

KDLA August 2010 Trustee Tip of the Month Are Libraries Required to Provide FMLA Benefits?

The Family and Medical Leave Act was created in 1993 to aid employees in balancing work and family responsibilities when the employee or a family member suffers from a serious medical condition. It allowed employees to have an excused absence and take up to 12 weeks of unpaid leave from their jobs during a 12-month period. Recently, some updates to the FMLA regulations have been announced. Libraries should review their policies regarding FMLA to ensure compliance with these new regulations.

Public libraries, as public agencies funded by tax dollars, are considered to be “covered employers” without regard to the number of employees they have. [29 CFR 825.104] Because all libraries in Kentucky are subject to FMLA law, they must have an FMLA policy which complies with Federal statutes.

However, employees of public libraries with fewer than 50 employees are **not** eligible for FMLA leave unless the library chooses to make them eligible. [29 CFR 825.110(d)] If the library chooses to provide FMLA leave to employees, it is required to comply with all of the Federal statutes concerning FMLA leave.

For an employee to be “eligible” to qualify for FMLA leave, all of the following conditions must be met [29 CFR 825.110]:

1. The employee must have worked for at least 12 months;
2. The employee must have worked at least 1,250 hours during the previous 12-month; and
3. At least 50 employees are employed by the library within 75 miles of the employee’s worksite.

Recent changes to FMLA regulations include:

1. The library must notify an employee requesting FMLA leave of their eligibility to take FMLA leave within five (5) business days. *Form WH-381: Notice of Eligibility and Rights & Responsibilities* is available for use at: <http://www.dol.gov/whd/forms/WH-381.pdf>.
2. The Medical Certification process must follow HIPPA privacy rules. The appropriate forms must be given to the employee to be completed by the medical provider. The employer cannot directly contact the healthcare provider for this information.
 - *Form WH-380-E: Certification for Employee’s Health Condition* is available at: <http://www.dol.gov/whd/forms/WH-380-E.pdf> or,
 - *Form WH-380-F: Certification for Family Member’s Health Condition* is available at: <http://www.dol.gov/whd/forms/WH-380-F.pdf>
3. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. This includes veterans who were on active duty within the previous 5 years of needing this care.
4. Employees may take up to 12 workweeks of “exigency” leave to deal with issues arising from the military service of a family member. *Exigencies* are defined as: short-notice deployment, military events, childcare and school activities, financial & legal

arrangements, counseling, rest and recuperation, post-deployment activities, and other activities agreed upon by employer and employee. [29 CFR 825.126]

5. The terms “son” and “daughter” have been defined beyond the traditional scope of parent and child relationships to include anyone who assumes the role of caring for a child regardless of the legal or biological relationship to that child. This would make the “in loco parentis (in place of parent)” eligible for parental rights to family leave for the care of that child. [Administrator’s Interpretation No. 2010-3]

Other FMLA requirements to keep in mind include:

- All libraries are required to post and keep posted on its premises, in a conspicuous place, a notice explaining the FMLA provisions and providing information concerning the procedures for filing complaints of violations of the Act. [29 CFR 825.300] An official poster is at: <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>.
- Employees may be required to follow the library’s normal, customary call-in procedures for FMLA notification unless there are unusual circumstances [29 CFR 825.302(d)].
- If an employee was receiving group health benefits when leave began, an employer must maintain them at the same level and in the same manner during periods of FMLA leave as if the employee had continued to work. If necessary, the library can work out how the employee’s insurance premium will be paid while on unpaid FMLA leave. [29 CFR 825.210]
- An employee may elect, or the employer may require, the use of any accrued paid leave (vacation, sick, personal, etc.) for periods of unpaid FMLA leave. [Note: Sick/vacation leave and the FMLA leave can run concurrently.]
- An employee who returns from FMLA leave is entitled to be restored to the same or an equivalent job (defined as one with equivalent pay, benefits, working conditions, responsibilities, etc.).
- Records pertaining to FMLA leave must be maintained for at least three (3) years. And these records should be filed separately from other personnel records in a secure location. [CFR 29 825.500]

Quick Tips:

- ◆ All libraries are required to post the Family Medical Leave Act provisions and procedures for filing complaints in a place where all employees will see them. Use an official poster.
- ◆ Review your FMLA leave policy to ensure it is accurate and reflects recent updates.
- ◆ Include your FMLA leave policy in your *Employee Handbook* and review it during orientation of new employees.
- ◆ If FMLA leave is requested, notify the employee of eligibility within 5 business days.
- ◆ Retain records regarding FMLA leave in a separate file and secure location for 3 years.

This is not legal advice and I am not an attorney. If you feel you need legal advice you should consult an attorney.

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