2014
FMLA
Jennifer Koehler, PHR
ENTITLEMENTS

- Basic Leave – 12 weeks unpaid, job protected leave
  - Pregnancy, Prenatal Care or Childbirth
  - Care for child after birth, or placement for adoption or foster care
- Serious Health Condition
- Qualifying Military Leave
  - Attend Military Events
  - Arrange for Child Care
  - Addressing Financial and/or Legal Arrangements
  - Attend Counseling Sessions
  - Attend Post-Deployment Reintegration Briefings

- Special Entitlement for Care of a Service Member
  - 26 weeks in 12 month period
ENTITLEMENTS (CONT’D)

- Serious Health Condition – Self/Spouse/Child/Parent
  - Illness, injury, impairment or physical or mental condition involving
    - **INPATIENT Care** in a Hospital, Hospice, or Residential Medical Care Facility
    - **OUTPATIENT Care** for a disabling condition which includes continuing treatment by a Health Care Provider
      - **PERIOD OF INCAPACITY**
        - More than 3 consecutive calendar days and/or requires subsequent treatment
        - Treatment two or more times by a health care provider within 30 days or once that results in a regimen of continuing treatment
USE OF LEAVE

- Continuous
- Intermittent – taken in separate blocks of time
- Reduced – Reduce usual number of working hours.
LIMITATIONS FOR INSTRUCTIONAL EMPLOYEES

- **School Breaks**
  - If not required to report, does not count towards FMLA

- **Intermittent/Reduce Leave - Foreseeable Treatment**
  - If planned leave is more than 20% of total working days over period of leave, employer may require employee to:
    - Take leave for a particular duration, not greater than duration of total leave.
    - Temporarily transfer to available alternative EQUAL position during period of time.

  - Example: Employee normally works 5 days a week, needs 2 days off each week = 40% of time off, above rules apply
LIMITATIONS FOR INSTRUCTIONAL EMPLOYEES

- **When Leave Begins...**
  - More than 5 weeks before end of semester
    - May require taking off until end of semester IF
      - Leave will last at least 3 weeks
      - Employee would return during last three weeks
  - During the 5-week period before the end
    - May require taking off until end of semester IF
      - Leave will last at least 2 weeks
      - Employee would return during last 2 weeks
  - During the 3-week period before the end
    - May require taking off until end of semester IF
      - Leave will last more than 5 working days

* Required Leave Beyond ability to return does not count as FMLA time, BUT get benefits
EMPLOYEE ELIGIBILITY REQUIREMENTS

- Worked for covered employer for at least one year
- 1,250 hours worked over previous 12 months
  - Does not include paid leave EXCEPT Military
- Employer has 50 or more employees within 75 miles
  - Employees are anyone on your payroll
BENEFITS & PROTECTIONS

- Maintain Health Coverage
- Restored to Original or Equivalent Position
- Equivalent Pay, Benefits, other Employment terms
RESPONSIBILITIES- EMPLOYEE

- Notification
  - Provide 30 day notice, when foreseeable
  - Provide as soon as practicable
  - Must comply with normal call-in procedures

- Information
  - Assist Employer to determine qualification
  - Anticipated timing and duration
  - Previously taken or certified FMLA leave
  - Certification
I need a doctor's note for the two days of work I missed.

You look healthy to me.

I got better.

How do I know you were sick?

The note just needs to say I was sick.

So you want me to lie?

It's not a lie. I really was sick.

If your company doesn't trust you, why should I?

Good point.

What if I let the people in your waiting room cough on me? Then you can write a note saying I have what they have.

As long as I didn't recommend it, I think that passes ethical muster.

You have nine diseases?

That have names.
RESPONSIBILITIES - EMPLOYER

- Notification
  - General
    - Post General Notice
      - Provisions/procedures for filing
  - At HIRE
- Specific
  - Eligibility
    - 5 business days of request or upon learning of potential need
  - Rights
  - Responsibilities
    - certification/recertification (30 day), fit for duty
  - Time designated as FMLA protected
FMLA QUICK REFERENCE STEPS
STEP 1: RECEIVE REQUEST

- 30 days notice required or as soon as possible for unforeseen events
- Employee not required to specifically request FMLA
Step 2: Determine Eligibility

- Worked for covered employer for at least one year
- 1,250 hours worked over previous 12 months
- Employer has 50 or more employees within 75 miles
STEP 3: NOTIFY EMPLOYEE

- Respond within 5 days
  - Eligible or ineligible
  - Rights and Responsibilities
STEP 3: NOTIFY EMPLOYEE (CONT’D)

- Request Certification, if eligible
  - Sample Forms: Employee serious health condition
  - Sample Forms: Family member serious health condition
  - Sample Forms: Qualifying Exigency for Military Family Leave
  - Sample Forms: Serious injury or illness of covered service member
STEP 4: RECEIVE CERTIFICATION

- Allow 15 days to return certification
- Request clarification if certification is not complete
  - Allow 7 days for clarification, in most states
  - Can deny request if not clarified
STEP 5: DESIGNATION - GRANT/DENY

- Notify within 5 days of receiving certification
- No certification received, send denial

USEFUL LINKS FROM DEPARTMENT OF LABOR

Overview from DOL -
- [http://www.dol.gov.whd/fmla](http://www.dol.gov.whd/fmla)

Compliance Poster -

Guide for Employees (good for employers too) -
**SCENARIOS**

#1

Joey told me that she is pregnant, does she have to “apply” for FMLA, or can I just give her an eligibility letter?
#2

Hayden and Nicole are married and both work for us. Hayden’s mother has a serious health condition in which she needs care. Do both each get 12 weeks?
#3

What do I do if I think Derek is abusing intermittent leave?
I have a teacher, Christina, who had a baby August 4. She wants to use Sick Leave for the time she is gone on Maternity Leave after school starts.
SCENARIOS

#5

Cody’s wife just had a baby and he wants to take some time off. We don’t have a Paternity Policy.
Brittany is a Paraprofessional who works 20 hours per week. She doesn’t qualify for FMLA as she doesn’t work enough hours, but can we give her time off for surgery?
Caleb was injured on the job. How does Work Comp work with FMLA?