

**THE FAMILY AND MEDICAL
LEAVE ACT OF 1993**

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The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family Medical Leave Act (FMLA) for all private, state and local government employees, and some federal employees. Most federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management or the Congress.

FMLA became effective on August 5, 1993, for most employers. If a collective bargaining agreement (CBA) was in effect on that date, FMLA became effective on the expiration date of the CBA or February 5, 1994, whichever was earlier. FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. The employer elects the designation of the 12-month period. The City of Port St Lucie has established that the first day of commencement of the leave, going forward, will determine the 12-month period for each employee.

The law contains provisions on employer coverage; employee eligibility for the law's benefits; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. The law also requires employers to keep certain records.

EMPLOYER COVERAGE

FMLA applies to all:

- ◆ Public agencies, including state, local and federal employers, local education agencies (schools), **and**
- ◆ Private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year **and** who are engaged in commerce or in any industry or activity affecting commerce – including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee **must meet all of the following**:

1. work for a covered employer;
2. have worked for the employer for a total of 12 months;
3. have worked at least 1,250 hours over the previous 12 months; and
4. work at a location in the U.S. or in any territory or possession of the U.S. where at least 50 employees are employed by the employer within 75 miles.

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of 12 workweeks of **unpaid** leave during any 12-month period for one or more of the following reasons:

- ◆ for the birth and care of the newborn child of the employee;
- ◆ for placement with the employee of a son or daughter for adoption or foster care;
- ◆ to care for an immediate family member (spouse, child, or parent) with a serious health condition; **or**
- ◆ to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a **combined** total of 12 workweeks of family leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth or placement.

“Serious Health Condition” means an illness, injury, impairment, or physical or mental condition that involves:

- ◆ Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; **or**
- ◆ Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:
 - (1) A health condition (including treatment therefor, or recovery therefrom) lasting more than **three consecutive days**, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:
 - ◆ treatment two or more times by or under the supervision of a health care provider; **or**
 - ◆ one treatment by a health care provider with a continuing regimen of treatment; **or**
 - (2) Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; **or**
 - (3) A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; **or**

- (4) A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; **or**
- (5) Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

Health Care Provider - Health care providers who may provide certification of a serious health condition include:

- ◆ Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices;
- ◆ Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law;
- ◆ Nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law;
- ◆ Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
- ◆ Any health care provider recognized by the employer or the employer's group health plan benefits manager;
- ◆ A health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

Intermittent/Reduced Schedule Leave

Under some circumstances, employees may take FMLA leave intermittently or on a reduced schedule – which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

- ◆ If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent/reduced schedule leave is subject to the **employer's approval**.
- ◆ FMLA leave may be taken intermittently/reduced schedule whenever **medically necessary** to care for a seriously ill family member, or because the employee is seriously ill and unable to work.
- ◆ Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave.
- ◆ Employers may account for FMLA leave in the shortest period of time allowed by their payroll system, provided it is one hour or less.

- ◆ Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider.
- ◆ The employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodates recurring periods of leave better than the employee's regular job.

Substitution of Paid Leave

Pursuant to City Of Port St. Lucie's Rules and Regulations regarding use of family and medical leave, employees are **required** to use their accrued **paid** leave (such as sick or vacation leave) to cover their FMLA leave. If their accrued paid leave benefits are exhausted, employees may take unpaid FMLA leave until the conclusion of the approved leave.

Employees on workers' compensation leave that runs concurrently with their FMLA leave are not required to use their accrued paid leave benefits.

The City Of Port St. Lucie will determine if an employee's use of paid leave counts as FMLA leave, based upon information received from the employee.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave. Coverage can be terminated during FMLA leave for failure by the employee to maintain his/her contributions.

In some instances, the employer may recover from an employee, *by deduction from any sums due the employee such as unpaid wages, vacation pay, etc.*, the amount paid in premiums by the employer to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an **equivalent** job with equivalent pay, benefits, and other terms and conditions of employment. Employees will be required to present a fitness-for-duty certification prior to being restored to their job. Restoration will be denied by the employer if the employee fails to provide the required fitness-for-duty certification.

An employee may **voluntarily** return to work by accepting a light-duty assignment. By doing so, however, the employee could exhaust restoration rights under FMLA prior to FMLA time being exhausted.

Also, an employee under a workers' compensation leave that is running concurrently with his/her FMLA leave, could forfeit workers' compensation benefits if he/she refuses a light-duty assignment offered by the employer in conjunction with the workers' compensation claim.

An employee's use of FMLA leave cannot result in the loss of any employee benefit that the employee earned or was entitled to **before** using FMLA leave, nor be counted against the employee under a "no fault" attendance policy.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly paid "**key**" employees after using FMLA leave during which health coverage was maintained. A "**key**" employee is a salaried "eligible" employee who is among the highest ten percent of employees compensated, within 75 miles of the work site.

Benefits and protection under the FMLA leave end if the employee fails to return to work within the 12-week entitlement, therefore, the employee is not entitled to restoration under FMLA.

NOTICE AND CERTIFICATION

Employees seeking to use FMLA leave may be required to provide **30-day advance notice** of the need to take FMLA leave when the need is foreseeable and such notice is practical.

Employers may also **require** employees to provide:

- ◆ **Medical certification** supporting the need for leave due to a serious health condition affecting the employee or his/her spouse, child, or parent;
- ◆ **Second or third medical opinions** (at the employer's expense) and **periodic recertification**;
- ◆ **Periodic reports during FMLA** leave regarding the employee's status and intent to return to work; and
- ◆ **Fitness-for-duty certification** upon their return to work.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. Also, covered employers must inform employees of their rights and responsibilities under FMLA.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also bring civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the “salary basis” requirements for FLSA’s exemption extends only to “eligible” employees’ use of leave required by FMLA.

The FMLA does not affect any other federal or state law that prohibits discrimination, nor supersede any state or local law that provides greater family or medical leave protection. Nor does it affect an employer’s obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan. The FMLA also encourages employers to provide more generous leave rights.

FURTHER INFORMATION

For more information, please contact the nearest office of the **Wage and Hour Division** listed in most telephone directories under U.S. Government, Department of Labor.

Addendum To The City's Family and Medical Leave Act (FMLA) Policy

1. National Defense Authorization Act (H.R. 4986), Section 585

On January 28, 2008, President Bush signed the 2008 National Defense Authorization Act that significantly expanded the Family Medical Leave Act (FMLA) for families of military service members. The Department of Labor (DOL) will publish the implementing final regulations for these provisions in the near future and an updated Addendum to the FMLA policy will be released at that time. These new laws are the first major revision to the FMLA since its enactment in 1993, and include the following:

Family Leave Due to a Call to Active Duty –

An eligible employee may now take up to 12 weeks of unpaid FMLA leave for any “qualifying exigency” (to be defined by regulation) related to a spouse, son, daughter or parent’s active duty or notification of an impending call or order to active duty in the Armed Forces in support of a “contingency operation” (generally a war or similar combat operation). The leave may commence as soon as he or she is notified of an impending call or order. The City will voluntarily extend this leave to qualifying employees, pending the finalization of the regulations by the DOL.

Caregiver Leave for An Injured Service Member –

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member may now take up to 26 weeks of FMLA leave in a single 12-month period, to care for the service member with an injury or illness incurred in the line of active duty that rendered the member unable to perform the duties of the member’s office, grade, rank or rating. This provision of the law is effective as of January 28, 2008.

Most of the provisions of the FMLA remain unchanged and will apply to these new types of FMLA leave, including employer coverage, employee eligibility requirements, health insurance continuation, and reinstatement rights. Employees can utilize the leave on an incremental basis or in quarter hours as tracked by the City’s payroll system.

2. Florida’s New Domestic Violence Leave Law

As of July 1, 2007, Florida employers must provide eligible employees with up to three (3) days of leave in a 12-month period if the employee, a family member, or a household member is a victim of domestic violence. The employee must have worked for the City for a minimum of 3 months. Employees may either use their accrued leave benefits or take the leave as unpaid.

Types of Activities Covered by the Law:

- Seeking an injunction for protection against domestic violence or repeat violence, dating violence, or sexual violence.
- Obtaining medical care or mental health counseling or both for the employee or a family or household member to address injuries resulting from domestic violence.
- Obtaining services from victim services organizations such as domestic violence shelters or rape crisis centers.
- Making the employee’s home secure from the perpetrator of domestic violence or finding a new home to escape the perpetrator.

Seeking legal assistance to address issues arising from domestic violence or attending or preparing for court-related proceedings arising from the act of domestic violence.

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, 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.

Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

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. A covered servicemember is: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness*; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.*

***The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months*, and if at least 50 employees are employed by the employer within 75 miles.

***Special hours of service eligibility requirements apply to airline flight crew employees.**

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and

a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- 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

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

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.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Wage and Hour Division



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CITY OF PORT ST. LUCIE

Human Resources



A CITY FOR ALL AGES

HIGHLIGHTS OF THE REGULATORY CHANGES IN

The Department of Labor's Final Rule On Family and Medical Leave

On November 17, 2008, the Department of Labor (DOL) published its final rule to implement the first-ever amendments to the Family and Medical Leave Act (FMLA), which were signed into law by President Bush in January 2008. These amendments not only incorporate changes and clarification to the 15-year old FMLA regulations, but also provide for new military family leave entitlements. They are effective on January 16, 2009.

Below are highlights of the regulatory changes in the DOL's Final Rule. These highlights will be posted on the City's employee website and emailed to each City department for posting. The City's FMLA Leave Policy will also be posted on the City's website upon completion of all changes and updates.

HIGHLIGHTS OF THE REGULATORY CHANGES

➤ **Military Family Leave**: FMLA was amended to provide two new leave entitlements:

1. Military Caregiver Leave(a.k.a Covered Service Member Leave):

Eligible employees who are family members of covered servicemembers may take up to 26 workweeks of leave in a "single 12-month period" to care for a covered service member with a serious illness or injury incurred in the line of active duty.

2. Qualifying Exigency Leave:

Eligible employees with a covered military member serving in the National Guard or Reserves may request up to 12 workweeks of FMLA leave to use for "any qualifying exigency" arising out of the fact that a covered military member is on active duty or called to active duty status in support of a contingency operation. The DOL defines qualifying exigency categories for FMLA leave to include: (1) Short-notice deployment; (2) Military events and related activities; (3) Childcare and school activities; (4) Financial and legal arrangements; (5) Counseling; (6) Rest and recuperation; (7) Post-deployment activities; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and the employee.

- **Serious Health Condition**: The final rule retains the six individual definitions of serious health condition while adding guidance on three regulatory matters. Under the final rule, one of the definitions of serious health condition involves more than three consecutive, full calendar days of incapacity plus “two visits to a health care provider” that must occur within 30 days of the beginning of the period of incapacity and the first visit to the health care provider must take place within 7 days of the first day of incapacity. Secondly, for the serious health condition definition that involves more than three consecutive, full calendar days of incapacity plus a regimen of continuing treatment, the final rules clarifies that the first visit to the health care provider must take place within 7 days of the first day of incapacity. Thirdly, the final rule defined “periodic visits” for chronic serious health conditions as at least two visits to a health care provider per year.
- **Employee Eligibility**: The employee must meet certain requirements to be eligible for FMLA leave benefits. The final rule amended the 12-month employment requirement to indicate that while the 12 months of employment need not be consecutive, employment periods prior to a break in service of 7 years or more need not be counted, unless the break is associated with the employee’s fulfillment of his/her National Guard or Reserve military obligation, or a written agreement exists indicating the employer’s intention to rehire the employee after the break in service.
- **Becoming Eligible for FMLA After Leave Begins**: Under the new regulations, for an employee on leave that was not eligible for FMLA at the start, but becomes eligible during the leave, the remaining leave will be considered FMLA leave from the date of eligibility. The leave taken prior to eligibility is not considered.
- **Employee Notice**: Under the final rule, when foreseeable, employees must provide 30 days advance notice of the need to take leave. If 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer’s normal call-in procedures. Employees must provide sufficient information to the employer to determine if the leave may qualify for FMLA protection and provide the anticipated timing and duration of the leave. Employees must also inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees may also be required to provide a certification and periodic recertification to support the need for leave. The regulations make it clear that, if the employee fails to provide timely notice, the FMLA leave request may be delayed or denied and may be subject to whatever discipline the employer’s rules provide.

- **Employer Notice Obligations**: The final rule employers will be required to provide employees with a **General Notice** about the FMLA; a **Notice of Eligibility** indicating the employee's eligibility for an FMLA leave; a **Rights and Responsibilities Notice** if they are eligible - a reason why if they are not; and a **Designation Notice** when the employee's FMLA leave request has been approved or if additional information is required. The final rule extends the time for employers to provide various notices from two business days to five business days.

- **Substitution of Paid Leave**: FMLA leave is unpaid, however, employers may require employees to use any accrued paid vacation, personal, family or sick leave concurrently with any FMLA leave, as does the City. Under the final rule, all forms of paid leave offered by an employer will be treated the same. An employee electing to use any type of paid leave concurrently with FMLA leave must follow the same terms and conditions of the employer's policy that apply to other employees for the use of such leave.

- **Medical Certification Process (Content and Clarification)**: The final rule recognizes the advent of the Health Insurance Portability and Accountability Act (HIPAA) and the applicability of the HIPAA privacy rule to communication between employers and employee's health care providers. Therefore, a requirement has been added to the final rule that specifies that the employer's representative contacting the health care provider must be a health care provider, human resource professional, a leave administrator, or a management official, but in no case may it be the employee's direct supervisor. Further, employers may not ask health care providers for additional information beyond that required by the certification form. The final rule also improves the exchange of medical information by updating the Department's optional form WH-380 to create separate forms for the employee and covered family members and by allowing, not requiring, health care providers to provide a diagnosis of the patient's health condition as part of the certification.

In addition, the final rule specifies that if an employer deems a medical certification to be incomplete or insufficient, the employer must specify in writing what information is lacking, and give the employee 7 calendar days to cure the deficiency.

- **Medical Certification Process (Timing)**: The final rule allows employers to request a new medical certification each leave year for medical conditions that last longer than one year. For recertification of an ongoing condition, in all cases the final rule allows an employer to request recertification every six months in conjunction with an absence.

- **Holidays**: The new regulations state that if an employee is on FMLA leave the whole holiday week, the employer may count the holiday as FMLA, but if the employee works part of the holiday week, FMLA leave is not applicable for the holiday.
- **Overtime**: If an employee is required to work overtime but is unable to do so because of FMLA leave, then the hours of overtime that the employee would have worked are counted against the employee's FMLA entitlements. Voluntary or discretionary overtime would not count against the employee's leave.
- **Light Duty**: Under the final rule, the time an employee spends performing "light duty" work does not count against an employee's FMLA leave entitlement and the employee's right to restoration is held in abeyance during the period of time the employee performs light duty, or until the end of the applicable 12-month FMLA leave year. If an employee is voluntarily performing a light duty assignment, the employee is not on FMLA leave.
- **Perfect Attendance Awards**: The final rule changes the treatment of perfect attendance awards to allow employers to deny a "perfect attendance" award to an employee who does not have perfect attendance because of taking FMLA leave as long as it treats employees taking non-FMLA leave in an identical way.
- **The Ragsdale Decision**: Under the regulations, retroactive designation is permitted if an employer fails to timely designate leave as FMLA leave and notify the employee of the designation. The employee may not however, suffer harm or injury as a result of the failure to timely designate the leave as FMLA. Additionally, an employee and employer may agree to retroactively designate an absence as FMLA protected.
- **Waiver of Rights**: The final rule clarifies that employees may voluntarily settle or release their FMLA claims without court or DOL approval. Prospective waivers of FMLA rights continue to be prohibited under the final rule.
- **Fitness-For-Duty Certifications**: The current FMLA regulations allow employers to enforce uniformly-applied policies or practices that require all similarly-situated employees who take leave to provide a certification that they are able to resume work (fitness-for-duty certification). The final rule makes two changes to the fitness-for-duty process. First, an employee may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. Second, where reasonable job safety concerns exist, an employer may require a fitness-for-duty certification before an employee may return to work when the employee takes intermittent leave.