

**FAMILY MEDICAL LEAVE
ACT
WORKBOOK**

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February 2001

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FAMILY MEDICAL LEAVE ACT

WORKBOOK

I. Introduction

The Family Medical Leave Act (FMLA) is a monumental piece of legislation enacted in 1993 that has greatly benefited workers. By law, each facility must post Department of Labor poster WH-1420, describing the FMLA, in a conspicuous place where employees can read it. As a result of this law, workers who find it necessary to take time off for medical reasons or familial purposes have had the risk of losing their jobs due to poor attendance greatly reduced. For this reason it should be thoroughly understood by APWU stewards so that they will be able to effectively communicate it's principles to USPS employees. This workbook will aid in the accomplishment of this goal.

The format of this workbook is straightforward and can be used independently or together with lecture. The material is divided into sections with questions that follow. The questions may be in any variety of forms: fill in the blank, multiple choice, true/false, etc. They cover all of the material covered to foster the learning process. For the learning experience to be truly meaningful, students are encouraged to go over any wrong answer until it is thoroughly understood. Some may find this material difficult to grasp; it is definitely not easy. However, if all of the exercises are completed with seriousness of purpose, the FMLA will be understood, thus making the steward's knowledge invaluable to many.

II. Definitions

Before explaining the Family and Medical Leave Act, there are a number of basic definitions that must be given so that one may know exactly to whom this legislation applies and for what purposes. After the definition is given, that word or phrase will be *italicized* as it is used so that the student will continuously reflect upon its meaning.

Generally speaking, most of the absences the FMLA covers are those for employees that are related to their health and welfare or to the health and welfare of their "sons or daughters," their "spouses," and their "parents." While many of these problems can be classified as a "serious health condition," some aren't and yet still are covered such as birth, placement, or adoption of a child. These terms must be defined along with other terms like "treatment" and phrases such as "health care provider."

These words may seem simple enough but the FMLA is very specific as to their meaning. The important thing to remember is that the employee, or that employee's son or daughter, or that employee's spouse, or that employee's parents must be deemed as such by the FMLA. Further, they must have what is classified as a serious health condition or be in another specified situation to qualify for leave under the FMLA. Understanding the basic terminology, as the terms are intended to mean within the FMLA, will serve as a foundation upon which to build your knowledge.

To be considered a **son or daughter**, that child must be a **biological child, foster child, legal ward, adopted child,** or a **stepchild** under the age of 18. Also included are children for whom you stand in loco parentis [the Latin term for a person "**standing in the shoes**" of a parent].¹ Loco parentis means you provide day to day care and financial support for a child.¹ A biological or legal relationship is not necessary. Children 18 years or older are considered family members if they are incapable of self-care because of a physical or mental disability and fall into one of the aforementioned categories. Therefore, if a *son or daughter* is the reason for a request of leave under the FMLA, the child **must** fall into one of the preceding categories.

To be considered a **spouse**, one **must** be a husband or a wife, and this includes husbands or wives in common law marriages.¹ Webster defines a common law marriage as "a marriage not solemnized by religious or civil ceremony but affected by agreement to live together as husband and wife and by the fact of such cohabitation." There is no such thing as a common law divorce. Therefore, if a spouse is the reason for a request of leave under the FMLA, that *spouse must* meet one of the above qualifications. Remember that all states do not recognize common law marriages.

A **parent** is the biological, adoptive, or foster parent or anyone acting as a parent (loco parentis) with regard to a *son or daughter*, e.g., one who has legally adopted a child. A biological or legal relationship is not necessary.¹ It is very important to note that the term "parent" **does not** include an in-law. Therefore, if a "parent" is the reason for a request of leave under the FMLA, that *parent must* meet one these qualifications.

The above terms explain the first part of the FMLA "equation" so to speak; i.e. the specific person involved as specified by the FMLA. The second part could be whether that person suffers from a "serious health condition" and before discussing this phrase, a number of other terms must be explained.

Two such terms that need to be defined for FMLA purposes, as they are foremost in the granting of FMLA leave when it pertains to health, are "incapacity" and "treatment." The FMLA defines an **incapacity** as the inability to perform **at least one essential function**¹ of one's position because of a serious health condition **or** because of an absence to receive medical treatment for a serious health condition. The FMLA defines **treatment** as an **examination** to determine if a serious health condition exists and an

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evaluation of that serious health condition. This **does not** include routine physical, eye, dental examinations or treatments.

Regimen of continuing treatment is another phrase that needs to be clarified. A regimen of continuing treatment includes for example a course of prescription medication or therapy requiring special equipment to resolve or alleviate a serious health condition. It **does not** include over the counter medication, bed rest, fluids, and other things needing no prescription. This difference must be remembered when requests are made under the FMLA.[□]

In situations where *treatment* by a health care provider is germane to the request for leave under the FMLA, it is very important to be aware of who are recognized as health care providers under the FMLA. A **health care provider**, for FMLA purposes, could be an MD, an OD, a podiatrist, a dentist, an optometrist, a nurse practitioner, a nurse midwife, Christian Science practitioners, some chiropractors (those treating subluxations of the spine), and providers of health care services licensed by the State to diagnose and treat without supervision. Therefore, to qualify as treatment by a *health care provider* under the FMLA, it **must** be done by any of the aforementioned practitioners.[□]

Needed to care is an expression used under the tenets of the FMLA to mean the providing of physical and/or psychological support that would aid in a patient's recovery from a serious health condition. However, that patient must be in a hospital or receiving home care for psychological support to be the only reason the family member is needed.[□]

All of these terms are used when determining what could be the second part of the FMLA "equation," and that is the necessity, in these instances, to show that a **serious health condition** does in fact exist. This phrase is much more involved and to be considered as such **must** meet any one of six sets of criteria. These six sets of criteria are as follows: (1.) overnight stay; (2.) over three-day absence/incapacity for work plus treatment; (3.) pregnancy; (4.) chronic condition; (5.) permanent or long term condition; (6.) multiple treatments. Since these have very little meaning in and of themselves, more detailed definitions of each will follow.

1. **Overnight stay**. For the purposes of the FMLA, an overnight stay can qualify as a serious health condition (and thus be granted leave under the FMLA) when one has incurred an illness, injury, impairment, or physical or mental condition that involves a period of *incapacity* or *treatment* in connection with an overnight stay in a hospital, hospice, or residential medical care facility.[□] For example, *treatment* in a residential substance abuse program, *treatment* in a nursing home, and hospitalization for elective surgery would all be considered "overnight stays" or a "serious health condition," and thus could qualify for the approval of leave under the FMLA.

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2. **Over three day absence/incapacity for work plus treatment**. This is a period of *incapacity* requiring absence from work of more than three calendar days (not work days), plus *treatment* by a *health care provider* two or more times, **or** one *treatment* by a *health care provider* resulting in a *regimen of continuing treatment*.[□] It

must be one or the other to be considered a “serious health condition.” Examples of such absences would be a five day absence caused by an on the job injury or a 22 day absence caused by pneumonia treated by prescription drug therapy.

3. **Pregnancy.** This is any period of *incapacity* due to pregnancy or for prenatal care.[□] Examples of this serious health condition for FMLA purposes would be a pregnant woman’s tardiness caused by severe morning sickness or a spouse’s absence to take his pregnant wife for ultrasound testing if she is incapacitated and cannot drive herself.

4. **Chronic Condition.** A chronic condition, to be a “severe health condition,” is one that must meet three qualifications and they are as follows: (1.) it must be a condition that requires periodic visits for *treatment*; (2.) it is a condition that continues over a period of time; and (3.) it is a condition that may cause episodic flare ups.[□] It must also be remembered that only absences due to the *incapacity* or *treatment* for the *incapacity* are protected. An example of this type of severe health condition would be a two-day absence for flare up of a migraine headache or a two-hour absence for a parent to take a child for *treatment* of an asthma attack.

Note: FMLA protection applies to medical appointments which must be scheduled during the work day. [□] An employee with diabetes, for example, may have to leave work periodically to obtain necessary treatments. You must attempt to schedule appointments for times which will not disrupt work unduly.[□]

5. **Permanent or long-term condition.** This is a “severe health condition” for which a period of *incapacity* is permanent or long term due to a condition for which *treatment* may not be effective. Examples of this particular “severe health condition” would be an employee’s request for time off because he is needed to care for a parent with Alzheimer’s disease or a spouse’s 12-week absence to care for his dying wife in the final stages of a terminal disease.[□]

6. **Multiple treatments.** This is a “severe health condition” for which it is necessary to receive multiple *treatments* by a *health care provider (HCP)* or under the supervision of an *HCP*. These multiple treatments could be for either restorative surgery after an accident or injury or for a condition which, if untreated, would likely cause more than three days absence.[□] Some examples that would fall into this category would be outpatient cosmetic surgery on three separate days after an injury from a fire; chemotherapy for three mornings per week for six weeks; kidney dialysis two times each week.

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Having been given these definitions, the issuance of leave under the auspices of the Family and Medical Leave Act should become clearer. So far, one can readily detect that it only can be given when specific people are involved: the worker himself, his *son* or *daughter*, his *spouse*, or his/her *parent*. It also can be approved if a *serious health condition* is being suffered by one of these people, and that this *serious health condition*, to be considered as such, must meet any of six sets of specific criteria. To put it more simply, if the worker himself, his *son* or *daughter*, his *spouse*, or his/her *parent* has a *serious health condition* (one that meets the six sets of criteria), than that employee can

be granted leave as per the Family and Medical Leave Act.

However, as alluded to earlier, there is another type of situation that the FMLA views as serious enough to warrant excused leave that may not be a *serious health condition*. This is the birth of a *son* or *daughter* as well as care for that healthy child until he or she is one year old. This also includes the placement of a *son* or *daughter* for adoption or foster care and bonding with that healthy child within that first year of placement.

There is one technicality associated with the above condition that can't be forgotten. When one wishes to **bond** with that *son* or *daughter* (biological, adopted, foster child or legal ward) that employee must remember that he **must** begin and conclude that bonding process within one year of the date of birth, or the date of adoption, etc. Also, he **is not** automatically entitled to FMLA protection for another absence following the employee's initial absence for bonding purposes; any other period of absence is at supervision's discretion.¹ In other words, a worker gets one chance to bond within the year specified at a time and for a time that he decides is appropriate, and **is not** automatically entitled to another.

If there is a situation where the specific person requirement is met, but not the second because it is a minor health condition, then you have what is referred to as **dependent care**.¹ This is separate from FMLA but it can overlap with FMLA. An eligible employee is entitled to 80 hours of dependent care and part or all of this may be used for an FMLA condition. This does not mean one is entitled to an additional two weeks (80 hours) of FMLA.

You now have had enough exposure to the basics of the Family Medical and Leave Act to apply what you have learned thus far to the questions appearing below. Please remember that you will probably have to refer back to the material that you have just covered.

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SECTION II REVIEW

Directions Circle the letter of the corresponding answer that best responds to the question given. Answers are given on page 17.

1. Of the following, which would not be considered a son or daughter under the Family and Medical Leave Act?
 - a. A 10 year old biological son
 - b. An 18 year old adopted daughter
 - c. A 14 year old foster child
 - d. 20 year old crippled with a disease rendering him/her incapable of self care

2. As defined by the FMLA, an incapacity for work with regard to a serious health condition is the inability to perform how many essential functions of a position?

- a. none
 - b. one
 - c. two
 - d. three
3. Which of the following would not be considered a health care provider for FMLA purposes?
- a. an optometrist
 - b. a psychiatrist
 - c. a nurse midwife
 - d. chiropractors
4. Leave requested for a nose job, breast implants, face-lifts, and other cosmetic surgery would meet the conditions of which set of criteria to be considered a serious health condition?
- a. overnight stay
 - b. over three day absence/incapacity plus treatment
 - c. chronic condition
 - d. none of the above
5. Which of the following could be considered “one essential function” of a postal worker’s position?
- a. standing
 - b. sitting
 - c. lifting
 - d. all of the above
 - e. neither a, b, or c

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Directions Consider the situations listed below. Place a check next to the appropriate provision(s) that you think would apply to the situation described. Refer to the definitions explained and the FMLA requirements mentioned in the text thus far. Answers are on page 17.

6. Employee is off Sat/Sun. The employee takes 2 days of sick leave (Friday and Monday) to care for the son of an employee who has a doctor’s prescription to treat a serious throat infection

_____ FMLA _____ Dependent Care _____ Neither

7. Same as (6.), but it is the employee’s niece who is visiting for five days who is in need of treatment with the prescription

_____ FMLA _____ Dependent Care _____ Neither

8. Four weeks of treatment for an employee in a residential abuse program

_____ FMLA _____ Dependent Care _____ Neither

9. A worker's inability to do an essential function of a position as a result of a serious health condition

_____ FMLA _____ Dependent Care _____ Neither

10. Treatment by a physician for an employee who has a cough

_____ FMLA _____ Dependent Care _____ Neither

11. Treatment by a family doctor for an employee's occasional back spasms from a ruptured disc suffered three months before

_____ FMLA _____ Dependent Care _____ Neither

12. A wife's stomach virus severe enough for the husband to miss two days of work so that he may care for her

_____ FMLA _____ Dependent Care _____ Neither

13. A worker moves in with a woman who is divorced and has a five-year-old son. For five years the worker cares for the child as if he was his own. Unfortunately, the child becomes afflicted with a serious health condition and the worker requests time off under FMLA to help care for him. Is the USPS obligated to grant the worker FMLA leave? Explain.

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III. WHAT DOES THE FMLA PROVIDE?

Entitlements. The FMLA entitles eligible full time regular employees up to **12 workweeks of leave** [□](annual, sick, or LWOP for USPS employees) in a **leave** year for covered conditions without discipline being issued by management for such absences. Spouses who are employed by the Postal Service are **each** entitled to twelve workweeks for the birth and care of a newborn, for placement of a child for adoption or foster care, and to care for a parent, spouse, or themselves due to a serious health condition.[□] Part-time regulars and part-time flexibles are entitled to **12 times the number of straight time hours normally scheduled** in their workweek.[□]

There will also be no loss of benefits that have been accrued or earned prior to taking FMLA leave, and health care benefits will continue while the employee is in FMLA protected leave.[□] The FMLA also specifies that there will be no retaliation taken by management against an employee who exercises his/her right to utilize such leave, and that it can not be detrimentally considered when such an employee opts for a transfer or for a promotion. However, a word of caution: the USPS **can** deny a step increase if thirteen weeks of LWOP is taken that **includes** LWOP for FMLA.[□] This could result in a

delay of that particular step increase for seven pay periods (fourteen weeks). On the other hand, layoff protection, in accordance with the provisions of the USPS/APWU collective bargaining agreement, would still be attainable if an employee was forced to use twelve weeks of LWOP in two different leave years for FMLA purposes.[□]

Intermittent or Reduced FMLA Leave. In some situations an employee may be entitled to “intermittent leave” or leave that includes more than one absence for the same qualifying event.[□] An employee may also be entitled to a “reduced work schedule,” which is a reduction in the regularly scheduled number of hours per day or per week due to a single qualifying event.[□] Employees **must** attempt to schedule such leave so as not to disrupt postal operations, and both of these are entitlements **only** when medically necessary. Employees **can** be temporarily assigned to other positions that better accommodates their need for intermittent leave or a reduced work schedule, within reason.[□]

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SECTION III REVIEW

Directions Read each of the following statements. If the statement is true, circle the T. If the statement is false, circle the F and change the underlined word to make the statement true. Place the new word in the blank space after the F. Answers are on pg. 18.

T F _____ 1. The FMLA entitles eligible full time regular employees up to 12 workweeks of leave (annual, sick, or LWOP for USPS employees) in a **calendar** year for covered conditions.

T F _____ 2. Part-time regulars and part-time flexibles are entitled to 12 times the number of **straight time hours** normally scheduled in their workweek for FMLA leave.

T F _____ 3. Employees **need not** attempt to schedule intermittent leave so as not to disrupt postal operations.

T F _____ 4. Reduced work schedules and intermittent leave are entitlements that must be granted when **medically** necessary.

T F _____ 5. A window clerk who starts work at 8:20 AM and is granted a reduced work schedule for medical reasons **can** be given hours on Tour I.

Directions Consider the situations listed below. Place a check next to the appropriate provision(s) that you think would apply to the situation described. Refer to the definitions explained and the FMLA requirements mentioned in the text thus far. Answers are on page 18.

6. A worker brings her biological daughter to an oral surgeon for major oral surgery; it fails and the procedure must be repeated

_____ FMLA _____ Dependent Care _____ Neither

7. A worker wishes to bond with his newborn son for a period of 45 days one year and one month after the birth of that child

_____ FMLA _____ Dependent Care _____ Neither

8. A worker requests leave to attend his son's (whom he adopted 1 month ago) graduation from grammar school; the worker argues it is part of the "bonding" process

_____ FMLA _____ Dependent Care _____ Neither

IV. HOW DO I QUALIFY FOR FMLA PROTECTION?

Eligibility. The FMLA places additional requirements upon employees seeking protection in order to be deemed eligible. For one thing, that employee **must** have worked for at least 12 months for the USPS at any time in his/her lifetime immediately before the request is made for FMLA protection. This 12 month period includes time on COP, OWCP, or court leave. This time requirement could have been completed years ago, all at once or at different times, as a casual employee, or as an employee in another craft.[□] Also, within that 12-month period, that employee **must** have worked 1250 hours of straight time and overtime **only**.[□] Annual leave, sick leave, administrative leave, continuation of pay, etc. **does not** count toward the 1250-hour work requirement.[□] Union steward's time counts; union leave without pay does not.

Employee Notice. If the need for FMLA protected leave is foreseeable, the employee **must** provide notice 30 days in advance.[□] Failure to provide foreseeable notice **will** result in delay or denial of FMLA protection.[□] If the need for leave is unforeseeable, the employee **must** provide notice as soon as practicable under the circumstances. Generally, this should be within two days of learning of the need for leave.[□]

Employee Obligations. Does the employee have the obligation to specify that the leave requested is for FMLA purposes when calling in? Actually, no. The employee has two obligations: to request leave and to state the reason for the absence. He **can** state that he wishes to take FMLA **or** provide enough information to ascertain that his leave would qualify under FMLA.[□] Even if the employee does not state a preference for FMLA, it is supervision's responsibility in all cases to make a determination and designate leave as FMLA protected based on information given. If the USPS so deems it as FMLA protected leave, the employee **may not** forego the protection of FMLA leave as it applies to their absence.[□]

Employer Notice. All postal facilities, including stations and branches, are required to conspicuously display WH1420, Your Rights Under the Family and Medical Leave Act of 1993. It must be posted, and remain posted, on bulletin boards where it can be seen readily by employees and applicants for employment.[□] The USPS is obligated to provide that employee with notice of his FMLA rights and responsibilities. To be more specific, the USPS **must** provide that employee with Publication 71 (see Appendix), once every 6 months for the same condition.[□]

Retroactive FMLA Leave. Generally, the USPS **can not** retroactively designate FMLA leave.[□] As stated above, the employee **must** be notified in writing that an absence is being designated as FMLA leave. Leave **may** be designated as FMLA leave retroactively **only** when management is unable to confirm leave qualifies; has requested medical certification; obtaining a second or third opinion; or within two business days of the employee's return to work, if the USPS was not aware of the reason for the leave.[□]

SECTION IV REVIEW

Directions Read each of the following statements. Complete each by filling in the blank space with the word or words that best completes the statement. Answers are on page 18.

1. An employee **must** have worked for at least _____ months for the USPS at any time in his/her lifetime immediately before the request is made for FMLA protection.
2. Within the period specified in (1.) above, that employee **must** have worked _____ hours of straight time and overtime **only**.
3. If the need for FMLA protected leave is foreseeable, the employee **must** provide notice _____ days in advance.
4. If the need for leave is unforeseeable, the employee **must** provide notice as soon as practicable under the circumstances. Generally, this should be within two days of learning of the need for leave, or within two _____ days of his return to work after an extended absence.
5. If the employee states no preference for FMLA leave when calling in sick, it is the responsibility of the _____ in all cases to make a determination and designate leave as FMLA protected based on information given.
6. To have met their notification requirement, the USPS **must** provide an employee qualifying for FMLA leave with a _____ and a _____.
7. FMLA allows _____ hours of leave every leave year to eligible employees for certain qualifying conditions.
8. A worker with a terminally ill spouse uses up his allotment of FMLA leave to care for his wife. The USPS, who states that they are mandated by law to end his FMLA leave, denies his request for additional leave. As a steward representing the employee, what would be your response?

V. WHAT IS CERTIFICATION AND HOW DO I GET IT?

Certification. “Certification” is documentation provided by an employee to establish that leave taken for a certain reason is in fact FMLA protected. The two documents mentioned previously that are given to an employee seeking FMLA protection include a written request to the employee for *certification* of the employee’s FMLA absence. PS Form 3971 should be marked when any documentation is required and a copy of this must be given back to the employee whenever any preliminary or final action is taken on it.

When certification is required, the employee then has a minimum of 15 days, but no more time than is reasonable under the circumstances, to provide *certification* of his FMLA absence.[□] Although any form is acceptable, it is highly recommended that USPS employees utilize the applicable APWU form (copies of which appear in this workbook’s appendix) to certify their request for FMLA protection.

The USPS then has two business days (business days are defined as Monday through Friday) to approve the *certification* requested on the appropriate APWU form completed by the employee.[□] If the two days passes with no action taken, the *certification* is accepted. If the USPS disapproves it, they **must** notify the employee in writing specifying why it was disapproved, and provide the employee a reasonable amount of time to attain the requested information.[□]

APWU Certification Forms. In the appendix of this workbook, there appears five different examples of properly completed APWU forms for a variety of different FMLA certifications, including self certification. Please look these over and use these as models for employees to go by when they are certifying their particular situation.

In general, to be “complete,” all certification **must** include:

- the date the condition commenced;
- the probable duration of the condition;
- the probable duration of the patient’s present capacity;
- medical facts within the health care provider’s knowledge to support application of a particular definition of a *serious health condition* to the patient’s condition;
- where applicable, a statement that the employee is needed to care for a family member and an estimate of the amount of time needed;
- where applicable, a statement that the employee is unable to perform an essential and an estimate of the amount of time needed to recuperate.

To apply for *intermittent leave* or a *reduced work schedule* under FMLA guidelines, the employee **must** meet additional requirements. They are:

- the dates and nature of the *treatments*;
- an estimate of the probable number of *treatments*;

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the length of the absences required for the *treatments*;
the likely frequency and duration of the anticipated *incapacity*;
a statement of medical necessity for *intermittent* leave or a *reduced work schedule*;

the expected duration of the need;
where applicable, a statement that the employee's leave is necessary for the care or recovery of the family member.

Furthermore, for certification of an *over-three-day absence/incapacity plus treatment* type of *serious health condition*, dates of *treatment* **are** required and whether a *regimen of continuing treatment* is prescribed. For a *chronic serious health condition*, the specific frequency and duration of the expected absences **must** be indicated.

Unclear, Doubtful Certification as per USPS. Once the *certification* is submitted, it may not be rejected simply because the supervisor does not like or agree with the information provided. If there are points on the *certification* form that are unclear, or if supervision doubts its validity, FMLA states that the USPS has two options:

a. the USPS **can** get the employee's permission to seek clarification, which the APWU advises against. If permission is granted, medical personnel (**not** your supervisor) would contact the employee's *health care provider* to clarify the certification; or,
b. the USPS **can** get a second opinion.¹ Here, there are a number of points to remember, and they are (1.) that employee permission **is not** required; (2.) that the *health care provider* chosen **can not** be affiliated with the USPS; (3.) that the *health care provider* is a specialist practicing within the geographical area; (4.) that the USPS pays and chooses; (5.) that the *health care provider* provides a second opinion on the FMLA certification **only**; (6.) that the USPS **may** seek a third opinion at USPS expense to settle disputes between the first and second opinions; (7.) that the USPS **can** consult with their Labor Relations Department.

Recertification. Note that for *chronic conditions, pregnancy, permanent/long term conditions* or conditions requiring *multiple treatments*, ensuing absences are subject to the leave requirements of the ELM but **do not** require FMLA "recertification," unless requested as allowed by FMLA regulations. For these conditions, "recertification," or individual notice, **must** be provided at least once every year. This **must** be requested in connection with an absence caused by the *serious health condition* and **is** paid for by the employee, through the *health care provider* of his choice. Requests **can not** be made more frequently than every 30 days **or** as indicated in the *certification* documentation, whichever is greater.¹ However, it **may** be requested at any time the *certification* is doubted or changes occur in the employee's circumstances, e.g., the duration and/or the frequency of absences.¹

Return to Duty Certification

Management may request a return to duty certification if an employee's own absence is for the following reasons. (A) hospitalized, (B) out for more than 21 days, (C) mental or nervous condition, (D) diabetes, (E) epilepsy, (F) exposed to communicable or contagious disease (G) cardiovascular disease. If requested, the employee must provide medical evidence of his/her ability to return to work prior to returning to work. The

medical certification must state unequivocally that the employee is fit for duty with or without limitations and without hazard to himself or others. However, employees on intermittent leave or reduced schedules do not have to provide medical evidence to return to work.

SECTION V REVIEW

Directions Circle the letter of the corresponding answer that best responds to the question given. Answers are given on page 18.

1. To provide *certification* of his FMLA absence, an employee has:
 - maximum of 15 days
 - minimum of 15 days
 - minimum of 15 days and no more time as is reasonable necessary
 - minimum of 15 days, and as much time as is necessary

2. To approve the *certification* requested by the employee, the USPS has:
 - two days
 - two calendar days
 - three business days
 - two business days

3. In general, to be “complete,” all certification **must** include:
 - a. the date the condition commenced, probable duration of the condition, complete medical history of the patient;
 - b. the probable duration of the condition, the probable duration of the patient’s present capacity, a statement that the employee is unable to perform at least two essential functions of the position;
 - c. the date the condition commenced, the probable duration of the condition, a complete medical history of the patient, notarized statements by family members attesting to the employee’s condition;
 - d. the date the condition commenced, probable duration of the condition, the probable duration of the patient’s present capacity, medical facts within the health care provider’s knowledge to support application of a particular definition of a *serious health condition* to the patient’s condition

4. To apply for intermittent leave or a reduced work schedule under FMLA guidelines, the employee must have:
 - a. the dates and nature of the treatments, an estimate of the probable number of treatments, a complete medical explanation of the reason for the treatments (citing medical history of the patient if necessary)
 - b. the dates and nature of the treatments, an estimate of the probable number of treatments, the length of the absences required for the treatments, the likely frequency and duration of the anticipated incapacity
 - c. a statement of medical necessity for intermittent leave or a reduced work schedule and where applicable, a statement that the employee’s leave is necessary for the care or recovery of the family member
 - d. b. and c.

5. Once the certification is submitted, it may be subject to a second opinion because:
 - a. the certification is unclear
 - b. the certification was not provided within three calendar days
 - c. the supervisor does not like or agree with the information provided
 - d. the supervisor spoke with the HCP and determined the condition doubtful

6. When getting a second opinion, it must be remembered that:
 - a. employee permission is required;
 - b. the HCP chosen can not be affiliated with the USPS and the USPS pays;
 - c. the chosen health care provider be a specialist practicing within the geographical area and also provides a second opinion on the employee's general health;
 - d. the USPS may not seek a third opinion even if at USPS expense to settle disputes between the first and second opinions

7. For the birth and care of a newborn, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition, spouses who are employed by the same employer are entitled to a combined total of:
 - a. twelve weeks in a calendar year
 - b. twenty four weeks in a leave year
 - c. twelve weeks in a leave year
 - d. twenty four weeks in a calendar year

Directions Consider the situations listed below. Place a check next to the appropriate provision(s) that you think would apply to the situation described. Refer to the definitions explained and the FMLA requirements mentioned in the text thus far. Answers are on page 18.

8. An employee who must take a child for dental braces with additional periodic visits

_____ FMLA _____ Dependent Care _____ Neither

9. A worker's wife, without a doctor's referral, visits a cardiologist and wants her husband with her for support

_____ FMLA _____ Dependent Care _____ Neither

10. A worker brings her biological mother to a to a psychologist for treatment of depression due to the death of her mother's husband

_____ FMLA _____ Dependent Care _____ Neither

VI. FMLA'S RELATIONSHIP TO CBA'S AND OTHER LAWS

Collective Bargaining Agreements. When the Family and Medical Leave Act was passed, it was not intended to change bargained for agreements between employers and their employees. In fact, if a union's collective bargaining agreement provides more and better benefits than what the FMLA allows, the employer must follow the provisions of that contract and not use FMLA as a reason not to.¹

The collective bargaining agreement can also be used as means to resolve disputes arising out of difference of opinions with regard to the FMLA. An employee can also contact the Department of Labor directly to seek resolution to a dispute and can also seek resolution through Federal District Court, provided these proceedings are commenced within two years.

Privacy Act. As we know, it is the supervisor's responsibility to make an FMLA determination. As such, he has a need to know all information necessary to make an FMLA determination and therefore ask questions perhaps not ordinarily asked. A diagnosis is considered restricted medical information and a supervisor may review certification that provides such restricted medical information.¹ The medical unit should store any documents that include restricted medical information. FMLA forms may not contain restricted medical information but they should still be maintained in a secured cabinet, not necessarily under lock and key. APWU Stewards have a right to restricted medical information (such as CA 17's) on USPS craft employees. **Willful** violations of the Privacy Act can lead to individual liability of supervisors as well as liability of the USPS as a whole. There is a three year statute of limitations that applies to such matters.

Federal Employees Compensation Act. Most on-the-job injuries or illnesses are also absences protected by the FMLA, and the USPS could inform you that such absences are going to be charged to your FMLA leave allotment. They **must** do this in writing. They could also inform you that they have work for you that are within your restrictions. You can refuse such limited duty work because you are not able to perform **one** essential function of your position, but at that point your workmen's compensation will end and your use of sick leave, annual leave, or leave without pay will start. This can continue as long as your FMLA leave limitations are not exhausted.¹

(17)

SECTION VI REVIEW

Respond to the following questions using the information you have been given regarding the FMLA. Correct responses appear on page 19.

1. Knowing what you now know about the Family and Medical Leave Act, why do you think USPS management might endorse the law? Why may they not want to abide by its stipulations?
2. Why do you think USPS management would want to charge time that you are out on workmen's compensation to FMLA?
3. A worker is out on FMLA to receive treatment in an alcohol rehabilitation center. He returns to work and is doing fine for two months and then has a relapse. During this episode he calls in sick and claims FMLA protection. Is his request for FMLA leave justifiable? Why or why not?
4. A worker is out on FMLA because his chronically bad back prevents him from lifting and his job is sorting parcels six hours a day. He is seen at a car dealership having the family automobile's passenger side seat belt repaired. Can he be terminated for misrepresentation?

VII. OVERVIEW

You have now completed the material that has been presented pertaining to the Family and Medical Leave Act of 1993. If you have paid close attention to the information as it was being presented, you can readily appreciate the significance of the FMLA and see the impact this piece of legislation can have on the workroom floor. As such, it should be very familiar to APWU stewards. It provides employees a plethora of rights never before seen to any nation's workforce. You are encouraged to keep this workbook as an additional reference to be used when asked to help a coworker. While we do not profess that this workbook has all of the answers to your questions, it will certainly help familiarize you to provisions of the FMLA and thus the workers you represent. Good luck!

(18)

ANSWERS TO REVIEW QUESTIONS

Section II

1. b
2. b
3. d
4. d
5. d
6. FMLA
7. neither
8. FMLA
9. FMLA
10. neither

11. FMLA
12. dependent care
13. He has a strong argument if the state where he resides recognizes common law marriages; if not, he has no basis for a claim.

Section III

1. F - leave
2. T
3. F - must
4. T
5. F - can not
6. FMLA, dependent care
7. Neither
8. FMLA, however any other request for intermittent leave during the remainder of the first year would only be approved at management's option.

Section IV

1. 12
2. 1250
3. 30
4. business
5. supervisor
6. Publication 71, 3971
7. 480 (12 weeks X 40 hours per week)
8. A steward's response should be that management can go beyond specified FMLA recommendations and are encouraged to do so by the Department of Labor. Twelve weeks is an amount that each eligible employee is entitled to and in this instance should not be used as a convenient, insurmountable obstacle by management.

Section V

1. c
2. d
3. d
4. d
5. a
6. b
7. b
8. FMLA
9. neither
10. FMLA

Section VI

1. Management might endorse the FMLA because it could reduce discipline and thus save money. It could also improve labor/management relations and it is, after all, the law. Violators could be held financially liable. They may not endorse it because it could increase sick leave usage and thus increase overtime, with very little control by management with regard to recourse.
2. To reduce your yearly allowances for FMLA leave and thus try to have some control of your attendance.
3. His request is not justifiable because FMLA does not make sick leave usage for "falling off the wagon" an excused absence; getting treatment for it is an excusable absence, as long as it is through a recognized FMLA HCP.
4. No; since he was unable to perform "one essential function" of his position, i.e. lifting parcels, his absence can be considered FMLA. However, the fact that it was an FMLA absence had to be so noted on his 3971 or he could be charged with misrepresentation.

CROSSWORD PUZZLE!

ACROSS

1. One necessity to get FMLA protection is to have a serious _____.
6. FMLA protection guarantees you won't lose this; specifically, your _____.
9. A woman can get FMLA protection if she is _____.
14. ____ term care could get FMLA protection.

15. Some must do this each year for FMLA protection.
16. Can take FMLA leave for this within first year child is born or adopted.
17. A minor tooth ____ probably would not qualify for FMLA leave.
19. An FMLA child can be a boy or a ____.
20. A husband or a wife could be considered a _____ for FMLA purposes.
24. When you lie about an FMLA condition, you are guilty of this.
25. Kind of hours needed to meet the 1250 requirement, along with 10 down.
27. When you feel sick, you are ____.
28. A physician, a psychologist, a clinical social worker, are each considered this (abbrev.), under FMLA.
29. You can lose this with 13 weeks (over 2 leave years) of FMLA LWOP.
30. When FMLA leave is approved after the fact, it is said to be ____ active.
31. You get 80 hours of this per year; can be used for illnesses other than serious health conditions.

DOWN

2. Can't be one day over this to be a FMLA "child."
3. FMLA is federal ____.
4. If hurt on the job this department (abbrev.) provides pay that could be FMLA leave.
5. A chronic condition must be a condition that requires periodic visits for _____.
7. This president vetoed FMLA twice!
8. An overnight stay can qualify as a serious health condition when one has incurred an illness, injury, impairment, or physical or mental condition that involves a period of incapacity or treatment in connection with an overnight stay in this, possibly.
10. Kind of hours needed to meet the 1250 requirement, along with 25 across.
11. A _____ condition, to be a "severe health condition," is one that must meet three qualifications and they are as follows: (1.) it must be a condition that requires periodic visits for treatment; (2.) it is a condition that continues over a period of time; and (3.) it is a condition that may cause episodic flare ups.
12. FMLA was the first law this president signed.
13. A ____ ward could be an FMLA child.
18. Podiatrists, as health care providers, care for these.
21. You may not get intermittent leave _____ medically necessary.
22. An _____ child can still be considered an FMLA child.
23. A period of time when not at work is called an _____.
24. Family Medical Leave Act (abbrev.)
26. Latin for dead

Decision Summaries

1. Arbitrator Cannavo, A90C-1A-D 95053133

This case involved the termination of a transitional employee who, at the time of termination, did not have a right to file a grievance. The Postal Service took the position that the case was not arbitrable based on the terms of the contract. The arbitrator ruled that the prohibition in the contract had to be set aside because the absences in question were FMLA protected. He ruled that the external law overruled the contract and the grievant was restored to duty with back pay because to do otherwise would be against

public policy. He could not condone an unlawful act.

2. Arbitrator Lurie, H90N-4H-D 94068273

This was one of the first cases decided after FMLA came into consideration on attendance cases. The basic dispute here was whether the grievant had to request FMLA in order to invoke the protections of the law. The arbitrator ruled the grievant did not have to request FMLA.

3. Arbitrator Cannavo, A94T-1A-C 98015781

This case dealt with the Postal Service's claim that employees must recertify all FMLA conditions every 30 days. The arbitrator ruled such a policy to be a violation and stated each case must be considered on its own merits and in this case a certification covering a longer period was permitted.

4. Arbitrator Kelly, A94C-1A-C 98067485

This case involved the delay of an employee returning from an FMLA condition because the Postal Service required a fitness for duty. The arbitrator ruled that the delay was a violation of the act. The employee has a right to return to duty first. The arbitrator ruled that he had to be paid for the three week delay caused by the fitness for duty.

5. Civil Action 98-100-A, District Court Decision, District of Virginia

This case involved a situation where an employee met the 1250 work hour requirement at the initial onset and certification of a condition. Then later had a subsequent intermittent absence for the same condition but at that point had fallen below the 1250 work hour requirement. The Postal Service refused to designate the subsequent absence as FMLA and terminated the employee based on the absence. The court ruled that since the employee met the 1250 work hour requirement at the time of the initial certification the subsequent intermittent absences were also protected.

6. Arbitrator Anderson H98C-4H-D 99290624

This case is similar to the court case cited above. Management refused to designate an absence as FMLA because at the time of the absence the employee had fallen below 1250 work hours. The employee was then disciplined. The Union argued that the employee had met the 1250 work hour requirement at the time the condition was first diagnosed and, therefore, did not have to re-qualify for the subsequent intermittent absence for the same condition. The Union argued that the subsequent intermittent absence was protected and could not be used for discipline. The arbitrator agreed and rescinded the discipline that was imposed for the intermittent absence.