



HANNA RESOURCE GROUP

## FMLA FOR NON-HR MANAGERS

*Presented By:*

CHIP BARTON, PHR, SHRM-CP

# AGENDA

- **Introduction to the Family and Medical Leave Act (FMLA)**
- **Family Relationships Under the FMLA**
- **Employee Benefits and Protections**
- **Provisions of the FMLA**
- **Administering FMLA Leave**
- **Scenarios**



# INTRODUCTION TO FMLA

## FAMILY AND MEDICAL LEAVE ACT (FMLA)

The Family and Medical Leave Act is a federal law, in effect since 1993, that provides eligible employees unpaid, job protected leave for specified family and medical reasons.

Of all federal employment laws, FMLA is one of the most popular and beneficial to employees. Many employees are aware of the basic requirements of the law, but they may not realize that the law provides employers with many options on how to administer leave under the FMLA.

# INTRODUCTION TO FMLA: EMPLOYER ELIGIBILITY



**Private sector employers with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer.**



**A public agency, including a local, state or federal government agency, regardless of the number of workers it employs.**



**A public or private elementary or secondary school, regardless of the number of workers it employs.**

## INTRODUCTION TO FMLA: EMPLOYEE ELIGIBILITY



- **At the time an employee's leave will start, the employee:**
  - **Works for a covered employer.**
  - **Has worked for the employer for at least 12 months.**
  - **Has worked at least 1,250 hours for the employer during the 12-month period immediately preceding the leave.**
  - **Works in a location where the employee has at least 50 employees within 75 miles.**

---

## **INTRODUCTION TO FMLA:**

## **FMLA-PROTECTED REASONS FOR LEAVE**

Because of the birth of a child or placement of a child for adoption or foster care, and to bond with a newborn or newly-placed child.

To care for a covered family member with a serious health condition.

Because of the employee's own serious health condition.

## **INTRODUCTION TO FMLA:**

## **FMLA- PROTECTED REASONS FOR LEAVE-MILITARY FAMILY LEAVE**

Qualifying Exigency Leave-for qualifying reasons when an employee's family member is on a deployment to a foreign country.

Military Caregiver Leave-To care for a current servicemember or a recent veteran, who has suffered a serious injury or illness, when the employee is the servicemember or veteran's spouse, child, or next of kin.





**FAMILY  
RELATIONSHIPS  
UNDER THE FMLA**

# FAMILY RELATIONSHIPS UNDER THE FMLA

## SPOUSE

A “husband or wife” as defined or recognized by the state where the employee was married and includes individuals in a same-sex marriage or common law marriage.

Does not include civil unions or domestic partnerships.

# FAMILY RELATIONSHIPS UNDER THE FMLA

## CHILD

A biological, foster child, stepchild, legal ward, or child of someone who is in *loco parentis*, i.e., in the role of a parent, and

At the time the employee's FMLA is to start: is under the age of 18 or is 18 or older and incapable of self-care due to mental or physical disability.

For military leave, an employee's child may be any age.

## FAMILY RELATIONSHIPS UNDER THE FMLA

# PARENT

A biological, adoptive, step or foster parent, or someone who stood in *loco parentis*, i.e., the role of a parent to the employee when the employee was a child.

# FAMILY RELATIONSHIPS UNDER THE FMLA

## **IN LOCO PARENTIS**

*IN THE ROLE OF A PARENT TO  
A CHILD*

Day-to-day responsibility to care for and/or financially support the child.

A Biological or legal relationship to the child is not required.

Grandparents and other relatives, such as siblings, may stand *in loco parentis*.


# FAMILY RELATIONSHIPS UNDER THE FMLA

## NEXT OF KIN

## FOR MILITARY CAREGIVER LEAVE

An employee may use military caregiver leave to care for a servicemember or veteran when the employee is the servicemember's next of kin.

Next of kin means the servicemember's nearest blood relative, other than a spouse, parent, son, or daughter, in order of priority: *blood relatives with legal custody, siblings, grandparents, aunt or uncle, first cousin.*



EMPLOYEE BENEFITS &  
PROTECTIONS UNDER  
FMLA

## PROTECTIONS AND BENEFITS UNDER FMLA

- Up to 12 workweeks of leave in a 12-month period for family and medical reasons.
- Up to 26 workweeks of leave in a 12-month period to care for a covered military member with a serious injury or illness.
- Continuation of group health benefits under the same conditions as if the employee did not use the leave.
- Return to work at the same or virtually identical job at the end of the leave period.
- Protection from interference and retaliation.





# PROVISIONS OF THE FMLA

## PROVISIONS OF THE FMLA-12 MONTH PERIOD

- Employers may choose the following 12-month period:
  - Calendar Year.
  - Any fixed 12-month leave year.
  - A rolling 12-month period measured backward.
- The 12-month period must be the same for all employees.
- Regardless of the 12-month period selected for other FMLA leave, the single 12-month period for Military Caregiver Leave begins on the first day the employee takes leave for this reason and ends 12 months later.

## PROVISIONS OF THE FMLA-UNPAID LEAVE

- FMLA is unpaid leave, however, an employee may request, or an employer may require the employee, to use accrued paid vacation, sick leave, personal leave, etc. for some or all of the FMLA period.
- When an employee uses FMLA leave at the same time as other leave such as paid vacation, sick leave or personal leave the leave must be counted as FMLA and is protected.
- Employer's may not require employees to use accrued paid vacation, sick leave, personal leave, etc. when FMLA leave is paid (e.g., employee is receiving workers' compensation pay or short-term disability pay).

## PROVISIONS OF THE FMLA-INTERMITTENT OR REDUCED SCHEDULE LEAVE

- Employees may take FMLA in separate blocks of time, or intermittently, or on a reduced schedule by working fewer hours each day or week, for:
  - Employee's or family member's serious health condition when the leave is medically necessary.
  - Covered servicemember's serious injury or illness when leave is medically necessary.
  - A qualifying exigency arising out of a military member's covered active-duty status.
- Leave to bond with a child after the birth or placement can be intermittent, but only if the employer agrees.

## PROVISIONS OF THE FMLA-INTERMITTENT OR REDUCED SCHEDULE LEAVE

- Employees may take intermittent leave in whole weeks, single days, hours, or in some cases, less than one hour.
  - Employees may use FMLA leave in the smallest unit of time made available by their employer for other types of leave, as long as that smallest unit of time is not greater than one hour.



# ADMINISTERING FMLA

## INITIATION OF FMLA LEAVE

- An employer's usual procedures for requesting leave generally apply.
- Employees do not have to specifically mention FMLA, but must:
  - Provide enough information for the employer to recognize FMLA.
  - Once FMLA has been approved for a leave reason, if more leave time is needed for the same reason, the employee must specially reference the qualifying reason or need for FMLA leave in any subsequent requests.

## INITIATION OF FMLA LEAVE

- Employer's must know FMLA triggers, for example:
  - Pregnancy related absence and leave.
  - A period of incapacity lasting more than 3 consecutive full calendar days.
  - Incapacity or treatment for a chronic serious health condition which continues over and extended period of time.
  - Any inpatient (overnight stay) in a hospital, hospice, or residential care facility.
  - The flu, if it results in incapacitation for 3 consecutive calendar days or more and requires continuing treatment such as a regiment of Rx medication may qualify for FMLA.



## EMPLOYER RESPONSIBILITIES- FMLA FORMS

- **Notice of Eligibility & Rights and Responsibilities Notice (WH-381):**
  - Provided to employee within five business days of leave request (or knowledge that leave may be FMLA-qualifying).
  - Must be provided the first time the employee takes FMLA leave for an FMLA-qualifying reason in the applicable 12-month leave year.
  - A new notice is required for subsequent qualifying reason if eligibility status changes.
- **Designation Notice (WH-382):**
  - Provided to employee within five business days of having enough information to determine that leave is for an FMLA-qualifying reason.
  - Once for each FMLA-qualifying reason per applicable 12-month period, and additional notice if any changes in notice information.

## EMPLOYEE RESPONSIBILITIES- CERTIFICATION FORMS

- Certification for employee's serious health condition (WH-380-E):
  - Use for medical condition of the employee.
- Certification for employee family member's serious health condition (WH-380-F):
  - Use for medical condition of the employee.

## ENFORCEMENT OF THE FMLA

- To enforce FMLA rights employees may:
  - File a complaint with Wage and Hour Division.
  - File a Private lawsuit under section 107(a).
    - Lawsuit must be filed within 2 years after the last action which employee claims was in violation of the FMLA or 3 years if it is a willful violation.



## FMLA RESOURCES

<https://www.dol.gov/agencies/whd/fmla>



HANNA RESOURCE GROUP



# SCENARIOS

## SCENARIOS

Daryl has chosen to use six weeks of FMLA leave to bond with his newborn child. His FMLA leave started on November 4<sup>th</sup> and ends on December 13<sup>th</sup>. Thanksgiving Day and the day after Thanksgiving are company holidays.

- Do those two holidays count against his FMLA entitlement?
- **YES. Even though he would not have had to work those two days, his week off counts as a whole workweek of FMLA.**

## SCENARIOS

Sarah typically works Monday-Friday. While using intermittent FMLA, she works Monday and Friday, and uses FMLA on Tuesday and Thursday. Independence day falls on Wednesday, July 4<sup>th</sup> which is a company holiday.

- Does Wednesday count against Sarah's FMLA entitlement?
- **NO.** Because she was not scheduled to work that day may not counted against her FMLA entitlement.

# SCENARIOS

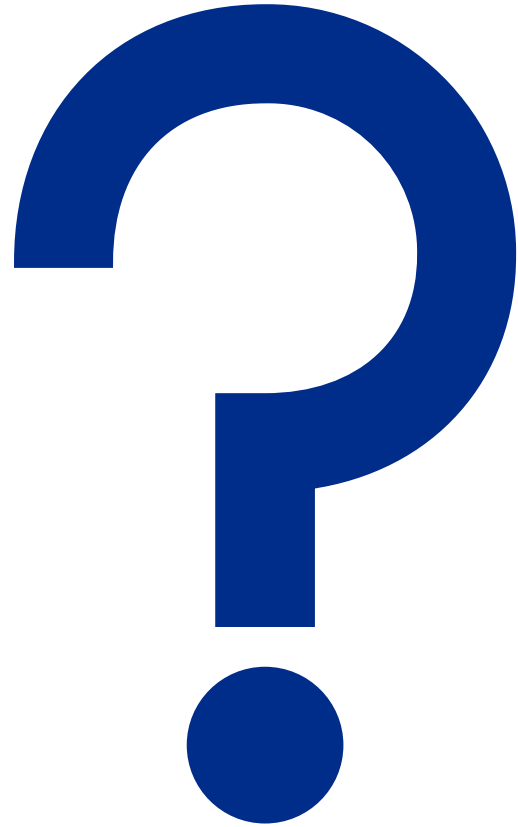
- A full-time employee, Michelle, began employment with you on 8/1/2023.
- Michelle is pregnant and her due date is 6/1/2024.
- If all goes well, Michelle expects her medical provider to take her off work beginning 6/1/2024 for a period of six to eight weeks and she has requested to take an additional 4 weeks to bond with her newborn.
  - Is Michelle eligible for FMLA leave?
  - If yes, when does her FMLA leave begin?
  - **Michelle is not eligible for FMLA until 8/1/2024.**
  - **Any leave time prior to 8/1/24 may not be charged against her FMLA eligibility.**
  - **The KY Pregnant Workers Act (2019) and the federal Pregnant Workers Fairness Act (2023) required covered employers (15+ employees) to reasonably accommodate known limitations related to pregnancy, childbirth, or related medical conditions. Time off for recovery from childbirth is generally (if not always) considered a reasonable accommodation.**



## SCENARIOS

Holly, an RN tripped over a space heater cord in the nurse station during her shift and tore ligaments in her knee. She will be off work for approximately 6-8 weeks.

- Is this Workers' Compensation or FMLA?
- Workers' Compensation is insurance that provides benefits and/or medical care for workers who are injured or become ill as a direct result of their job.
- FMLA is job protected leave and may run concurrently with time off for a work-related injury if:
  - ❖ The injury meets the requirements of a serious health condition.
  - ❖ The employee meets the eligibility requirements for FMLA.



QUESTIONS?

## CONTACT INFORMATION

Chip Barton, PHR, SHRM-CP

Direct: 859-963-2673

Office: 859-514-7724

Email: [chip@hannaresource.com](mailto:chip@hannaresource.com)

Website: [www.hannaresource.com/](http://www.hannaresource.com/)



HANNA RESOURCE GROUP