

## The State Contract Series

For use in understanding the state employees' contract

### Article 31.06-Family and Medical Leave Act: Important Points

#### What is it?

The Family and Medical Leave Act (FMLA) requires employers to offer eligible employees no less than 12 work weeks (number of hours depends on an individual's regular scheduled work week) of **unpaid** leave per year.

This federal law—incorporated into our contract—generally does not provide OCSEA members with additional leave benefits, but can supplement the paid leave benefits currently secured by our collective bargaining agreement. The primary benefit of FMLA to OCSEA members employed by the state of Ohio is protection from discipline for alleged mis-use of paid leave benefits.

In most cases when you use FMLA leave, employees have to follow all their employer's normal procedures for taking paid leave, including the application procedure and call-off procedures. Under the law and our collective bargaining agreement, the employer is allowed to also require employees to take paid leave concurrently (at the same time) with the unpaid FMLA leave. The State of Ohio requires that first, sick leave, then personal leave, then vacation leave balances must be exhausted before any remaining available unpaid FMLA leave will be granted. The employer cannot force you to use compensatory time concurrently with unpaid FMLA leave.



#### Who is eligible?

Any employee who has worked for the employer for at least 12 months in the last eight years, and who has worked for the employer at least 1,250 hours in the last year is eligible to take FMLA leave (subject to some restrictions).

#### Under What Circumstances Can I Use FMLA?

FMLA can be used for the following reasons:

1. For incapacity due to pregnancy, prenatal care or child birth;
2. To care for the employee's child after birth, or placement for adoption or foster care;
3. To care for the employee's spouse, employee's son or daughter, or employee's parent, who has a serious health condition; or
4. For a serious health condition that makes the employee unable to perform the employee's job.

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 incapacitates either the employee or the employee's son, daughter, or parent. 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 a chronic condition. Other conditions may also meet the definition of continuing treatment.

### **How do I request FMLA leave?**

Employees must provide employers with 30 days advance notice of their need to take FMLA leave when their need for leave is foreseeable. When employees are unable to give 30 days notice they must provide notice as soon as practicable.

When giving notice employees must provide sufficient information for the employer to know the requested leave may qualify for FMLA. They should also provide the anticipated timing and duration of leave, if known. Simply calling in "sick" is usually insufficient; more information should be provided.

Once an employee requests FMLA by name, or the employer has enough information to know the employee is taking leave for an FMLA-qualifying reason (the reason for the leave meets one of the 4 reasons above), the employer generally has five business days to designate the leave as FMLA and inform the employee that the leave is being counted toward the unpaid FMLA leave balance along with the paid leave (if any) being used.

### **Medical Documentation**

The employer can require employees to submit medical documentation of their need for FMLA leave. This is called a medical certification. If the employer has reason to question the certification, he/she may at the agency's expense require a second examination by a doctor of their choice who does not work for the employer on a regular basis. A third opinion may be obtained from a doctor who is mutually selected by the employee and the employer, at the employer's expense.

An employer may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless the employer receives information that casts doubt on the employee's need for leave.

If the medical certification indicates that the minimum duration of the condition is more than 30 days, an employer must wait until that minimum duration expires before requesting a recertification, unless the employer receives information that casts doubt on the employee's need for leave. In all cases, however, an employer may request a recertification every six months in connection with an absence by the employee.

### **Use of Leave**

An employee can take up to 12 work weeks of FMLA leave in any form necessary. FMLA leave can be taken for any length of time, from one work week block to increments smaller than an hour. It can also be taken intermittently for serious health conditions which only require the employee to miss work occasionally.

## **Military Leave**

In addition to the above, FMLA is available to eligible employees called to active-duty status in the National Guard or Reserves or with a spouse, son, daughter, or parent on active-duty status. Reasons qualifying for leave may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also permits eligible employees to take up to 26 weeks of leave per 12 month period to care for a covered service member who has a serious injury or illness incurred in the line of duty that may make the service member medically unfit to perform his or her duties, subject to certain restrictions.

## **Enforcement**

If you think your employer has improperly denied your request for FMLA leave, contact the Department of Labor:

Cleveland (216) 522-3892  
Columbus (614) 469-5677  
Cincinnati (513) 684-2942  
Akron (216) 375-5820

You—not your steward or staff representative—are responsible for filing your claim with the Department of Labor. In addition, a grievance may also be filed pursuant to our collective bargaining agreement. If you think the employer has improperly denied your leave, or incorrectly designated your paid leave as FMLA, you should contact your steward or staff representative immediately.

## **Reference**

Article 31.06

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