

In This Issue

Maryland's New Flexible Leave Act: You've Got Questions? We've Got Answers!

Employment Line™

Employment Law Brief

July 2008

Maryland's New Flexible Leave Act: You've Got Questions? We've Got Answers!

Neil E. Duke
410-347-7398
neduke@ober.com

- 1. Q: What is the Flexible Leave Act?**
A: Effective October 1, 2008, Maryland companies with 15 or more employees that provide paid leave benefits (pursuant to an employment policy or collective bargaining agreement), must permit their employees to use any form of accrued paid leave to care for an immediate family member suffering from an "illness." (CAUTION): The term "illness" is not defined by the Act. As such, paid leave must be afforded to employees even if the "illness" is not what would ordinarily be considered a serious medical condition.
- 2. Q: Who would be considered an "immediate family member" under the Act?**
A: An immediate family member would include a spouse, parent, or child.
(CAUTION): The Act does not define the term "child." Therefore, an employee could conceivably take leave to care for an adult "child."
- 3. Q: When may employees begin to exercise their leave rights under the Act?**
A: The Act goes into effect on October 1, 2008; that is when employees may begin to utilize their leave under the Act.
(CAUTION): Unlike the Family and Medical Leave Act (FMLA), there is no length of service requirement before an employee is entitled to take leave under the Act. Additionally, employees may use paid leave that was accrued before October 1, 2008.
- 4. Q: Does the Act affect any rights afforded under FMLA?**
A: No. An employee is still entitled to his/her FMLA rights.
(HINT): Many employers have adopted policies that require employees to exhaust paid leave concurrently with FMLA leave. Since Maryland's Flexible Leave Act does not forbid that practice, it is strongly recommended that employers adopt such a practice, if they have not done so already.
- 5. Q: Is it permissible to require that an employee provide advance notice of his/her intent to take leave under the Act?**
A: Yes. An employer is free to design its leave policy in such a way that an employee must provide advance notice of his/her intention to take leave under the Act.
(HINT): Leave policies must be evenly applied and should be designed to afford administrative consistency. This is especially important in light of the Act's anti-discrimination provision.
- 6. Q: Must an employer now adopt a paid leave policy to comply with the Act if the company does not already have such a policy?**
A: No. There is no requirement that an employer adopt a paid leave policy to satisfy the Act.
(CAUTION): Employers that have already adopted a paid leave policy or that elect to design such a policy must be aware of the consequences. For assistance in drafting or revising Flexible Leave and/or FMLA policies, please contact Ober|Kaler's Employment Group.