

**FAMILY AND MEDICAL
LEAVE ACT
TELECONFERENCE**

Participant Materials

**New York State
Office of Children and Family Services**

**George E. Pataki, Governor
John A. Johnson, Commissioner**

NOTICE TO PARTICIPANTS

These written materials are intended only as a brief summary of many different cases, statutes, rules, regulations, and policies. They are not intended to be used as a guide to answering all questions regarding the Family and Medical Leave Act (FMLA). The accuracy of these materials is dependent upon many different factors including US Department of Labor interpretative materials, new court cases and amendments to existing statutes, rules, and regulations. Also, the answer to any specific question about the FMLA is dependent upon the specific factual situation under which the question arises. Specific questions about the applicability of the FMLA need to be referred to Mary Duprey, Employee Benefits Office, at (518) 473-7845.

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FMLA and New York State

- **Family and Medical Leave Act was signed into law on 2/5/93.**
- **Not originally a public sector law. Public agencies as employees added at the end.**
- **New York cannot get an exemption from the FMLA.**

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Purpose of the FMLA

The FMLA was designed to:

- **allow employees to balance work and family life by taking reasonable leave for personal and family medical reasons and for the birth or adoption of a child and childcare related to thereto;**
- **balance the demands of the workplace with the needs of families; and**

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Purpose of the FMLA

- **Promote the stability and economic security of families in a manner that accommodates the legitimate interests of employers.**

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Determining Eligibility

Two Steps

- Employed at least 12 months by the employer
- Actually worked 1250 hours in the year immediately preceding the commencement of leave

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Types of Leave

Employers are required to grant leave:

- For the birth of the employee's son or daughter, and to care for newborn infant.
- For placement with the employee of a son or daughter for adoption or foster care.

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Types of Leave

- To care for the employee's spouse, son, daughter or parent with a serious health condition, and
- For a serious health condition that makes the employee unable to perform the duties of his or her position.

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Benefits and Amount of Leave

- Amount of FMLA Leave
 - 12 weeks of leave in a calendar year
 - Husband and Wife of same employer – only 12 weeks total for birth, adoption or foster care.
- Taken in one block or intermittently or on reduced leave schedule.
 - Intermittent – separate blocks due to single qualifying reason.
 - Reduced Leave Schedule – reduction in hours for week or day.
- Paid or Unpaid
- Maintain Health Insurance under same conditions as if working

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Definitions

- Spouse: Husband or Wife
- Parent: Biological parent or individual who stands or stood in loco parentis; does not include parents "in-law."
- Son or Daughter: Biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 or over 18 and incapable of self care.

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Serious Health Condition

Definition:

An illness, injury, impairment, or physical or mental condition that involves the following:

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Serious Health Condition

- Inpatient care (overnight stay), including any period of incapacity, subsequent treatment for or recovery from serious health condition – OR

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Serious Health Condition

- Continuing treatment by a health care provider which includes:
 - A period of incapacity of more than three consecutive calendar days and any related treatment or period of incapacity, involving:
 - treatment two or more times by a health care provider, or
 - treatment by a health care provider one time resulting in a regimen of continuing treatment.

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Serious Health Condition

- Any period of incapacity due to pregnancy, or for prenatal care.
- A period of incapacity or treatment for a chronic health condition—Asthma, Diabetes, Epilepsy, etc.

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Serious Health Condition

Chronic serious health condition:

- requires periodic visits for treatment;
- continues over an extended period of time, and
- may cause episodic rather than a continuous period of incapacity.

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Serious Health Condition

- A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective – Alzheimer's, a severe stroke (supervision of a health care provider, but not necessary to be receiving treatment).

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Serious Health Condition

- A period of absence to receive multiple treatments for restorative surgery after an injury or for a condition which, if left untreated, would result in incapacitation of more than three days (ie: dialysis for kidney disease; chemotherapy for cancer).

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Notice Obligations

Three Obligations

Employer to Employee

- Posting
- Handbooks

Employee to Employer

- Foreseeable – 30 days if practicable and where approved
- Unforeseeable - within 1 to 2 days, if practicable

Employer to Employee

- Once notice given, evaluate eligibility and respond quickly-1 or 2 business days
- If not, deemed eligible

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Medical Certification

- Strict guidelines for what can be required in medical certification
 - Civil Service Attendance and Leave Manual
- If doubt medical certification – second and third opinions
 - Employer pays - picks second opinion
 - Third opinion – both pick and is final and binding

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Medical Certification

- The frequency with which you can request recertification depends upon the nature of the serious health condition and the minimum duration of leave specified by the health care provider in the medical documentation.

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Medical Certification

- **Recertification**
 - **Pregnancy, chronic or permanent/long-term conditions – no more often than every 30 days and only in connection with an absence unless:**
 - **circumstances have changed significantly, or**
 - **employer receives information that casts doubt upon reason for absence.**

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Medical Certification

- **If minimum duration is more than 30 days, the employer may not request recertification until minimum duration has passed unless:**
 - **employee requests an extension;**
 - **circumstances have changed significantly; or**
 - **employer receives information casting doubt on certificate's validity.**

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Medical Certification

- **For all other circumstances, may not request recertification not more often than every 30 days, unless:**
 - **employee requests an extension;**
 - **circumstances have changed significantly; or**
 - **employer receives information casting doubt on validity of certification.**

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Return to Work

- **Employee entitled to return to same or equivalent position with equivalent benefits, pay and other terms and conditions of employment.**
- **Equivalent position means virtually identical to former position in terms of pay, benefits and working conditions including privileges, perquisites and status.**

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Return to Work

- **Equivalent pay entitles the employee to unconditional pay raises and pay premiums. If an employee takes leave from a position with a certain average amount of overtime, they are ordinarily entitled to return to such position.**
- **Equivalent benefits means benefits must be resumed as same levels as when departed except for changes to benefits affecting other employees. Returning employee can not be required to re-qualify for benefits.**

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Return to Work

- **Equivalent terms and conditions means that the equivalent position must have substantially similar duties, conditions, responsibilities, privileges, authority and status to the employee's original position. This includes a return to the same or proximate work site, ordinarily the same shift.**
- **An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. Includes layoff, shift elimination and overtime reduction.**

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Supervisor's Responsibility

- Qualify the employee for FMLA
- Obtain the appropriate FMLA documentation
- Forward the appropriate documentation to Charles Breiner, Director of Personnel, or Mary Duprey, Employee Benefits
- Notify employee within two business days whether the employee qualifies for FMLA

Supervisor's Responsibility

- Complete a Personnel Action Form (OCFS-0002)
- Forward OCFS-0002 to Charles Breiner, Director of Personnel or Mary Duprey, Employee Benefits
- Include in Remarks: FMLA, Leave Without Pay, rather than Sick Leave Without Pay

Supervisor's Responsibility

- Must review deductions as well as leave accruals on the employee's Time and Accrual Record
- Require medical documentation from employee before the employee returns to work

Employee's Responsibility

- Review all FMLA information given to him/her during employment
- Provide notice of need for leave to supervisor
- Complete the OCFS-4465, Request for Leave form, attach a copy of the Medical Certification Form, and forward to the supervisor for approval
- Deduct the proper accruals from the Time and Accrual Record
- When returning from FMLA, provide medical documentation from the physician indicating that the employee can return to work

Contact Information

- Mary Duprey
- (518) 473-7845 or (518) 486-7157
- Via E-Mail
