



Laborers Funds Administrative Office of Northern California, Inc.
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TO: Contributing Employers

RE: **Family and Medical Leave Act**

As you are aware, the Family and Medical Leave Act became effective on August 5, 1993 for non-bargaining employees and February 4, 1994 for bargaining employees.

In brief, the law requires employers with 50 or more total employees to grant leaves of absence of up to 12 weeks in a year to eligible employees for family or medical leave under certain conditions. Eligible employees are those who have worked at least 1,250 hours for the particular employer during the previous 12-month period. Among the Act's provisions is the requirement that employers continue to provide eligible employees with health coverage during the leave of absence.

Although the Act focuses upon employers, the Trustees wish to accommodate those Contributing Employers who must comply with the law. Consequently, the Fund has established the following policy to provide coverage to eligible employees for family or medical leave.

- It is the Employer's responsibility to notify employees of their rights under the Family and Medical Leave Act and carry out the provisions of that Act.
- Employer contributions for employees on leave of absence are to be remitted on the same monthly reporting form used to remit contributions on behalf of other employees and are due on the date specified in the collective bargaining/participation agreement. The names of employees on leave should be marked "FMLA."
- It is not the Fund's responsibility to maintain coverage for employees on leave whose employers have not made the required contributions. Any penalties under the Act for failure to maintain coverage are the responsibility of the employer.
- Employees will receive health coverage on the same basis as other Fund participants.
- Employers will contribute a monthly amount per FMLA employee based on the contribution rate multiplied by 173 hours. This amount is determined by the Fund and may change in the future.

The Health and Welfare provisions of the Family and Medical Leave Act are only a portion of the entire Act. Enclosed, you will find a sample of a notice you may want to distribute to your employees, which provides some additional detail. However, you may want to consult with your own legal counsel or the U.S. Department of Labor as the Fund assumes no responsibility for interpreting the provisions of the Act beyond its obligation to provide benefits upon timely payment of contributions by the employer.

If you should have any questions concerning the Fund's participation, please contact the Fund Office. If you have any questions concerning the Family and Medical Leave Act and your employer obligations, you should contact the nearest office of the U.S. Department of Labor.

This memorandum is not intended to address all issues relevant to the Family and Medical Leave Act and should not be relied upon to make legal decisions concerning employer obligations or employee rights under the Act. The Fund takes no responsibility for interpreting the provisions of the Act beyond its obligation to provide benefits upon timely payment of contributions by the employer and, if applicable, the employee.

(Notice of Employees of Rights under FMLA)

**YOUR RIGHTS
under the
FAMILY AND MEDICAL LEAVE ACT OF 1993**

FMLA requires covered employers to provide up to 12 weeks of unpaid, job protected leave to “eligible” employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within a 75 mile radius.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

A serious health condition is defined as, an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is “formidable.”
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require a second or third opinion (at the employer's expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any “group health plan.”
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny this exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

CERTIFICATION OF PHYSICIAN OR PRACTITIONER
(Family and Medical Leave Act of 1993)

1. Employee's Name: _____
2. Patient's Name (if other than employee): _____
3. Diagnoses: _____

4. Date condition commenced : _____
5. Probable duration of condition: _____
6. Regimen of treatment to be prescribed (indicate number of visits, general nature and duration of treatment, including referral to other provider of health services. Include schedule of visits or treatment if it is medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal schedule of hours per day or days per week):
 - a. By Physician or Practitioner:

 - b. By another provider of health services, if referred by Physician or Practitioner:

IF THIS CERTIFICATION RELATES TO CARE FOR THE EMPLOYEE'S SERIOUSLY-ILL FAMILY MEMBER, SKIP ITEMS 7, 8 AND 9 AND PROCEED TO ITEMS 10 THROUGH 14 ON REVERSE SIDE. OTHERWISE, CONTINUE BELOW.

Check Yes or No in the spaces below, as appropriate.

- | | Yes | No | |
|----|-----|-----|---|
| 7. | ___ | ___ | Is inpatient hospitalization of the employed required? |
| 8. | ___ | ___ | Is employee able to perform work of any kind? (If "No," skip item 9.) |
| 9. | ___ | ___ | Is employee able to perform the functions of employee's position?
(Answer after reviewing statement from employer of essential functions of employee's position or, if none provided, after discussing with employee.) |

FOR CERTIFICATION RELATING TO CARE FOR THE EMPLOYEE'S SERIOUSLY-ILL FAMILY MEMBER, COMPLETE ITEMS 10 THROUGH 14 BELOW AS THEY APPLY TO THE FAMILY MEMBER AND PROCEED TO ITEM 15.

- | | | | |
|-----|-----|-----|--|
| | Yes | No | |
| 10. | ___ | ___ | Is inpatient hospitalization of the family member (patient) required? |
| 11. | ___ | ___ | Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety or transportation? |
| 12. | ___ | ___ | After review of the employee's signed statement (See Item 14 below), is the employee's presence necessary or would it be beneficial for the care of the patient? (This may include psychological comfort.) |
| 13. | | | Estimate the period of time care is needed or the employee's presence would be beneficial: |

ITEM 14 IS TO BE COMPLETED BY THE EMPLOYEE NEEDING FAMILY LEAVE.

14. When Family Leave is needed to care for a seriously-ill family member, the employee shall state the care he or she will provide and an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced leave schedule:

Employee Signature: _____ Date: _____

15. Signature of Physician or Practitioner: _____

16. Date: _____

17. Type of Practice (Field of Specialization, if any): _____