

FMLA 15 years later

So many questions, so little time

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In my short tenure with the OEA, my biggest surprise was the number of questions from teachers about their rights to take leave time from work for medical or family reasons under the Family and Medical Leave Act, or FMLA. In this limited space, I will address and attempt to dispel much of the misinformation which seems to have become accepted propaganda spread by well-intentioned (and not so well-intentioned) school administration offices. And remember, these questions are being asked about a law which went into effect almost 15 years ago.

What is this thing called Family and Medical Leave?

The FMLA provides that eligible employees of certain employers have the right to take unpaid medical leave (or for unpaid family leave) for a period of up to 12 work weeks in any 12 month period for a serious health condition as defined by the Act. In talking with teachers across the state, most have a misconception that FMLA is “that pregnancy law” and protects them when they are out for maternity leave. As the two main reasons for leave by school district employees are for the birth of a child and leave for a serious medical condition (of their own or family members), it is important to remember FMLA makes it unlawful for an employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the Act.

Which school districts must offer FMLA leave to its employees?

All school districts which employ 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year must provide FMLA leave as well as notice of the employees’ rights to FMLA leave. When counting employees, remember to count all employees – administrators, teachers and support professionals – including any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer (i.e. school board members) and possibly any employees where the department has been recently privatized by a contractor (i.e. school bus drivers).

Who can take medical leave?

The short answer is any eligible employee who needs leave time for his/her own serious health condition or the serious health condition of an immediate family member. The term “serious

health condition” means an illness, injury, impairment or physical or mental condition that involves, (A) inpatient care in a hospital, hospice or residential medical care facility; or, (B) continuing treatment by a health care provider wherein an employee is unable to perform his or her job for a minimum of three work days due to the serious health condition. There are many examples of what is or is not a serious health condition as defined by the FMLA, so please call an OEA advocacy specialist for help in determining this issue.

Who can take family leave?

An eligible employee may take up to 12 weeks of FMLA leave during any 12-month period for the birth and care of the employee’s newborn, or adopted, son or daughter. Yes, a male employee can take FMLA leave for the birth of a child. He is entitled to 12 weeks just as any other FMLA leave; and there should be no discrimination as to school policy on whether this FMLA leave is paid leave as opposed to any other type of FMLA leave. In other words, if the school district has a policy where it requires employees to use their accrued paid leave when taking FMLA for any reason, then the school district must pay the male spouse for his FMLA leave (if he has accrued paid leave time available).

Conclusion

If you must use leave time during your employment at school, for a medical or family situation, ask yourself (or your OEA advocacy specialist) whether FMLA leave applies to the situation. As it is the school district’s responsibility to determine whether FMLA applies to your leave situation, remember, whether you asked for it or not, the FMLA may govern your rights to further leave and reinstatement.