



FMLA and Other Triggers for Leaves of Absence

By TDIC Risk Management Staff

The Family and Medical Leave Act (FMLA) operates under the principle that workers are not just contributing to the success of a business, but are also contributing to the health and well-being of their families.

Signed into law in 1993 by President Bill Clinton, FMLA basically applies to businesses with 50 or more workers. According to the U.S. Department of Labor, FMLA provides eligible employees up to 12 weeks per year of unpaid leave to manage an illness or for other domestic needs, most commonly to care for a child or other immediate family member.

Many dental practices, because of their small size, may not be required to provide FMLA benefits to employees. However, Risk Management analysts at The Dentists Insurance Company advise dentists to address any request for a leave of absence with caution. There may be other laws that do apply to employee leave, such as the Americans with Disabilities Act or workers' compensation. There are also state laws that may come into play, such as the Fair Employment and Housing Act in California.

In navigating the laws relating to employee leaves of absence, experts advise employers to seek the assistance of a legal or human resources professional. While the laws are complex, dentists can help protect themselves and their practices by carefully assessing an employee's request for a leave of absence. The basic practices of communication and documentation are essential. Engage the employee, ask questions and seek to "reasonably accommodate" the employee's request. Document your efforts in the employee's personnel file. For in-depth information about the reasonable accommodation process, watch for the fall issue of TDIC's Liability Lifeline newsletter.

These steps are often referred to as the "interactive process" and are in line with the intent of FMLA, which seeks to positively impact the lives of workers without imposing an undue burden upon employers, according to the Department of Labor.

The department last year surveyed 3,000 employees and 1,800 employers nationwide and reported that most employers give FMLA high marks. According to the survey, 91 percent of employers report compliance with the FMLA as positive in terms of employee absenteeism, turnover or morale. Some employers surveyed said the act did not have a noticeable effect. Employers surveyed also

reported that misuse of FMLA is rare, with fewer than 2 percent of covered workplaces confirming misuse of the law.

According to the Department of Labor, FMLA allows the following conditions to eligible employees:

- Workers may take up to 12 weeks of unpaid leave to bond with a newborn, newly adopted or newly placed child; care for a seriously ill child, spouse or parent; or care for their own serious health condition without fear of losing their jobs.
- Amendments to FMLA extend the protections to allow workers with family in the military to take time away from work to attend to a parent, spouse, son or daughter's foreign deployment and up to 26 weeks of leave to care for a service member with a serious injury or illness.
- During FMLA leave, employers must continue employee health insurance benefits and, upon completion of the leave, restore employees to the same or equivalent positions.
- Covered employers: The FMLA applies to private employers with 50 or more employees working within 75 miles of the employee's worksite.
- Covered individuals: Employees of business with at least 50 workers are eligible to take FMLA leave if they have worked for their employer for at least 12 months, and have worked for at least 1,250 hours over the 12 months before the leave.

The Department of Labor website at dol.gov/whd/state/fmla/index.htm links to state-focused labor information and the Job Accommodation Network at askjan.org provides free and professional guidance about workplace accommodations. Call TDIC's Risk Management Advice Line at 800.733.0634 with questions about FMLA and employee leave.

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