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The Family and Medical Leave Act:

The Basics and Beyond

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Abstract

The Family and Medical Leave Act of 1993 allows employees to take unpaid leave for a serious health condition involving the self, spouse, children, or a parent, as well as for the birth or adoption of a child. Although the act was implemented to aid families in need of this type of leave, there are many flaws. The language used in the FMLA is not clearly defined, and thus provides ambiguity in litigation. Furthermore, employees are typically uncompensated during this leave, and therefore many employees are forced to forgo the benefits afforded under the FMLA. Finally, due to the unpaid nature of this leave, as well as other factors, not all employees make equal use of FMLA leave, despite the need for leave. In conclusion, the FMLA, although offers a new range of opportunities to eligible employees, still has some distance to go before it is beneficial to all employees.

The Family and Medical Leave Act: The Basics and Beyond

The Family and Medical Leave Act (FMLA) was signed into law in August 5,1993, but the final ruling was not effective until April 6, 1995. The act was passed for the primary purpose of allowing employees to receive medical and family leave. Like other employment laws, the FMLA requires employers to decide related employee benefits regardless of race, color, religion, sex, or national origin. The FMLA is applicable to private companies who have 50 or more employees at a worksite or within a 75 mile radius of the work site, and all state and local government employers regardless of size. Despite the FMLA's good intentions, it is difficult to administer within businesses for a variety of reasons. Therefore, this paper will discuss not only the basics of the FMLA, but will also aim to uncover some of the potential problems that are associated with administration of benefits under the FMLA. (U.S. Department of Labor, 2004)

Basics of the FMLA

On the most basic level the FMLA was enacted to provide eligible employees with up to 12 unpaid workweeks of leave in a 12-month period. This leave is available to serve four purposes. It allows for the birth and care of a newborn child, adoption and care of the adopted child, care for a spouse, son, daughter, or parent with a serious health condition, and finally, for an employee who has a serious health condition resulting in an inability to perform essential job functions. Although the first 2 purposes for taking FMLA leave are clear, the last 2 purposes (serious health condition of family member, personal serious health condition) are much harder to define and will be discussed later in this paper.

Given the fact that eligible employees may take up to 12 workweeks of leave, it is important to protect the rights of the employee during this time. Therefore, the FMLA requires employers to not only maintain the employees' coverage on a group health plan, but the company must also allow the employee to return to the same or an equivalent job at the end of leave.

The information provided thus far is relatively straightforward. The FMLA does not end with the basic rights and benefits however. The following sections will address some of the problems in administering and litigating under the FMLA.

Interpreting the FMLA Language

A key component to the information presented thus far is the term "eligible". Determining eligibility, unlike many other facets within the FMLA, is clear-cut. An eligible employee is one "who has been employed for at least 12 months and has worked at least 1,250 hours during that period" (Lines v. City of Ottawa, 2003; U.S. Department of Labor, 2004).

Another, seemingly benign word used in the act is "employee". The use of this term, however, has been debated in a variety of court cases, including Lines v. City of Ottawa, Kansas. In 2003, the U.S. District Court ruled that in order to take advantage of FMLA, you must be a current employee when making the request. In this particular case, Lines, who had a history of epileptic seizures, was told that he was fired on one date, but was put on administrative leave that began at a later date. The leave was given to allow Lines sufficient time to find the proper dosage of medicine to control his seizures. It was during this administrative leave that Lines requested leave under FMLA (Lines v. City of Ottawa, 2003). The City of Ottawa contended that Lines did not make the request while

he was a current employee, but instead made the request after termination. Given the fact that Lines was put on administrative leave after the supposed termination date, the court stated that he was employed by the City at the time of the request and therefore, could file for leave under FMLA. (Lines v. City of Ottawa, 2003; Was employee fired on leave?, 2003)

Another issue involving the use of the term "employee" concerns waiving FMLA rights. Under the FMLA, an employee may not waive his/her rights. In one case, Faris v. Williams WPC-I, Inc (2003), the employee was terminated and waived her rights under FMLA as part of the termination agreement. In return for this document, her employer offered a sum of $4063.32. By signing this waiver, Faris was not entitled to sue the company for terminating her using a violation of the FMLA reasoning. However, Faris did sue the company using this argument. The question here was whether or not the law allowed Faris to waive her rights under the FMLA. The US Court of Appeals decided, as in Lines v. City of Ottawa, that "employee" referred to current employees. Since Faris was not an "employee" at the time of the waiver she was eligible to waive her rights. Furthermore, because she violated the legal waiver, she was ordered to repay the incentive money offered ($4063.32). In both of the cases presented here, the term employee was interpreted to mean "current employee" and therefore future or terminated employees are not included under the FMLA umbrella. (Danaher, 2003; Faris v. Williams WPC-I, Inc, 2003; Lines v. City of Ottawa, 2003; "Post-termination release", 2003)

The next important factor in determining whether a person may be granted leave under the FMLA for the last 2 purposes listed above (i.e. serious medical conditions – involving self, spouse, children, or parent) is to decide if the medical condition is

"serious". A "serious health condition" as defined in the FMLA is an "illness, injury, impairment, or physical or mental condition that involves…inpatient care…or continuing treatment by a health care provider" (U.S. Department of Labor, 2004). This condition can be further defined as "a period of incapacity (i.e., an inability to work) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition" (Lines v. City of Ottawa, 2003; U.S. Department of Labor, 2004). Although in the case above (Lines v. City of Ottawa, 2003) the court found that Lines was entitled to make a request under FMLA, it was ultimately decided that because his doctor did not require him to miss work for three consecutive calendar days, he was not able to receive leave under FMLA.

An important point to note is that a serious health condition filed under the FMLA may also be a disability under the ADA. If a person has documentation under FMLA of a serious health condition that could qualify as a disability, the person must still create a record of the ADA disability in order to receive rights under the ADA, however. The condition is not automatically considered under both the FMLA and ADA, but must be addressed specifically with regards to each act. (Lines v. City of Ottawa, 2003)

It is evident from the information presented in this section that although the FMLA appears to be clear-cut, implementation of the benefits proves otherwise. Many of the terms used in the FMLA were not specifically defined and therefore, courts have been forced to adopt definitions before getting to the heart of a case. The definition of terms is not the only problem with the FMLA, however. There is another side to the problem: actually getting employees to utilize the benefits available to them. Therefore, in the following section, some of the disparities of FMLA use will be discussed.

Utilization of FMLA Benefits

There has been quite a bit of research tracking the use of FMLA benefits since its implementation into companies in the 1990's. Data shows that not all eligible employees are utilizing the benefits available, and furthermore, the disuse is unequal across all groups of employees. For example, many males are not utilizing the benefits that are now available to them for the birth of a new child (Dorman, 2001).

One of the reasons that all eligible employees are not using the benefits provided by the FMLA is practicality issues. Leave granted under the FMLA is typically unpaid (Budd & Brey, 2003). Although some companies offer the use of paid/partially paid sick leave or vacation leave in lieu of the unpaid leave under the FMLA, this is not required or guaranteed. Even when employees are given partial pay during their FMLA leave, this is often not enough to keep a family out of financial trouble, particularly in single-income families (Dorman, 2001). Typically the employees who must take unpaid leave under FMLA are those in lower-paying positions and are minority populations. Therefore, the employees who have benefited most from the FMLA are the employees who do not have as great a need for the leave, those in high-paying positions, two-income families or high family income, salaried employees, union members, and highly educated white employees (Commission on Leave, 1996, p. xxi; Gerstel & McGonagle, 1999; Wisensale, 2003).

As mentioned earlier, despite the availability of FMLA benefits for men, they are often not being used. Significantly more women make use of the FMLA leave provided when having a baby than do men. In the workplace, it is not as easily accepted by co-workers that males may need newborn leave as when females request this type of FMLA

leave. The male's role in the family and workplace is generally not seen as the caregiver, but instead the "breadwinner". Therefore, men are hesitant to violate these norms still found in the workplace today (Dorman, 2001; Gerstel & McGonagle, 1999).

Gender is not the only factor that affects who needs leave, who takes leave, and how long the leave lasts. Gerstel and McGonagle (1999) found that employees with children under 18, non-whites, and low-income families report needing leave from jobs under the FMLA more than white, high-income families with no children. In fact, African Americans perceive a higher need for leave than any other race; Latinos also report a high need for leave. Although African Americans report a higher need for leave, significantly less African Americans take leave than any other racial group surveyed. This difference is still significant even when income is controlled for in the sample. Furthermore, breaking this finding down by gender, White women take 50% more leave than African American women, and African American men take 25% less leave than White men. Latino women and men, however, take approximately the same amount of leave under FMLA as White women and men.

The length of leave, although the act provides up to 12 workweeks, also varies based on gender, number of children, and union membership. Primarily, women, families who have young children, and employees who belong to unions take longer leaves. More specifically, children increase the length of leave for women, but decrease length for men. Furthermore, union membership increases men's length of leave, but does not affect women. (Gerstel & McGonagle, 1999)

The information presented in this section shows that leave under the FMLA does not, in reality, equally apply to all eligible employees. In fact, it is flaws in the act that cause these inequities.

Conclusions

The FMLA was signed into law in 1993 and takes a large step toward providing employees with the time necessary to care for their family and themselves. Unfortunately, the FMLA is not perfect; it has flaws that cause the employees most in need of such leave to be unable to take it. In order to remedy the problems discussed throughout this paper, the Commission on Family and Medical Leave will need to address several factors. First and most importantly they need to provide better definitions of the terms used throughout the act to reduce ambiguity.

Secondly, approximately 60% of workers are covered under the FMLA, leaving 40% not covered under the FMLA (Wisensale, 2003). Therefore, the next step is to cover all eligible employees regardless of employer/company size. This could possibly be done through federal subsidies provided to companies that consist of less than 50 employees to offset the tremendous cost of providing 12 weeks of leave.

These basic changes are not all that is needed however. The FMLA was meant to provide all employees with the opportunity for leave, but because this leave may be unpaid, the employees who need this benefit the most are unable to take advantage of it. Research has shown that unions are able to negotiate pay with a company and provide information that might not otherwise be available (Budd & Brey, 2003). This fact suggests that lower paying positions would benefit from union membership, especially since it is employees in these positions that typically receive unpaid leave. Employees in

higher-paying positions are often allowed to use sick/vacation time during FMLA leave in order to maintain full or partial pay and may not benefit as widely from union negotiators.

Finally, a major goal that should be undertaken by the Commission is to ensure that all eligible employees are aware of their rights and benefits under the FMLA. Currently, the penalty for employers is $100 if they do not inform employees, via posted signs, of their rights under the FMLA (Budd & Brey, 2003). This is no more than a slap on the wrist for most corporations and they see this small fine as far less costly than properly informing their employees, who may in turn take the FMLA leave.

In conclusion, the FMLA is headed on the right track toward providing employees with necessary leave, but nearly a decade after it's implementation the act still has a lot of room to grow and improve.

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