

# FMLA COMPLIANCE & ADMINISTRATION FAQ'S



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## SUMMARY OF INFO



- ◆ What is FMLA?
  - ◆ Definition
    - ◆ Consecutive Leave
    - ◆ Intermittent Leave
    - ◆ Military Rights
  - ◆ Who is Eligible?
  - ◆ Qualifying Events
    - ◆ Pregnancy and Bonding Leave
    - ◆ Dual Coverage (ACCGov Spouses)
    - ◆ Employee as Care Giver
    - ◆ Serious Health Condition of Employee
    - ◆ Designated Leave
  - ◆ Rights and Responsibilities
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    - ◆ Employer
  - ◆ Returning to Work
    - ◆ Employee Personal HCP Release
    - ◆ ACCGov HCP Follow up
    - ◆ TAA vs Light Duty

- ◆ FMLA Record keeping
  - ◆ Application
  - ◆ Medical Certification
  - ◆ Intermittent Leave
- ◆ Paid Leave while on FMLA
  - ◆ Accruals / No-Pay
  - ◆ Donated Leave
  - ◆ Worker's Comp
  - ◆ Short Term Disability
- ◆ Penalties
  - ◆ Non-Compliance
  - ◆ Retaliation

### OBJECTIVES

- ◆ Understand FMLA laws
- ◆ Understand ACCGov policies
- ◆ Administer & help employees understand FMLA rights and requirements
- ◆ Avoid penalties!



## FAMILY MEDICAL LEAVE

### ACT (FMLA)

- ◆ The Family Medical Leave Act (FMLA) is the federal law passed in 1993, revised in 2009, and again on March 8, 2013, that requires employers to grant leave for medical circumstances of the employee and their spouse, child, or parent, and reinstate the employee to the same or an equivalent position upon conclusion of the FMLA leave.
- ◆ FMLA provides qualified employees with up to 12 work-weeks (or 26 if military related) of unpaid, job-protected and benefit protected leave in a 12-month period equal to their average hours worked per week.
  - ◆ An employee may use their designated medical leave consecutively (all in consecutive days until they return to work)
  - ◆ An employee may use their designated medical leave intermittently (by the hour throughout a 12 month period)
- ◆ FMLA runs concurrently with Short Term Disability and Workers' Compensation.






## ELIGIBLE EMPLOYEES &

### QUALIFYING EVENTS

- ◆ Both Full-time and Part-time employees may qualify for FMLA benefit
  - ◆ To qualify, an employee must have a 12 month history of employment with ACCGov in the past 7 years
  - ◆ AND has worked at least 1250 hours in the last 12 months (est. 24hrs/week). Hours worked include any temp-perm work time, and internships.
- ◆ Qualifying Events Include:
  - ◆ Birth, adoption, or placement of a child into foster care
    - ◆ Both Mother and Father are eligible for FMLA for birth of child (if both parents are employed by ACCGov, then they are allowed a combined total of 12 workweeks FMLA leave for bonding time)
    - ◆ This time includes medically necessary leave for mother after delivery (initial 6-8 weeks), and for bonding time of healthy newborn (once released from physician)
    - ◆ FMLA is allowed prior to the birth for prenatal care as designated by HCP (ex. Bed rest, severe morning sickness, or other prenatal conditions affecting job responsibilities)
  - ◆ Serious health condition of child, spouse, or parent, or
    - ◆ A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:
      - ◆ Inpatient Care, an overnight stay in a hospital, hospice, or residential medical care facility, AND any period of incapacity or subsequent treatment in connection with such inpatient care
      - ◆ OR Continuing treatment by a health care provider
    - ◆ A qualifying military exigency as mentioned previously.
    - ◆ To care for a covered service member as mentioned previously.





## EMPLOYEE'S RIGHTS & RESPONSIBILITIES

- ◆ Employees are required to give a minimum of 30 days advance notice when foreseeably possible.
  - ◆ If leave is not foreseeable, then the employee must notify ACCGov HR Benefits division, or the department supervisor as soon as possible.
  - ◆ Notice may be given by the employee or the employee's representative in person, via phone, or other electronic format.
- ◆ Employees must contact Unum to report their need for medical leave:
  - ◆ Initiate medical leave claim by calling Unum directly, 866-779-1054.
    - ◆ Unum will provide medical certification forms to the HCP
  - ◆ Report need for medical leave to supervisor, and HR.
- ◆ Employees are required to Re-Certify their medically necessary FMLA leave with Unum as required by HCP notes.
- ◆ The employee has the right to continue their benefits, and accrue days of service while on FMLA leave.
- ◆ The employee's position will be protected, and they will be returned to the same position or equivalent position upon their return to work.
- ◆ If an employee has multiple FMLA eligible requests for leave, then there must be an FMLA application for each medical necessity (even if overlapping).
  - ◆ The appropriate notations must be made on timesheets for the specific claim being used.
    - ◆ Ex. Leave for EE vs. Parent Leave should be noted



## ACCGOV'S RIGHTS & RESPONSIBILITIES

- ◆ ACCGov must post notice of the FMLA laws and procedures in every department
  - ◆ General Notice WH-1420 DOL poster
- ◆ ACCGov has the responsibility to Designate an employee's absence as FMLA if they acquire knowledge of an FMLA qualifying event.
  - ◆ Email, call, or send notice to HR as soon as possible.
- ◆ Unum provides each employee their leave expectations, rights, obligations, and consequences if obligations are not met.
  - ◆ An approval/denial notice is sent to the employee as per their contact request when initiating the claim with Unum.
  - ◆ Unum also emails notification to HR, Benefits division.
- ◆ Supervisors, administrators, and managers are required to notify the Human Resources Department of an employee's need for FMLA, the employee's first date of leave, **AND** their return to work date.
  - ◆ It is best to do in writing either via email or interoffice memo.
- ◆ ACCGov must adhere to all HIPAA laws.
  - ◆ Medical records are to be kept by Unum's FMLA team only.
    - ◆ *The departments should not be keeping medical information on site, and is not allowed to ask the employee for specific medical details at any time.*
  - ◆ HR will request HIPAA protected info from Unum to assist with leave usage audits.



## RETURNING TO WORK

- ◆ An employee may be required to receive a Return to Work exam provided by an ACCGov represented physician if FMLA is for a serious health condition of the employee.
  - ◆ If required, the Human Resources Department will schedule the exam after the employee receives a full release from their HCP. Only the HR department can authorize the exam.
- ◆ The employee's position will be protected, and they will be returned to the same or equivalent position upon their return to work.
- ◆ If an employee's HCP states they may return to work, but lists restrictions, then they may not be able to return to work. "Light Duty" is reserved for worker's compensation claims only. However, they may be eligible for a Temporary Alternate Assignment (TAA)
  - ◆ A TAA may only be requested in order to "temporarily" accommodate medical restrictions noted by the employee's HCP.
  - ◆ Requests may be denied & MUST be made prior to allowing the employee to RTW.
    - ◆ The TAA request must be submitted to the HR Director for review by the Department Director.
    - ◆ The TAA must address the following (a template can be provided by HR):
      - ◆ The specific need of the department for the TAA, how the TAA accommodates restrictions, specific duration of the TAA, and the anticipated return to full duty without restrictions.
    - ◆ The employee may be required to receive a return to work exam provided by an ACCGov represented physician prior to returning to full duty.
- ◆ An employee on Intermittent leave is currently working, but requires hours off periodically for medical necessity. The hours used for approved FMLA must be recorded on the employee timesheet, and reported to Unum each pay period.



## FMLA RECORD KEEPING

- ◆ FMLA application must be completed by the employee 30 days prior to the qualifying event (or as close to 30 days as foreseeably possible)
- ◆ Every 30 days, the employee must give Unum and/or Human Resources a new Medical Recertification Form when they are on FMLA for their own serious health condition.
  - ◆ The employee can use the ACCGov form provided (Medical Recertification form), or their own HCP's form (as long as it provides detailed information).
- ◆ ALL applications and Health Condition forms MUST be kept secure and confidential in the Unum FMLA intake, or Human Resources benefits files only.
- ◆ Intermittent Leave should be reported on the timesheet NOTES section, by the employee or the payroll administrator when the employee uses FMLA designated leave.
  - ◆ The employee MUST report their FMLA usage directly to Unum each pay period.
    - ◆ Unum will make audit requests to HR via email.
  - ◆ Intermittent time does not have to be a full day, and may be used in hourly increments to reflect anything less than the normal shift.
  - ◆ Hourly FMLA is calculated with employee's annual average work hours per week times a 12 week period. Leave usage tracking is completed by Unum.
    - ◆ Ex. 40 hrs/week = 480hrs FMLA over 12 months, 25 hrs/week = 300hrs FMLA over 12 months allowed.
    - ◆ Ex. 82.5 hrs/bi-weekly = 495hrs FMLA over 12 months, 100 hrs/bi-weekly = 600 hrs FMLA over 12 months





## PAID LEAVE WITH FMLA

- ◆ FMLA is NOT paid leave – it is benefit and job protection **only**
- ◆ An employee may use accrued leave during FMLA
  - ◆ Sick time, Vacation Time, Comp Time, Comp Holiday Time
  - ◆ During Maternity/Paternity leave, the employee may elect to use sick time during the "medical necessity/recovery" weeks **only**
  - ◆ Notice: Submitting a full 10 days of sick time for a pay period will not allow sick time to accrue for that pay period. Furthermore, an employee on STD status will not accrue paid leave.
- ◆ An Employee may also use donated leave (with approval).
  - ◆ See ACCGov Donated Leave Policy
  - ◆ The maximum number of hours of donated leave allowed is 240 hours (or 6 weeks equivalent pay for public safety)
  - ◆ The minimum number of hours of contributory leave allowed is equivalent to one week
- ◆ FMLA works concurrently with Worker's Compensation pay/leave
- ◆ FMLA works concurrently with Short Term Disability pay/leave
  - ◆ Short Term Disability pays 60% of your annual salary capped at \$100/day. There is a 30 day waiting period to be eligible for paid benefits.





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## HIPAA RIGHTS

- ◆ Health Insurance Portability and Accountability Act
- ◆ Right to confidentiality and privacy of health information
- ◆ Only authorized persons have access to files

**Administrators – DO NOT KEEP MEDICAL INFO ON YOUR EMPLOYEES!!!**





**Health Insurance Portability and Accountability Act (HIPAA)**  
Notice of Privacy Practices for Protected Health Information

This notice describes how medical information about you may be used and disclosed and how you can get access to this information. Please read carefully.

This is your Notice of Privacy Practices for Protected Health Information for the Athens-Clarke County Unified Government Plan. The Plan is the Sponsor of the employee health, dental, and vision plans for the Short Term and Long Term Disability plans.

Please read it carefully.

You have received this notice because you are covered under one or more of Athens-Clarke County Unified Government's employee health, dental, and vision plans. The Plan is operated by the Unified Government of Athens-Clarke County. Athens-Clarke County Unified Government is responsible for the confidentiality and security of employee information.

The Plan is required to provide this notice to you under the Health Insurance Portability and Accountability Act (HIPAA). This notice refers to the Plan sponsored by the Unified Government of Athens-Clarke County by using the term "we," "us," or "our."

**Request Information about HIPAA**  
You have the right to request that we provide you with a copy of our privacy policy. You may have to pay a reasonable, out-of-pocket fee for this information. Your privacy policy is outlined in this notice, you should review it for more information.

**Confidentiality**  
Athens-Clarke County Unified Government Health Resources Department  
P.O. Box 3003  
Athens, GA 30603  
Or, if you prefer, you may call 706-613-3116.

**Additional Notice**  
You may also receive a separate HIPAA Privacy Notice from a service company that provide benefits under one or more of the Plans. These companies are called "Business Associates" of the Plan, as required by law, because the Unified Plan is being managed by them. The duty of these companies is to protect the confidentiality of our information, as required by law.

Revised: January 2003



## PENALTIES

♦ **Supervisors, Managers, Directors may be held "Personally Liable" for a violation of FMLA.**

- ♦ The FMLA is a no-fault statute. Therefore, in order to impose liability on a supervisor, the aggrieved employee need not prove that the employer intended to violate the Act. Since individuals may, if they satisfy the criteria, be held liable on the same basis as the employer, some federal courts have held that a manager or supervisor may be ordered to pay damages for any violation, even an unintentional one.
- ♦ FMLA is administered and enforced by the Department of Labor (DOL). An employer is prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any rights provided by the act.
- ♦ FMLA provides two theories of recovery – Entitlement & Retaliation
  - ♦ Entitlement = did not receive benefit they were entitled to.
  - ♦ Retaliation = was retaliated against due to use of FMLA rights.
- ♦ Employers can be sued by the DOL or the employee for lost wages, salary or employment benefits, and monetary losses.
  - ♦ An employee cannot file suit once the DOL files.
  - ♦ Employees may also sue for recovery of attorney's fees, the DOL cannot.
  - ♦ Monetary costs may include cost of providing care for a family member, and/or an amount equal to as much as 12 weeks of the employee's wages or salary, interest at prevailing rates on monies that would have been earned, and damages in lieu of reinstatement.
- ♦ An employee may also seek reinstatement or promotion in addition to monetary compensations.
- ♦ Front Pay, a cash award, may also be awarded to the employee for any future loss of earnings that results from some discriminatory job action if not reinstated.





## QUESTIONS & ANSWERS

**Thank you for your time!  
Any Questions?**

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