**FMLA**

History: The Family and Medical Leave Act of 1993 was enacted as a public law on February 5, 1993 “to grant family and temporary medical leave under certain circumstances.” In 2008, the National Defense Authorization Act (NDAA) amended the FMLA to permit a "spouse, son, daughter, parent, or next of kin" to take up to 26 workweeks of leave to care for a member of the Armed Forces or for a “qualifying exigency” resulting from a spouse, or a son, daughter, or parent of the employee serving on active duty. The National Defense Authorization Act was amended in 2010 and further expanded the FMLA’s military caregiver leave and qualifying exigency leave provisions.

Purpose: To provide unpaid leave for employees as needed due to qualifying family and medical conditions.

Enforced by: Department of Labor (Wage and Hour Division)

Applies To: *All* public employers regardless of number of employees and private employers with 50 or more employees within a 75 mile radius for at least 20 weeks during the current or preceding calendar year. (Maine – employers with 15 or more employees and municipal agencies with 25 or more employees)

Covers: Employees who have qualifying reason for leave, have worked at least 12 months (does not have to be consecutive and time spent as temp employee counts) and 1,250 hours within the most recent 12 months (determined by FLSA standards). (Maine – employees who have been employed for 12 consecutive months)

Time Limits: 12 weeks in 12 month period as defined by the Employer – rolling, calendar, fiscal. (Maine -10 weeks in two year period)

Qualifying Condition: Serious health condition of the employee, to care for an immediate family member (spouse, parent, or child) with a serious health condition, or for birth and care of employee’s newborn or placement with employee of child for adoption or foster care. (Maine – also allows leave to care for domestic partner, domestic partner’s child and sibling)

Medical Inquiries: Certification may be required for approval of leave but information requested may not go beyond regulations (See D.O.L. Certification Form).

Light Duty: May offer, but employee is not required to take if FMLA leave is still available.

Return to Work: Examination/certification permitted only if policy or practice in place requiring the same of all similarly situated employees and when employee is ready to return.

Continuation of Benefits: Health coverage must be continued, even if employee does not pay share, but continuation of other benefits determined by employer policy. (Maine – employer can transfer entire cost of premium to employee)

Reinstatement: Required to return to previous or equivalent job.

Termination: Not automatic at end of leave, must consider ADA or MHRA.

Payment: Not required by employer, but may require employee to use accrued leave.

Other Considerations:

Designation: Does not have to be requested by employee in order to be designated.

Intermittent: May be required when medically necessary for recurring treatments, etc.

Restrictions: Can’t restrict employee’s activities while on leave, but may apply policy regarding outside employment.

Recent Changes:

Definition of Spouse: The Department of Labor issued a Final Rule on February 23, 2015 to revise the definition of spouse under the Family and Medical Leave Act of 1993 (FMLA) in light of the United States Supreme Court’s decision in United States v. Windsor, which found section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional. The Final Rule amended the definition of spouse extending FMLA leave rights to eligible employees in legal same-sex marriages, regardless of where they live or work. Note: Maine’s family medical leave law already applied to “domestic partners.”

**WORKERS’ COMPENSATION**

History: Workers’ compensation laws are adopted and administered at the state level. Maine’s current Workers’ Compensation Act was enacted in 1992 and includes significant changes adopted by the Legislature in 2012.

Purpose: To provide wage replacement and medical benefits to employees injured in the course of employment workplace and limit employer liability for the employee’s injury.

Enforced By: Maine Workers’ Compensation Board.

Applies To: All employers with one or more employees.

Covers: Employees who have sustained an injury arising out of or in the course of employment – employee obligation to report within thirty days of injury or three months after death, but employer’s knowledge of the injury is considered sufficient notice. Employer must report within seven days after receiving notice or actual knowledge of injury.

Time Limits: None, but may run concurrently with FMLA (absent collective bargaining provision to the contrary)

Medical Inquiries: Permitted, but related to workplace injury only.

Light Duty: Not required, but should be offered if available to eliminate employee’s wage-replacement benefit – collective bargaining agreements may specify light-duty, modified return-to-work programs.

Return to Work: Examination/certification permitted.

Continuation of Benefits: Not required unless concurrent with FMLA – if employee does not return to work, may not recover health insurance premiums for concurrent FMLA/WC leave.

Reinstatement: Employee is entitled upon request to reinstatement to former position if available and suitable to employee’s physical condition for up to two years after date of injury; if not, then to any other available position suitable to employee’s physical condition. Reasonable accommodation may be required unless undue hardship on employer.

Termination: Not a leave benefit, payment may be terminated upon reaching maximum medical improvement if employee declines to return to work, but employee is entitled to rehabilitation services up to 52 weeks and must take into consideration FMLA and/or ADA.

Payment: May not require employee to substitute accrued paid leave for leave covered by workers’ comp – may agree to supplement workers’ comp with paid leave. Waiting period 7 days of incapacity, except for firefighters or if continued for more than 14 days.

Other Considerations:

Exclusive Remedy: Employee not required to prove fault, but may not sue employer for other benefits if received workers’ compensation.

Recent Changes:

Effective August 30, 2012: Appellate Division reestablished; benefit suspension during appeal; vocational rehabilitation program; permanent impairment threshold increased; and statute of limitations set at two years from date of First Report or injury.

Effective January 1, 2013: 30 Day Injury Reporting Window; compensation rates set at 2/3 of average weekly wage; max compensation rate increased to 100% of the State Average Weekly Wage (from January 1, 2013 - June 30, 2013 = $717.09); and Permanent Impairment threshold increased to 18%.

**AMERICANS WITH DISABILITIES ACT**

History: The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity for persons with disabilities in employment (Title I), State and local government services (Title II), public accommodations and commercial facilities (Title III), and transportation. The current text of the Americans with Disabilities Act of 1990 (ADA), includes changes made by the ADA Amendments Act of 2008 (ADAAA), which became effective on January 1, 2009.

Purpose: To prevent discrimination against applicants and employees who are “otherwise qualified individuals with a disability.”

Enforced By: EEOC and MHRC

Applies To: Employers with 15 or more employees for 20 weeks during current or preceding calendar year.

Covers: Employee who is disabled, but otherwise qualified for the position and able to perform the essential functions of the position with or without reasonable accommodation.

Time Limits: None – does not specifically require leave to be provided, but requires reasonable accommodation, which may include leave and may extend beyond FMLA.

Medical Inquiries: Must be job-related and limited to determining ability to perform job and/or whether accommodation is needed.

Light Duty: Not required to create, but may do so on a temporary basis. However, required if considered a reasonable accommodation that does not create an undue hardship (action requiring significant difficulty or expense) on the employer.

Return to Work: Examination/certification permitted if job-related and necessary to determine ability to perform essential functions of the job.

Continuation of Benefits: Not required, but must provide same benefit coverage as other employees on non-ADA leave of absence.

Reinstatement: Required to return to previous job unless undue hardship.

Termination: Must be legitimate non-discriminatory motive, *e.g.,* budget cuts, lack of work, performance issues unrelated to disability, but should be very carefully considered.

Payment: Depends on employee’s status – leave is not necessarily required and pay depends on job being performed, but should be substantially similar to prior job to the extent employee can perform essential functions with or without reasonable accommodation.

Other Considerations:

Wellness Programs: Do health assessments constitute unlawful medical inquiry? If not completely voluntary, maybe – can’t threaten cancellation of coverage or premium shifts if employee does not participate.

Recent Changes:

Compensation: The Lilly Ledbetter Fair Pay Act of 2009 amended the ADA to clarify the time frame in which victims of discrimination can bring an action for discriminatory compensation decisions or other discriminatory practices affecting compensation. A charging party is generally required to file a charge within 180 or 300 days after the alleged unlawful employment practice occurred. In *National Railroad Passenger Corp. v. Morgan*, the Supreme Court ruled that the timeliness of a charge depends upon whether it involves a discrete act or a hostile work environment claim.