

## **FMLA EMPLOYER RESPONSIBILITIES**

- PROVIDE NOTICE OF DESIGNATION
  - Within five business days of having enough information to determine leave is FMLA-qualifying
  - Once for each FMLA-qualifying reason per applicable 12-month period (additional notice if any changes in notice information)
  - Include designation determination; substitution of paid leave; fitness for duty requirements
  - Must be in writing (optional WH-382)
  - Retroactive designation permitted provided that failure to timely designate does not cause harm to employee
- If leave is determined not to be FMLA-qualifying, notice may be a simple written statement
- Employer must notify employee of the amount of leave counted against entitlement, if known; may be payroll notation
- If amount of leave is unknown (e.g., unforeseeable leave), employer must inform employee of amount of leave designated upon request (no more often than 30 days)
- Group health plan benefits must be maintained throughout the leave period
  - Same terms and conditions as if employee were continuously employed
  - Employee must pay his/her share of the premium
  - Even if employee chooses not to retain coverage during leave, employer obligated to restore same coverage upon reinstatement
  - In some circumstances, employee may be required to repay the employer's share of the premium if the employee does not return to work after leave
- Same or equivalent job
  - equivalent pay
  - equivalent benefits
  - equivalent terms and conditions
  - Employee has no greater right to reinstatement than had the employee continued to work
  - Bonuses predicated on specified goal may be denied if goal not met
  - Key employee exception

## **EMPLOYEE RESPONSIBILITIES**

- Provide sufficient and timely notice of the need for leave and if requested by the employer:
  - Provide certification to support the need for leave
  - Provide periodic status reports
  - Provide fitness-for-duty certification
  - Provide sufficient information to make employer aware of need for FMLA-qualifying leave
  - Specifically reference the qualifying reason or the need for FMLA leave for subsequent requests for same reason
  - Consult with employer regarding scheduling of planned medical treatment
  - Comply with employer's usual and customary procedural requirements for requesting leave absent unusual circumstances
- Timing of Employee notice of need for leave:
  - Foreseeable Leave - 30 days notice, or as soon as practicable [§ 825.302](#)

- Unforeseeable Leave - as soon as practicable [§ 825.303](#)
- Medical Certification for serious health condition (optional WH-380-E and 380-F)
  - Submit within fifteen calendar days
- Employer must identify any deficiency in writing and provide seven days to cure
- Annual certification may be required
  - Employee responsible for any cost
- Employer (**not** employee's direct supervisor) may contact health care provider to:
  - **Authenticate:** Verify that the information was completed and/or authorized by the health care provider; no additional information may be requested
  - **Clarify:** Understand handwriting or meaning of a response; no additional information may be requested beyond what is required by the certification form
- If employer questions the validity of the complete certification, the employer may require a second opinion
  - Second and third opinions (at employer's cost)
  - If the first and second opinions differ, employer may require a third opinion that is final and binding
- Recertification
  - No more often than every 30 days and with an absence
  - If the minimum duration on the certification is greater than 30 days, the employer must wait until the minimum duration expires
  - In all cases, may request every six months with an absence
  - More frequently than every 30 days if:
    - the employee requests an extension of leave, or
    - circumstances of the certification change **significantly**, or
    - employer receives information that casts doubt on the reason for leave
- Consequences of failing to provide certification
  - Employer may deny FMLA until certification is received
  - Employee must respond to employer's request for information about status and intent to return to work
- For an employee's own serious health condition, employers may require certification that the employee is able to resume work
  - Employer must have a uniformly-applied policy or practice of requiring fitness-for-duty certification for all similarly-situated employees
  - If state or local law or collective bargaining agreement is in place, it governs the return to work