



#### OFFICE LOCATION

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## PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

JANUARY 20, 2010

## E-Newsletter

### Family and Medical Leave Act

The Family and Medical Leave (FMLA) was enacted in 1992 in order to provide unpaid leave to any employee who

- has a serious health condition that requires the employee to miss work;
- has had or adopted a child, or had a child placed with him or her in foster care; or
- is needed to care for a family member who has a serious health condition.

A "serious health condition" is defined as an illness, injury, impairment, or other physical or mental condition that requires inpatient care or continuing treatment by a healthcare provider, or is a chronic serious health condition. For example, the flu is typically not a "serious health condition" under the FMLA; diabetes, cancer, or a broken leg is.

FMLA leave is unpaid, although an employer may opt to pay the employee during all or part of the leave, or may require an employee to use his or her accrued sick or vacation days during the leave, so that he or she will be paid for part of the leave. Once the leave is over, if the employee returns within twelve weeks or at the close of twelve weeks, the employee is entitled to be returned to his or her previous position or one with the same pay and benefits, and similar hours and responsibilities. The employer may refuse to reinstate the employee only if his or her position has been eliminated during the leave (and would have been eliminated even if the employee had not gone on leave), or the employer can show that it would be an undue hardship for it to return the employee to his or her position. For example, the employer could show that the employee's position is so important to the company that the employer must permanently fill it with someone



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else immediately after the employee goes on leave.

An employee may also take what is known as “intermittent” leave under the FMLA, if the employee does not need a block of leave, but instead needs to take leave in small increments. An employee might take intermittent leave for weekly medical treatments or to take a seriously ill relative to doctors’ appointments.

Covered employers must maintain an employee’s health coverage under a “group health plan” on the same conditions as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. The employee would be responsible for his or her share of the premium.

An employee need not specifically request FMLA leave (or even know about the law) in order to be entitled to leave. The employee need only tell the employer of his or her need for leave; it is the employer’s responsibility to know that the FMLA exists and that the employee may be entitled to leave under the law. Once the employee makes a request for leave, however, the employer may require the employee to provide information from a health care provider certifying the need for leave. If the employer doubts the medical certification, it may require a second opinion from an independent medical source, such as a private physician who does not regularly work for the employer. If the employee disagrees with this second opinion, he or she may seek another opinion from a mutually chosen medical provider, and the opinion of this third choice will be binding.

The FMLA applies to any employer with fifty or more employees for at least twenty weeks in the current year, or fifty or more employees for twenty weeks the previous year. In addition, an employee is not protected by the FMLA unless the employer employs at least fifty persons within a seventy-five mile radius of the employee’s work site. If the employer meets these criteria, then any of its employees who have been employed for at least one year, and who have worked at least 1,250 hours in the previous year are entitled to leave under the law.



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### Worksheet: Damages Estimates

To read and printout the Worksheet please click below.

[Damage Estimates](#)

### Disclaimer

This publication and the information included in it are not intended to serve as a substitute for consultation with an attorney. Specific legal issues, concerns and conditions always require the advice of appropriate legal professionals.