



Dori Noyes
County Clerk
and ExOfficio Recorder of Deeds

Becky Lindsey, Treasurer
Gina Anderson, Assessor
Michelle M Burns, Prosecuting Attorney
Vickie Larchick, Clerk of District Court
Kenneth Blackburn, Sheriff
Delmar Atwood, Coroner

COUNTY COMMISSIONERS
Jerold S Ewen, Chairman
Keith M Grant
Thomas S Hinman

Phone: 307-568-2641 Fax 307-568-9375

carol.willard@bighorncountywy.gov

From the Desk of Carol L Willard in the
Office of Dori Noyes, County Clerk

P.O. Box 31
Basin WY
82410

February 22, 2012

To: Big Horn County Elected Officials, Department Heads and Supervisors
From: Carol L. Willard, Big Horn County Payroll Clerk

Re: FMLA {Family Medical Leave Act}

This is just a little housekeeping issue regarding the FMLA. We are currently trying to update our personnel policy and noticed that the section regarding the FMLA mentions that an application is available from Elected Officials or department heads.

So you will find 3 items attached; FMLA application, a Q & A about FMLA, and the section from our personnel policy. Also if your employees have further questions, please instruct them to go to the website:

<http://www.dol.gov/whd/fmla/>

If you have anymore questions, please give us a call.

Thanks,

Carol

-Carol L. Willard,
Big Horn County Payroll Clerk

Notice of Eligibility and Rights & Responsibilities (Family and Medical Leave Act)

U.S. Department of Labor Wage and Hour Division



OMB Control Number: 1235-0003 Expires: 2/28/2015

In general, to be eligible an employee must have worked for an employer for at least 12 months, have worked at least 1,250 hours in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form by employers is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. § 825.300(b), which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by 29 C.F.R. § 825.300(b), (c).

[Part A – NOTICE OF ELIGIBILITY]

TO: _____ Employee

FROM: _____ Employer Representative

DATE: _____

On _____, you informed us that you needed leave beginning on _____ for:

- _____ The birth of a child, or placement of a child with you for adoption or foster care;
_____ Your own serious health condition;
_____ Because you are needed to care for your _____ spouse; _____ child; _____ parent due to his/her serious health condition.
_____ Because of a qualifying exigency arising out of the fact that your _____ spouse; _____ son or daughter; _____ parent is on active duty or call to active duty status in support of a contingency operation as a member of the National Guard or Reserves.
_____ Because you are the _____ spouse; _____ son or daughter; _____ parent; _____ next of kin of a covered servicemember with a serious injury or illness.

This Notice is to inform you that you:

- _____ Are eligible for FMLA leave (See Part B below for Rights and Responsibilities)
_____ Are not eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):
_____ You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately _____ months towards this requirement.
_____ You have not met the FMLA's 1,250-hours-worked requirement.
_____ You do not work and/or report to a site with 50 or more employees within 75-miles.

If you have any questions, contact _____ or view the FMLA poster located in _____.

[PART B-RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE]

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by _____. (If a certification is requested, employers must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

- _____ Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request _____ is/_____ is not enclosed.
_____ Sufficient documentation to establish the required relationship between you and your family member.
_____ Other information needed: _____

No additional information requested



Frequently Asked Questions and Answers About the Revisions to the Family and Medical Leave Act

The following are answers to commonly asked questions about the new Family and Medical Leave Act (FMLA) regulations. The effective date of the revised FMLA regulations is January 16, 2009.

A separate FAQ relating to the FMLA military family leave entitlements can be found at www.dol.gov/whd/fmla/finalrule.htm.

Qualifying Reasons for FMLA Leave

Q. Can I still use FMLA leave during pregnancy or after the birth of a child?

A. Yes. An employee's ability to use FMLA leave during pregnancy or after the birth of a child has not changed. Under the regulations, a mother can use 12 weeks of FMLA leave for the birth of a child, for prenatal care and incapacity related to pregnancy, and for her own serious health condition following the birth of a child. A father can use FMLA leave for the birth of a child and to care for his spouse who is incapacitated (due to pregnancy or child birth).

Q. Can I continue to use FMLA for leave due to my chronic serious health condition?

A. Under the regulations, employees continue to be able to use FMLA leave for any period of incapacity or treatment due to a chronic serious health condition. The regulations continue to define a chronic serious health condition as one that (1) requires "periodic visits" for treatment by a health care provider or nurse under the supervision of the health care provider, (2) continues over an extended period of time, and (3) may cause episodic rather than continuing periods of incapacity. The regulations clarify this definition by defining "periodic visits" as at least twice a year.

Q. Are there any changes to the definition of a serious health condition under the regulations?

A. A "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. The "continuing treatment" test for a serious health condition under the regulations may be met through (1) a period of incapacity of more than three consecutive, full calendar days plus treatment by a health care provider twice, or once with a continuing regimen of treatment, (2) any period of incapacity related to pregnancy or for prenatal care, (3) any period of incapacity or treatment for a chronic serious health condition, (4) a period of incapacity for permanent or long-term conditions for which treatment may not be effective, or (5) any period of incapacity to receive multiple treatments (including recovery from those treatments) for restorative surgery, or for a

requesting to be reinstated under the USERRA. Both the hours and the months that Dean would have worked but for his military status must be counted in determining his FMLA eligibility.

Employer Notice Requirements

Q. What are an employer's posting and general notice requirements?

A. Employers must post a general notice explaining the FMLA's provisions and providing information regarding procedures for filing a claim under the Act in a conspicuous place where it can be seen by employees and applicants. Under the regulations, this posted notice includes additional information regarding the definition of a serious health condition, the new military family leave entitlements, and employer and employee responsibilities. Employers must also include the information in this general notice in any employee handbook or other written policies or manuals describing employee benefits and leave provisions. Additionally, under the regulations, an employer without a handbook or written guidance is required to provide this general notice to new employees upon hiring.

Q. Is there a penalty if an employer fails to post the required FMLA notice?

A. An employer that willfully fails to post the required FMLA notice may be assessed a civil monetary penalty. Under the regulations, the penalty is increased to \$110.

Q. How soon after an employee provides notice of the need for leave must an employer determine whether someone is eligible for FMLA leave?

A. Absent extenuating circumstances, the regulations require an employer to notify an employee of whether the employee is eligible to take FMLA leave (and, if not, at least one reason why the employee is ineligible) within five business days of the employee requesting leave or the employer learning that an employee's leave may be for a FMLA-qualifying reason.

Q. Does an employer have to provide employees with information regarding their specific rights and responsibilities under the FMLA?

A. At the same time an employer provides an employee notice of the employee's eligibility to take FMLA leave, the employer must also notify the employee of the specific expectations and obligations associated with the leave. Among other information included in this notice, the employer must inform the employee whether the employee will be required to provide certification of the FMLA-qualifying reason for leave and the employee's right to substitute paid leave (including any conditions related to such substitution, and the employee's entitlement to unpaid FMLA leave if those conditions are not met). If the information included in the notice of rights and responsibilities changes, the employer must inform the employee of such changes within five business days of receipt of the employee's first notice of the need for FMLA leave subsequent to

known that the time would be counted against his FMLA entitlement, the two weeks his employer failed to appropriately designate may not count against his FMLA entitlement.

Employee Notice Requirements

Q. How much notice must an employee give before taking FMLA leave?

A. When the need for leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, an employee must give at least 30 days notice. If 30 days notice is not possible, an employee is required to provide notice “as soon as practicable.” Employees must also provide notice as soon as practicable for foreseeable leave due to a qualifying exigency, regardless of how far in advance such leave is foreseeable (see FAQ for military family leave for additional information). The regulations clarify that it should be practicable for an employee to provide notice of the need for leave that is foreseeable either the same day or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must account for the individual facts and circumstances.

When the need for leave is unforeseeable, employees are required to provide notice as soon as practicable under the facts and circumstances of the particular case, which the regulations clarify will generally be within the time prescribed by the employer’s usual and customary notice requirements applicable to the leave.

Example:

When Mandy goes to her Monday physical therapy appointment for her serious health condition, she finds out that the appointment she had previously scheduled for Thursday has been changed to Friday. Upon her return to work after the Monday appointment, Mandy informs her employer that she will no longer need leave on Thursday for physical therapy, but will need leave on Friday instead. Mandy has provided notice of her need for foreseeable leave as soon as practicable.

Q. What information must an employee give when providing notice of the need for FMLA leave?

A. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee does not need to specifically assert his or her rights under FMLA, or even mention FMLA. The employee must, however, provide “sufficient information” to make the employer aware of the need for FMLA leave and the anticipated timing and duration of the leave.

The regulations provide additional guidance for employees regarding what is “sufficient information.” Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee’s family member is under the continuing care of a health care provider; if the leave is due

Q. How soon after I request leave does my employer have to request a medical certification of a serious health condition?

A. Under the regulations, an employer should request medical certification, in most cases, at the time an employee gives notice of the need for leave or within five business days. If the leave is unforeseen, the employer should request medical certification within five days after the leave begins.

A. An employer may request certification at a later date if it has reason to question the appropriateness or duration of the leave.

Q. What happens if my employer says my medical certification is incomplete?

A. An employer must advise the employee if it finds the certification is incomplete and allow the employee a reasonable opportunity to cure the deficiency. The regulations require that the employer state in writing what additional information is necessary to make the certification complete and sufficient. The regulations also require that the employer allow the employee at least seven calendar days to cure the deficiency, unless seven days is not practicable under the particular circumstances despite the employee's diligent good faith efforts.

Q. May my employer contact my health care provider about my serious health condition?

A. The regulations clarify that contact between an employer and an employee's health care provider must comply with the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations. Under the regulations, employers may contact an employee's health care provider for authentication or clarification of the medical certification by using a health care provider, a human resource professional, a leave administrator, or a management official. In order to address employee privacy concerns, the rule makes clear that in no case may the employee's direct supervisor contact the employee's health care provider. In order for an employee's HIPAA-covered health care provider to provide an employer with individually-identifiable health information, the employee will need to provide the health care provider with a written authorization allowing the health care provider to disclose such information to the employer. Employers may not ask the health care provider for additional information beyond that contained on the medical certification form.

Q. Must I sign a medical release as part of a medical certification?

A. No. An employer may not require an employee to sign a release or waiver as part of the medical certification process. The regulations specifically state that completing any such authorization is at the employee's discretion. Whenever an employer requests a medical certification, however, it is the employee's responsibility to provide the employer with a complete and sufficient certification. If an employee does not provide either a complete and sufficient certification or an authorization allowing the health care

employee is able to resume work. Under the regulations, an employer may require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the position if the employer has appropriately notified the employee that this information will be required and has provided a list of essential functions. Additionally, an employer may require a fitness-for-duty certification up to once every 30 days for an employee taking intermittent or reduced schedule FMLA leave if reasonable safety concerns exist regarding the employee's ability to perform his or her duties based on the condition for which leave was taken.

Q. What happens if I do not submit a requested medical or fitness-for-duty certification?

A. If an employee fails to timely submit a properly requested medical certification (absent sufficient explanation of the delay), FMLA protection for the leave may be delayed or denied. If the employee never provides a medical certification, then the leave is not FMLA leave.

If an employee fails to submit a properly requested fitness-for-duty certification, the employer may delay job restoration until the employee provides the certification. If the employee never provides the certification, he or she may be denied reinstatement.

Miscellaneous Questions

Q. Can my FMLA leave be counted against me for my bonus?

A. Under the regulations, an employer may deny a bonus that is based upon achieving a goal, such as hours worked, products sold or perfect attendance, to an employee who takes FMLA leave (and thus does not achieve the goal) as long as it treats employees taking FMLA leave the same as employees taking non-FMLA leave. For example, if an employer does not deny a perfect attendance bonus to employees using vacation leave, the employer may not deny the bonus to an employee who used vacation leave for a FMLA-qualifying reason.

Example:

Sasha uses ten days of FMLA leave during the quarter for surgery. Sasha substitutes paid vacation leave for her entire FMLA absence. Under Sasha's employer's quarterly attendance bonus policy, employees who use vacation leave are not disqualified from the bonus but employees who take unpaid leave are disqualified. Sasha's employer must treat her the same way it would treat an employee using vacation leave for a non-FMLA reason and give Sasha the attendance bonus.

Q. My medical condition limits me to a 40 hour workweek but my employer has assigned me to work eight hours of overtime in a week. Can I take FMLA leave for the overtime?

Employees who are unable to return to work due to illness or other related reasons shall be granted all accrued sick leave first, and then finally vacation leave.

Sick Leave Bank

Employees may request, with approval of their department head and the Board of County Commissioners, up to 480 hours sick leave from the sick leave bank for illness. An employee must use all of their own accumulated vacation and sick leave before requesting sick leave from the bank. Not more than 480 hours may be donated to any one employee without approval of the Board of County Commissioners. **Employees may donate hours to the general sick leave bank and or a specific employee. Also, an employee may not donate any remaining sick leave hours upon separation of employment. Employees cannot draw from the sick leave bank while drawing Workers' Safety and Compensation. [Personnel Policy 01/1998 – 06/1998]**

Sick Leave Bank may be accessed only by employees paid by the Big Horn County payroll system. Sick Leave bank does not include employees with independent payroll systems (county boards).

Family Medical Leave Act

Employees who have been employed by Big Horn County for at least one year and for at least 1250 hours over the previous 12 months are entitled to 12 weeks of unpaid leave under the Family Medical Leave Act (FMLA).

Note: this means one FMLA leave occurrence for 12 weeks within a 12 month period of time.

If the need for leave under FMLA is foreseeable, the employee must try to schedule leave so as not to unduly disrupt the operations of the Big Horn County, and the employee must provide 30 days notice to the Department Head and/or Supervisor. If the need for leave is unforeseeable, the employee must notify the Department Head and/or Supervisor as soon as possible.

While on leave under the FMLA, the Big Horn County requires that an employee substitute accrued paid sick leave and paid vacation prior to taking the 12 weeks as unpaid leave.

The Big Horn County will continue to pay health benefits while the employee is on leave. The employee must, however, continue to pay his/her share of the all premiums while on unpaid leave (if the employee is required to pay premiums).

Upon written application to the Big Horn County elected official or department head, a family leave of absence without pay and without loss of seniority shall be granted to an employee for the purpose of childbearing and/or child rearing.

Please see your Big Horn County elected official or Department head for further information.

Funeral Leave

In the event of the death of a member of the immediate family each employee shall be entitled to three **(3)** days leave with pay for funeral arrangements and attendance. Under extraordinary circumstances this leave may be extended, but without pay.

Immediate family is to include: spouse, children, grandchildren, step-children, parent or step parent, grandparent, brother or sister, step-brother or sister, father-in-law, mother-in-law, brother-in-law and sister-in-law.

Leave of Absence

An employee may request in writing to his/her elected official or department head a Leave of Absence. The application shall contain the specific reason for the leave, the date leave would begin, and the date of return. All requests must be approved prior to the first effective day of the leave. If a Leave of Absence is approved, sick leave, vacation, or other paid time off benefits will cease to accrue until the employee returns to work. Anniversaries will not be affected unless someone leaves or is terminated.