



Leaves of Absence

Presented By:

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Family Medical Leave Act (FMLA)

- ✓ Applies to employers with at least 50 employees;
- ✓ Up to 12 weeks of unpaid leave for:
 - Birth or placement of a child;
 - Caring for serious health condition of oneself or relative.



Common FMLA Mistakes

- ✓ Counting light-duty as leave;
- ✓ Incomplete certifications ;
- ✓ Silent managers; and/or
- ✓ Overlooking the ADA.



California Family Rights Act (CFRA)

Almost identical to
FMLA BUT:

- ✓ Does not provide leave for pregnancy;
- ✓ Does not provide military leave.



Fair Employment and Housing Act (FEHA)

- ✓ Applies to employers with five (5) or more employees;
- ✓ Requires employers to reasonably accommodate employees with a known disability (barring undue hardship).



American Disabilities Act (ADA)

- ✓ Applies to employers with at least 15 employees;
- ✓ Requires reasonable accommodation for a known disability (barring undue hardship).



Pregnancy Disability Leave (PDL)

- ✓ Applies when employers have five (5) or more employees.
- ✓ Provides:
 - Up to four (4) months of unpaid leave for employees disabled by pregnancy, child birth or a related medical condition;
 - Reasonable accommodation for medical needs.



Workers Compensation

- ✓ Leave due to work related illness or injury;
- ✓ May be in addition to leave provided under FMLA/CFRA;
- ✓ Leave vs. modified duty.



FMLA Medical Certification

- ✓ Employer must notify the employee if certification required;
- ✓ Employee must provide completed certification within 15 calendar days, absent unusual circumstances;
- ✓ Employer may ask for additional clarification or authentication;
- ✓ May require 2nd opinion at employer's expense;
- ✓ If opinions differ; may request 3rd opinion at employer's expense.

NOTIFICATIONS UNDER FMLA AND CFRA

- ✓ Employee must be notified of management's designation of leave as FMLA or CFRA;
- ✓ Employee must return Certification of Health Care Provider (CHCP) to employer.

Reinstatement/Return to Work

- ✓ FMLA & CFRA

- ✓ Must allow employee to return to equivalent position:

- Virtually identical in pay, benefits and working conditions including privileges, etc.;
 - Must involve same or substantially similar duties and responsibilities.

- ✓ Disability (ADA & PDL)

- May be required to make reasonable accommodations;
 - Must allow employee to return to previous position (PDL).

Other Statutory Leaves

- New Parent Leave Act
- Sick Leave
- Protected Leaves for all employers
- Protected for leaves for employers with 25 or more employees



PAID AND UNPAID LEAVES OF ABSENCE

- Vacation Leave
- Holiday Leave
- Voting Leave
- Jury and Witness Leave



HYPO 1



Sarah, an employee, has had several performance related problems and has requested medical leave. Sarah's employer want to terminate her based on her poor performance prior to taking FMLA leave. The employer was already aware of Sarah's shortcomings before she requested leave, but failed to take any action to correct those issues.

The employer would like to terminate Sarah, but worries the termination will be viewed as retaliation, what should the employer do?

HYPO 2



Bob has intermittent leave, which allows him up to 3 days off a month because of a medical condition. Bob's employer has a no-fault attendance policy. Bob calls in to work, but has already taken 3 days off this month. The employer tells Bob that he will be disciplined because he has no sick leave and no intermittent leave left.

Is this okay?

HYPO 3



Erica has been on medical leave for 3 months and has consistently sent medical certification to her Human Resources Manager. Erica's medical provider has certified that she may return to work with modified duties, meaning Erica can only work a limited number of hours per day, and cannot lift more than 10 lbs. Erica's position requires an employee who can work for 8 hours a day and lift up to 20 lbs.

Erica's employer has temporarily filled her position for 2 months. Her employer now wants to find someone to fill the position on a regular basis. What are Erica's reinstatement rights? What must the employer do?

HYPO 4



Mike does not yet qualify for FMLA Leave, but has a medical condition, which requires that he take 2 days off of work during a given month.

What are Mike's options?

What must Mike's employer do?

Q & A

