

# FMLA Basics and Beyond

*Federal Leave Statute Nears 30th Anniversary*

Scott P. Horton  
Horton Law PLLC

**HORTON**  
Management Law



# Family and Medical Leave Act

- ▶ Signed by Pres. Clinton on Feb. 5, 1993
- ▶ Provides unpaid leave to eligible employees with qualifying circumstances
- ▶ Covers all public employers
- ▶ Covers private employers with 50+ employees
- ▶ Covered employer may not have any covered employees

# Counting Employees

- ▶ Did employer have 50+ employees in U.S. on payroll during 20+ weeks in current or preceding calendar year
- ▶ Count full-time, part-time, and employees on leave



# Joint Employers

- ▶ Count toward both employers' coverage threshold
- ▶ Primary employer is responsible for administering FMLA
- ▶ Factors: authority/responsibility to hire and fire, assign/place the employee, make payroll, and provide employee benefits

# Integrated Employer

- ▶ Separate legal entities can be deemed a single employer for FMLA purposes
- ▶ Factors: common management; interrelation between operations; centralized control of labor relations; and degree of common ownership and financial control

# Eligible Employees

- ▶ Employed for at least 12 months
- ▶ Worked at least 1,250 hours in the past 12 months
- ▶ Works at a worksite where the employer employs at least 50 employees within 75 miles

# 12-Month Employment

- ▶ Determined when leave is scheduled to begin, **not** when requested
- ▶ If employee is on payroll for any part of a week, that week counts as a week of employment
- ▶ Does not have to be consecutive
- ▶ Any combination of 52 weeks equals 12 months

# 1,250 Hour Requirement

- ▶ Only count hours actually worked
- ▶ Employer burden to prove the hour requirement wasn't met
- ▶ Exempt employees?



# Qualifying Reasons for FMLA Leave

- ▶ Birth or caring for a newborn child
- ▶ Placement of a child for adoption or foster care
- ▶ Caring for the employee's spouse, child, or parent with a serious health condition
- ▶ Serious health condition that makes the employee unable to perform the functions of their job
- ▶ Qualifying exigency arising from the employees' spouse, child, or parent as a military member on covered active duty or call to active duty status
- ▶ Caring for covered servicemember (spouse, child, parent, next of kin) with a serious injury or illness

# Serious Health Condition

- ▶ Illness, injury, impairment or physical or mental condition
- ▶ Involves either:
  - ▶ Inpatient care, or
  - ▶ Continuing treatment by a health care provider

# Continuing Treatment

- ▶ Incapacity and treatment
- ▶ Pregnancy or prenatal care
- ▶ Chronic conditions
- ▶ Permanent or long-term conditions
- ▶ Conditions requiring multiple treatments

# Incapacity & Treatment

- ▶ Incapacity that lasts more than 3 consecutive days
- ▶ Plus, either:
  - ▶ Treated at least 2 times by a healthcare provider within 30 days of first day of incapacity; or
  - ▶ Treated by healthcare provider at least once resulting in regimen of continuing treatment supervised by a healthcare provider

# Qualifying Exigency Leave

- ▶ Short-notice deployment
- ▶ Military events and related activities
- ▶ Childcare and school activities
- ▶ Financial or legal arrangements
- ▶ Counseling
- ▶ Post-deployment activities
- ▶ Rest and Recuperation
- ▶ Parental care



# Serious Injury/Illness (Active)

- ▶ Incurred in the line of duty on active duty in the Armed Forces or aggravated by service in the line of duty, and
- ▶ May render the member medically unfit to perform the duties of the member's office, grade, rank, or rating

# **Serious Injury/Illness (Veteran)**

- ▶ A continuation of a serious injury/illness that incurred or was aggravated during service
- ▶ A physical or mental condition with a VASDR of at least 50%
- ▶ A physical or mental condition that substantially impairs ability to work or would absent treatment
- ▶ An injury on the basis of which the veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers

# Leave Allowance

- ▶ 12 weeks per year
- ▶ 26 weeks in single 12-month period for covered servicemember leave



# FMLA Year Options

- ▶ Calendar year (Jan. 1 through Dec. 31)
- ▶ Any fixed 12 months, such as a fiscal year or a leave year beginning on the first day of an employee's employment
- ▶ 12-month period measured forward from the first date an employee takes FMLA leave
- ▶ 12-month period measured backward from the date an employee uses FMLA leave (each time an employee takes FMLA leave, the remaining leave is the balance of the 12 weeks not used during the immediately preceding 12 months)

# Employer Notices

- ▶ Employee rights notice (posting & distribution)
- ▶ Eligibility/Rights/Responsibilities notice within 5 days of employee notice of need to take leave
- ▶ Designation notice



# Employee Notice

- ▶ No “magic words”
- ▶ More than “sick”
- ▶ At least 30 days in advance if foreseeable
- ▶ As soon as practicable if not foreseeable
- ▶ Return certifications within 15 days

# Intermittent Leave

- ▶ Allowed when medically necessary or for military-related qualifying exigencies
- ▶ Employer may permit for birth or placement of child

# Interaction with Paid Leave

- ▶ FMLA is unpaid leave
- ▶ Employee may choose or employer may require employee to use another form of paid leave concurrently
- ▶ BUT . . .



# Maintenance of Health Benefits

- ▶ Employee remains eligible for same health insurance benefits while on FMLA leave
- ▶ Employer must continue to pay premiums
- ▶ Employee must continue contributions
- ▶ If employee drops coverage during leave, must be permitted to reinstate it upon return to work

# Reinstatement

- ▶ Employees retain all benefits and seniority that were accrued prior to the leave, but FMLA doesn't require that they accrue additional seniority or benefits during the leave period.
- ▶ Employees returning from FMLA leave are entitled to be restored to the same position they held when the leave commenced or to an equivalent position with equivalent pay benefits and other terms and conditions of employment.

# Exceptions to Reinstatement

- ▶ Key employee, where reinstatement would cause “substantial and grievous economic injury”
  - ▶ Salaried employee
  - ▶ Among highest paid 10% of employer’s employees within 75 miles)
- ▶ Employee not required to maintain employment that would have ended or changed for reason other than FMLA leave



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# Questions?



Contact me: [scott@hortonpllc.com](mailto:scott@hortonpllc.com)  
(716) 508-7748