

MODULE 7

Family and Medical Leave

Module Overview

Time:

110 minutes

Objectives:

- to review the key points of the Family and Medical Leave Act (FMLA), the Massachusetts Paid Family Leave Act, and the Small Necessities Leave Act
- to practice applying those acts

Preparation:

- Read: Schwartz, *Your Rights on the Job*, Chapter 14.
- Read and copy handouts: *Participant Outline; the Key Rules of FMLA; Am I Covered?; the Key Rules of the MA PFMLA; Do I Qualify?; The Family and Medical Leave Act in Brief; The Massachusetts Paid Family and Medical Leave Act in Brief; and The Small Necessities Leave Act In Brief*

Materials:

- Prepare flipcharts.

flipchart, markers, tape, ball (optional, for icebreaker)

Module Outline

Module Detail

Welcome and Introduction

Time: 5 minutes

Flipcharts: *Objectives and Agenda*

What is Our Experience?

Time: 15 minutes

Welcome and Introduction

Welcome participants, introduce yourself and review workshop objectives and agenda. It is helpful to put the Objectives and Agenda on flipcharts to post.

Icebreaker: What is Our Experience?

Ask participants to introduce themselves, giving their name, and union or organizational affiliation, if any. Ask for a show of hands of all who have had experience with the FMLA – either personally or a member of their family. Ask some participants to briefly describe the experience

The Family and Medical Leave Act

Time: 10 minutes

Handout: The Key Rules of the FMLA

Activity 1: The Family and Medical Leave Act

Ask participants to listen to the following Mini-rap on the FMLA:

Mini-rap:

“In 1993 Congress created the Family and Medical Leave Act after much pressure from unions, women’s groups and others. The purpose of the law is to protect your job if you are absent due to your own illness, a family member’s illness, or the birth or adoption of a child. You can take up to twelve work weeks of unpaid FMLA leave if you have worked at least 1,250 hours in the year before you need the leave. You may be able to use personal, sick or vacation time if this is in your union contract or if it is your employer’s policy. To be eligible, your employer must have at least fifty employees within a seventy-five mile radius of your workplace.”

To use medical leave you must be sick for more than three calendar days in a row and use continuing care from a healthcare provider. You can take this leave all at once, intermittently or on a reduced schedule. All of your group health insurance must continue as if you were working. You cannot be disciplined or suffer any negative consequences for using FMLA leave. Injuries you may get on the job are not covered by the FMLA – they are covered by Workers Compensation.”

Distribute and review the handout *The Key Rules of the FMLA*. Ask participants “What are your questions?”

Am I Covered?

Time: 20 minutes

Handout: Am I Covered?

Flipchart: Am I Covered?

Activity 2: Am I Covered?

Distribute handout *Am I Covered?* Break participants into small groups and ask each group to discuss each example and determine if the situation described is covered by the FMLA. Bring the whole group back together and ask each group to report their answers, posting responses on flipchart: *Am I Covered?* Discuss any disagreements.

The Mass. Paid Family and Medical Leave Act**Time:** 10 minutes**Handout:** The Key Rules of the Mass PFMLA**Activity 3: The Massachusetts Paid Family and Medical Leave Act**

Ask participants to listen to the following Mini-rap on the Massachusetts PFMLA:

Mini-rap:

“In 2017 and 2018, a grassroots coalition of community organizations, religious groups, and labor unions collected more than 160,000 signatures to qualify a paid family and medical leave question for the ballot. In June 2018, the Legislature passed, and the governor signed, a bill creating a paid family and medical leave program in Massachusetts, avoiding the need for the ballot question.

Massachusetts workers are now able to take up to 12 weeks of job-protected paid leave to care for a new child or a seriously ill or injured family member, up to 12 weeks to meet family needs arising from a family member’s active duty military service, up to 20 weeks to recover from a serious illness or injury, and up to 26 weeks to care for a seriously ill or injured service member.

Paid leave benefits are funded by payroll contributions split effectively 50-50 between employer and employee.

Employers with under 25 employees do not need to make their own contributions, but their workers’ contribution and benefits stay the same. Worker and employer contributions go into a Family and Medical Leave Trust Fund. This allows the Act to cover employees of small employers and self-employed workers.”

Distribute and review the handout *The Key Rules of the MA PFMLA*

Ask participants “What are your questions?”

Do I Qualify?**Time:** 20 minutes**Handout:** Do I Qualify**Flipchart:** Do I Qualify?**Activity 4: Do I Qualify?**

Distribute handout *Do I Qualify?* Repeat procedure in Activity 2, above: Break participants into small groups and ask each group to discuss each example and determine if the situation described is covered by the MA PFMLA. If it is covered, how many weeks is the worker entitled to?

Bring the whole group back together and ask each group to report their answers, posting responses on flipchart: *Do I Qualify?* Discuss any disagreements.

The Small Necessities Leave Act

Time: 5 minutes

Handout: Small Necessities Leave Act in Brief

Activity 5: The Small Necessities Leave Act

Ask participants to listen to the following mini-rap on the Small Necessities Act:

Mini-rap:

“In Massachusetts there is a law that provides for 24 hours a year of leave to attend a child’s school activity or to accompany a child or elderly relative to a medical appointment. The rules of eligibility are the same as the FMLA. This leave is in addition to the FMLA. Depending on your union contract or your employer’s policy, you may be able to use personal, sick or vacation time, or it may be unpaid. You must give seven days’ notice, if possible, before using the Small Necessities Act.”

Distribute & review handout Small Necessities Act in a Nutshell.

Ask participants “What questions to you have?”

Who is Eligible?

Time: 10 minutes

Handout: Who is Eligible for Small Necessities Leave?

Flipchart: Who Is Eligible?

Activity 6: Who is Eligible

Distribute the handout *“Who is Eligible for Small Necessities Leave?”* Staying in the large group, have the participants answer the questions. This should proceed relatively quickly, since the characters in the scenarios were all introduced in activities 2 and 4.

Remedies for Violation of the FMLA or the PFMLA

Time: 10 minutes

Handouts: The FMLA in Brief; the MA PFMLA In Brief

Flipchart: If You Are Denied

Note to facilitator:

Summary

Time: 5 minutes

Remedies for Violation of the FMLA or PFMLA

Distribute and review the remedies section of the handouts *The FMLA in Brief* and *The MA PFMLA In Brief*.

Use the flipchart *If You Are Denied Leave* for emphasis.

Ask participants “What questions to you have?”

Depending on literacy levels you can read the remedy sections aloud or ask one or two participants to read them

Summary:

“It took years of education and lobbying by unions and other groups to pass the FMLA. The key provisions are that covered employees are allowed 12 weeks per year of job protected, unpaid leave. A union could bargain to allow employees to use sick, vacation or personal time to get paid for FMLA leave. But many workers are unable to take time off without pay.

In Massachusetts and eight other states plus the District of Columbia, grassroots groups, unions and other advocates have been able to get laws passed that provide for **paid medical leave**.

Immigrant workers, whether documented or undocumented, are covered by FMLA and PFMLA. It is not always safe, however, for **undocumented workers to go to state and federal agencies** with complaints, as those agencies might notify Immigration and Customs Enforcement (ICE).

Therefore, undocumented workers should check first with an advocacy organization (see handout: Partial List of Advocacy Organizations). **The handout Safe and Unsafe Agencies for Immigrant Workers is only a guideline. Policies change.** To be safe, always go to an advocacy organization first.”

MODULE 7

Family and Medical Leave

1 hour, 50 minutes

Participant Outline

Objectives:

- To review the key points of the Family and Medical Leave Act (FMLA), the Massachusetts Paid Family Leave Act, and the Small Necessities Leave Act
- To practice applying those acts

Welcome and introductions

Icebreaker: What's Our Experience?

Discussion: What do we know about the FMLA?

Activity 1: The Family and Medical Leave Act in Brief

Listen to mini-rap about the law

Activity 2: Am I Covered?

Small group discussion practicing what has been learned about the FMLA

Activity 3: The Massachusetts Paid Family and Medical Leave Act

Listen to mini-rap about the law

Activity 4: What Are My Benefits?

Small group discussion practicing what has been learned about the MA PFMLA

Activity 5: The Small Necessities Leave Act

Listen to mini-rap about this Massachusetts legislation

Activity 6: Who is Eligible?

Discussion together in big group about who is eligible for SNLA leave

Remedies for Violation of the FMLA or PFMLA

Learn what can be done if your rights are violated

Summary

Wrap up what we have learned about the FML, MA PFMLA and Small Necessities Act

Key Rules of the FMLA (Family and Medical Leave Act)

You can take up to 12 workweeks of unpaid FMLA leave in each 12 month period for the following reasons:

- 1) Your own serious illness
 - 2) To care for a seriously ill child or parent
 - 3) For childbirth or to care for a newborn child up to age one
 - 4) For the placement of a child with you for adoption or foster care
- Depending on your union contract or your employer's policy, you may be able to use personal, sick, or vacation time to pay for the time off; or it may be unpaid.
 - To be eligible
 - 1.) You must have worked 1,250 hours in the 12 months before your absence.
 - 2.) Your employer must have 50 or more workers within a 75 mile radius
 - Medical leave can be taken all at once, intermittently, or on a reduced schedule.
 - For your own illness, you must be sick for three days in a row with an illness that requires care from a health care provider..
 - You must give your employer "proper and timely notice".
 - During your leave, group health plan benefits must be maintained as if you had continued to work.
 - When you return, you must be restored to your former position or to an equivalent one with no loss to your seniority or benefits.
 - You cannot be given any discipline or suffer any negative consequences for time taken under the FMLA.

Am I Covered? Participant Worksheet

Read the following scenarios and answer the questions posed in each. Each workplace meets the standards of FMLA eligibility

- 1) Elaine has worked full-time at S&S Manufacturing for two years. Her father has cancer and is not expected to live for more than two months. Is she covered to take time off to be with him at home?
- 2) Juan has a bad back. His doctor wants him to be able to come in to work late on days his back hurts, so he can loosen it up at home. Under the FMLA, is this possible?
- 3) Sue finished high school last May and started a new full-time job in June. She broke her leg in November. She needs to take two weeks off to get better. Is she covered?

Am I Covered? Facilitator's Answers

Read the following scenarios and answer the questions posed in each. Each workplace meets the standards of FMLA eligibility

- 1) Elaine has worked full-time at S&S Manufacturing for two years. Her father has cancer and is not expected to live for more than two months. Is she covered to take time off to be with him at home?

Yes, Elaine is covered. The FMLA covers time off to care for a seriously ill parent.

- 2) Juan has a bad back. His doctor wants him to be able to come in to work late on days his back hurts, so he can loosen it up at home. Under the FMLA, is this possible?

Yes, FMLA leave may be taken intermittently if Juan's back condition is a chronic, serious condition.

- 3) Sue finished high school last May and started a new full-time job in June. She broke her leg in November. She needs to take two weeks off to get better. Is she covered?

No, Sue is not covered. She had not worked for her employer for at least 1,250 hours before breaking her leg.

Key Rules of the Massachusetts PFMLA

Who is covered?

- Anyone who works in Massachusetts and is classified as an employee, not an independent contractor.
- Crew members of commercial fishing boats and some others who receive 1099-MISC tax forms rather than W-2 forms.
- Self-employed individuals can opt in to the system by paying the required contribution to the Trust Fund.
- It does not matter how long you have worked for your current employer, but you must meet a minimum threshold of earnings in the previous year (currently \$5,400) to be eligible. Those earning can be from multiple employers.

Are all employers included?

- The size of the employer (number of employees) does not matter
 - Certain employers are excluded, including municipalities and some other political subdivisions (such as regional planning boards or housing authorities), as well as railroads and churches. Excluded employers can opt in.
 - An employer can opt out if they provide a private plan with the same or better benefits
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- You can take up to 20 workweeks of paid leave each year to manage your own serious illness.
 - You can take up to 12 months each year to:
 - 1) care for a seriously ill child or parent
 - 2) bond with a newborn or newly placed foster child or adopted child
 - There are some special provisions for members of the Armed Forces
 - The leave can be taken all at once, intermittently, or on a reduced schedule.
 - You must give your employer 30 days notice, if possible. If 30 days is not possible, give as much notice as possible.
 - During your leave, group health plan benefits must be maintained as if you had not left.
 - When you return, you must be restored to your former position or to an equivalent one with no loss to your seniority or benefits.
 - You cannot be given any discipline or suffer any negative consequences for time taken under the PFMLA.
 - Benefits start after seven days of leave
 - The amount of the benefit is determined by a formula, with a cap pegged at 64% of the state average weekly wage in the previous year.

Do I Qualify? Participant Worksheet

Read the following scenarios and answer the questions posed in each.

- 1) Marie lives in New Hampshire, but works at a “Mom-and-Pop” corner store in Massachusetts. Her grandfather has cancer and is bedridden at his home in New Hampshire. Does Marie qualify for PFML benefits to take care of him?

- 2) Jason is self-employed as a dog-walker. He sprained his ankle, and won’t be able to walk for a couple of weeks. Is he eligible for PFML benefits?

- 3) Sue finished high school last May and started a new full-time job in June. She broke her leg in November. She needs to take two weeks off to get better. Is she covered?

Do I Qualify? Facilitator's Answers

Read the following scenarios and answer the questions posed in each.

- 1) Marie lives in New Hampshire, but works at a “Mom-and-Pop” corner store in Massachusetts. Her grandfather has cancer and is bedridden at his home in New Hampshire. Does Marie qualify for PFML benefits to take care of him?

Yes, Marie qualifies. The PFMLA covers time off to care for a seriously ill grandparent. It does not matter where the employee lives, as long as he or she works in Massachusetts. It also does not matter how many employees the employer has.

- 2) Jason is self-employed as a dog-walker. He sprained his ankle, and won't be able to walk for a couple of weeks. Is he eligible for PFML benefits?

This depends on whether Jason has opted into the system and paid the required contributions

- 3) Sue finished high school last May and started a new full-time job in June. She broke her leg in November. She needs to take two weeks off to get better. Is she covered?

Yes. The Massachusetts law does not have the requirement that the employee has worked 1,250 hours for the employer. Even at minimum wage, she would easily have made the \$5,400 minimum threshold to be eligible for benefits.

Who is Eligible? Participant Worksheet

Using the same characters from the previous two handouts, decide who is eligible for Small Necessities Leave (assuming they are not at present taking leave under the FMLA or PFMLA)

- 1) Elaine needs to take her father to a doctor appointment.
- 2) Juan needs to attend a parent-child conference at his daughter's school
- 3) Sue needs to go to the clinic to get her cast removed
- 4) Marie gets an emergency call from her son's school. She needs to take him home right away.
- 5) Jason was bitten by one of the dogs he walks. He needs to get a rabies shot.

Who is Eligible?

Facilitator's Answers

Using the same characters from the previous two handouts, decide who is eligible for Small Necessities Leave (assuming they are not at present taking leave under the FMLA or PFMLA)

- 1.) Elaine needs to take her father to a doctor appointment.

Yes, Elaine is eligible. She qualifies for FMLA, and a father's doctor appointment is a covered activity.

- 2.) Juan needs to attend a parent-child conference at his daughter's school

Yes. Juan works in a workplace that is covered by FMLA, and a parent-child conference qualifies as a school activity that relates to the educational advancement of the child

- 3.) Sue needs to go to the clinic to get her cast removed

No. Sue has not worked long enough to qualify for FMLA, so she is not eligible.

- 4.) Marie gets an emergency call from her son's school. She needs to take him home right away.

No. Marie works for a small employer who is not covered by the FMLA

- 5.) Jason was bitten by one of the dogs he walks. He needs to get a rabies shot.

No. Self-employed people are not eligible for the Small Necessities Leave Act

Flipcharts for Module 7: Family and Medical Leave

Flipcharts for Welcome and Introductions

Objectives

- To review the key points of the Family and Medical Leave Act (FMLA), the Massachusetts Paid Family Leave Act, and the Small Necessities Leave Act
- To practice applying those acts

Agenda

- Welcome and Introductions
- Icebreaker: What is Our Experience?
- Activity 1: The Family and Medical Leave Act
- Activity 2: Am I Covered?
- Activity 3: The Massachusetts Paid Family and Medical Leave Act
- Activity 4: Do I Qualify?
- Activity 5: The Small Necessities Leave Act
- Activity 6: Who is Eligible
- Remedies for Violation of the FMLA
- Summary

Flipchart for Activity 2:

Am I Covered?
1.) Elaine
2.) Juan
3.) Sue

Flipchart for Activity 4:

Do I Qualify?
1.) Marie
2.) Jason
3.) Sue

Flipchart for Activity 6:

Who Is Eligible?
1.) Elaine
2.) Juan
3.) Sue
4.) Marie
5.) Jason

If You Are Denied FMLA Leave

The U.S. Department of Labor enforces this act.

They can

- Give you the time off
- Reinstatement and pay back wages and other benefits you lost if you took the time off without permission

If you are Denied PFMLA Benefits, or SNLA Leave

The Mass Attorney General enforces these acts

A Court may order your employer to:

- Obey the law
- Reinstatement with triple back pay plus legal expenses
- Pay a fine