

**4<sup>th</sup>**  
**LABOR & EMPLOYMENT**  
**SEMINAR**



**KAMER ZUCKER & ABBOTT**

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# EFFECTIVE MANAGEMENT OF EMPLOYEE LEAVES OF ABSENCE

By: Jody M. Florence, Esq.

## Step 1. Which Laws Apply?

### A. Employer.

- ' ADA: Private employers with 15 or more employees and all state and local governments.
- ' FMLA: Private employers with 50 or more employees within a 75 mile radius for 20 weeks and all state and local governments.
- ' Workers' Compensation: Virtually all employers.
- ' Pregnancy Discrimination Act: All employers with 15 or more employees.

### B. Employees.

- ' ADA: Disabled employees and applicants, and individuals with a relationship with a disabled person.
- ' FMLA: Employees who have worked 12 months and 1,250 hours in the 12 month period preceding the leave request.
- ' Workers' Compensation: Employees who have suffered an occupational injury.
- ' Pregnancy Discrimination Act: Employees who are pregnant or are affected by child-birth or related medical conditions.

## Step 2. Evaluate The Grounds For A Leave Of Absence.

### A. ADA.

- ' A leave of absence may be a reasonable accommodation for an individual who suffers from a physical or mental impairment that substantially limits one or more major life activities.

### B. FMLA.

- " A leave of absence is permitted for the birth or care of a newborn, adoptive or foster child, or for a serious health condition of the employee or a serious health condition of the employee's spouse, child or parent.

### C. Workers' Compensation.

- " Leave is provided to treat and assess the extent of an employee's occupational injury or as a result of a temporary or total disability.

### D. Pregnancy Discrimination Act.

- " Under the FMLA, an employee is entitled to leave for the birth of a child, to care for a newborn child, or

because of a period of incapacity due to pregnancy or prenatal care.<sup>1</sup>

## Step 3. Determine The Possible Length And Types Of Leave Available.

### A. ADA.

- " Leave, intermittent leave, and/or reduced work schedules, barring undue hardship, can be accommodations provided that such leaves and modifications do not progress to the point where the person is not qualified to perform his job.

- " Indefinite leaves are generally not a reasonable accommodation

- " Light duty can be a reasonable accommodation, but there is no duty to create a position.

### B. FMLA.

- " 12 weeks of leave are available.

- Employer can choose calendar year, fixed 12-month period, or rolling 12-month period but must designate which it is using in advance or the time period which is most favorable to the employee will be applied.

- < The rolling 12 month period is the best way to manage leave abuses because employee cannot stack 12 weeks at end of the year and then take another 12 at the beginning of the next year.

- < Employer can change the method of calculation, but must give 60-days' notice.

- " Exceptions to 12-week entitlement: If employer employs husband and wife, any leave for the care of a newborn, sick child or parent is 12 weeks total for both employees.

- " Intermittent and reduced leave is permissible in some circumstances.

- Intermittent leave is only permitted for an employee's serious health condition or to care for a spouse, child or parent with a serious health condition, when it is medically necessary.

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<sup>1</sup> If an employee is temporarily unable to perform her job due to pregnancy, and the FMLA does not apply, the employer must treat her the same as any other temporarily disabled employee, by, for example, providing modified tasks, alternative assignments, or disability leave.

- Intermittent leave may be taken after the birth or placement of a child for adoption or foster care only if the employer agrees.

“ Light Duty Assignments.

- An employer cannot require light duty in lieu of FMLA. If an employee wishes to return from leave and accept a light duty job, in lieu of continued unpaid leave, the time worked on the light duty job cannot count against the 12 week FMLA entitlement. Moreover, the employee retains the right to be returned to his original position or an equivalent position when he is able to do so.
- Alternatively, the employee can reject light duty and stay on FMLA leave. An occupationally-injured employee who rejects light duty will no longer qualify for temporary disability payments under workers’ compensation or for vocational rehabilitation benefits as long as certain statutory minima are met.

**C. Workers’ Compensation.**

- “ There is no set duration of workers’ compensation leave in Nevada, but employers will want to have employees “rated” as to the extent of any permanent injury as soon as the employee’s condition has stabilized.
- “ If an employee with an occupationally-related injury qualifies for leave under the FMLA, employers should designate the leave as FMLA and run the leave concurrently with workers’ compensation leave.
- “ While not mandated, intermittent leave or a reduced schedule may be used as a form of light duty, and can be desirable to reduce an employer’s exposure to temporary total disability and vocational rehabilitation benefits.
- “ Refusal to accept light or modified duty can result in termination of some types of benefits.

**D. Pregnancy Discrimination Act.**

- “ Pregnant employees should be treated like other employees with regard to leave issues.
- “ If the employee is eligible for FMLA leave, apply the FMLA provisions regarding length of leave and intermittent leave. If an employer allows disability leave for births, the leave can also be designated as FMLA and run concurrently.
- “ If the employee is temporarily disabled due to childbirth or pregnancy, apply the same standards you would apply to a disabled employee.

- “ If an employee is not disabled, apply the same standards you would apply to a request for personal or non-disability related leave.

**Step 4. *Gather Appropriate Documentation Regarding The Need For The Leave.*<sup>2</sup>**

**A. ADA.**

- “ An employer can seek information as to the nature and extent of the disability if the inquiry is job-related and consistent with business necessity. Information can be obtained directly from the employee’s health care providers, but employers should always seek the employee’s written authorization first.
- “ An exam can be performed to determine whether leave is truly necessary and would be effective. Such exams under the ADA can be conducted by the company’s doctor.

**B. FMLA.**

- “ An employer cannot make direct contact with an employee’s health care provider. An employer can request a medical certification of the need for leave, but only a very limited amount of information can be obtained. Use Form WH-380.
- “ If an employer questions a medical certification, it can then obtain a second opinion from a physician designated by the employer but the physician cannot be one regularly employed by the employer. The employer can also seek a third opinion from a doctor approved by both the employer and employee but that opinion is final and binding upon both parties.
- “ If an employee presents with an FMLA or ADA-related condition, the employer is required to provide the greater of the benefits. If an employer seeks a medical certification under the FMLA, it will not violate the ADA provided it limits its certification to the FMLA’s parameters. The employer may also make additional disability-related inquiries, if necessary, to determine whether the employee is entitled to an accommodation. The employer should then engage in the interactive process and determine what the employee needs. Analyze the employee’s rights under both statutes with regard to leave, accommodations, benefits, etc., and apply whatever provides the greater right. See 29 C.F.R. § 825.702.

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<sup>2</sup> All documentation gathered should be kept in a single confidential medical file which is separate from the employee’s personnel file, regardless of whether leave is pursuant to workers’ compensation, ADA or FMLA.

**C. Workers' Compensation.**

- " Employers may request that an injured employee submit to medical examinations to assess the extent of the employee's injuries.
- " Employer can freely communicate with physicians as long as it logs verbal communications and copies written communications on the injured employee or his/her representative.
- " If an employee requests an accommodation, the employer may require documentation supporting the need for the accommodation if it is not obvious.
- " Because of the possible overlap with the ADA, employer should limit inquiries to the injury at hand and the injury's impact on the employee.

**D. Pregnancy Discrimination Act.**

- " If the employee is eligible for FMLA leave, apply the FMLA's requirements.
- " If FMLA does not apply, treat the employee as you would under the ADA if she is temporarily disabled.
- " If neither applies, apply the same requirements you would for personal, nondisability leave.

**Step 5. *Determine The Company's Notice Obligations To The Employee.***

**A. ADA.**

- " No formal notice requirements exist, but employers are advised to confirm decisions with regard to employee leaves in writing and notice the employees of the same types of information as required by the FMLA.

**B. FMLA.**

- " Upon an employee's request for leave, employer must designate the leave as FMLA and provide written notice of the following, in a language in which the employee is literate:
  - whether leave is being counted against 12 weeks of FMLA leave;
  - if applicable, any medical certification requirements;
  - the employer's requirements, if any, of substituting paid leave or the employee's right to elect paid leave;
  - the employee's payments, if any, for continuing health and other benefits during leave;
  - whether a fitness for duty report will be required to return to work;
  - whether he is a key employee and the import of that designation; and
  - the right to return to the same or equivalent job.

- ' Use Form WH-381.

- ' It is recommended that this notice be given every time leave is requested unless an employee is taking intermittent leave.
- ' Designation of leave as FMLA leave usually must be made within two (2) business days (absent extenuating circumstances). When in doubt, employers can provisionally designate leave as FMLA leave and await receipt of medical certification. Oral notice within two business days is sufficient but it must be confirmed in writing by the next payday.
- ' If leave is not timely designated, it will not count toward the 12-week entitlement. There is presently a split among the courts as to the validity of this rule. Two courts have held in McGregor v. Autozone, Inc., 180 F.3d 1305 (11<sup>th</sup> Cir. 1999) and Ragsdale v. Wolverine Worldwide, Inc., 218 F.3d 933 (8<sup>th</sup> Cir. 2000) that the regulation requiring employers to notify an employee that an absence is being counted against the 12-week entitlement before the employer can count the absence is invalid. In June 2001, the United States Supreme Court agreed to hear the Ragsdale case and consider this issue.
- ' Retroactive designation (after employee has returned) is not permitted unless: (1) the employer learns of the FMLA-qualifying nature of the leave for the first time when the employee returns, or (2) the employer knows the reason for the leave but has not been able to confirm that the leave qualifies as FMLA leave.

**C. Workers' Compensation.**

- " No formal notice requirements exist, but employers are advised to confirm decisions with regard to employee leaves in writing and notice the employees of the same types of information as required by the FMLA.

**D. Pregnancy Discrimination Act.**

- " If leave is being taken under the FMLA, follow the notice requirements.
- " Otherwise, no formal notice requirements exist, but employers are advised to confirm decisions with regard to employee leaves in writing and notice the employees of the same types of information as required by the FMLA.

**Step 6. *Know The Employee's Rights While On Leave.***

**A. ADA.**

- " No requirement for benefits continuation, but cannot discriminate against individuals with disabilities who are on leaves of absence as compared to other employees who are on leave.

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These materials are educational in nature and represent an overview of the state of the law at the time they were written. They are intended to provide you and your company with a basic working knowledge of the subjects presented. Before your company makes any significant employment or labor law decisions, it is important that you determine whether there have been any changes in the law and whether those decisions call for more detailed exploration and consideration.

**B. FMLA.**

- ' During leave, group health insurance must be provided and other benefit provisions should apply such that insurance coverage continues and does not lapse and service has continued for purposes of vesting and eligibility in pension and other retirement plans.
- ' Employee must continue to pay his share of the premiums.
- ' The employer should hold the employee's position open unless it can show that doing so causes undue hardship.

**C. Workers' Compensation.**

- " While there is no statutory requirement to maintain the employee's group health and other benefits, employers must treat employees on workers' compensation leave the same as they treat employees on other types of non-FMLA leave.

**D. Pregnancy Discrimination Act.**

- " If the employee is eligible for FMLA, apply the FMLA's requirements.
- " Apply the same rights to the temporarily disabled employee as you would for a disabled employee on leave.
- " If the employee is not disabled, apply the same rights to the employee as you would for a personal, nondisability leave.

***Step 7. Understand The Employee's Rights Upon Return To Work.***

**A. ADA.**

- ' An employee is entitled to return to the same job after a disability leave unless the employer demonstrates that holding the job open would impose an undue hardship.
- ' If the job cannot be held open, the employer must see if it has a vacant, equivalent position for which the employee is qualified and to which the employee can be reassigned without undue hardship to continue his leave. If an equivalent position is not available, the employer must look for a vacant position at a lower level. Continued accommodation is not required if a vacant position at a lower level is also unavailable.
- ' An employee has no right to return to his prior position if he cannot perform the essential functions of the position with or without a reasonable accommodation. If the employee can return with a reasonable accommodation, the accommodation must be made.
- ' If an occupational injury also constitutes an ADA disability, an employer must evaluate the possibility of

reasonably accommodating the employee by placing him in a vacant position in addition to providing vocational rehabilitation benefits under NRS 616C.530 through NRS.616C.600. If an employer only provides vocational rehabilitation benefits and ignores the injured employee's request for an alternative job, it will face an ADA discrimination claim. Thus, even if workers' compensation determines the employee is totally disabled, the employer must still engage in the ADA analysis.

- ' Return to work certificates are permitted if they relate to the condition necessitating the leave and are limited to determining whether the employee can perform the essential functions of the position.

**B. FMLA.**

- ' The employee must be returned to the same or equivalent job unless he is a highly compensated "key employee" (to whom reinstatement may be denied).
- ' If the employee is unable to perform an essential function of the same or equivalent position because of a physical or mental condition, the FMLA does not require the employer to reinstate the employee into another job.
- ' Upon return to work, the employer can request a medical certification regarding the employee's fitness to return.

**C. Workers' Compensation.**

- ' An employee with a disability-related occupational injury is entitled to return to his same position unless holding the position open would constitute an undue hardship. If this is the case, the employer should consider whether it has a vacant, equivalent position for which the employee is qualified and to which he can be assigned without an undue hardship.
- ' An employer can require a return to work certificate as to the employee's ability to perform his job.

**D. Pregnancy Discrimination Act.**

- " If leave was taken under the FMLA, return the employee to the same or equivalent position subject to the key employee exception.
- " Treat the returning employee as you would any other employee returning from disability leave.
- " If the leave is neither disability-related or FMLA-related, treat the employee as you would an employee returning from a voluntary, personal leave.
- " A return to work certificate may be required for an employee returning from leave caused by a medical

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condition (as opposed to birth) if it is required from other employees on disability or personal leaves.

### **MANAGEMENT STRATEGIES FOR LEAVE REQUESTS**

- “ Consider implementing a global leave policy, centralizing your leave administration, and standardizing your procedures for administering leave requests.
- C Avoid fragmenting the administration of employee leaves of absence between separate departments such as Risk Management (i.e., workers’ compensation) and Human Resources. Encourage regular communication between departments regarding leave issues.
- C Implement standardized procedures for the administration of leaves of absences:
  - < Require, wherever possible, that leave requests be submitted in writing.
  - < Send requests for medical certifications out within 2 days of learning of any leave request where more information is needed.
  - < Establish a uniform policy which conforms to the FMLA regarding continuation of health

benefits and design a system to facilitate easy payment of employee contributions for health insurance premiums.

- < Require return to work certificates for all leaves and apply the requirement consistently.
- “ Educate supervisors to look and listen for possible FMLA-qualifying conditions. Before supervisors discipline employees for attendance issues, be sure that such absences were not FMLA-qualifying.
- “ Train employees and supervisors to submit requests for leave to Human Resources, and train Human Resources staff to respond to requests for leave promptly.
- “ Remain in communication with the employee during leave, requesting updates when permitted.
- “ Require the substitution of paid leave first.
- “ Notify employees that failure to cooperate in the process and submit requested information will result in denial of the leave.
- “ Adopt job descriptions with essential functions for each position so they can be easily provided to doctors



(When completed, this form goes to the employee, **not to the Department of Labor.**)

OMB No.: 1215-0181  
Expires: 06/30/02

1. Employee's Name

2. Patient's Name (If different from employee)

3. Page 4 describes what is meant by a "**serious health condition**" under the Family and Medical Leave Act. Does the patient's condition<sup>1</sup> qualify under any of the categories described? If so, please check the applicable category.

(1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_ (4) \_\_\_\_\_ (5) \_\_\_\_\_ (6) \_\_\_\_\_ , or None of the above \_\_\_\_\_

4. Describe the **medical facts** which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

5. a. State the approximate **date** the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present **incapacity**<sup>2</sup> if different):

b. Will it be necessary for the employee to take work only **intermittently or to work on a less than full schedule** as a result of the condition (including for treatment described in Item 6 below)?

If yes, give the probable duration:

c. If the condition is a **chronic condition** (condition #4) or **pregnancy**, state whether the patient is presently incapacitated<sup>2</sup> and the likely duration and frequency of **episodes of incapacity**<sup>2</sup>:

<sup>1</sup> Here and elsewhere on this form, the information sought relates **only** to the condition for which the employee is taking FMLA leave.

<sup>2</sup> "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

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6. a. If additional **treatments** will be required for the condition, provide an estimate of the probable number of such treatments.

If the patient will be absent from work or other daily activities because of **treatment** on an **intermittent** or **part-time** basis, also provide an estimate of the probable number of and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

b. If any of these treatments will be provided by **another provider of health services** (e.g., physical therapist), please state the nature of the treatments:

c. **If a regimen of continuing treatment** by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

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7. a. If medical leave is required for the employee's **absence from work** because of the **employee's own condition** (including absences due to pregnancy or a chronic condition), is the employee **unable to perform work** of any kind?

b. If able to perform some work, is the employee **unable to perform any one or more of the essential functions of the employee's job** (the employee or the employer should supply you with information about the essential job functions)?  
If yes, please list the essential functions the employee is unable to perform:

c. If neither a. nor b. applies, is it necessary for the employee to be **absent from work for treatment**?

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8. a. If leave is required to **care for a family member** of the employee with a serious health condition, **does the patient require assistance** for basic medical or personal needs or safety, or for transportation?

b. If no, would the employee's presence to provide **psychological comfort** be beneficial to the patient or assist in the patient's recovery?

c. If the patient will need care only **intermittently** or on a part-time basis, please indicate the probable **duration** of this need:

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Signature of Health Care Provider

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Type of Practice

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Address

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Telephone Number

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Date

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**To be completed by the employee needing family leave to care for a family member:**

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

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Employee Signature

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Date

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A “**Serious Health Condition**” means an illness, injury impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

**Inpatient care** (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity<sup>2</sup> or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

(a) A period of incapacity<sup>2</sup> of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity<sup>2</sup> relating to the same condition), that also involves:

- (1) **Treatment**<sup>3</sup> **two or more times** by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (*e.g.*, physical therapist) under orders of, or on referral by, a health care provider; or
- (2) **Treatment** by a health care provider on **at least one occasion** which results in a **regimen of continuing treatment**<sup>4</sup> under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to **pregnancy**, or for **prenatal care**.

4. Chronic Conditions Requiring Treatments

A **chronic condition** which:

- (1) Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;
- (2) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and
- (3) May cause **episodic** rather than a continuing period of incapacity<sup>2</sup> (*e.g.*, asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision

A period of **Incapacity**<sup>2</sup> which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need not be receiving active treatment by, a health care provider**. Examples include Alzheimer’s, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for **restorative surgery** after an accident or other injury, **or** for a condition that **would likely result in a period of Incapacity<sup>2</sup> of more than three consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

This optional form may be used by employees to satisfy a mandatory requirement to furnish a medical certification (when requested) from a health care provider, including second or third opinions and recertification (29 CFR 825.306).

*Note:* Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

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<sup>3</sup> Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

<sup>4</sup> A regimen of continuing treatment includes, for example, a course of prescription medication (*e.g.*, an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

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**Public Burden Statement**

We estimate that it will take an average of 10 minutes to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**DO NOT SEND THE COMPLETED FORM TO THIS OFFICE; IT GOES TO THE EMPLOYEE.**

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**(Family and Medical Leave Act of 1993)**

OMB No. : 1215-0181  
Expires : 06-30-02

Date:

To: \_\_\_\_\_  
(Employee's Name)

From: \_\_\_\_\_  
(Name of Appropriate Employer Representative)

**Subject: REQUEST FOR FAMILY/MEDICAL LEAVE**

On \_\_\_\_\_, you notified us of your need to take family/medical leave due to:  
(Date)

- The birth of a child, or the placement of a child with you for adoption or foster care; or
- A serious health condition that makes you unable to perform the essential functions for your job; or
- A serious health condition affecting your  spouse,  child,  parent, for which you are needed to provide care.

You notified us that you need this leave beginning on \_\_\_\_\_ and that you expect  
(Date)  
leave to continue until on or about \_\_\_\_\_.  
(Date)

Except as explained below, you have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

This is to inform you that: (check appropriate boxes; explain where indicated)

1. You are  eligible  not eligible for leave under the FMLA.
2. The requested leave  will  will not be counted against your annual FMLA leave entitlement.
3. You  will  will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by \_\_\_\_\_ (insert date) (must be at least 15 days after you are notified of this requirement), or we may delay the commencement of your leave until the certification is submitted.
4. You may elect to substitute accrued paid leave for unpaid FMLA leave. We  will  will not require that you substitute accrued paid leave for unpaid FMLA leave. If paid leave will be used, the following conditions will apply: (Explain)

5. (a) If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you, and it is agreed that you will make premium payments as follows: *(Set forth dates, e.g., the 10th of each month, or pay periods, etc. that specifically cover the agreement with the employee.)*
- (b) You have a minimum 30-day *(or, indicate longer period, if applicable)* grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, *provided* we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work. We will  will not pay your share of health insurance premiums while you are on leave.
- (c) We  will not do the same with other benefits (e.g., life insurance, disability insurance, etc.) while you are on FMLA leave. If we do pay your premiums for other benefits, when you return from leave you  will not be expected to reimburse us for the payments made on your behalf.

6. You  will not be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until certification is provided.

7. (a) You  are not a “key employee” as described in § 825.217 of the FMLA regulations. If you are a “key employee:” restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us as discussed in § 825.218.
- (b) We  have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. *(Explain (a) and/or (b) below. See §825.279 of the FMLA regulations.)*

8. While on leave, you  will not be required to furnish us with periodic reports every \_\_\_\_\_ *(indicate interval of periodic reports, as appropriate for the particular leave situation)* of your status and intent to return to work *(see § 825.309 of the FMLA regulations)*. If the circumstances of your leave change and you are able to return to work earlier than the date indicated on the reverse side of this form, you  will not be required to notify us at least two work days prior to the date you intend to report to work.

9. You  will not be required to furnish recertification relating to a serious health condition. *(Explain below, if necessary, including the interval between certifications as prescribed in §825.308 of the FMLA regulations.)*

This optional use form may be used to satisfy mandatory employer requirements to provide employees taking FMLA leave with Written notice detailing specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. (29 CFR 825.301(b).)

*Note:* Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

### Public Burden Statement

We estimate that it will take an average of 5 minutes to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

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