AN OVERVIEW OF THE FAMILY MEDICAL LEAVE ACT AND TIME OFF FOR HOURLY AND LOW-WAGE WORKERS

The Family Medical Leave Act (FMLA) provides unpaid, job-protected time off to covered workers. Covered workers are allowed to take up to 12 weeks of unpaid leave a year to care for themselves or covered family members, but the FMLA’s coverage requirements exclude many hourly and low-wage workers. This document answers common questions about the FMLA’s coverage, including its applicability to hourly and low-wage workers.

Full-time employees who work for larger employers are covered by the FMLA

The FMLA covers employees who worked at least 1,250 hours in the past year for the government or for private employers who have at least 50 employees working within 75 miles of the place of employment. Covered employees may take up to 12 weeks of job-protected unpaid leave within a 12 month period for specified reasons.

Covered employees may take time off for specified family and medical reasons

A covered employee may take unpaid time off for the birth and care of a newborn child or for the adoption or foster care placement of a child, a serious health condition, or to care for the serious health condition of a spouse, child, or parent.

FMLA leave is job-protected but unpaid

FMLA leave is unpaid, but the employee may substitute any available paid time off for FMLA leave. The employer may require the employee to use any available paid time off instead of the unpaid FMLA leave. In addition, employees cannot be discharged, demoted, or penalized for asking about or taking FMLA leave. Employers must reinstate employees who return from FMLA leave to their same position or to an equivalent position with the same pay, terms, and benefits.

Eligible employees may take FMLA leave on an intermittent or reduced schedule basis

Intermittent or reduced schedule leave may be used for medical reasons if that is the best way to address the medical condition. For the birth or placement of a child, an employee may use intermittent or reduced schedule leave only with the employer’s agreement.

Employees must provide employers with notice when taking FMLA leave

Employees must provide employers with at least 30 days notice when the need to take FMLA leave is known, or if 30 days notice is not feasible, employees must give notice as soon as practicable. Employees should also state whether they plan to take FMLA leave on a continuous, intermittent, or reduced schedule basis. In addition, employees should give notice about when FMLA leave will be taken and for which covered reason they are taking FMLA leave.

Prepared by Heather Todd Horrocks, Student Attorney & Clinical Professor Marcy Karin, Spring 2011. This document provides general information. Please consult with an attorney if you need legal advice.
Many hourly and low-wage workers are not covered by the FMLA

A large segment of hourly and low-wage workers either are part-time and do not work enough hours to receive FMLA coverage, or work for businesses with too few employees to receive FMLA coverage. Also, even when the FMLA covers hourly and low-wage workers, they may not be able to take advantage of that coverage because they cannot afford to take unpaid time off, or they may fear that taking time off could impact their job security.

FMLA leave would benefit hourly and low-wage workers

Research suggests that hourly and low-wage workers would greatly benefit from taking advantage of the FMLA because they are more likely to be caring for multiple children or family members with health difficulties. They are also likely to have medical conditions of their own that require time away from work. In addition, hourly and low-wage workers have less access to any type of time off than their higher wage and skilled counterparts.

The FMLA and the recession

As some employers cut back on hours due to the recession, more employees are becoming less than full-time workers, and thus ineligible for FMLA coverage. Moreover, any hours that employees spend in furlough status do not count toward the FMLA’s 1,250 hour coverage requirement.

Where can I find out more?


**The Department of Labor** enforces the FMLA and provides user-friendly guides to understand its provisions at http://www.dol.gov/whd/fmla/index.htm.

- For more information on the FMLA’s provisions, visit http://www.dol.gov/whd/regs/compliance/whdfs28.htm.

- State and local laws may offer additional protections for workers. For a list of State Labor Offices, visit http://www.dol.gov/whd/contacts/state_of.htm.