



FUNK & BOLTON

ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION
315 HIGH STREET
SUITE 202
CHESTERTOWN, MARYLAND
21620-1350
PHONE: 410.810.1381
FAX: 410.810.1383
www.fblaw.com

DAVID M. FUNK (MD)	SENIOR COUNSEL	OF COUNSEL
BRYAN D. BOLTON (MD, PA)	MARY E. MCGRATH (MD, DC)	KEVIN J. BEST (MD, DC)
REN L. TUNDERMANN (MD)	AMY L. STRAGLIAN (PA, NJ)	STEPHEN P. CARNEY (MD)
CHARLES D. MACLEOD (MD)		GARY C. HARRIGER (MD)
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JAMES F. TAYLOR (MD)	JUSTIN S. LANDRETH (NY)	RONALD L. SOULDERS (PA, DC)
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CHRISTOPHER W. POVERMAN (MD, DC, NJ)	MICHELLE R. SAWYER (MD)	
DONALD B. DAVIS, JR. (MD)		

LOCAL GOVERNMENT LAW BULLETIN

Family and Medical Leave Act – New Regulations Revise FMLA Practices

On November 17, 2008, the United States Department of Labor published its final rule to implement the first-ever amendments to the Family and Medical Leave Act (FMLA). The new regulations, which take effect January 16, 2009, provide new tools to administer the FMLA more efficiently. To use the new tools, however, and to comply with the new rules, certain FMLA policies, forms and personnel procedures will need to be substantially revised. Many employers may find the new FMLA rules initially complex and challenging to administer. The following provides a cursory glimpse of some of the changes.

Military Leave: To the list of events that may trigger FMLA leave, the regulations outline two additional leave categories: (i) an employee may take up to 12 weeks of FMLA leave for a “qualifying exigency” that arises while a parent, spouse or child is on active duty call or a call to active duty, and (ii) employees can take up to 26 weeks of leave to care for a covered service member with a serious injury or illness incurred while on active duty.

Serious Health Condition: The new regulations retain the six individual definitions of a serious health condition, but add considerable guidance as to what constitutes “continuing” and “periodic” treatment by a health care provider.

Substitution of Paid Leave: FMLA is unpaid, but accrued paid leave can be substituted in certain circumstances. The current rules, however, provide different procedural requirements for substituting different forms of paid leave (e.g., vacation vs. sick leave). Under the new regulations, all forms of accrued paid leave can be substituted for unpaid FMLA leave, regardless of the type of leave used.

Employer Notice Obligations: The new regulations clarify and strengthen the employer notice provisions and require employers to give a general notice about the FMLA (through a workplace poster, and through either an employee handbook and/or upon hire); an eligibility notice; a rights and responsibilities notice; and a designation notice. Samples of each are provided in the appendix of the new regulations.

Medical or Other Certification: There are now four different forms to use in certifying the need for FMLA leave. In addition, the regulations require employers to notify employees of deficient certifications and must provide employees an opportunity to cure deficient certifications. The new regulations also provide processes for authenticating and clarifying the information an employer receives about the need for FMLA leave.

If you have questions about the new federal regulations or would like assistance in revising your FMLA policies and procedures, please contact Victor K. Tervala by telephone at 410-659-4984 or by e-mail at vtervala@fblaw.com.

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