

FREQUENTLY ASKED QUESTIONS

FMLA AND THE EMPLOYER-EMPLOYEE RELATIONSHIP

1. Can Metro require me to return to work before I exhaust my leave?

Ordinarily, the answer is no. However, subject to certain limitations, Metro may deny the continuation of FMLA leave due to a serious health condition if you fail to fulfill your obligation to provide supporting medical certification. Metro may not, however, require you to return to work early by offering you a light duty assignment.

2. When will FMLA not apply?

The protections of FMLA will not cover situations where the reason for leave does not meet medical condition eligibility requirements, where the reason for leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave.

3. Can my department deny or terminate my Family Medical Leave?

Yes. The following reasons would apply:

- If you do not meet the eligibility requirements
- Employees who give unequivocal notice that they do not intend to return to work lose their entitlement to FMLA leave.
- Employees who are unable to return to work and have exhausted their 12 workweeks of FMLA leave in the designated "12 month period" no longer have FMLA protections of leave or job restoration.

4. Am I permitted to work at outside jobs while I am on approved FMLA leave?

Yes, with two conditions. An employee eligible for FMLA leave may engage in outside employment provided: A) the employee's health care provider approves the outside employment by certifying that the outside employment will not impede the employee's recovery from, or treatment for, a serious health condition; and B) the employee's Human Resources Coordinator approves the outside employment as being consistent with Civil Service Rules §3.8. An employee seeking permission to engage in outside employment while on FMLA leave is responsible for having their health

care provider submit a separate letter to their HR Coordinator the medical requirement.

5. Can Metro count my leave as FMLA leave even if I have not asked to use my FMLA leave?

Yes. Under the FMLA, an employer can count an absence for a serious health condition as an FMLA absence even if the employee does not request that the leave be counted as such.

6. Can a department place an employee on FMLA leave if the employee fails to request the leave?

Yes. A department should place employees on FMLA who meet the eligibility requirements and have qualifying circumstances. Within five (5) business days after receiving complete, sufficient certification or, if no certification was requested (by the employee), after sufficient information is provided indicating a need for FMLA-qualifying leave, the department must provide notice to the employee that the leave is being designated as FMLA leave.

7. Is an employee required to follow an employer's normal call-in procedures when taking FMLA leave?

A. Yes. Under the regulations, an employee must comply with an employer's call-in procedures unless unusual circumstances prevent the employee from doing so (in which case the employee must provide notice as soon as he or she can practicably do so). The regulations make clear that, if the employee fails to provide timely notice, he or she may have the FMLA leave request delayed or denied and may be subject to whatever discipline the employer's rules provide.

Example:

Sam has a medical certification on file with his employer for his chronic serious health condition, migraine headaches. He is unable to report to work at the start of his shift due to a migraine and needs to take unforeseeable FMLA leave. He follows his employer's absence call-in procedure to timely notify his employer about his need for leave. Sam has provided his employer with appropriate notice.

