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THE FAMILY AND MEDICAL LEAVE ACT: AN EXPLANATION OF EMPLOYER AND EMPLOYEE RESPONSIBILITIES

Under the Family and Medical Leave Act (“FMLA”), certain employers are required to provide up to 12 weeks of unpaid leave per year to specified employees for taking care of a newborn; caring for a sick child, spouse, or parent; or when the employees cannot work because of their own serious health condition. For those employers who are affected by the Act, in addition to providing unpaid leave, they must continue providing group health benefits during the leave period and must restore employees to the same or an equivalent position upon their timely return.

Since not all employers are subject to the FMLA and not every employee is qualified to take leave under the Act, we hope this summary will give you some guidance in determining whether you are affected, and what responsibilities are placed on you as either employer or employee. Since our intent is to only give you a basic understanding of the Family and Medical Leave Act, it should not be relied upon for specific legal advice.

I. Employers Covered by the FMLA

Any person or private entity engaged in interstate commerce, or in any industry or activity affecting interstate commerce, who employs fifty (50) or more workers each working day during 20 or more calendar weeks in the current or preceding calendar year, is covered by the Act. Public employers, regardless of the number of employees they have, are also covered by the Act. Because application of the Act for individuals and private entities depends on how many employees they have, coverage can change from year to year.

II. Employees Eligible for Leave under the FMLA

Not all employees have leave rights, even if the employer is covered under the Act. An eligible employee is one who has been employed by the employer for at least 52 weeks and who has worked at least 1,250 hours during the 12-months immediately preceding the commencement of leave. The 52-week period of employment need not be consecutive, and if an employee is maintained on the payroll for any part of a week (even if absent for another type of leave), the week counts as a week of employment. Additionally, the individual must be employed at a work site where there are 50 or more fellow employees within a 75-mile radius. This requirement was added to minimize the burden on small work sites.

III. Employer Responsibilities

In addition to providing 12 weeks of unpaid, job-protected leave, continued group health benefits and the same or an equivalent position upon the employee's return, the FMLA places the following responsibilities on the employer:

1. Covered employers are required to post a notice explaining the provisions of the FMLA and providing information concerning the procedures for filing complaints for violations of the Act. (Copies of the required notice may be obtained from local offices of the Wage and Hour Division of the U.S. Department of Labor.)

2. If an employer has any written guidance to employees concerning employee benefits or leave rights, such as an employee handbook, information concerning FMLA entitlement and employee obligations under the Act must be included in the handbook or other document.

3. If the employer does not have written policy manuals or handbooks, the employer must still provide guidance concerning rights and obligations under the FMLA whenever an employee requests leave.

4. When an employee requests leave under the Act, the employer must explain employee obligations and the consequences for failing to meet those obligations.

IV. Employee Responsibilities

Although specified employees may take up to 12 weeks of unpaid, job-protected leave per year, the FMLA places certain responsibilities on employees which include the following:

1. An employee must give at least 30 days notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member. (If 30 days notice is not feasible, notice must be given as soon as practicable).

2. The notice given by the employee must be sufficient enough to make the employer aware of the employee's need for FMLA qualifying leave, the anticipated timing of the leave and its anticipated duration. The employee need not expressly assert rights under the FMLA or even mention the FMLA. (When leave is requested, the employer should inquire further to get more information about whether, and for how long, FMLA leave is being sought.)

3. An employee must comply with the employers usual and customary notice and procedural requirements for requesting leave without pay. (However, failure to follow internal employer procedures will not permit an employer to disallow an employee's taking FMLA leave if the employee otherwise gives timely verbal notice.)

4. When planning for medical treatment, the employee must consult with the employer and make a reasonable effort to schedule leave to minimize disruption of the employer's operation.

V. Conclusion

In granting employees rights to accomplish necessary family and medical obligations, Congress has subjected employers to detailed rules which may further complicate attendance policies, benefit plans, and the ability to manage a business. Employers who are covered under the act should ensure that they understand and meet the obligations imposed upon them in order to avoid claims and possible penalties.

THIS IS INTENDED TO SERVE AS ONLY A GENERAL EXPLANATION OF THE FAMILY AND MEDICAL LEAVE ACT, IN ORDER TO FAMILIARIZE OUR CLIENTS WITH THE BASIC PROVISIONS OF THE LAW, YOU SHOULD NOT RELY ON THIS SUMMARY FOR YOUR SPECIFIC LEGAL NEEDS. IF YOU HAVE ANY QUESTIONS ABOUT THESE REGULATIONS, OR WOULD LIKE ADDITIONAL INFORMATION, PLEASE CONTACT YOUR ATTORNEY.