

# Family and Medical Leave Act ("FMLA")

Do you believe that your FMLA rights have been violated? Have you been denied an FMLA leave of absence or even notification that you are entitled to such a leave? Have you been retaliated against for taking an FMLA leave? If so, we can assist you.

The FMLA entitles "eligible" employees of "covered" employers to take an unpaid, job-protected leave of absence for specific family and medical reasons with a continuation of group health insurance benefits.

An employee may take a leave of absence:

- (i) After the birth of a child;
- (ii) To bond with a newborn, adopted or foster child;
- (iii) To care for an immediate family member with a serious health condition; or
- (iv) To care for his/her own health if he/she is unable to work due to a serious health condition.

Generally, to be eligible for an FMLA leave of absence, you must:

- (a) Work for a covered employer (public agencies and private employers who employ 50 or more employees within a 75 mile radius);
- (b) Have worked 1,250 hours during the 12 months prior to the start of the leave; and,
- (c) Have worked for the employer for at least 12 months.

Typically an employee is entitled to take up to 12 weeks of leave in a 12 month period. This can be continuous leave or intermittent depending on the need for such leave. The FMLA

leave may need to be approved (“certified”) by a doctor. The employee may be eligible to take up to 26 weeks of leave in a 12 month period if the employee is caring for a covered service member with a serious illness or injury.

Upon returning from FMLA leave of absence, an employee is to be reinstated to the same or similar position, that is, an equivalent position with equivalent pay, benefits and terms and conditions.

If you are considered a “Key Employee” of the company you may be denied reinstatement at the end of the FMLA leave if reinstating you would cause “substantial and grievous economic impact” on the business. A key employee is a salaried employee who is among the highest 10% of all employees employed by the employer within 75 miles of the worksite. However, the employer cannot decide haphazardly to deny reinstatement. Rather, if you are considered a key employee, your employer must notify you, by written notice, of this classification at the time that you seek FMLA leave.

While FMLA leave of absence is unpaid, employees can usually use accrued vacation, sick or personal time to continue receiving compensation during the period that he/she is out of work. In fact, some employers have policies requiring that you use this accrued time to be paid during your leave. Other employers pay an employee while out without requiring you to use your accrued pay. Generally, an employer’s FMLA policy is set forth in the Employee Handbook.

While some states have their own family and medical leave policies, New York is not among them. Rather, New York follows the requirements stated in the Federal FMLA.

If you think your rights have been violated – you have been denied information necessary to take a FMLA leave and/or you have been retaliated against, our firm is available to assist you in resolving your FMLA claims. We are also available to

counsel you in seeking an FMLA leave of absence. With our help you may be able to resolve your claims through a negotiated resolution with your employer. If that does not transpire then we can assist you by bringing your claims to the Department of Labor or initiating a lawsuit against your current/former employer.

If you are interested in these services, please contact our office to schedule a time to speak.