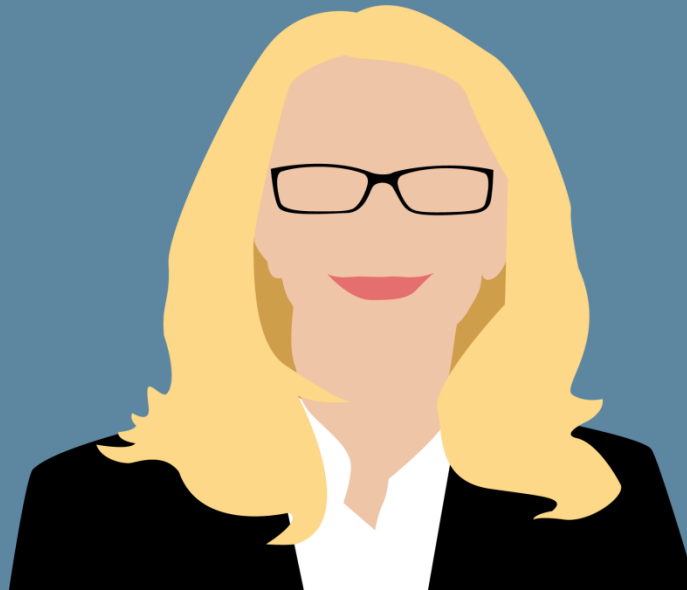


Legal Lunch with Laura



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Today's Webinar

- Today's webinar will be 1 hour
- Objective is to provide overall knowledge about the Family Medical Leave Act
- Discuss complicating factors

Disclaimer: This webinar is provided for informational purposes only and is not legal advice. Participation in this webinar does not create an attorney-client relationship between Offit Kurman and the participant. The opinions expressed at or through this webinar are the opinions of Laura L. Rubenstein, Esq. and may not reflect the opinions of the firm or any individual attorney.

Lunch Dates for 2012 Webinars

Tuesday, July 17

Tuesday, September 18

Tuesday, November 20

*Note – this is the third Tuesday of every other month from
12:00 – 1:00 p.m.

Important Provisions of the Family Medical Leave Act (FMLA)

Employer Coverage

What employers are required to provide FMLA coverage?

- public agencies, including State, local and Federal employers, and local education agencies (schools); and
- private sector employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year including joint employers and successors of covered employers.

Participant's Question

Question:

Our company is growing rapidly and will be approaching the 50 employee threshold quickly. Does FMLA kick in on the day we hire our 50th employee?

☐

Yes

☐

No

Employee Eligibility

To be eligible for FMLA leave

- an employee must work for a covered employer;
- have worked for that employer for at least 12 months;
- and have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave; and
- work at a location where at least 50 employees are employed at the location or within 75 miles of the location.

Leave Entitlement

A covered employer must grant an eligible employee up to a total of *12 workweeks of unpaid leave* in a 12 month period for one or more of the following reasons:

- for the birth of a son or daughter, and to care for the newborn child;
- for the placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
- to care for an immediate family member with a serious health condition; and
- when the employee is unable to work because of a serious health condition.

Notice

Eligible employees seeking to use FMLA leave *may* be required to provide:

- 30-day advance notice of the need to take FMLA leave when the need is foreseeable;
- sufficient information for the employer to understand that the employee needs leave for FMLA-qualifying reasons (the employee need not mention FMLA when requesting leave to meet this requirement, but may only explain why the leave is needed); and
- where the employer was not made aware that an employee was absent for FMLA reasons and the employee wants the leave counted as FMLA leave, timely notice (generally within two business days of returning to work) that leave was taken for an FMLA-qualifying reason.

What is “intermittent” leave?

- Are employers obligated to provide it?
- How long can it last?

Participant's Poll

Question:

My employee wants to take intermittent leave to care for her live-in father-in-law. Does the FMLA permit this?

☐

Yes

☐

No

2008 FMLA Amendment

Effective in 2008 year, the FMLA was amended to require that eligible employees be permitted to take leave for up to 26 workweeks to care for a "member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness."

Serious Health Condition

- A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.
- Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition.
- Other conditions may meet the definition of continuing treatment.

Medical Certification

An employer may require that the need for leave for a serious health condition of the employee or the employee's immediate family member be supported by a certification issued by a health care provider. The employer must allow the employee at least 15 calendar days to obtain the medical certification.

What if the Medical Certification is questionable?

Can the employer contact the medical provider to ask questions about the certification?

Can the company require the employee get a second opinion if it questions the medical certification.

Health Care Provider

Health care providers who may provide certification of a serious health condition include:

- doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
- podiatrists, dentists, clinical psychologists, optometrists, and chiropractors authorized to practice in the State and performing within the scope of their practice under State law;
- nurse practitioners, nurse-midwives, and clinical social workers authorized to practice under State law and performing within the scope of their practice as defined under State law;
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
- any health care provider recognized by the employer or the employer's group health plan's benefits manager; and
- a health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

Communicating with an Employee on FMLA Leave

- Should my employee be working part-time for another employer while on leave from my company?
- What if I learn my employee is engaging in physical activity when they're supposed to be on bed rest?
- What if my employee won't communicate with me at all?

Job Restoration

- Upon return from FMLA leave, an employee must be restored to his or her original job, or to an "equivalent" job.
- An employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using (but not necessarily during) FMLA leave.

Participant's Poll

What if the employee can return to work but cannot perform his/her same job duties?

- A. I can terminate the employee.
- B. I must provide the employee additional leave.
- C. I am required to accommodate the employee.
- D. None of the above.
- E. Not sure.

FMLA Forms available on DOL website

- **WH-380E:** Certification of Health Care Provider for Employee's Serious Health Condition
- **WH-380F:** Certification of Health Care Provider for Family Member's Serious Health Condition
- **WH Publication 1420:** Notice to Employee of Rights Under FMLA
- **WH-381:** Notice of Eligibility and Rights and Responsibilities (mandatory)
- **WH-382:** Designation Notice
- **WH-384:** Certification of Qualifying Exigency for Military Family Leave
- **WH-385:** Certification of Serious Injury or Illness of Covered Service member for Military Family Leave

Reminder: 2012 Lunch Dates

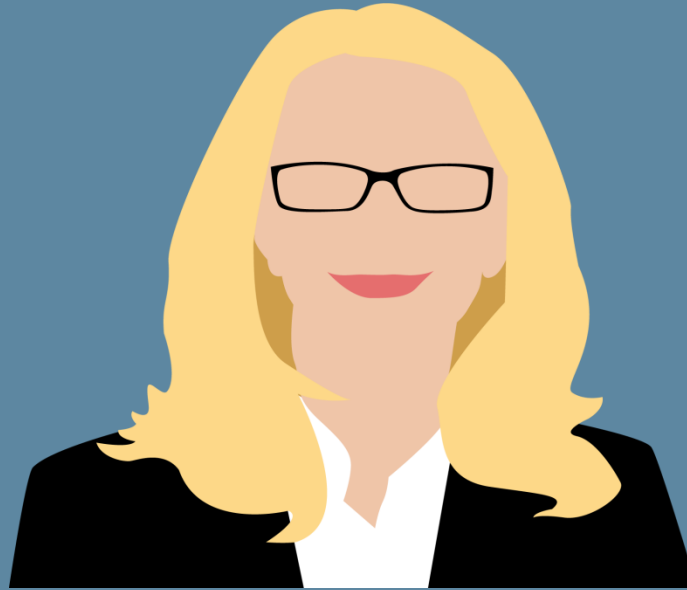
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