

Those New Leave Policies: Medical and Family Friendly

You have just selected Suzie Grange upon the completion of her intern program. Suzie has been exceptional during her internship and you are elated that you were able to find a position for her. However, she has just come to you and asked for permission to take leave to care for her mother who is coming to live with her. Her mother has medical problems and must go for treatment several mornings a week. Suzie desires to have leave to accompany her mother whenever is necessary.

Your first reaction is NO because you need her full time. Of course, she can take some leave for emergencies, but taking several mornings each week off (and maybe more), that's impossible. You don't want to seem harsh, but she has a job to do. You wonder how is the best way to tell her NO and still keep her motivated.

Don't tell her "no" too fast, because she is entitled to take leave to care for her mother. In the mid-1990s two important laws were passed that significantly enhanced federal employees leave



What new entitlements?



entitlements to allow them to care for themselves and members of their families. The acts are **The Family and Medical Leave Act (FMLA)** and **Federal Employees Family Friendly Leave Act (FEFFLA)**. In addition, over the past few years several changes have been made that expanded the entitlements.

Three important things about medical and family leave:

- They are **entitlements**, not just options or suggestions;
- Employers have an obligation to **inform** personnel of their right to use it. Yes, you have to tell your employees that such leave is available to them; and
- Don't **assume** that your employee is aware of the laws and what is covered. Remember that the employee may not know all the definitions and rules that we will discuss below.

We will cover the various laws and executive orders separately to avoid confusion.

FMLA -- What Does
It Authorize?

The Family and Medical Leave Act (FMLA)

Under FMLA, employees who have completed a total of 12 months of service are entitled to:

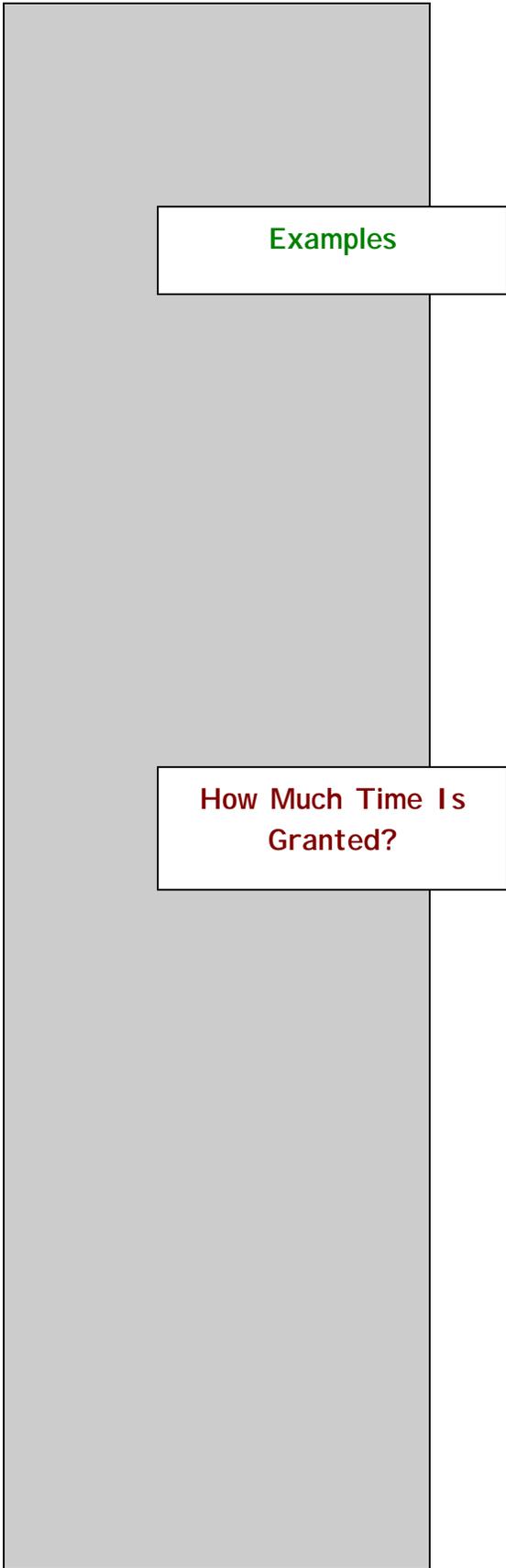
- ❑ **12 administrative workweeks of unpaid leave during any 12 month period**
- ❑ **For specified family and medical needs**
- ❑ **Applies to full-time and part-time personnel**

Family membership under FMLA includes

- Parent - Spouse - Son or daughter (biological or legal)

The following are considered to be family and medical needs covered by FMLA:

- ❑ **Birth of son or daughter of the employee and subsequent care**
- ❑ **Placement of son or daughter with the employee for adoption or foster care**
- ❑ **Care of a spouse, son, daughter or parent of the employee who has serious health condition**
- ❑ **Serious health condition of the employee that renders the employee unable to**



Examples

How Much Time Is
Granted?

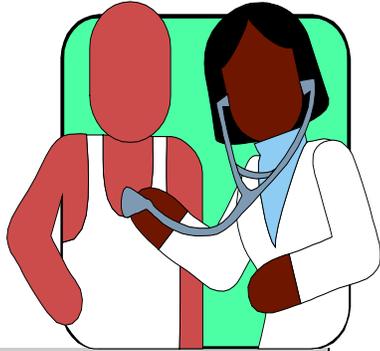
perform any one or more of the **essential** function of his or her position.

Example 1: Tonya adopts a special needs child and wants to spend time immediately after the adoption to care for the child.

Example 2: Tom's father is recovering from multiple by-pass surgery. His father is a single parent with two young children. Tom needs to take a period of time off to help his father care and his family.

But how much time may a person take of for medical and family needs? It seems that each type of need might demand a different amount of time to address. The law entitles a person to:

- **A 12 month period** that begins with the first day leave is taken under FMLA; It covers only time needed to meet the need; and
- Employee **may** use other leave in conjunction with FMLA to avoid the loss of income, e.g., annual, sick and compensatory time earned or donated leave if appropriate.



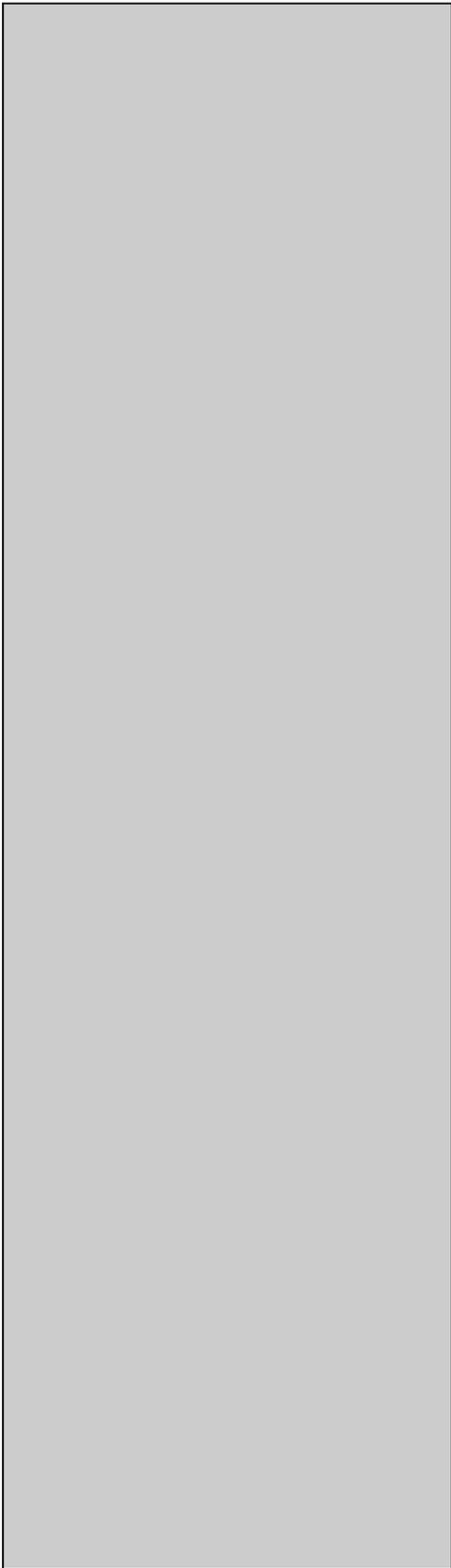
Notification
And Medical
Certification

Whether to use paid leave is an employee's choice. FMLA entitlement is for **unpaid** leave. So it is up to the employee whether he or she chooses to use his or her paid leave or to use unpaid leave.

- ❑ **No**, the supervisor may not deny an employee the right to use paid leave if available;
- ❑ **No**, the supervisor may not require the employee to take paid leave because it is available; and
- ❑ **Yes**, the employee must notify the supervisor of his or her intent to use paid leave. **This may not be done retroactively.**

Like any other leave, the supervisor needs to know when it is being taken and why. Because the leave may be taken for a total of 12 administrative workweeks and also may be taken incrementally, advanced notice is expected. Also since many family care situations can be anticipated and planned for, advanced notice is expected.

- ❑ Since many family and medical needs can be foreseen and planned for, **30 days advanced notice** is expected;



- Where 30 days advanced notice is not possible, notice should be given as soon as the need is determined;
- If the leave was foreseeable and the employee fails to give 30 days notice with no reasonable excuse, the leave **may** be delayed; and
- Employee must provide acceptable documentation of the family or medical need.

So what kind of documentation should you ask for and expect?

- Employee must provide **written documentation** to support FMLA request;
- Must include:
 - Statement of need (diagnosis or condition)
 - When commenced and expected duration or time needed
- Justification for intermittent or reduced scheduling; and
- If condition **obviously** continues after the initial 12-month period, further documentation may be waived.

What happens if you question the justification and documentation that you are provided?

Some Cases to Consider

- You may provisionally grant leave pending further documentation;
- You may request the employee obtain a 2nd opinion **at the agency's expense**; AND
- If there is disagreement between first two medical opinions, you may obtain a 3rd opinion at the agency's expense **whose opinion is binding**.

Case 1: Geri will require physical and occupational therapy as a result of a car accident. The therapy requires Geri to miss three mornings of work per week.

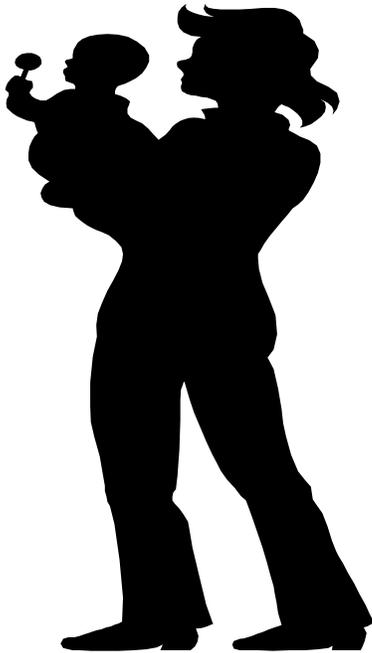
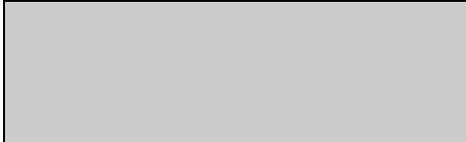
Comments: Geri has a medical condition that she can easily document. It appears that she will be maintaining a regular schedule for therapy. You should approve in advance the time that she plans to take off and would also be wise to know **again in advance** when she plans to be at work and how long the therapy will last. It may not be easy to determine the exact ending date, but you should inquire regarding Geri's progress periodically.



Case 2: Andy has epilepsy. Although his seizure activity is generally under control, he suffers from breakthrough seizures about once a week. Andy has no way to predict when they will occur.

Comments: Again, Andy's medical condition is easily documented. It is also not possible for Andy to predict the time that he will require the requested leave. Because of the nature of his medical condition, you may approve the leave under the condition that either he or someone in his family call you and let you know that he has had a seizure and gives you an estimate of when he will return to work. Andy should submit an official request for leave to cover his absence when he arrives at work.

Case 3: Abby and John Addams have tried unsuccessfully to have a baby for five years. Through the help of medical breakthroughs, Abby is now pregnant and is expecting a baby in four months. The pregnancy is considered high risk and her physician recommends that Abby stop working two months before her due date. Abby would like to



take one month of sick leave that she has earned followed by two months of unpaid leave under FMLA. Can she do this?

Also John would like to take one month of unpaid leave under FMLA after the baby is born to help his wife and their baby. Can he do this?

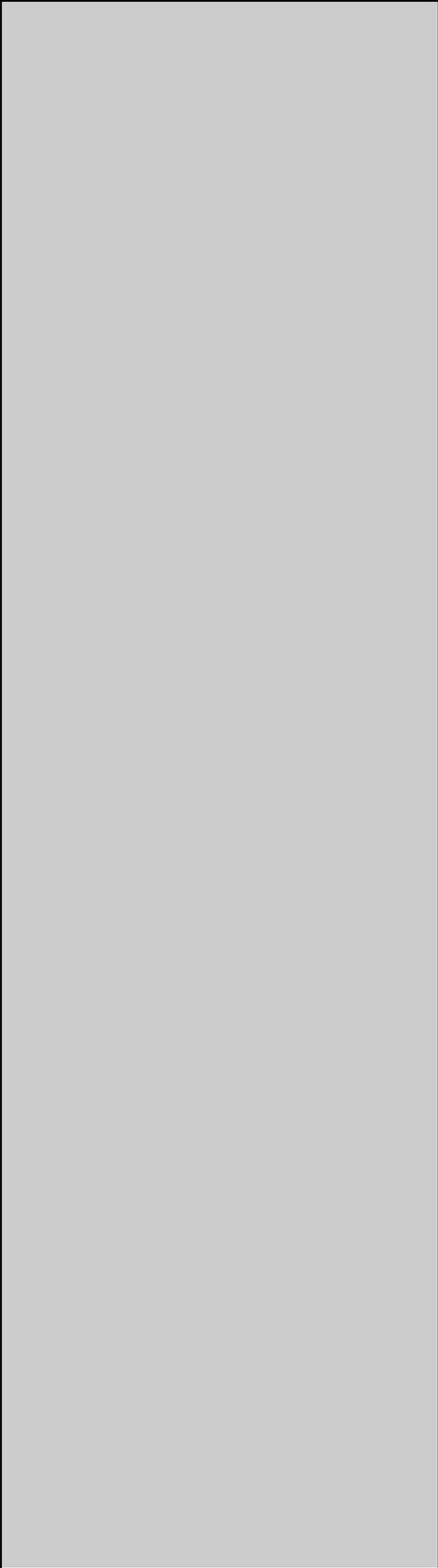
Comments: Abby has a medical condition that requires her to stop working for an extended period of time. It would certainly be appropriate with the proper medical documentation to grant her sick for the first month. Since the medical condition continues through the pregnancy and into a period of recovery after the birth of the child, LWOP or unpaid leave would also be appropriate. The total amount of leave (paid + unpaid) under FMLA cannot exceed 12 administrative workweeks.

John is also allowed leave under FMLA as the result of the birth of the baby. However, John is restricted to taking either annual leave or leave without pay. Sick leave may not be used for the purpose of bonding with a new family member.



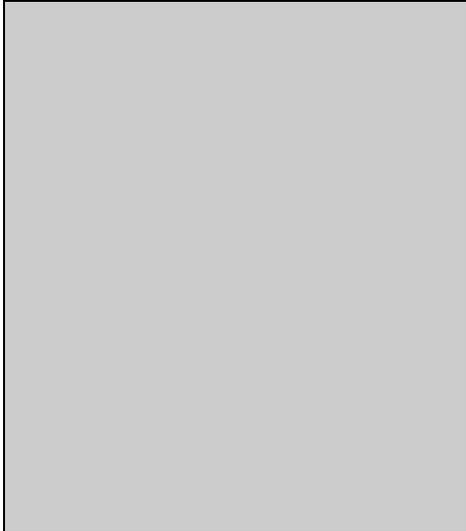
Case 4: Renee has been a problem employee of yours for years. First it was performance, then leave issues and now disrespect. When you proposed to discipline Renee for disrespect, she provided you with written medical documentation that she is under the care of a psychiatrist for acute anxiety and stress. Now Renee has not shown up for work for the past two weeks, so you charged her with AWOL. Today she called to say that she has been sick and her doctor does not recommend that she return to work for at least three months. Renee has no sick leave. What do you do?

Comments: Renee is indeed a problem employee. But she may also be entitled to FMLA if her medical condition is supportable. She should immediately be provided the required form for obtaining documentation from her physician. Continue to charge her AWOL until the documentation is provided. Since she has no sick leave, you need to check if she has any annual leave accrued.



If so, offer her the opportunity to use it to cover her future absences. When she provides the medical documentation, have your employee relations advisor review it in order to determine whether she is eligible for FMLA. If she is eligible, her AWOL should be changed to LWOP under FMLA from the date that the doctor certifies that the medical condition made her absence necessary.

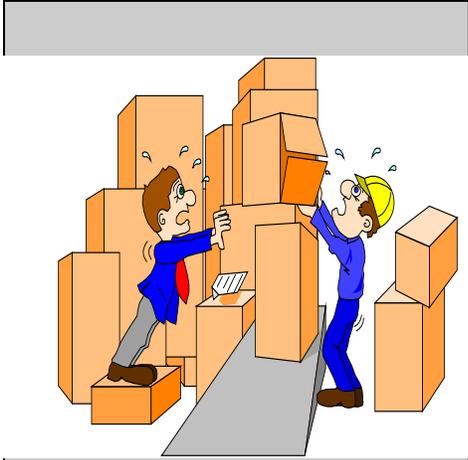
Case 5: Tara has chronic back problems and suffers from asthma. When either her back bothers her or her asthma flares up, she is unable to come to work. About twice a week she calls in the morning to say that she is in pain or has problem breathing and will be in late. She has provided you with medical documentation for both problems and they appear to be legitimate. Tara has requested unpaid FMLA leave to cover future cases of absences caused by these medical problems. She has agreed to call you whenever she is unable to come to work. You are tired of having to attend morning meetings that she has set up and then cannot make because of her medical problems. What do you do?



Comments: Tara's request seems to be covered by FMLA. Since the timing of her absences cannot be predicted, she may be granted the leave on an intermittent basis.

Tara's entitlement to leave however does not allow her to schedule meetings that others must cover. You should have a discussion with Tara and inform her that you are willing to cover for her absences on rare occasions. But since she knows that she will often not be able to attend meetings in the morning, she should make every effort to schedule all her meetings in the afternoon. If she continues to schedule meetings in the morning and causes an inconvenience to you and your staff, then disciplinary action may be appropriate.

- physical and mental illness;**
- injury;**
- pregnancy and childbirth;**
- medical, dental and optical exams and treatment; and**
- death.**



FEFFLA -- What Does It Authorize?

Note the **expanded** definition of family membership compared to FMLA.

Family membership under FEFFLA includes

- Parent
- Spouse
- Son or daughter (biological or legal)
- Brothers and sisters and
- Individuals of blood or affinity is equivalent to a family relationship

Under FEFFLA employees are authorized to use:

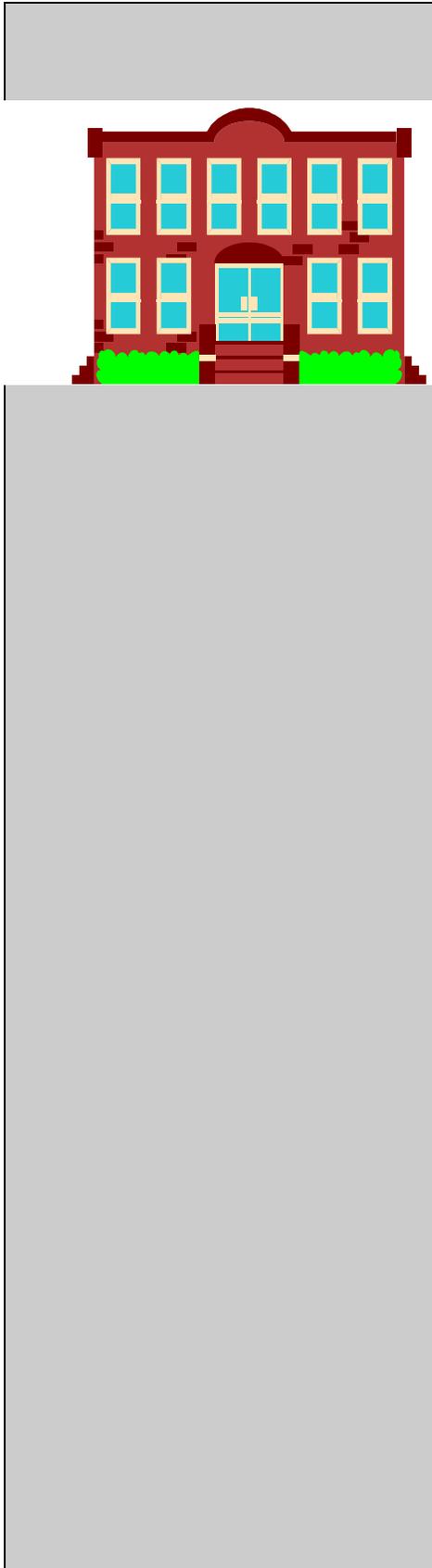
- Up to 40 hours of **sick** leave per year for any full-time employee

Plus

- An additional 64 hours of **sick** leave per year **if** employee maintains a balance of at least 80 hours of sick leave.

In addition, employees are entitled to up to seven days of paid leave each calendar year to serve as a bone-marrow donor. Employees who serve as organ donors are entitled to up to 30 days.

Leave for bone marrow and organ donation is a new category of leave that is in addition to annual and sick leave.



Expanded FMLA Policies

In order to improve the quality of life of employees with families with children and elderly relatives, President Clinton issued an Executive Order in 1997 encouraging federal agencies to grant 24 hours of **unpaid** leave during any 12 month period to help employees fulfill family obligations or participate in the following activities. Sick and annual leave may also be used if covered elsewhere under FMLA or FEFLA.

- School and early childhood educational activities, such as attending parent-teacher conferences, interviewing for a new school or child-care provider, or volunteering to help at a school, child care or Head Start activity;
- Routine family medical purposes, such as annual check ups, and vaccinations; or
- Elderly relatives' health or care needs, such as routine dental and medical appointments, making arrangements for housing, phones, banking services, etc.

Finally, an employee is entitled to a total of 12 weeks of **sick** leave each year for **all** family care purposes.

Some Cases to Consider

Since many of the situations covered by FMLA and FEFLA are complex, **always** work closely with your Human Resource advisor.

Case 6: Chante would like to accompany her elderly mother to her first few days at a new senior citizens' group. The group meets from 9-11:30 on Mondays through Thursdays. Chante has requested to take 20 hours of sick leave under the Expanded Family and Medical Leave Policies to do it.

Comments: Since Chante is engaged in the care of an elderly relative, she is entitled to be granted time off for these purposes. However, since there is no medical problem being addressed that is covered by FMLA, she should be told that she cannot take sick leave for such visits, but she may request and receive annual leave or LWOP.

Case 7: Alvina comes from a large family. Her mother is quite elderly and has had some very serious medical problems during the past twelve months. One of Alvina's older brothers passed away during the year and Alvina requested time to assist her mother through the funeral.



Earlier this week, Alvina was notified that her youngest sister has liver problems and is hospitalized. Alvina requested to use FEFFLA to visit and help her sister. Before you had an opportunity to discuss the situation with Alvina, she left to visit her sister. After she has been gone two days, she calls to say that she is thinking of donating one of her kidneys to her sister who desperately needs a transplant. She ends by saying that she requests the necessary leave.

Comments: Alvina's situation is too complex for you to decide quickly over the phone. Try to get an e-mail address at which you can contact her while she is on leave. It is better to provide her feedback in writing to avoid confusion and misunderstanding. It is obvious that Alvina is under considerable stress.

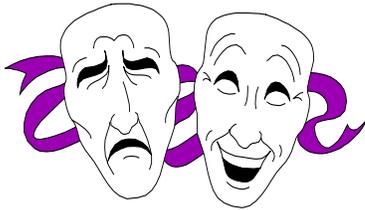
Here are the components of Alvina's situation for which FMLA or FEFFLA are appropriate.

- Bereavement for her brother;**
- Assistance to her mother with medical problems and obtain medical care;**



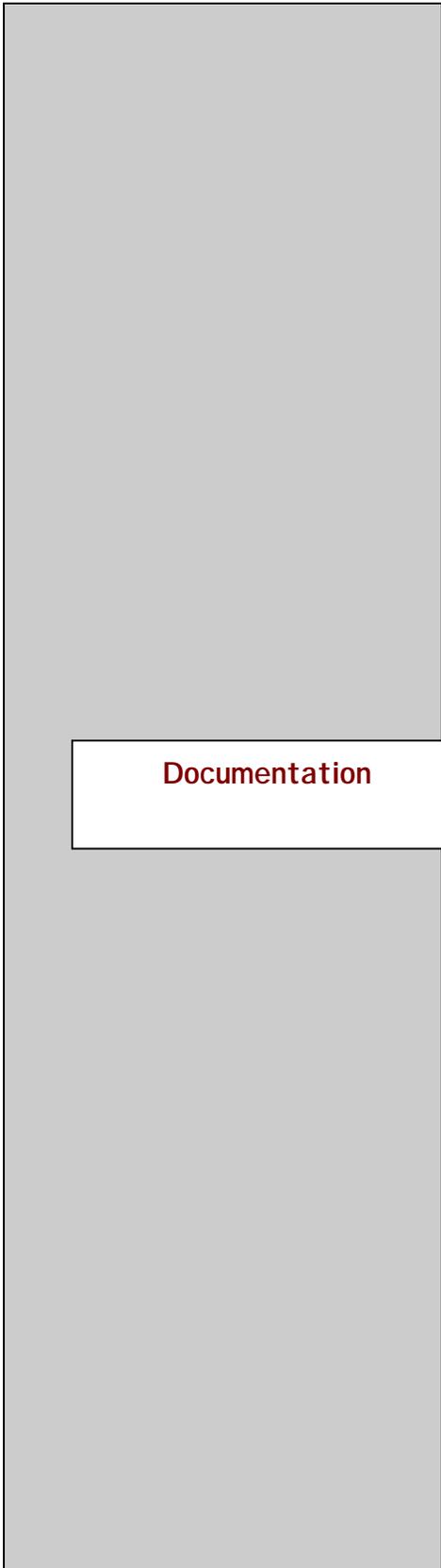
- ❑ Visit her sister in the hospital; and
- ❑ Donation of a kidney (if selected).

Finally, when Alvina returns to work, you should offer her the opportunity to use the services of the Civilian Employee Assistance Program. Avoid making the suggestion sound in any way like Alvina has a problem that needs to be addressed; it is simply a service that she may find of use as she undergoes the stress of dealing with her family issues.



Case 8: Lacey was a drama major in college. She has always wanted to direct a play. Today her son's high school called her and offered her the opportunity to direct the school's spring musical. She would have to miss two hours a day of work for the next five weeks. She has enough annual leave accumulated to cover all but 20 hours of the time that she would miss. Can Lacey take the final 20 hours under expanded FMLA?

Comments: Before dealing with the expanded FMLA issue, can you afford to let Lacey miss that much work? You may want to begin your discussion with Lacey with a review of the work that needs to be done and what problems (if any) may be



Documentation

encountered with such an extended absence. The best solution may be to adjust her work hours temporarily.

Specifically about expanded FMLA, the first issue is does the play support her child's advancement in the school. If it doesn't, then expanded FMLA does **not apply. Secondly, Lacey can request LWOP without expanded FMLA and, if workload allows, you can approve it. Third, depending on the workload, you do not have to approve the annual leave.**

What form of documentation am I required to ask for and maintain to support FMLA and FEFFLA?

- Department of Labor form WH-380 Certification of Health Care Provider (Family and Medical leave Act of 1993) (Revised Dec 99) is used to document the medical condition. The WH-381 is used for approval of the request. Copies of the forms are located at the end of this discussion.**
- Standard Form 71 Request for Leave or Approved Absence is used by the employee to request leave that will be taken under both FMLA and FEFFLA.**



Web Sites

This is the form used throughout the Federal government to request and grant leave. A copy of this form is also attached at the end of this discussion.

Note that blocks four and five are designed to document AND TRACK usage of leave under FMLA and FEFLA. It is therefore essential that when employees request to use leave authorized by these two act that it be properly documented and tracked.

Important FMLA and FEFLA web sites are:

- ❑ **OPM guidance on Family and Medical Leave**
<http://www.opm.gov/oca/leave/html/FMLAFACT.HTM>

- ❑ **OPM guidance on Family Friendly Leave**
<http://www.opm.gov/oca/leave/index.htm>

- ❑ **OPM Questions and Answers about Expanded FMLA**
<http://www.opm.gov/oca/leave/html/famqa.htm>

Question 1: Do I have this right. Even if my employees don't ask for leave under FMLA or FEFFLA, I need to inform them of the acts and that they may be entitled to approved leave under them?

Answer 1: Yes, you are expected to inform your employees if they are eligible for such leave. It is the employee's obligation to request the leave sought and to provide the necessary documentation to support it.

Question 2: Do I have to help my employee figure out which type of leave is most beneficial for them to use – especially when there is a choice between paid leave and unpaid leave, compensatory time, or voluntary leave transfer?

Answer 2: The use of leave is an employee option. You may want to mention what types of leave the employee may have available to him or her, but it is up to the employee to decide which combination, if any, is most beneficial. As a supervisor, you are not allowed to make the choice for the employee.

Questions and Answers
Continued

Question 3: Did you say that an employee couldn't request FMLA or FEFLA retroactively?

Answer 3: No, he or she CAN request it retrospectively once the documentation has been provided showing the onset of the condition. What an employee **cannot do retroactively is request that the leave be paid leave. Some common sense is needed here, depending on the condition of the employee at the time that the medical or family condition began. For example, an employee rushes to visit a child at college early on Monday morning and find that the child is in a coma as the result of a car accident. If the child is in surgery for most of Monday and you don't hear from the employee until late Tuesday, then the approval of the paid leave may be appropriate.**

Question 4: Is my brother-in-law a family member under FEFLA?

Answer 4: Not normally, but if he is considered in a family membership with you then he could be so considered. Example, if your brother-in-law and your sister have an extremely close family relationship with you, live near you, are members of a bowling team with you, go on vacations with you

Questions and Answers
Continued

and possibly even have vacation time sharing arrangements with you, then FEFFLA may be appropriate. If the brother-in-law lives in another state and has little day-to-day connection with you, FEFFLA probably doesn't. However, if your brother-in-law is seriously ill and you need to go help you sister cope with the situation, FEFFLA would apply because of the needs of *your sister*.

Question 5: If my employee donates an organ, I have to give them extra time off?

Answer 5: Yes. We have to guard against being too cynical in the use of FMLA and FEFFLA. Employees will not generally choose to endanger themselves by donating a bodily organ, just to get some free leave.

Question 6: I can take leave to attend functions at my child's preschool under FEFFLA?

Answer 6: Yes, but if you request it under FEFFLA, then it will be **unpaid** leave. You are certainly free to request annual leave for such occasions to avoid loss of pay. But supervisors **may** turn down annual leave requests if workload requires.

Question 7: I have an employee who is continuously missing deadlines because of family emergencies and medical problems. What can I do, when all of the situations appear to fall under either FMLA or FEFLA?

Answer 7: This is very difficult to answer without specifics about the circumstances requiring the leave. Some employees just have very complex family situations that require patience by supervisors.

The first thing that you need to do is to have a private talk with the employee, reviewing all the options that the employee has. Second, you should also review all the deadlines and work demands of the office and point out what role the employee plays in meeting these deadlines. Finally, offer the employee the opportunity to make use of the Civilian Employee Assistance Program if he or she may desire some assistance in handling some of the stress.

In discussing the issue of missing deadlines, it is important that you focus on the need for the employee to help you meet the deadlines rather than hinting that

Questions and Answers
Continued

there is a problem with performance or leave abuse. If the employee is entitled to the leave under FMLA and FEFFLA, then you will jointly need to work out how the work assignments will be met. One last thing to look for – if the employee calls in at the last moment when a deadline is due and asks for leave under FMLA and FEFFLA, you need to document this and discuss it with both the employee and your Employee Relations Advisor.

Question 8: I have an employee who has not been to work for almost six months. For the first two months she was on a combination of sick and annual leave. For about three months I have not spoken to my employee because she has moved in with her sister and I do not have her new phone number. I hear from a member of my staff that she is ill, but I have no way to confirm it. Even the two letters that I have written to her have received no response. Can I fire her?

Answer 8: You need to be careful. You should be carrying this employee on AWOL (not LWOP), because she is not authorized by you to be absent. However, you need to work with your Employee Relations Advisor in deciding how to proceed.

Questions and Answers
Continued

You probably should proceed in proposing her removal for excessive AWOL. But be aware that should she come forth with medical documentation supporting FMLA or FEFFLA, then she would be placed on LWOP and the AWOL charge will be dropped. If there is any possibility that medical documentation **MAY be forthcoming (even when the employee appeals the termination), then the 12 weeks of administrative leave will have to be granted retroactively and your proposed removal withdrawn. In cases where there is a question, you may want to wait until the 12 weeks of potential leave has passed, and then propose the removal. But these are all judgment calls.**

Question 9: I have an employee who continuously comes to work late or doesn't come at all. She has documentation from her physician that says that she has various conditions, including a bad back and a sleep disorder that makes getting to work on time difficult. In fact, in the past 14 pay-period, she has averaged less than 24 hours at work per pay period. I never know when she will be here and

Questions and Answers
Continued

when she won't. I've had it – can I fire her?

Answer 9: Since the medical condition is documented as occurring intermittently, it will be very hard to fire her. However, it is important that you keep in contact with this employee about work performance and meeting deadlines. She has a medical condition, but she also has a job to do. Again, this is a **very difficult** and complex situation and emotions must be controlled. Again work closely with your Employee Relations Advisor to make sure that you are not violating some of your employee's rights, while insuring that you get the performance expected from a full time employee.

**Request for Leave or Approved
Absence:** [Page27](#)

**Certification of Health Care
Provider:** [Page28](#)

**Employer response to Employee
Request for Family or Medical
Leave :** [Page32](#)

REQUEST FOR LEAVE OR APPROVED ABSENCE

1. NAME (Last, First, Middle Initial)	2. EMPLOYEE OR SOCIAL SECURITY NUMBER
---------------------------------------	---------------------------------------

3. ORGANIZATION

4. TYPE OF LEAVE/ABSENCE <i>(Check appropriate box(es) below.)</i>	DATE		TIME		TOTAL HOURS	5. FAMILY AND MEDICAL LEAVE
	From:	To:	From:	To:		
<input type="checkbox"/> Accrued Annual Leave						If annual leave, sick leave, or leave without pay will be used under the Family and Medical Leave Act of 1993, please provide the following information: <input type="checkbox"/> I hereby invoke my entitlement Family and Medical Leave for: <input type="checkbox"/> Birth/Adoption/Foster Care <input type="checkbox"/> Serious Health Condition of Spouse, Son, Daughter, or Parent <input type="checkbox"/> Serious Health Condition of Self Contact your supervisor and/or your personnel office to obtain additional information about your entitlements and responsibilities under the Family and Medical Leave Act of 1993.
<input type="checkbox"/> Restored Annual Leave						
<input type="checkbox"/> Advance Annual Leave						
<input type="checkbox"/> Accrued Sick Leave						
<input type="checkbox"/> Advance Sick Leave						
Purpose: <input type="checkbox"/> Medical/dental/optical examination of requesting employee <input type="checkbox"/> Other <input type="checkbox"/> Care of family member/bereavement, including medical/dental/optical examination of family member						
<input type="checkbox"/> Compensatory Time Off						
<input type="checkbox"/> Other Paid Absence <i>(Specify in Remarks)</i>						
<input type="checkbox"/> Leave Without Pay						

6. REMARKS:

7. **CERTIFICATION:** I hereby request leave/approved absence from duty as indicated above and certify that such leave/absence is requested for the purpose(s) indicated. I understand that I must comply with my employing agency's procedures for requesting leave/approved absence (and provide additional documentation, including medical certification, if required) and that falsification of information on this form may be grounds for disciplinary action, including removal.

EMPLOYEE SIGNATURE **DATE**

8. **OFFICIAL ACTION ON REQUEST:** **APPROVED** **DISAPPROVED**
 (If disapproved, give reason. If annual leave, initiate action to reschedule.)

SIGNATURE **DATE**

PRIVACY ACT STATEMENT

Section 6311 of title 5, United States Code, authorizes collection of this information. The primary use of this information is by management and your payroll office to approve and record your use of leave. Additional disclosures of the information may be: To the Department of Labor when processing a claim for compensation regarding a job connected injury or illness; to a State unemployment compensation office regarding a claim; to Federal Life Insurance or Health Benefits carriers regarding a claim; to a Federal, State, or local law enforcement agency when your agency becomes aware of a violation or possible violation of civil or criminal law; to a Federal agency when conducting an investigation for employment or security reasons; to the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of leave administration; or to the General Services Administration in connection with its responsibilities for records management.

Where the employee identification number is your Social Security Number, collection of this information is authorized by Executive Order 9397. Furnishing the information on this form, including your Social Security Number, is voluntary, but failure to do so may result in disapproval of this request.

If your agency uses the information furnished on this form for purposes other than those indicated above, it may provide you with an additional statement reflecting those purposes.



(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 condition¹ 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**² 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 incapacitated² and the likely duration and frequency of **episodes of incapacity**²:

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

² “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.

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):

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**?

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:

Signature of Health Care Provider

Type of Practice

Address

Telephone Number

Date

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:

Employee Signature

Date

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 incapacity² or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

(a) A period of incapacity² of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity² relating to the same condition), that also involves:

- (1) **Treatment**³ **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**⁴ 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 incapacity² (*e.g.*, asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision

A period of **Incapacity**² 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 Incapacity² 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.

³ 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.

⁴ 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.

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.

Employer Response to Employee
Request for Family or Medical Leave
(Optional use form - see 29 CFR § 825.301)

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division



(Family and Medical Leave Act of 1993)

(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 of 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 leave to continue until on or
about _____
(date) (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 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 will not be expected to reimburse us for the payments made on your behalf.
6. You will 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 are not a "key employee" as described in § 825.218 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.
- (b) We have 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 § 825.219 of the FMLA regulations.)*
8. While on leave, you will 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 will not be required to notify us at least two work days prior to the date you intend to report for work.
9. You will 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.)*