

Simplifying the Complexities of LEAVE Management

May 5, 2016

AUSTIN
Insurance Professionals & CO., INC.

VENABLE_{LLP}

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Welcome

Venable, LLP: Venable's Independent School Practice represents schools nationwide. Venable attorneys provide advice on the wide range of legal issues facing independent schools. Consistent with industry best practice and school culture Venable lawyers provide proactive strategies to challenging legal problems. Those concerns include employment issues, allegations of sexual misconduct and abuse, benefits compliance, student discipline, social media and technology matters, governance, litigation, headmaster and employee agreements, enrollment contracts, construction, finance and endowment compliance.

Austin & Co., Inc. provides a consultative approach to insurance, employee benefits, HR consulting services and benefits/HR technology. Every employee-owner has a vested interest in the agency's success and operates with great integrity and superior efficiency in order to provide the highest level of service and advice to our clients. Our education niche enables us to provide unique marketplace and service advantages. We were established in 1853, tradition is our foundation and innovation is our strength.

Today's Speakers

Caryn Pass is a partner with the nationwide law firm Venable LLP, Caryn represents independent schools throughout the country. She advises educational institutions on a wide range of legal issues facing her clients in these ever-changing times. The foundation of her practice is the philosophy that effective legal counsel must be consistent with a school's culture. She works collaboratively with her clients, actively joining their team to make certain she is intimately familiar with the school's culture, missions and goals.

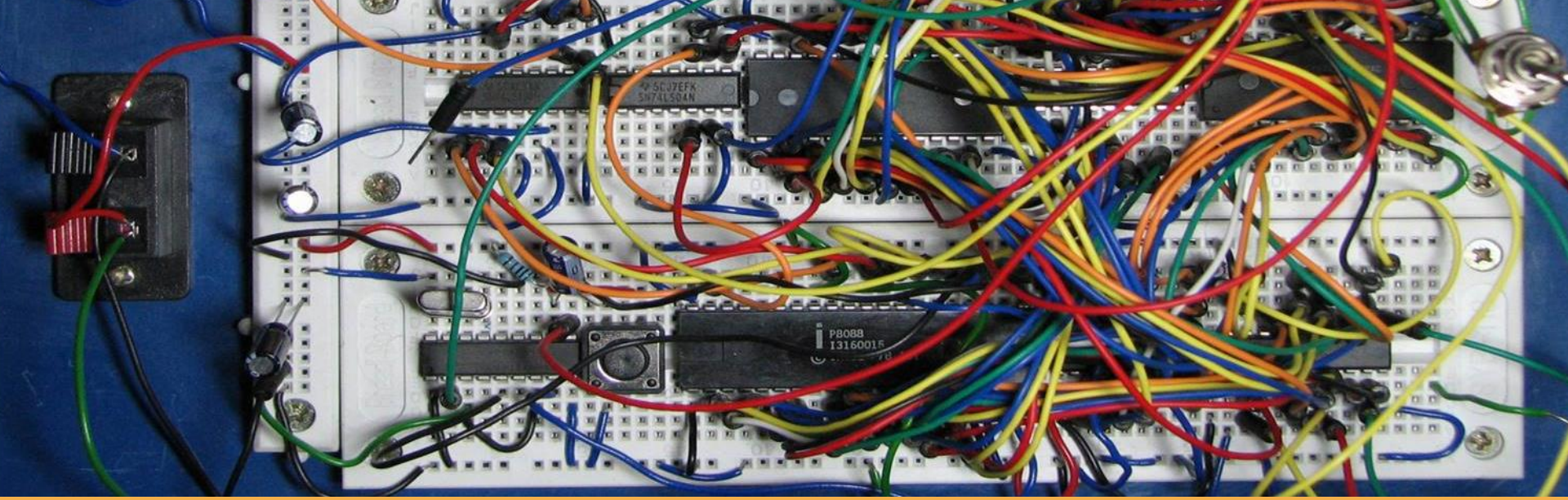
Hope DeRocha is the Director of Human Resource Consulting Services with Austin & Co., Inc. She joined Austin in 2005 and is responsible for development and delivery of human resource consulting services, client relations, project management and process improvement. Hope works closely with Austin's benefits and commercial divisions to deliver strategic solutions to our education clients.

Disclaimer

Although inspired in part by true incidents, the following scenarios are fictional and do not depict any actual person or event.

Agenda

- The Complexities of Leave
 - Leave Laws (Federal, State and Local)
 - Insurance
 - Internal Policies
- How To Simplify Leave
 - Five Steps to L-E-A-V-E Management
 - Case Study
- What If?
- Next Steps
- Resources

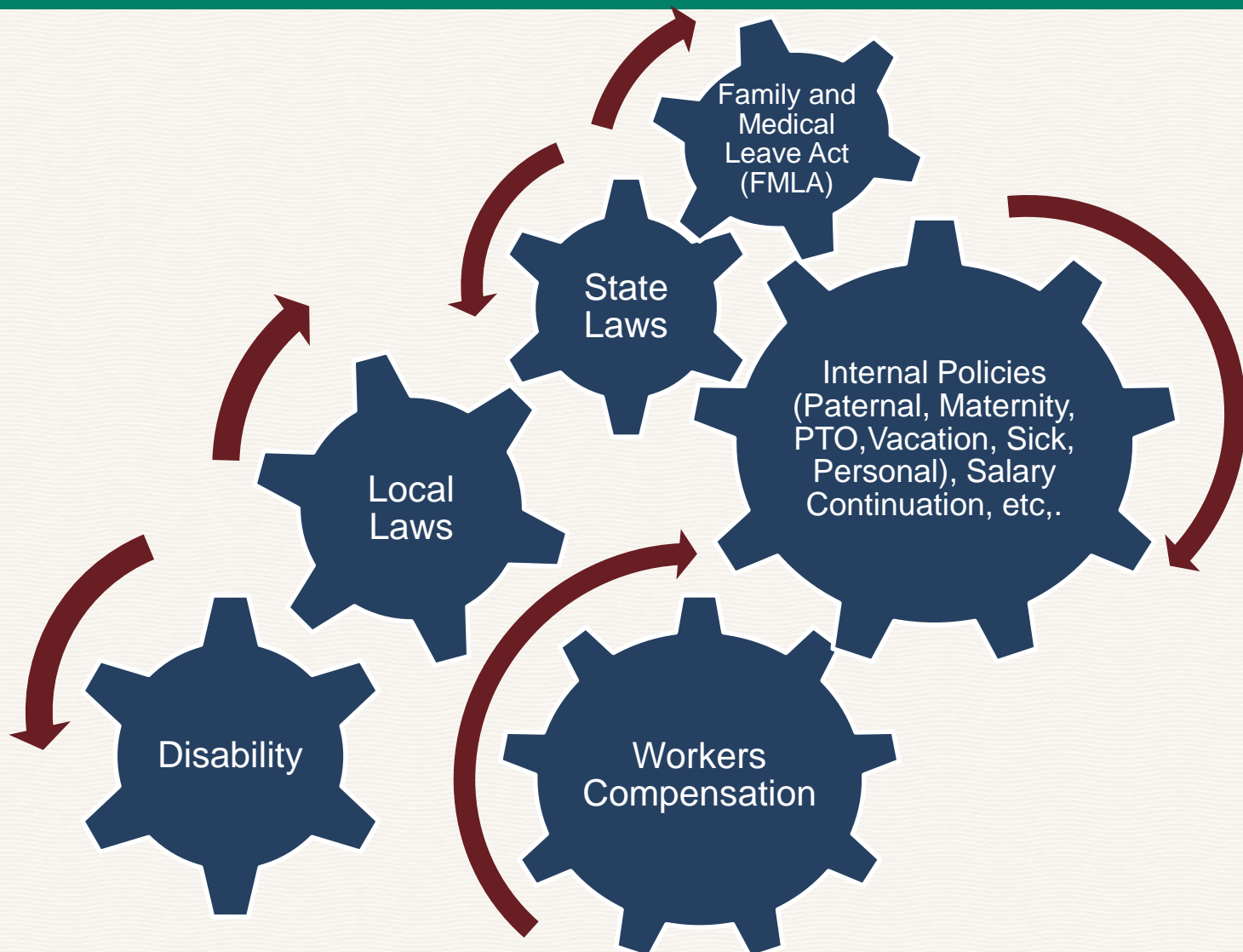


The Complexities of Leave

Reasons For Leave Are Simple

- There are various forms of situational leave
 - Illness (Can be Intermittent or Consecutive)
 - Injury
 - Care For a Family Member
 - Maternity/Adoption Placement/Foster Care
 - Disability
 - Military Service

Managing Leave is Complex



Family and Medical Leave Act (FMLA)

School Eligibility

- All schools are subject to notice requirements of FMLA; however, employees may not be eligible if the school does not employ 50 or more employees within 75 miles of the work site.

Employee Eligibility

- Employees must meet minimum service of 12 months and 1,250 hours.
- 10 month employees are assumed to meet the service requirements if they have completed a full academic year.

Length of Leave, Pay and Benefits

- Employees have up to 12 weeks of unpaid leave within a 12 month period. The employer must define the 12 month period.
- Leave may be taken intermittently, although an employer may require that leave to bond with a child be taken all at once. This is usually included in the employer's formal FMLA policy.
- Maintain employee benefits for up to 12 weeks in the same condition as if they were actively working.

Reasons

- Birth or adoption of a child.
- Employee's serious health condition or the serious health condition of their child, spouse or parent.
- "Qualifying exigency," such as caring for an injured/ill covered service member.

State Family/Medical Leave Laws

CT

Employer Eligibility: 75+ employees.

Employee Eligibility: 12 months and 1,000 hours service.

Length of Leave: Up to 16 weeks of leave during a 24 month period.

Pay: Unpaid

Benefits: Maintained

Reason: Birth/adoption, to care for a spouse, child, or parent with a serious health condition, employee's own serious health condition, or organ or bone marrow donor.

NJ

Employer Eligibility : 50+ employees.

Employee Eligibility : 12 months and 1,000 hours service.

Length: Up to 12 weeks of leave during a 24 month period.

Pay: Unpaid

Benefits: Maintained

Reason: Birth/adoption or to care for a spouse, child, or parent with a serious health condition.

NY 2018

Employer Eligibility: All sizes.

Employee Eligibility: 26 consecutive weeks of service.

Length: Up to 12 weeks of leave.

Pay: Partially Paid

Benefits: Maintained

Reason: Birth/adoption, to care for a family member with a serious health condition, or any qualifying exigency as defined under FMLA.

Local Sick Leave Laws

CT

ER Eligibility: 50+ employees.

EE Eligibility: Non-exempt service workers.

Length: 5 days

Pay: Unpaid

Benefits: Maintained

Reason: An employee, their child's, or spouse's illness, injury or health condition, preventative care, medical care or counseling for an employee who is a victim.

Jersey City

ER Eligibility: All sizes.

EE Eligibility: All employees.

Length: 5 days 10+ paid, 10< unpaid
Pay: Unpaid

Benefits: Maintained

Reason: An employee or their family member's illness, injury or health condition, and preventative medical care.

Newark

ER Eligibility: All sizes.

EE Eligibility: All employees.

Length: 5 days 10+ paid, 10< unpaid
Pay: Unpaid

Benefits: Maintained

Reason: An employee or family member's illness, injury or health condition, preventative care, employees (or their child's) place of business closed due to public health emergency.

NY City

ER Eligibility: 5+ employees.

EE Eligibility: All employees.

Length: 5 Days/40 Hours
Pay: Paid

Benefits: Maintained

Reason: An employee or family member's illness, injury or health condition, preventative care, employees (or their child's) place of business closed due to public health emergency.

Worker's Compensation and Disability

Worker's Compensation

- Provides disability benefits coverage to employees for an on the job injury or illness.
- NY, NJ & CT cover all medical expenses and a partial weekly wage (benefits may differ depending on severity of the injury).
 - NY: 67% of weekly wage, up to a maximum.
 - NJ: 70% of weekly wage, up to a maximum.
 - CT: 75% of weekly wage, up to a maximum.

Statutory Short Term Disability in NY and NJ

- Provides disability benefits coverage to employees for an off the job injury or illness.
 - NY: Maximum benefit allowance for any disability is \$170/week, for a maximum of 26 weeks.
 - NJ: Maximum benefit allowance for any disability \$615/week, for a maximum of 26 weeks.

Enhanced Short Term Disability (STD)

- Employer/employee purchased.
- Provides benefits for non-work-related illnesses or accidents on a per-disability basis.
- Benefits are paid as a percentage of employee earnings or as a flat dollar amount.
- Typically for a 6-month to 12-month period.

Long Term Disability (LTD)

- Employer/employee purchased.
- Provides monthly benefit to eligible employees who, because of a non-work-related illness or injury, are unable to work for an extended length of time.
- Benefits are usually paid as a fixed percentage of earnings before disability, up to a set limit.
- LTD typically begins when short term disability ends.
- LTD benefits last as long as the disability or until maximum period of payment.

_____’s Internal Policies

Maternity/Parental

Who is eligible _____
Reasons to take leave _____
Impact on pay _____
Impact on benefits _____
Other _____

Salary Continuation

Who is eligible _____
Reasons to take leave _____
Impact on pay _____
Impact on benefits _____
Other _____

Paid Time Off – Vacation, Sick, Personal

Who is eligible _____
Reasons to take leave _____
Impact on pay _____
Impact on benefits _____
Other _____

Etc.

Who is eligible _____
Reasons to take leave _____
Impact on pay _____
Impact on benefits _____
Other _____

Leave Laws and Policies Overlap

FMLA (unpaid)	<i>up to 12 weeks</i>
CT State Family/Medical Leave (unpaid)	<i>up to 16 weeks</i>
NJ State Family Leave (unpaid)	<i>up to 12 weeks</i>
NY State Family Leave (paid, starting 2018)	<i>up to 12 weeks</i>
CT State Sick Leave (paid)	<i>5 days</i>
Jersey City Sick Leave (paid)	<i>5 days</i>
Newark Sick Leave (paid)	<i>5 days</i>
NY City Sick Leave (paid)	<i>5 days</i>
Workers' Comp (paid)	<i>Unlimited</i>
NJ Statutory Disability (paid)	<i>up to 26 weeks</i>
NY Statutory Disability (paid)	<i>up to 26 weeks</i>
Enhanced Short Term Disability (paid)	<i>up to 6-12 months</i>
Long Term Disability (paid)	<i>end of disability or retirement</i>
Internal Policies & Benefits	<i>Payment, leave type & length determined by the school</i>



How To Simplify Leave

L-E-A-V-E

L - Learn

- Collect the details

E – Eligibility

- Confirm the employee is eligible

A - Act

- Begin preparations and inform the employee of their rights

V - Validate

- Complete certifications and determine the details of pay, benefits, time, etc.

E - Expectations

- Communicate leave expectations with an employee leave letter

Case Study - Sally

Sally is a full-time teacher. She has been employed by the school for two years. She tells you she is pregnant and she needs her leave to start September 1st.

L - Learn the Details

Collect information:	Sally
<input type="checkbox"/> How long do they expect to be out. How long has the employee been absent?	12 Weeks
<input type="checkbox"/> Has anyone “promised” the employee leave (supervisor, HOS/Headmaster)?	No
<input type="checkbox"/> Is this considered a “serious health condition” under FMLA?	Yes, Birth
<input type="checkbox"/> Is this for a family member, active service member or veteran?	No
<input type="checkbox"/> Was this related to a work injury?	No
<input type="checkbox"/> Is this a disability?	Yes
<input type="checkbox"/> Review your internal policies (PTO, FMLA, etc.)	✓
<input type="checkbox"/> Have we set precedence with past practice?	No

E- Eligible?

Determine eligibility:	Sally
<input type="checkbox"/> FMLA (1 year and 1,250 hours worked)	Yes
<input type="checkbox"/> State Leave	No (NYS)
<input type="checkbox"/> Local Leave	Yes
<input type="checkbox"/> Internal Policies (PTO, salary continuation)	Yes
<input type="checkbox"/> Disability Insurance/Supplemental	Yes
<input type="checkbox"/> Workers Compensation	No

A- Act

Inform the employee of their rights and necessary paperwork:	Sally
<input type="checkbox"/> FMLA Paperwork	✓
<input type="checkbox"/> Disability/Workers Comp Claim	✓
<input type="checkbox"/> Salary Continuation	✓
<input type="checkbox"/> Use of Vacation, Sick, Personal Time	✓
<input type="checkbox"/> Review and Calculate Dates	✓

V- Validate

Verify information and details of the leave:	Sally
<input type="checkbox"/> Review Medical Certifications	Approved
<input type="checkbox"/> Determine the final details of: <ul style="list-style-type: none">• Unpaid FMLA Leave• Unpaid State Leave• Paid Local Sick Leave• Salary Continuation (Maternity, Parental, Other)• Paid Time Off (Vacation, Sick, Personal days)• Disability• Benefits	12 weeks None 1 week 6 weeks 10 days Up to 26 weeks Continue for 12 weeks

E - Expectations

Communicate leave expectations with employee through a leave letter:	Sally
<input type="checkbox"/> When will leave begin and end?	Today, and end 12 weeks thereafter
<input type="checkbox"/> Are benefits and salary continued?	Yes, up to 12 weeks
<input type="checkbox"/> Consequences for not following up with the school?	Leave is delayed or denied

Sally's Leave – Maternity

FMLA (unpaid) 12 weeks

Employee Benefits – medical, dental, vision... 12 weeks

NY Statutory Disability (paid) 6 weeks

Local Sick Leave (paid) 5 days

Internal Leave Policy (paid) 6 weeks

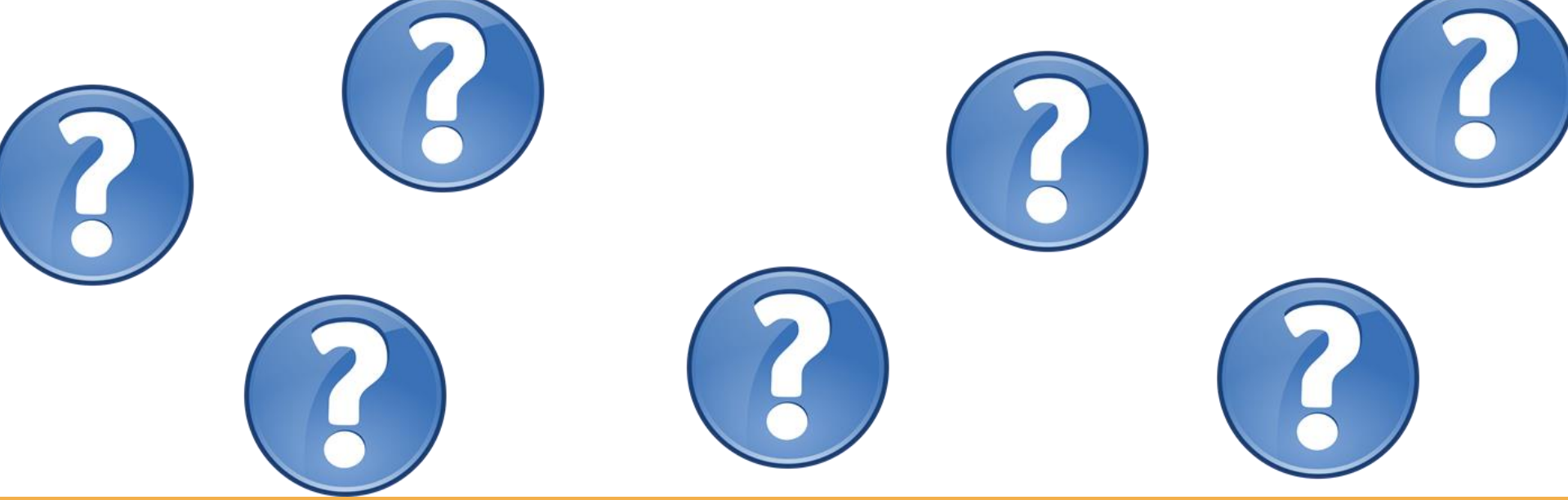
PTO 2 weeks

What If...

- The employee needs to extend leave after 12 weeks? What happens to pay and benefits?
- We want to keep the temp we hired rather than take back the employee on leave.
- Impact of school breaks on managing leave.
- The return to work date is in early June.
- The birth occurs over winter / summer break.
- The Head of School needs a medical leave.
- Impact of intermittent FMLA on pay.
- The employee has not been paying their portion of benefits.
- When is “Enough, Enough?”
 - Don’t forget the ADA

Proactive Next Steps

- Use the L-E-A-V-E process to guide you.
- Review existing policies and employee handbook to ensure leaves run concurrently, modify and update as needed.
- Review benefits SPD and carrier contracts to ensure they match.
- Educate and train managers and supervisors to notify HR as soon as they learn about a request or if an employee has been absent for 3 or more days.
- Implement a tracking process.
- Manage promises and one-off situations.
- **APPLY CONSISTENTLY!**



Questions?

Thank You!

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Resource Page

Overview of FMLA <http://www.dol.gov/whd/fmla/>

The Employer's Guide to The Family and Medical Leave Act

<http://www.fmlainsights.com/wp-content/uploads/sites/311/2016/04/FMLA-Guide-for-Employers.pdf>

Fact #28 The Family and Medical Leave Act

www.dol.gov/whd/regs/compliance/whdfs28.pdf

Special Rules for Employees of Educational Institutions

<https://www.gpo.gov/fdsys/pkg/CFR-2002-title29-vol3/pdf/CFR-2002-title29-vol3-sec825-601.pdf>

GINA “Safe Harbor” Language

https://www.eeoc.gov/laws/regulations/gina_qanda_smallbus.cfm

Language can be found in section 17 - What should an employer do to comply with GINA when lawfully requesting health-related information from an employee?

Resource Page - FMLA Forms

- Within five (5) business days of learning of the need for leave, the employee must be provided all of the following:
 - Employee's Rights and Responsibilities Notice
 - Notice of Eligibility and Rights and Responsibilities
 - Certification of Health Care Provider for Employee's Serious Health Condition or Family Member's Serious Health Condition*
 - GINA Safe Harbor Language

**The school must give the employee at least 15 calendar days to return this form. Failure to return the form may result in delay or denial of the leave*

The above can be hand delivered or mailed.

Resource Page - FMLA Forms

- Within five (5) business days after an employee has submitted the appropriate certification form, you must complete and provide the employee with the Designation Notice, DOL Proposed Form WH-382.
- Helpful Links:

Certification of Health Care Provider for Employee's Serious Health Condition <http://www.dol.gov/whd/forms/wh-380-e.pdf>

Certification of Health Care Provider for Family Member's Serious Health Condition <http://www.dol.gov/whd/forms/wh-380-f.pdf>

Notice of Eligibility and Rights & Responsibilities
<http://www.dol.gov/whd/forms/wh-381.pdf>

Designation Notice <http://www.dol.gov/whd/forms/wh-382.pdf>

Sample Leave Cover Letter

I am writing to confirm that the school has received your request for and is pleased to grant your request for up to XX weeks of leave beginning on _____.

Please be sure to read this notice carefully, as the information below is not comprehensive.

Below is a summary of the terms of your leave:

Pay During Your Leave:

Describe applicable pay under state, local laws and/or the school's policy.

Indicate the paid leave time runs concurrently with the unpaid FMLA leave time permitted by law.

Timing of Your Leave:

Describe expected start and end time for leave – keep in mind, any full weeks or holidays (e.g. summer vacation, spring break) in which an employee would not have been required to work will not count against FMLA leave entitlement.

Benefits During Your Leave:

Describe the duration the benefits will be continued.

Describe the process the employee must follow to pay their share of insurance premiums during this time.

Other Information:

Describe process for notification should the employee take more/less than the time outlined in the letter.

Describe consequences for not providing follow up information.

Include school contact person and contact information.