Understanding the Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) was passed in 1993 to protect workers from having to make a terrible choice: should they attend to their own medical needs and those of family members, or should they keep their jobs?

Recognizing that most of us have to balance the demands of work and family, Congress provided workers with up to 12 weeks of unpaid leave to deal with certain medical emergencies. In the past 10 years, 35 million workers have used some portion of this job-protected leave.

When the FMLA was passed, however, it made physicians and health care professionals the centerpiece of the process – without consulting them and without explaining just what they were expected to do.

Here’s help: this pamphlet provides a quick introduction to the FMLA and to the health care professional’s responsibilities under the Act.

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A Guide for Physicians and Other Health Care Professionals

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Workplace Realities

First, it is important for physicians and health care professionals to understand that many workers – your patients – have no guarantee of sick leave while on the job. While many white-collar workers have a certain number of paid sick days each year, many blue-collar and service workers have no such days, paid or unpaid.

While on FMLA leave, the worker is entitled to retain health insurance and all rights accrued prior to starting the leave.

What workers are eligible to use FMLA?

Not all workers can take advantage of the law: in fact, only about 60 percent of American workers are eligible. To use FMLA, a worker must:

- Work for an employer with more than 50 employees
- Have worked 12 months for that employer
- Have worked 1250 hours in the 12 months preceding the leave
- Work within 75 miles of 50 employees. Thus, new hires, part-timers, workers at small companies, and those who work in isolated locations may be ineligible to use FMLA.

What qualifies as a “serious health condition”?

The law identifies six broad categories of health conditions:

1. **In-patient care**. Patients who are admitted and spend one night in a medical care facility are covered by the law for their hospital stay and for all treatment that results from that stay.

2. **Illness or injury lasting more than three consecutive days**. An acute illness or injury is covered if the patient is incapacitated for more than three days and has continuous medical treatment. This treatment can be either two visits to the doctor, or one visit with supervised treatment such as therapy or a course of prescription medication. The consecutive days do not have to be workdays.

### Does FMLA leave have to be taken all at once?

FMLA leave can be taken in a large block, such as 10 or 12 weeks, or intermittently, in amounts of an hour or a day. Any leave that is discontinuous – that is, the employee returns to work after a period of leave, however long – is considered intermittent. The employer must allow the worker to take leave intermittently if the physician certifies that it is medically necessary to do so.

As you can imagine, this is one of the more controversial sections of the law, because most of us suffer through one or more viruses or bugs each year. The regulations specifically exclude such maladies as the common cold, upset stomachs, earaches, headaches (other than migraine), and the flu – unless the condition develops into something serious, or unless that particular patient could suffer severe consequences from one of these illnesses.

3. **Pregnancy**. FMLA covers childbirth, pre-natal visits, and periods of incapacity during pregnancy.

4. **Chronic serious health condition**. Conditions such as cancer, arthritis, asthma, diabetes, and migraine headaches are included in this category. FMLA covers any period of incapacity caused by a chronic serious condition.

5. **Long-term or permanent disability**. Conditions such as terminal illnesses are covered under this category.

6. **Conditions requiring multiple treatments**. These conditions require multiple medical treatments to prevent an incapacity greater than three days. Physical therapy, chemotherapy and dialysis fall under this category.

The six categories above correspond to the six categories on Form WH-380, Certification of Health Care Provider, which is used by many employers.

The FMLA was passed in 1993 to protect workers from having to choose between their jobs and their health. The law prohibits employers from counting FMLA leave under no-fault policies, but a physician must first certify that the patient has a “serious health condition” as defined by the law. This is why it is so important that you complete and return the FMLA certification form your patient gives you. Otherwise, your patient may be denied FMLA leave, and may ultimately lose a job.

What protections does the FMLA provide?

The FMLA allows a worker to take up to 12 weeks of job-protected, unpaid leave in these circumstances:

1. Birth, adoption, or placement of a child
2. To care for a seriously-ill spouse, child or parent
3. To cope with the employee’s own serious health condition

Not all workers can take advantage of FMLA.