



4TH QUARTER *Brief*

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More Insights Into The FMLA

The Family and Medical Leave Act (FMLA) has been around since 1993, but much confusion persists about this ground-breaking legislation. Here are the answers to several basic questions about the FMLA.

Q. What is the law's main focus?

A. The law permits eligible employees to take up to 12 weeks of unpaid leave from work for the birth or adoption of a child, for reasons relating to their medical condition or to care for another family member.

An eligible employee maintains benefits during the leave period, but must continue to pay the required employee portion for such benefits. The employee also has the right to return to the same or equivalent position, pay and benefits at the conclusion of the leave.

Q. Who is an eligible employee?

A. It is someone who has been employed by the business for at least 12 months and worked at least 1,250 hours during that period. This rule applies if the business has 50 or more employees within 75 miles of the worksite.

Q. What notification must the employee provide?

A. The employee must provide 30-day advance notice for foreseeable events. This includes scheduled surgery and the adoption or birth of a child. The employer is allowed to delay the leave if the employee

fails to provide the requisite 30-day notice.

Q. Can an employer require proof of a medical condition?

A. Yes. The employer may request that the employee obtain certification from a health care provider in order for the employee to take a medical leave. Upon completion of a leave for the employee's own medical condition, the employer may require the employee to obtain a certification of fitness to return to work. The employer can delay the start of FMLA for 30 days if the employee does not provide advance notice or proper certification.

Q. What notification must the employer provide?

A. An employer must give an employee requesting FMLA written notice, within two business days, if the employee is not eligible for FMLA. If the employer does not respond to a leave request within two business days, the employee is eligible to take the leave.

Q. Does the employee have to take the leave in consecutive weeks?

A. No. The employee can take 12 weeks off during any 12-month period. The leave may be taken on an intermittent basis. For instance, an employee might switch to part-time status until the equivalent of 12 weeks has been used.

Sexual Harassment Part 1: Avoid Legal Problems

Sexual harassment comes in two basic forms. "Quid pro quo harassment" occurs when employment decisions are determined by whether or not a person submits to sexual advances or demands. "Environmental harassment" represents unwelcome sexual conduct that creates an intimidating or offensive work environment.

The Equal Employment Opportunity Commission

(EEOC) says a single incident or isolated incidents of offensive behavior generally do not create a "hostile environment" unless the conduct is severe.

An allegation of sexual harassment is strengthened if the complaint is contemporaneous. Note: The EEOC considers a complaint to be "contemporaneous" even if the worker does not notify the employer about the unwelcome conduct until he or she quits her job. Once

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the company receives notice of a complaint, it should investigate the situation.

Each case is decided on its own merits. Nevertheless, the EEOC guidelines provide that an employer will be held responsible for the unreasonable acts of its employees, regardless of whether the acts were authorized or forbidden and whether the employer knew, or should have known, of the occurrence.

How does an employer determine whether the behavior is reasonable or not? This can be difficult. For instance, there may not be any witnesses to the alleged event (or series of events), or the witnesses could be biased. In some cases, the complaining worker may have encouraged the conduct or "played along" out of fear or intimidation.

To avoid potential problems, employers should maintain an environment that is free of sexual harassment. In the event a claim occurs, follow these steps:

- Obtain a specific description of the event from both parties.
- Ask for the names of any witnesses.
- Collect all the other relevant facts (e.g., how long the conduct has been going on and whether the alleged victim has shown disapproval).
- Keep records of the meetings.
- Find out what course of action the alleged victim is seeking.
- Ensure that the unwanted conduct has stopped.
- When it is appropriate, respond with action.

Finally, try to educate all employees about sexual harassment issues. If your company has not yet established a grievance procedure for complaints, spell out a policy in the company manual.

Sexual Harassment Part 2: Employee's View

Frequently, victims of sexual harassment, who usually are women, believe they have little, if any, recourse available to them. However, giant strides have been made in recent years.

There are two basic types of sexual harassment. *Quid pro quo* harassment occurs when employment decisions are determined by whether a person submits to sexual advances or demands. Environmental harassment is unwelcome sexual conduct that creates an intimidating or offensive work environment.

Here are six steps to follow for victims of sexual harassment.

Step 1. Frequently, the party responsible for sexual harassment—perhaps the employee's supervisor—is not aware that

his or her conduct is offensive. This is particularly true with environmental harassment. The first step for addressing the problem is to let the responsible party (or parties) know that you find the conduct to be offensive. Even if the issue is not resolved to your satisfaction, you have managed to put the harasser on notice that you find his or her conduct to be offensive.

Step 2. If the harassment continues, consult the company manual concerning the proper procedures. For example, you may be required to report grievances to a designated company officer. Follow the guidelines to the letter. Be especially careful to meet any time restraints.

Step 3. If your company does not have a predetermined policy, report the problem to your immediate supervisor. If your supervisor is the one responsible for the offensive conduct, go up the management ladder to the next-highest-ranking officer. It is critical, especially in environmental harassment cases, to report the incident soon after it occurs.

Step 4. Keep a detailed record of all harassment incidents, your reported complaints and any other occurrences related to the harassment. List the dates, times, individuals involved, and what was said and/or done.

Step 5. If you are unable to resolve the matter through company procedures, you may want to file an administrative charge with the U.S. Equal Employment Opportunity Commission (EEOC) or a state-run agency. The EEOC or the state will investigate the claim. If the matter still is not resolved and your claim is determined to be valid, you may be issued a "right to sue" letter.

Step 6. Subsequently, you may initiate a legal action for injuries suffered due to the sexual harassment. Physical injury is not required; you may also sue for emotional distress. Some of the results of a successful lawsuit are:

- * Reinstatement of a lost job;
- * Back pay for compensation forfeited;
- * Fringe benefits lost;
- * Damages for emotional distress;
- * Required sexual harassment training; and
- * Attorney's fees and court costs.

Final word: The best thing to do is to consult with an attorney experienced in employee rights. Remember that you have legal remedies at your disposal.

