

FAMILY AND MEDICAL LEAVE ACT (FMLA) of 1993

This information sheet is provided to inform employees of their entitlements, responsibilities and obligations under the FMLA.

The FMLA entitles certain Federal employees to a total of 12 administrative weeks of unpaid leave during any 12 month period for certain family and medical needs of the employee and/or family members. This may include care for the birth of a child, placement of a child with the employee for adoption, care of a spouse, child or parent with a serious health condition, driving a family member to a medical appointment, providing assistance during treatment of the family member, helping a family member recuperate from an illness or medical condition and the employee's own serious health condition if it renders the employee unable to do his/her job. A serious health condition has been defined as an illness, injury, impairment or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical care facility, or continuing treatment for more than three consecutive days by a health care provider under 5 U.S.C. 6381.

Eligible employees under 5 U.S.C. are defined as those who have completed at least 12 months of service (not required to be 12 recent or consecutive months) with the exclusion of intermittent employees. Temporary employees must have an appointment with a time limitation beyond one year, and meet other employee eligibility requirements in order to receive FMLA leave per 5 CFR 630.1203(e). Family member under the FMLA is defined as parent, spouse, son and daughter. Parents include in *loco parentis*, which includes an individual who has day to day responsibility for the care and financial support of a child, or who did when the employee was a child. A biological or legal relationship is not necessary for in *loco parentis* to be possible.

An employee must invoke his or her entitlement to family and medical leave, subject to the following notification and medical certification requirements. If leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee shall provide notice to take leave not less than 30 calendar days before the date the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin within 30 calendar days, the employee shall provide such notice as is practicable. If leave is for the care of a family member or a serious health condition of the employee and foreseeable based on planned medical treat, the employee shall consult with the agency and make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operations of the agency, subject to the approval of the health care provider. The agency may, for justifiable cause, request that an employee reschedule medical treatment, subject to the approval of the health care provider.

If the need for leave is not foreseeable - e.g., a medical emergency or the unexpected availability of a child for adoption or foster care, and the employee cannot provide 30 calendar days notice, the employee shall provide notice within a reasonable period of

time appropriate to the circumstances involved. If the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the leave may not be delayed or denied.

If the need for leave is foreseeable and the employee fails to give 30 calendar days notice with no reasonable excuse for the delay of notification, the agency may delay the taking of leave under 5 CFR 630.1203(a) until at least 30 calendar days after the date the employee provides notice of his or her need for family and medical leave.

An employee may elect to substitute annual leave and sick leave in order to receive paid leave but only to the extent that the paid leave is permitted under current law and regulations. An employee may not retroactively invoke his or her entitlement to family and medical leave. However, if an employee and his or her personal representative are physically or mentally incapable of invoking the employee's entitlement to FMLA leave *during the entire period* in which the employee is absent from work for an FMLA-qualifying purpose, the employee may retroactively invoke his or her entitlement to FMLA leave within two workdays after returning to work, provided the employee provides written medical certification from a health care provider documenting the incapacity of the employee. The employee must also provide documentation acceptable to the agency explaining the inability of his or her personal representative to contact the agency and invoke the employee's entitlement to FMLA leave during the entire period in which the employee was absent from work for an FMLA-qualifying purpose.

An agency may require that a request for leave for the care of a spouse, son, daughter, parent of the employee, or for a serious health condition of the employee be supported by written medical certification issued by the health care provider of the employee or spouse, son, daughter or parent of the employee.

The written medical certification shall include the following:

- (1) The date the serious health condition commenced;
- (2) The probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity;
- (3) The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider;
- (4) For the purpose of leave taken for the care of a spouse, son, daughter or parent of the employee with a serious health condition –
 - (a) A statement from the health care provider that the spouse, son, daughter, or parent of the employee requires psychological comfort and/or physical care;

needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs, and would benefit from the employee's care or presence; and

(b) A statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son, daughter or parent;

(5) For the purpose of leave taken for a serious health condition of the employee, a statement that the employee is unable to perform one or more of the essential functions of his or her position or requires medical treatment for a serious health condition,; and

(6) In the case of certification for intermittent leave or leave on a reduced leave schedule for the care of a spouse, son, daughter, parent of the employee, or serious health condition of the employee for planned medical treatment, the dates on which such treatment is expected to be given, the duration of such treatment, and the period of recovery or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

An employee must provide the above required written medical certification, signed by the health care provider, no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested medical certification within 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the medical certification with 30 calendar days after the date the agency requests such medical certification.

If the leave commences and the employee fails to provide the requested medical certification, the agency may charge the employee as absent without leave (AWOL) or allow the employee to request that the leave be changed to leave without pay (LWOP) or annual and/or sick leave, as appropriate.