

THE RIGHT TO LEAVE

AN OVERVIEW OF LEAVE RIGHTS UNDER
FEDERAL, STATE AND LOCAL LAWS



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Shop Steward Seminar
March 12, 2016

Overview of Topics



CONSIDER:

1. PAY – THE MONEY
2. DISCIPLINE – NO FAULT

1. Family Medical Leave Act (FMLA) of 1993.
2. Americans with Disabilities Act (ADA) of 1990
3. Washington's Workers' Compensation Law.
4. Washington Family Care Act
5. Municipal Sick and Safe Time Ordinances

Family Medical
Leave Act
("FMLA")
and
Washington
FMLA,
RCW 49.78



Family Medical Leave Act

- Covers workplaces with 50 or more employees.
- Protects employees who have worked for the employer for at least 12 months and 1250 hours.
- Provides employees with 12 weeks of leave for employee's own "serious health condition," for the birth/adoption of a child, or to care for a child, spouse, or parent with a serious health condition.
- Provides continued health coverage during the leave.

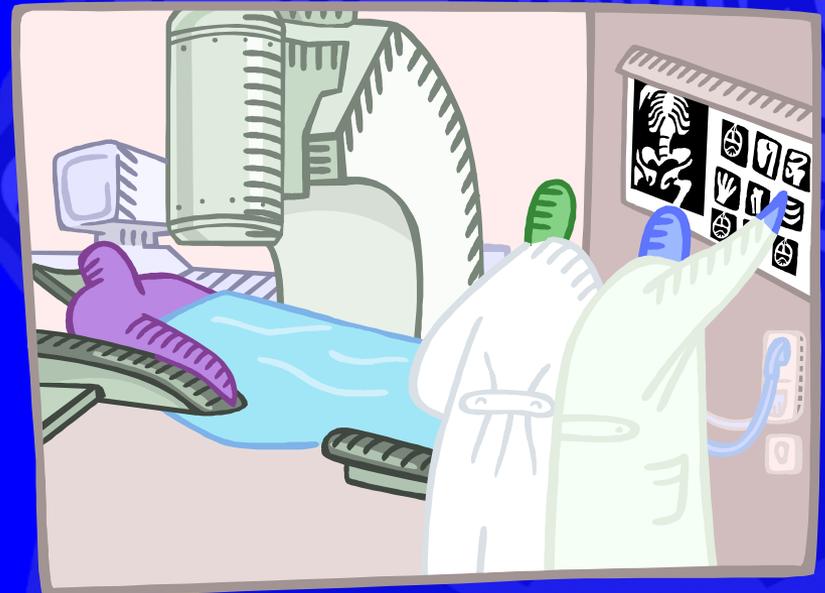


What is a “Serious Health Condition?”

Inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider:

Condition must necessitate an employee’s absence for **more than 3** consecutive days; or

A chronic condition that requires on-going intermittent treatment and leave.



Is substance abuse a serious health condition?

Is FMLA Leave Paid or Unpaid?

- Employers are *not* required to provide paid leave.
- Failure to use paid sick leave prior to using FMLA leave does not deprive an employee of FMLA coverage.
- The employee or employer can designate paid leave (sick, vacation, PTO) as concurrent with FMLA leave.



Other FMLA Protections

- An employer may not discriminate or retaliate against an employee for exercising FMLA rights.
- An employer is obligated to reinstate an employee returning from FMLA leave, but only if the employee is able to perform the essential functions of his or her job.
- The FMLA requires that the employer allow intermittent leave (in increments of no more than one hour).
- An employee must provide their employer with 30 days notice when leave is foreseeable and reasonable notice when the leave is not foreseeable.
- Washington FLA differences: (1) pregnancy supplement; (2) covers registered domestic partners.

Americans with
Disabilities Act
and
Washington Law
Against
Discrimination
RCW 49.60



Americans With Disabilities Act

- No employer can discriminate against a qualified individual because of that individual's disability if that disability can be reasonably accommodated.
- This law creates additional protection for leaves taken due to a disability.



What is a “Disability?”

- Toyota Motor Mfg. v. Williams, 534 U.S. 184 (2002).
 - A disability is a “physical or mental impairment that substantially limits one or more major life activities.” An impairment may be disabling to one individual but not to another.
 - A “major life activity” is an activity of central importance to daily life. (ex., walking, seeing, hearing, or performing manual tasks.)

Under the WLAD, RCW 49.60, definition is very broad:
“any impairment that limits the ability to work.”

Reasonable Accommodation and Seniority Systems

US Airways, Inc. v. Barnett, 535 U.S. 391 (2002).

- An employer's showing that a requested accommodation conflicts with seniority rules is ordinarily sufficient to show that an accommodation is not reasonable.
- An employee may be able to present special circumstances showing the accommodation is reasonable despite the seniority system.



Extended Leave As A Possible Reasonable Accommodation

- Nunez v. Walmart Stores, Inc., 164 F.3d 1243 (9th Cir. 1999).
 - An extended medical leave or an extension of an existing leave period may be a reasonable accommodation if it does not pose an undue hardship on the employer.
 - This is probably true even if the seniority provision in the collective bargaining agreement provides for the loss of seniority after a period of absence due to illness or injury.

Washington's Workers' Compensation Law RCW 51

- Washington's Workers Compensation Law does not expressly provide an independent protection for that leave.
- It prohibits discrimination or retaliation for exercising rights to file and pursue a workers' compensation claim: RCW 51.48.025. But the real protection to return after leave comes from the FMLA and/or the ADA.
- Note that Workers Compensation leave can also run concurrently with FMLA.
- Is it paid leave?



Washington's Family Care Act

RCW 49.12.265 – RCW 49.12.295

- If you have paid sick leave or other paid time off, it allows you to use that leave to care for:
 - * A sick minor child with a routine illness;
 - * A spouse, registered domestic partner, parent, parent-in-law or grandparent with a serious or emergency health conditions;
 - * A sick adult child incapable of self-care because of a physical or mental disability.
- An employer may not discipline for leave taken under this law.

NEW LAWS PROVIDE MINIMUM LEAVE

- Sea-Tac Minimum Wage and Paid Sick Leave Ordinance:
 - Filo Foods v. SeaTac, 319 P.2d 817 (2014)
 - * Municipalities can establish wage and leave laws above state and federal minimum wage/leave laws!
- Seattle Safe/Sick Time Ordinance
 - * Establishes MINIMUM sick/safe time depending on the size of the employer AND provides absolute protection relative to no-fault attendance policies.
 - * Applies to EMPLOYEES who work in Seattle.
 - * Paid leaves can be concurrent with SSL.
 - * Can be waived through collective bargaining.
- Tacoma Sick Leave Ordinance.

SUPPORT THE STATEWIDE PAID SICK LEAVE INITIATIVE!!

- One hour of paid sick leave for every 40 hours worked with 40 hour minimum carryover.
- First day sick leave!
- No discipline for use of paid sick leave!
- No CBA waiver!

**WE NEED 246,000 SIGNATURES BY JUNE 30.
LET'S GET IT DONE!**

Summary

- For decades, federal and state laws have provided protection against possible discipline or separation from employment for employees who need leave for serious health conditions, but until now there have not been **minimum paid leave thresholds** established or **total protection**.
- Washington State, through the SeaTac initiative, led the way in establishing the possibility of municipal laws creating minimum wage and benefit standards.
- This in turn has led to a Statewide initiative so that the minimum standards can be statewide rather than varying depending on the municipality.
- **The labor movement, and your Union in particular, continues to lead the way in raising employment standards for all workers.**

Be proud!