

Town Topics September 15, 2004 Legal Forum: "Caring for Yourself and Your Family, A Short Guide to Family and Medical Leave"
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Good management and good job performance require hard work and attention to detail. They also require employers and employees to have adequate knowledge about when it's time to take a break to care for themselves and their families. Even though there is no legal requirement that businesses grant health insurance coverage or certain other benefits that most of us take for granted, federal and state laws clearly require covered employers (those with 50 or more employees) to provide a fairly substantial amount of leave time (up to 12 weeks) to allow employees to take care of serious medical conditions, care for ailing family members and, whether the employee is male or female, to care for a newborn child or a child placed with an employee's family for adoption or foster care.

Medical and family issues are very personal and individualized. Therefore, even the detailed federal and state rules, and the comprehensive personnel policy manuals prepared by most businesses cannot deal fully with every situation. The result is that each request for medical or family leave is usually evaluated on a case-by-case basis.

In view of the complex nature of family and medical leave issues, the purpose here is to present some of the more important factors of which employers and employees should be aware, and to point out areas requiring close attention by those requesting leave and those who evaluate those requests. The following specific areas should always be carefully reviewed as they apply to any given leave request:

1. Employers have the right to determine if leave will be paid, unpaid, or a combination of both; however, the policy must be the same as that which is applied to other types of leave.
2. Leave should be requested at least 30 days before the leave is to begin, although this is very often not possible. Notice of intent to return to work should also be provided.
3. Employers have the right to request medical certification sufficient to demonstrate the need for the leave, whether it is for the employee or family member. All illnesses do not necessarily qualify as serious health conditions resulting in entitlement to family or medical leave.
4. An employer has the right to require medical certification of fitness to return to work upon the expiration of a leave of absence. If the employee's medical condition precludes return to work, the employee can be terminated if all other time off has been exhausted.
5. An employer has the right to eliminate the position of an employee who is on medical or family leave, including pregnancy and childbirth, provided it is part of a valid reduction in force.

6. Leave may be denied when requested by certain key employees, if the employer reasonably determines that granting it will cause “substantial and grievous economic injury” to the employer’s business.
7. Upon return from leave, an employee is entitled to reinstatement to the position held when the leave began or an equivalent position with equivalent seniority, status, benefits and pay.
8. The method of calculation of the amount of leave entitlement should be fully understood by the employer and employee.
9. Any expectations the employer has of the employee during the leave should be clearly spelled out in company policies.

The rights granted by the federal and state family and medical leave laws are significant; however, they can be properly implemented only if employers and employees have an adequate understanding of their benefits and limitations, and work in good faith to apply the laws in a fair and reasonable manner.