

FAMILY CARE LEAVE¹

A. Definition

Every attorney may request an unpaid leave of absence for a period of up to twelve weeks to care for the attorney's own health, or to care for the attorney's child, spouse, domestic partner, parent or member of the household who is ill or experiencing a serious health condition. The leave period need not be continuous, but may be taken in shorter occasional segments as needed.

B. Criteria for Granting Request

This leave will be granted to attorneys who are in good standing with the firm upon request to the appropriate department chair or firm decision-maker.

C. Effect on Benefits

The attorney will receive the same benefits she or he would have received if working full-time.

D. Discretionary Extension

1. *Time:* The length of the unpaid family care leave may be extended beyond twelve weeks at the discretion of the managing committee [or other appropriate decision-maker] of the firm.

2. *Reason:* Unpaid family care leave may also be granted for other difficult family situations needing the attention of the attorney at the discretion of the managing committee [or other appropriate decision-maker] of the firm.

E. Effect on Partnership or Promotion

The use of one twelve-week family care leave shall have no effect on the partnership or other promotional determination or its timing.

COMMENTS

1. *Eligibility*

Unpaid family care leaves are available to all men and women attorneys. This provision recognizes that newborn infant care is not the only family responsibility that attorneys have. An older child may be ill or handicapped. A seriously ill parent or spouse may require the care of the attorney, as may other family emergencies and difficulties. The attorney may have a serious health problem that requires an extended leave. Attorneys need the flexibility to be able to handle these family problems.

¹ This sample policy was copied from the Philadelphia Bar Association's Model Policies. See http://www.philabar.org/member/governance/mp_parent3.asp (accessed September 14, 2005).

The Family Medical Leave Act, 29 U.S.C.A. § 2601 *et seq.* (the “FMLA”) requires employers with more than 50 employees to grant 12 weeks of leave in any 12-month period to an employee (1) to care for a spouse, son, daughter or parent with a serious health condition, or (2) because of a serious health condition of the employee.

The FMLA requirements apply only to an employee with one year and 1250 hours of service. Such a limitation is not recommended in the model policy. Firms that do opt to use a minimum employment period may want to leave it flexible. For example, one organization with a leave of absence policy provides that “normally” employees with less than one year of service are not eligible for family care leaves. Such phrasing of the policy allows the firm to extend the leave to employees with less than one year of service in appropriate circumstances.

2. *Effect on Benefits*

It is crucial to the welfare of families that health insurance benefits be in effect at all times. This policy provides that all benefits continue in effect during a twelve-week (or less) leave. If the firm in its discretion allows a longer leave, health insurance benefits should remain in effect at all times. Some firms may find it necessary to require employee payment of the required premiums if the extended leave is for a long period of time. If this is necessary the firm should take all reasonable measures to insure that no lapse of coverage occurs.

The FMLA requires the employer to maintain eligibility for coverage under any “group health plan” during the employee’s FMLA leave. The taking of leave shall not result in the loss of any employment benefit accrued prior to the leave. 29 U.S.C.A. § 2614(a)(2) and (c)(1).

3. *Notice*

Some firms may choose to add a requirement that employees give advance notice of a leave. The FMLA requires that at least 30 days notice shall be given for leave which is foreseeable based on an expected birth or placement or “such notice as is practicable.” 29 U.S.C.A. § 2612(e).

The firm may wish to require the attorney to prepare, when practicable, a “departure memorandum,” which outlines the attorney’s ongoing responsibilities and a plan for meeting those responsibilities during the attorney’s leave.

4. *Return to Work and Reinstatement*

The policy contains no provision regarding the circumstances of the return to work of the attorney. It assumes reinstatement to former position upon return to work. The FMLA requires that employees returning from FMLA leave be restored to their position, or its equivalent, upon return from leave. 29 U.S.C.A. § 2614(a). Such “restoration” may be denied under certain economic circumstances, and as to employees who are among the highest-paid 10 percent of employees. 29 U.S.C.A. § 2614(b).

Some firms may opt to make the right to take leave contingent upon the attorney's advising the firm in advance that she or he intends to return to work on a full or part-time basis upon the completion of the leave. If so, the firm should include that requirement in its written policy and the requirement should be discussed with the attorney before the leave is begun.

Some organizations, especially those with highly structured departments, may also prefer to include a provision stating whether the attorney, upon return to work, will be placed in the same or an equivalent position. In no circumstances, however, may the use of the leave be the basis for demotion or other retaliatory work action.

5. *Application to Attorneys with Alternative Work Arrangements*

A firm may opt to include a provision indicating the circumstances in which family care leave applies to attorneys with pre-existing alternative work arrangements. The FMLA does not provide for a "reduced leave schedule" for family leave unless the employee and the employer so agree. 28 U.S.C.A. § 2612(b).