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PEOPLE & PRODUCTIVITY

Tackling the gray areas of FMLA

On January 6, 1995 the U.S. Dept. of Labor (DOL) issued the final regulations to the Family and Medical Leave Act (FMLA). Human resource personnel must contend with this employment law as the government and courts determine how to deal with the regulation's gray areas.

The FMLA applies to employers with 50 or more employees—this figure must have been maintained for 20 or more calendar work weeks. In addition, employees of all branches or departments must work within a 75-mile radius for the employer to be qualified under the law.

Family and medical leave requests must fall into one of four categories:

- Birth of a son or daughter and in order to care for such son or daughter.

- Placement of a son or daughter with the employee through adoption or foster care.

- To care for a spouse, son, daughter or parent with a serious health condition.

- A serious health condition that renders the worker unable to perform the functions of his or her position.

The leave is unpaid, unless employees have earned or accrued paid vacation. Accrued paid sick leave may be used for FMLA leave when the employer allows.

By BRIAN W. GILL  
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Disability leave for a child's birth is considered FMLA leave for a serious health condition and is counted in the 12 weeks of leave under the act. In addition, short-term disability leave, while paid, would count toward calculating FMLA leave. Employers must maintain group health benefits for employees on FMLA leave, but may charge workers their share of health care premiums.

When spouses are employed by the same company, they are jointly entitled to a combined total of 12 work-weeks of FMLA leave. Also, under certain circumstances employees may take FMLA leave intermittently, for example, taking blocks of time or reducing normal weekly or daily work hours.

How FMLA handles workers' com-

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pensation and light duty remains one area of contention in the final regulations. If employees on workers' compensation are certified by a health care provider to return to light-duty jobs, but not their regular or equivalent job, workers may decline light-duty offers. However, if they decline the offer, they would lose workers' compensation payments, but could remain on unpaid FMLA leave until the 12-week entitlement was exhausted.

For employees to qualify for such leaves, they must meet two requirements: they must have been employed for at least 12 months by the employer and for at least 1,250 hours of service during the previous 12-month period.

The term "serious health condition" is likely the most difficult definition in the final regulations. It is defined as an illness, injury, impairment, or physical or mental condition involving:

Any period of incapacity or treatment connected with inpatient care in a hospital, hospice or residential medical-care facility, and any period of subsequent incapacity or treatment connected with such inpatient care;

Or, continuing treatment by a health

care provider, including any period of incapacity (inability to work, attend school or perform other regular activities) due to:

- A health condition lasting longer than three consecutive days.

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*Upon returning from leave, an employee must be restored to his or her original job or an equivalent one*

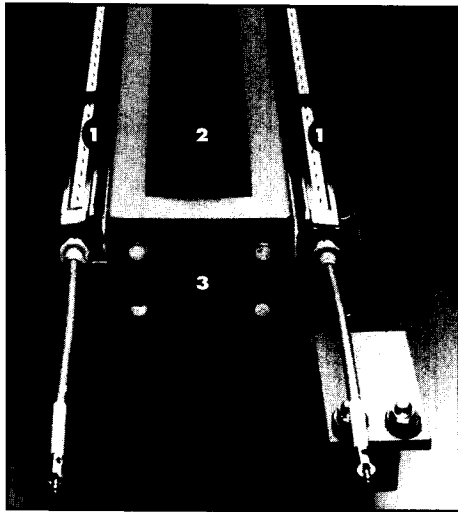
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- Pregnancy or prenatal care.
- A chronic serious condition continuing over an extended period of time (asthma, diabetes).
- A permanent or long-term condition for which treatment may not be effective (Alzheimer's, stroke, terminal cancer).
- Any absences to receive multiple treatments for restorative surgery or for a condition that would result in a period of incapacity of more than three days if not treated.

Upon returning from FMLA leave, employees must be restored to their original jobs or to equivalent jobs with equivalent pay and benefits. Key employees (salaried employees among the highest 10 percent paid) may take FMLA leave, but employers can refuse to reinstate them if the leave would cause the company substantial, grievous economic injury.

Numerous companies soon will provide "how to" compliance guides on the FMLA. For now, printers who must comply with the law should obtain a copy of the final regulations from their local U.S. Dept. of Labor office.

The DOL welcomes comments from employers regarding their experiences in implementing the act during the next year. A special commission formed to evaluate the law's implementation may decide to revise problem areas of the final regulations. Therefore, I invite every printer, whether or not you are a PIA member, to contact me (703-519-8130) regarding the new law's difficulties. The information we collect will be submitted to the Dept. of Labor at the end of the year. ■



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