

How leave laws apply

Federal legislation dictates terms of family and medical leaves

Susan has been working for you for two years and has always reported to work as scheduled. Over the last few weeks, though, you've noticed she's called in sick several times. You decide to talk with her about her attendance. Susan tells you she has a medical issue and believes she could need extended time off. What do you do?



Laurie Sinner

Susan probably qualifies for time off under the Family and Medical Leave Act. Enacted in 1993, the law provides position protection for eligible employees who need time off work for their own or a family member's serious health condition or for the birth or placement of a child.

The law states that if an employer employs 50 or more individuals within a 75-mile radius, this employer must provide up to 12 weeks of time off. The law does NOT state if the person is to be paid, but only that a similar

position must be available when the employee is able to return to work. To be eligible, an employee must have been employed with this employer for 12 months and worked 1,250 hours during the rolling 12-month period. Intermittent or a reduced-hours schedule must also be provided, if requested, up to a total of 12 weeks.

The eligible employee shall be granted the position protection due to one or more of the following reasons:

- Birth of the employee's child and to care for the child.
- Placement of a child with the employee for adoption or foster care.
- To care for the spouse, child or parent of the employee if the spouse, child or parent has a serious health condition.
- A serious health condition that makes the employee unable to perform the functions of his or her position.
- Any qualifying exigency arising out of the fact the spouse, child or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the armed forces in support of a contingency operation. Qualifying exigencies may include attending certain military events, arranging for alternative child care, addressing certain financial and legal arrangements, attending certain counseling sessions and attending post-deployment reintegration briefings.

Adopted most recently is the Service Member Family Leave. Subject to meeting certification requirements by the health care provider, an eligible employee who is the spouse, child, parent or next of kin of a covered service

FOR YOUR INFORMATION

The Western Colorado Human Resource Association is next scheduled to meet at 11:30 a.m. June 15 at Two Rivers Convention Center, 159 Main St. in Grand Junction. The meeting will include a presentation on succession planning. For more information, visit www.wchra.org.

member shall be entitled to a total of 26 work weeks of leave during a 12-month period to care for the covered service member. A covered service member includes a member of the armed forces, including national guard and reserves, who's undergoing medical treatment, recuperation or therapy for a serious health condition.

Qualified employers should have a written FMLA policy available to their employees so procedures are in place. The notice of need for leave, certification of a serious health condition, medical recertification and affect upon benefits and premiums should be included. The policy also should include parameters for the return to duty, extensions of the leave, consistent forms and termination procedures. Have your attorney review the policy.

Employers may deny re-employment of key employees following FMLA leave. A key employee is a salaried FMLA-eligible employee who's among the highest paid 10 percent of all employees. This denial can occur if the employer notifies the key employee prior to the leave the denial is necessary to prevent substantial and grievous economic injury to the operations of the employer.

Returning to our scenario, Susan underwent a surgical procedure that left her unable to work for five weeks. However, she was granted position protection. She returned to work and now tells other employees how much she appreciates the company's understanding of her health needs. You have developed a better relationship with a long-standing employee and become a hero to the rest of your staff.

Laurie Sinner is director of human resources at Community Hospital in Grand Junction. Sinner holds a bachelor's degree in business administration and draws on 35 years of human resources experience, primarily in health care. Sinner is also a member of the Western Colorado Human Resource Association.

