leave entitlements, and employer and employee responsibilities. Employers must also include the information in this general notice in any employee handbook or other written policies or manuals describing employee benefits and leave provisions. Additionally, under the regulations, an employer without a handbook or written guidance is required to provide this general notice to new employees upon hiring.

Q. Is there a penalty if an employer fails to post the required FMLA notice?

A. An employer that willfully fails to post the required FMLA notice may be assessed a civil monetary penalty. Under the regulations, the penalty is increased to \$110.

Q. How soon after an employee provides notice of the need for leave must an employer determine whether someone is eligible for FMLA leave?

A. Absent extenuating circumstances, the regulations require an employer to notify an employee of whether the employee is eligible to take FMLA leave (and, if not, at least one reason why the employee is ineligible) within five business days of the employee requesting leave or the employer learning that an employee's leave may be for a FMLA-qualifying reason.

Q. Does an employer have to provide employees with information regarding their specific rights and responsibilities under the FMLA?

A. At the same time an employer provides an employee notice of the employee's eligibility to take FMLA leave, the employer must also notify the employee of the specific expectations and obligations associated with the leave. **(More Information Provided for this answer in the Q & A)**

Q. How soon after an employee provides notice of the need for leave must an employer notify an employee that the leave will be designated and counted as FMLA leave?

A. Under the regulations, an employer must notify an employee whether leave will be designated as FMLA leave within five business days of learning that the leave is being taken for a FMLA-qualifying reason, absent extenuating circumstances. The designation notice must also state whether paid leave will be substituted for unpaid FMLA leave and whether the employer will require the employee to provide a fitness-for-duty certification to return to work (unless a handbook or other written document clearly provides that such certification will be required in specific circumstances, in which case the employer may provide oral notice of this requirement). **(More Information Provided for this answer in the Q & A)**

Q. If an employer fails to tell an employee that leave has been designated as FMLA leave, can the employer count the leave against the employee's FMLA leave entitlement?

A. Under the regulations, retroactive designation is permitted if an employer fails to timely designate leave as FMLA leave (and notify the employee of the designation). The employer may be liable, however, if the employee can show that he or she has suffered harm or injury as a result of the failure to timely designate the leave as FMLA. Additionally, an employee and employer may agree to retroactively designate an absence as FMLA-protected.

Additional information regarding this can be found on the DOL website:

<http://www.dol.gov/whd/fmla/> - general website with all sorts of pdf files for reference.

<http://www.dol.gov/elaws/fmla.htm> - This is a great site. It will actually walk you through Employer Eligibility, Employee Eligibility, Employer Rights and Responsibilities and Employee Rights and Responsibilities among other things

NEW JERSEY FAMILY LEAVE ACT

Covered Employers

- A company with at least 50 employees for 20 or more weeks either this or last year; or
- A governmental agency; or
- A school.

Eligible Employees - Employees are eligible if they have worked for a covered employer, with at least 50 employees, for at least one year and for at least 1,000 hours over the previous 12 months.

Reasons for Taking Leave

Unpaid leave must be granted for any of the following reasons:

- to care for the employee's child after birth, or placement with the employee of a son or daughter for adoption or foster care;
- to care for the employee's spouse*, son or daughter, or parent, who has a serious health condition, or;
- for a serious health condition that makes the employee unable to perform his or her job.

*Because civil unions are recognized in the State of New Jersey, the New Jersey Family Medical Leave Act will apply; that is, unpaid leave must also be granted to allow an employee to care for his/her civil union partner or eligible same-sex domestic partner who has a serious health condition.

NOTE: Like the NJFLA, federal Family and Medical Leave Act (FMLA) also provides time off from work in connection with the birth or adoption of a child or the serious illness of a parent, child or spouse. When an employee takes a leave for a purpose covered by both the FMLA and the NJFLA, the leave simultaneously counts against the employee's entitlement under both laws.

The FMLA provides time off from work due to an employee's own disability, while the NJFLA does not provide covered employees with leave for their own disabilities. Thus, even though an employee may utilize all of his or her allotted time under the federal FMLA due to his or her disability, the employee may subsequently be entitled to time off under the NJFLA in connection with the birth or adoption of a child or the serious illness of a parent, child or spouse. The FMLA provides up to twelve weeks in a 12-month period, rather than a 24-month period as provided in the NJFLA.

WEBSITES to view for more information

<http://www.state.nj.us/treasury/pensions/epbam/additional/fmla-overview.htm>

<http://www.nj.gov/oag/dcr/law.html#FLA>

***DISCLAIMER** - This e-mail is informational only and should not be construed as insurance, legal or tax advice, nor is it to advise you of your entire obligation under the FMLA and/or NJFLA. If you would like more information, please do not hesitate to contact our office or you legal counsel*