

FMLA, Arrowhead West & You

What is FMLA? The Family and Medical Leave Act (FMLA) is a federal labor law that entitles employees to take unpaid, protected leave for family and medical reasons while continuing group health insurance. FMLA provides an eligible employee with 12 weeks of unpaid leave in a 12 month period. Additionally, FMLA ensures an eligible employee is able to return to his/her position as he/she left without any threat of termination or demotion. Arrowhead West's policy provides that "any applicable accrued paid vacation or sick leave will first be substituted for any unpaid family and medical leave as allowed by law" (AWI Procedure 3.28.13) meaning FMLA leave will run at the same time with your sick and vacation leave.

Are you eligible for FMLA? All public agencies must follow FMLA rules. Private employers must follow FMLA rules if they employ 50+ for at least 20 workweeks during the current or previous year. Arrowhead West meets FMLA requirements under the private employer sector.

To be covered as an employee, you must have worked for the employer for a minimum of 12 months for at least 1250 hours in order to qualify for FMLA benefits. For Arrowhead West employees, the 12 month period is measured forward from your first FMLA leave usage.

Once you have concluded your employer is covered and you qualify for FMLA, what's next - - it is time to apply. This process requires action from both the employee and employer. Usually the process begins with a request from the employee. Employees must notify the employer of the intended dates of leave and in the event of a "foreseeable" birth, adoption, surgery, etc., the employee must give 30 days' notice to the employer. If it is not possible to give 30 days' notice, an employee must notify their supervisor as soon as possible. (AWI Procedure 3.28.9)

Supervisors need to be aware because an employee's request does not have to specify FMLA. If an employee is asking time off for leave of more than three days for a serious health condition, supervisors need to take that as their clue to start the FMLA process. This is the point when the employee receives the FMLA packet. Supervisors are responsible for instructing their staff to complete the appropriate forms. The first form is the Request for Family & Medical Leave (AWI 3.3.1) and needs to be completed at the time of the employee's request or first knowledge of need for FMLA. Very important – needs to be sent to Human Resources immediately because a notice has to be sent to the employee within five days of the request (the five day time frame starts when the employee makes their request known to their supervisor; not when Human Resources receives the request) notifying the employee whether or not they qualify for FMLA. In addition to the notification of eligibility, AWI is required to provide the employee with FMLA Rights & Responsibilities as well as any request for certification. Arrowhead West's procedures provide for the supervisor or division secretary to give the employee the FMLA information including the applicable certification form at the time of the request. The certification forms have been updated and can be found in the "NON-AWI FORMS" file in the Forms (F) drive.

After the Notice of Eligibility is provided to the employee by Human Resources, the employee has 15 calendar days to provide the completed certification from their or their family member's health care

provider. Upon receipt of the certification for the health care provider, Human Resources has five business days to notify the employee whether or not the FMLA request is approved or denied. Please note the certification form should be faxed directly to Human Resources and not the applicable division or supervisor. The certification forms in the NON-AWI FORMS file have the information already populated.

As I hope you can see, there are definite time lines for responses and how important it is for supervisors to get FMLA paperwork into Human Resources in a timely fashion.

RECAP:

- Employee must notify the employer of the intended dates of leave. If the FMLA request is foreseeable (birth, adoption, planned surgery, etc.), the employee must give 30 days' notice to the employer.
- Within five business days of receiving the FMLA request, the employer must notify the employee as to whether or not they are eligible.
- Within 15 calendar days of the issuance of the Notice of Eligibility, an employee must provide the completed certification form from the health care provider to the employer. Please note there are some health care providers who charge to complete the form and that cost is the responsibility of the employee.
- Within five days of receipt of the certification from the health care provider, the employer must notify the employee of FMLA approval or denial.

When can I take family or medical leave under FMLA?

- If you have a serious health condition as defined by FMLA;
- If you are caring for your new baby, caring for a newly adopted or newly placed foster child;
- If you are caring for your child who is under age 18 or age 18 or older who is incapable of self-care or caring for a spouse or parent with a serious health condition;
- If you are caring for a wounded service member or veteran; or
- If you need time away from your job to address particular circumstances arising from the deployment of a service member or a member of the armed forces.

A serious health condition is defined as an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. The most common serious health conditions that qualify for FMLA leave are:

1. Conditions requiring an overnight stay in a hospital or medical care facility;
2. Conditions that incapacitate you or your family member (i.e., unable to work or attend school) for more than three consecutive days and require ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as a prescription medication);
3. Chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and

4. Pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).

Family leave refers to time off to care for another person in your family and medical leave refers to time off to seek medical treatment for or to recover from you own serious health condition.

AWI Procedure 3.28.13 indicates that any accrued paid vacation or sick leave will first be substituted for any unpaid family and medical leave as mention previously. However, under this procedure it also states that sick leave may not be used under the following circumstances: a) for the adoption of a child; and b) to care for a child incapable of self-care who attends school or daycare when the daycare or school is closed or not available.

Also affecting FMLA requests is the **Maternity Leave** portion of AWI Policy 3.10. I would recommend reviewing the whole paragraph but in part states “A maximum of 30 days accrued sick leave for a mother may be used for the birth of a child. Maternity leave not covered by FMLA will be limited to 30 work days.”

Under AWI Procedure 3.28.12, it states that “If leave” (FMLA) “is taken because of an employee’s own serious health condition or to care for a covered relation, the employee must contact the Human Resource Manager on each payday regarding the status of the condition and their intention to return to work. The Human Resource Manager will inform the supervisor of the employee’s status. I believe this is an area that has fallen to the wayside and we need to get back on track.

What happens when I return to work? An employee returning to work from FMLA approved leave is required to provide the Fitness for Duty Medical Certification form (AWI 3.3.10). The exception to this provision is when an employee is returning from FMLA approved leave for the birth of a child, adoption or placement of a foster child. For the birth of a child, a note from the doctor verifying they are fit to resume work is sufficient. Failure to get a release from the doctor will result in the employee not being permitted to resume work until it is provided. A doctor’s note for adoption or placement of a foster child is not required. The employee is to present the medical certification or doctor’s note to their supervisor before returning to work. The supervisor will then ensure the paperwork is routed to the Human Resource Manager.

In conclusion, there is so much to FMLA and I have only covered some of the highlights. It is my hope this gives you a little better understanding and if you do have questions, please feel free to ask.

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