

## ***Your Rights under the Family Medical Leave Act***

In February, 1993, President Bill Clinton signed into law the Federal Family and Medical Leave Act (FMLA) to enable workers to care for themselves or for family members without fear of job loss, harassment, or loss of benefits.

### **What is FMLA?**

FMLA entitles employees with at least 12 months of employment, and who have worked 1,250 hours over the previous 12 months, to take up to 12 weeks of leave within a 12 month period. This work requirement is prorated for part-time employees, so that if you worked half-time, you would be entitled to 30 days of leave (or 60 half-days). Leave may be taken for:

- the employee's own serious illness;
- the care of a serious ill child, spouse, or parent;
- the birth, adoption, or foster placement of a child.

In some circumstance FMLA leave is unpaid. However, employees must use accrued paid sick leave for their own illness before taking unpaid leave, unless your CBA has language that states otherwise. For the care of qualifying relatives, employees are not required to take sick leave, but may use up to 30 days per year of paid sick leave, if they choose. You may use paid vacation time for other leaves permitted by the Act.

It is your decision -- if you want to save your vacation time for other purposes, and would prefer to take it as unpaid leave, you may. (The exception to this is that employees who have reached their maximum vacation leave accrual must use 10% of their vacation time towards any such leave.) Your boss cannot force you to use your comp time; however, if you would like to use your comp time you may, and it will not count against your FMLA balance of 12 weeks. For example, if you become seriously ill, you may elect to use your comp time, so that you may save your guaranteed FMLA leave time for emergencies.

If your leave is foreseeable (e.g. for planned surgery or medical treatment), you must give your supervisor at least 30 days notice, or else the leave can be denied until 30 days has elapsed.

In the case of an employee who is taking leave for their own serious illness, FMLA leave runs concurrently with disability leave. The only exception to this is an employee's pregnancy leave. Pregnancy disability leave can be a very complicated issue. If you have questions, first ask your benefits counselor for the "benefits checklist" on maternity leave. If you still have questions, contact us, we may be able to help.

An FMLA leave need not be taken in one continuous block of time. If you have periodic appointments for treatment of this serious health condition (e.g. dialysis, or chemotherapy), leave can be scheduled on an intermittent basis, or as a reduced schedule, until the 12 weeks is exhausted. The same holds true in caring for a qualifying relative.

The exception to this is caring for a newborn -- in that case, leave must be taken all at once, unless the employer gives permission otherwise.

It is important to remember that you may have other rights relating to leave, which are guaranteed by the terms of the CBA. In addition to your 12 weeks of FMLA leave, your personal / sick / vacation leave and vacation may be used care for a seriously ill relative. So, if you've already used all of your FMLA time, but still have personal / sick / vacation leave on the books, you may be able to use that time.

### **What is a "serious health condition?"**

Under the FMLA, a "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves any of the following:

1. Incapacity connected with inpatient care at a hospital or other medical facility or;
2. Incapacity causing absence of at least three calendar days of work or school, or other daily activities and involving continuing treatment by (or under supervision of) a health care provider or;

3. Continuing treatment by (or under supervision of) a health care provider for chronic or long-term conditions which likely would cause absences of three or more days if untreated, and for prenatal care.

### **Have your rights been violated?**

If you qualify for an FMLA leave, your boss cannot deny it based on inconvenience or other grounds. Your medical benefits must be continued during the leave (although it may be your responsibility to make any required contributions), and you are guaranteed your old job or an equivalent position upon returning to work without loss of seniority.

Under the law, the company may not fire, discipline, harass, intimidate, restrain or interfere with workers who exercise their rights to take, or inquire about, FMLA leave. The company may require medical certification to verify that there was a "serious health condition," in the case of lateness or absence from work, that the time off was also "medically necessary." If the employee was caring for a child, parent or spouse, medical certification may be required to show that the employee was needed to "care for or comfort" the family member. The company cannot use Attendance Policies against eligible employees if the absence or tardiness is caused by a condition protected by FMLA, nor can it demand leave notice or certification in advance when it is not reasonable for the employee to produce.

Have you been disciplined or warned or written up for taking time off that may qualify under FMLA? Has your supervisor failed to tell you that you may be protected by FMLA if you needed time off to care for yourself or a family member with a serious illness?

Let a Steward or Committeemen know about your situation. If it turns out your rights were violated, we can seek to have it corrected using the protections of the contract which covers IAM Members. You may also have remedies available through the Department of Labor's Wage and Hour Division.