

School employees' families affected by changes in FMLA

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With the enactment of the Family and Medical Leave Act of 1993 (FMLA), there has always been tension between employers and employees when the need for medical or family leave arises.

An employee's right to take care of his or her own medical or family needs has been expanded to include the medical or family needs of the employee's immediate family. Although FMLA now provides these rights and remedies to a broader class of employees, the needs of the family are caught in crossfire between the loyalty to family and the loyalty demanded by the school district.

This article merely seeks to raise your awareness of your rights as an employee – and a quick primer as to some of the changes to FMLA regulations, especially when you have need to take leave for a serious health condition.

Under FMLA, the term “Foreseeable Leave” – such as an upcoming birth, scheduled surgery or ongoing medical treatment – means an employee needs to provide notice of the need for leave due to the birth or placement of a child, or for their own serious health condition, or to care for a covered family member with a serious health condition, 30 days before the leave is to begin where possible.

However, when it is not possible to provide 30 days notice of the need for such leave, employees must provide “such notice as is practicable.” This is called “Unforeseeable Leave.” As we all know, your administrators would prefer to deal with foreseeable events than having to plan for emergency leave situations. But as we all know, “life” happens.

When leave is unforeseeable under FMLA, notice from the employee means at least verbal notification to the employer within one or two business days of when the need for leave becomes known to the employee. New regulations hold that except for emergency situations, an employee should provide notice of the need for leave either the same day (if the employee becomes aware of the need for leave during work hours) or the next business day (if the employee becomes aware of the need for leave after work hours).

And, yes, an employee should follow the established call-in procedures of the school district (except one that imposes a more stringent timing requirement than the regulations provide), and failure to properly notify employers of absences may cause a delay or denial of FMLA protections.

Even if the employee has a qualified illness under the FMLA, but failed to comply with the normal procedures for reporting an absence, the employee may be subject to whatever discipline the employer's rules provide for such failure and the employer may delay FMLA coverage until the employee complies with the rules.

These new regulations adopted by the U.S. Department of Labor went into effect January 1.

And last, let me correct a myth perpetuated in the school districts since FMLA began. A school's administration does not have the authority to prevent an employee from using their FMLA leave until after all his or her sick leave or paid leave has been exhausted by the employee.

Please contact your OEA Advocate if you have questions about your FMLA rights.