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Family and Medical Leave Act of 1993

The Federal Family and Medical Leave Act of 1993 became effective August 5, 1993. This article is intended to provide employers and employees with a summary of the original provisions of this law. Amendments have quite likely occurred:

Covered Employers. The Family and Medical Leave Act of 1993 (the "Act") applies to any employer engaged in commerce or in an industry or activity affecting commerce who employs 50 or more employees for each working day during 20 or more calendar workweeks.

Eligible Employees. To be eligible for the benefits of the Act, an employee must have been employed by the employer for at least 12 months and worked for 1,250 hours during the most recent 12 month period.

Entitled Leave. An eligible employee is entitled to a total of 12 work weeks of leave during any 12 month period for one or more of the following reasons:

1. The birth of child of the employee and in order to care for such child (hereinafter referred to as "item 1").
2. The placement of a child with the employee for adoption or foster care (hereinafter referred to as "item 2").
3. To care for the spouse, son, daughter (a son or daughter must be under 18 years of age or incapable of self-care because of a mental or physical disability), or parent of the employee if such individual has a serious health condition (hereinafter referred to as "item 3").
4. A serious health condition that makes the employee unable to perform the functions of the position of his employment (hereinafter referred to as "item 4").

The leave may be taken intermittently or on a reduced leave schedule (that is, a work schedule in which the usual number of hours per week or day is reduced) if, in the event of item 1 or item 2, the employee and employer agree; and in the event of item 3 or item 4, when medically necessary. Intermittent leave or a reduced leave schedule may continue until the 12 weeks leave is taken.

If an employee requests intermittent leave or a reduced leave schedule for item 3 or item 4 based on planned medical treatment, the employer may require the employee to transfer temporarily to an available alternate position for which the employee is qualified, that has equivalent pay and benefits,

and better accommodates the recurring periods of leave.

The leave required under the Act is unpaid leave. The employer may require the employee, or the employee may elect, to apply any accrued paid leave to the 12 weeks required under the Act.

Notice of Leave. In the event that the necessity for the leave is foreseeable under item 1 or item 2, the employee shall provide at least 30 days notice, before the date the leave is to begin, of the intention to take such leave. If the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable. With regard to item 3 or item 4, if the leave is foreseeable and based on planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to unduly obstruct the employer's operations. Additionally, the employee shall provide at least 30 days notice of the intention to take the leave if practicable.

Certification of Health Care Provider. An employer may require that a request for leave under item 3 or item 4 be supported by a certification issued by the health care provider of the eligible employee, or the son, daughter, spouse or parent of the employee as appropriate. Certification is sufficient if it contains the date on which the serious health condition commenced, the probable duration of the condition, and the appropriate medical facts within the knowledge of the health care provider regarding the condition. Additionally, with regard to item 3, the certification should include a statement that the eligible employee is needed to care for the individual and an estimate of the amount of time that such employee is needed. For purposes of item 4, the certification should include a statement that the employee is unable to perform the functions of his or her position.

If the employer has reason to doubt the validity of the certification, it may require, at its own expense, that the eligible employee obtain the opinion of a second health care provider chosen or approved by the employer. If the second opinion differs from the opinion in the original certification, the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider, chosen or approved by both the employer and employee. The opinion of the third health care provider shall be binding.

The employer may require that the employee obtain subsequent recertification on a reasonable basis. In addition, the employer may require the employee taking leave to periodically report to the employer concerning the employee's status and intention to return to work.

Return to Work. Once the employee returns from the leave, the employee must be restored to the position of employment held by the employee when the leave commenced or to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

The taking of leave cannot result in the loss of any employment benefit accrued prior to the date on which leave commenced. However, the restored employee is not be entitled to accrual of any seniority or employment benefits during the period of leave.

The employer may deny restoration of employment only to a salaried eligible employee who is among the highest paid 10% of the employees employed within 75 miles of the facility at which the employee is employed if the denial is necessary to prevent substantial and grievous economic injury to the operations of the employer; the employer notifies the employee of the intent to deny restoration of employment at the time the employer determines that such injury would occur; and, in any case in which the leave has commenced, the employee elects not to return to employment

after receiving such notice.

Health Insurance. While the employee is on leave, the employer must maintain coverage under any group health plan for the duration of the leave at the level and under the conditions that coverage would have been provided if the employee had been continuously employed. However, if the employee fails to return, the employer may recover the premium paid for this coverage, unless the failure to return is due to a circumstance beyond the control of the employee or to the recurrence, continuation, or onset of a serious health condition that entitles the employee to leave under item 3 or 4.

Notice. Employers must post Notice of the Act on the premises. The Notice required to be posted is issued by the United States Department of Labor. Copies of this Notice can be obtained from the Department of Labor by calling (314) 539-2706. Once obtained, this Notice can be reproduced.

Use of this Web Site and review of this Article does not create an attorney-client relationship. The law and its application by the courts is constantly evolving and changing. As with all memoranda in these archives, the discussion of the law is for general informational purposes, is in general summary form, is not to be taken as a definitive guide, and should not be relied upon to determine all fact situations. Each set of facts must be examined separately with the current case and statutory law analyzed and applied accordingly.