FMLA

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Title: Family leave helps you balance all your responsibilities

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Full Text:

The federal Family and Medical Leave Act (FMLA) went into effect in August of last year. In most cases it assures that you will still have a job waiting for you when you take time off in any of three situations: to care for a child after birth, adoption, or foster care placement, to care for a family member who has a serious health condition, or to deal with a serious health condition of your own that makes you unable to perform your job.

Definitions of terms under the law give you broad leeway in some areas and set strict limits in others. A serious health condition, for instance, can be anything that requires either inpatient care or continuing treatment by a health care provider. Examples include MI or CAD severe enough to require bypass surgery; stroke; back conditions requiring either extensive therapy or surgery; spinal injuries; pneumonia; severe arthritis or nervous disorders; Alzheimer's disease; and clinical depression.|1~ The definition of "family members," however, includes only a spouse, parents, and children--including foster children and stepchildren. Unmarried domestic partners are excluded, as are grandparents, in-laws, and other relatives, even if they live with you.|2~

The length of time you're entitled to varies. Employers are required to grant everyone up to 12 "workweeks" of leave during a 12-month period. But the length of a workweek is determined by the number of hours you work in an average week. Thus, a nurse working 40 hours a week would be entitled to 12 40-hour workweeks of leave, for a total of 480 hours. A nurse averaging just 24 hours a week would be eligible for only 12 24-hour workweeks.

You needn't take that time all at once. Leave may be taken intermittently--a day or even an hour here and there--for doctor's appointments, for instance, or treatments. Or you can use your allotted hours to return to work part time. There is one catch, though: FMLA gives employers the right to transfer anyone who is on intermittent leave to a different but equivalent position where his or her recurrent absences would be less disruptive.

Your employer may also require you to use any or all accrued, paid leave that you are entitled to under your benefit package, collective bargaining agreement, or state disability laws as part of your 12-week allotment.

Not everyone is covered under the new law

FMLA covers most federal, state, and local government employees, as well as those working for private employers. However, nurses who work in the smallest hospitals or outside of acute care should be aware that employers with fewer than 50 employees--a count that includes every staffer, full or part time, working within a 75-mile radius of the primary work site--do not have to comply with the law.

To be eligible for family leave, you must have worked for your current employer for at least 12 months and put in a minimum of 1,250 hours during the 12 months immediately preceding the start of your leave. Since independent contractors are not covered, per diem and other contract nurses should review the terms of their employment carefully to find out if they qualify.

Giving notice, getting documentation

If you anticipate taking leave, you must give your employer 30 days' notice, verbally or in writing. If your leave is unforeseeable, or has to begin sooner than planned--because of premature labor, for example--you must notify your employer as soon as possible. When leave is prompted by medical problems, your employer can require a written statement from your health care provider, justifying your request. FMLA allows your employer to request certification from a second provider, this one of his choice, if he's not satisfied with the initial explanation. And if the two opinions differ, a third--and deciding--opinion may be sought from a clinician both parties agree on.

FMLA recognizes advanced practice nurses: Certified nurse-midwives and nurse practitioners are among the health care providers authorized to provide such certification.

FMLA, job security, and fringe benefits

If you take family leave, are you guaranteed you'll get your job back? Generally, the answer is Yes. In fact, the law makes it illegal for your employer to discourage you or interfere when you seek to take leave. And you can't be fired for taking an authorized leave. When you return from leave, however, your employer can change your position, provided the one you're offered is equivalent--in seniority, status, salary, benefits, working conditions, and other terms--to what you enjoyed before. The law entitles you to a job on the same shift and with the same, or an equivalent, work schedule as well.

Ironically, the more powerful your position, the more problems you're apt to face: FMLA does not guarantee job security to nurses in top management. A "key employee"--one whose earnings rank in the organization's top 10%--may be denied reinstatement. But the employer can't spring this on a staff member by surprise: She must receive written notice of her "key employee" status under the law when she requests leave, and her employer must prove that restoring her to the position would cause the organization "substantial and grievous economic injury."|1~

While you're on leave, your employer must continue to provide health benefits under the same terms in effect when you work. Thus, you're responsible for any premiums, including increases, that you'd normally pay. If you plan to take extended unpaid leave, check with your benefits coordinator to be sure you'll have uninterrupted coverage.

If you decide not to return to your job--to stay home with your baby or to relocate, for instance--you will have to reimburse your employer for any health or other benefits paid for while you were on leave. Reimbursement won't be necessary if your own ill health or that of a family member prevents your return.

Although FMLA is effective in all 50 states and in the District of Columbia, it does not replace any state law that's more generous. Instead, it sets minimum rights that cannot be reduced under state law, collective bargaining agreement, or employer policy. Terms of employment or state disability, maternity, or family leave laws may provide additional or different benefits, however, which must be coordinated with your rights under FMLA.

For example, under District of Columbia law a nurse may be eligible for up to 16 workweeks of personal medical leave and up to 16 workweeks of family care leave over a two-year period, so it's possible that a nurse could use her entire 32 weeks of leave in one year and still be eligible for 12 weeks of federal leave the following year. District law considers domestic partners family members as well.|3~

If you have any questions about how much or what type of leave you're entitled to, consult a knowledgeable benefits manager, union representative, state or federal agency, or an attorney.

By now, your employer should have informed you of your rights under FMLA, if your organization is covered. The law requires employers to post notice of employee rights and provide detailed information upon request. Should a legal dispute arise about your rights under the new law or if you feel your rights have been violated, contact your local branch of the Department of Labor, Wage and Hour Division.

Under certain circumstances, you can file a civil lawsuit against your employer for violation of the law. You may seek reinstatement to your job and compensatory damages for lost wages, benefits, and other costs, such as wages paid to a home health nurse or sitter when leave was improperly denied.

The Family and Medical Leave Act does not solve all dilemmas arising from the conflict between your own needs or those of a family member and the demands of your job. And it does come with some strings attached. But the law goes a long way in helping employees cope with one kind of crisis without having to worry about facing another.

REFERENCES

1. Senate Committee Report on the Family and Medical Leave Act, #103-3A, Jan. 27, 1993.

2. The Family and Medical Leave Act of 1993, P.L. 103-3, and 29 CFR Part 825.

3. Section 36-1301 et.seq. D.C. Code, Annotated, 1981.

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Abstract:

The Family and Medical Leave Act of 1993 mandates 12 workweeks of leave from work for the following conditions with a guarantee of reinstatement or reassignment to a job with equivalent status. The conditions are to care for a child after birth, to care for a family member who has a serious health condition and to deal with a serious personal health condition that disallows one to perform the job adequately.

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