

## **FMLA: Know Your Rights!**

In response to the Company's recent changes to its FMLA policy, we are writing to let you know your rights under federal law. In doing so, we have put together an informational sheet to explain the different types of FMLA leave available depending on your circumstances, as well as a checklist to go through when calling in FMLA to the Company. Note that calling in "sick" is different from calling in FMLA. Calling in sick is covered under Section 11.E of the Collective Bargaining Agreement and you do not have to discuss the nature of your illness with the Company, but only provide the approximate duration of your sick leave. In contrast, calling in FMLA is covered under the federal law the Family Medical Leave Act and it's important to follow certain steps in exercising your right to FMLA. As a reminder, to be eligible for FMLA you must have been employed with the Company for 12 months, and have flown either 540 paid hours (does not include vacation/sick hours) or 60% of your guarantee in those 12 months.

### **Foreseeable FMLA (Block Leave)**

- This leave occurs when you know the exact dates for the leave – for example, you have surgery scheduled on July 10 and the doctor expects you will return to work July 30.
- Because you know the dates in advance, you do not need to wait for an absence related to your health condition to send in the FMLA form. Request and send the form in as soon as you know you will need the FMLA leave.
- According to the regulations, you must notify the company at least 30 days in advance. If the leave will start sooner than 30 days, you must notify the company as soon as possible/practical; generally within 1-2 business days of learning you need the FMLA leave.

### **Unforeseeable FMLA**

- Unforeseeable leave is either unexpected (car crash/serious accident/asthma attack) or leave that is expected for a chronic condition flare up (MS, hepatitis, migraines).
- Although intermittent leave for chronic condition flare ups seems to be foreseeable – since you know it will eventually occur - because you will not know the exact dates the flare ups will happen it is characterized as unforeseeable.
- Because the dates are not known in advance, the Company may require an absence related to your health condition before accepting the FMLA certification forms. Once the first absence occurs, request the FMLA form and return it within 15 calendar days of the date F&H sends it.
- If you have a chronic condition and you are certifying for the first time, seeking recertification, or seeking certification again more than six months after your initial certification, we recommend talking to your health care provider in advance.
- In order to avoid processing delays for either type of leave, we recommend that you obtain and send F&H the forms as soon as your health care provider completes them.

### **FMLA for Self**

- Foreseeable or unforeseeable FMLA can be taken for your own "serious health condition." This includes chronic conditions such as cancer, any illness that results in an overnight stay in a hospital, or a period of incapacitation (unable to work) longer than 3 days. Common cold, flu, etc. do not generally qualify for FMLA.

### **FMLA for Family Member**

- Foreseeable or unforeseeable FMLA can be taken to care for a sick family member. The regulations classify family member as a child (including step, adopted, foster, or legal ward), parent, or spouse (including same-sex).
- There is a different form for family member FMLA, but the procedures for certification and calling out FMLA are the same.
- Qualifying care for a sick family member includes a range of approved activities, from providing comfort and psychological care to running errands, going to doctor's appointments, and filling prescriptions.

*Disclaimer: This informational document is not legal advice. If you have specific questions regarding your rights to FMLA leave under federal law contact the Union or an attorney.*

### Things to Remember

- You have 15 calendar days from the date F&H sends the form to submit it to the Company.
- The Company has 5 business days to tell you if you are eligible for FMLA. If not, the Company must give you at least one reason you are ineligible.
- If the Company denies your FMLA, or requests more information then it must – in writing – inform you of the additional information needed. You have 7 calendar days to provide it.
- The Company cannot ask for more information than the FMLA form requires.
- Your doctor may, but is not required to provide a diagnosis.
- It is best to communicate with F&H via email to make record keeping easier.

### FMLA Checklist

According to the Department of Labor, the Company must notify you if you are eligible for FMLA leave within five business days of your first leave request. If the Company says that you are not eligible, it has to state at least one reason why you are not eligible (for example, you have not worked for the Company for a total of 12 months).

#### Foreseeable FMLA (Block Leave)

- Once informed you will need a specific block of time off for your own serious health condition/treatment, or for that of a qualifying family member, notify the Company to request the FMLA leave form.
  - If F&H refuses this request, delays, or is unresponsive, report it [here](#) and obtain the D.O.L. form [here](#).
  - Once F&H sends the FMLA form, you have 15 calendar days to complete and return it.
- Obtain the completed form from your (or your family member's) health care provider and send it to F&H.
  - F&H has 5 business (not calendar) days to inform you of your eligibility.
  - If the request is denied or states more information is needed, the Company must state – in writing – the information that is lacking. You have 7 calendar days to provide the missing information.
- Once approved the block leave should be reflected in your schedule.

#### Unforeseeable FMLA

- If the need arises from a pre-existing condition you have been certified for in the past, discuss the situation with your health care provider before the certification lapses.
  - It's best to put your health care provider on notice, so they have the appropriate information on hand once you have an FMLA triggering absence.
- If you are in an accident or otherwise incapacitated, you are not required to alert the Company until you are physically able to do so. A family member, however, is allowed to contact the Company on your behalf if you feel comfortable with them doing so. But, this step is not required.
- At the first absence, contact F&H and advise them that you have an FMLA qualifying reason to take leave for either yourself or your family member. They are required to send the FMLA forms.
- Just as with foreseeable absences, you have 15 calendar days to return the forms to the company, and the company must respond within 5 business day to inform you of your eligibility.
- When taking your first absence:
  - Communicate to the Company (we recommend email) your need for FMLA – you do not have to give a diagnosis but you can't simply say you are sick (self only). There must be enough information to notify the company that the absence is the result of a serious health condition that may qualify for FMLA.

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- Instead of a diagnosis, you can give symptoms. For example, if your symptoms include nausea and vomiting but you prefer not to disclose the diagnosis, simply tell F&H you suffer from a chronic condition that is causing nausea and vomiting making you unable to work.
- When using approved FMLA leave follow Company procedure and report any issues to AFA immediately [here](#).
- F&H can ask for the reason you are taking FMLA but cannot ask for more information than is on your FMLA form. If they ask, read what your health care provider wrote on question 4, page 2. Nothing more, nothing less.

#### **FMLA for Family**

- Discuss the situation with your family member's health care provider as soon as possible so together you can estimate the duration of the leave whether it is block time or intermittent.
- It is extremely important that when taking an absence for care of a family member, **that you do not tell the Company you are taking sick time for yourself.**
  - Company policy does not allow sick time for anyone besides you.
  - Instead, communicate to F&H that you have an FMLA qualifying absence to care for a family member and request the FMLA form if it is the first absence.

#### **FMLA FORMS CLICK FOLLOWING LINK:**

**<https://static1.squarespace.com/static/50dcbe2ce4b039551296e445/t/582f46375016e1920cc30ff2/1479493179345/DOL+FMLA+FORM.pdf>**

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