



# WomanView

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## U.S. Department of Labor's Proposed Amendments Diminish Access to the Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) of 1993 allows workers to balance their responsibilities at work with their responsibilities at home. In the past 15 years the FMLA has protected more than 60 million eligible workers for absences due to birth or adoption of a child or their own serious health condition or that of a qualifying family member. However, last month the U.S. Department of Labor released proposed amendments to the FMLA regulations (<http://www.dol.gov/esa/whd/fmla/FedRegNPRM.pdf>). The amendments would hinder access to FMLA leave and undermine the rights of all eligible workers attempting to use it. Some of the proposed amendments are as follows:

- ❑ *Eligibility Standard.* Currently the FMLA provides 12 weeks of unpaid leave to workers who have been with the same employer for 12 months and worked at least 1,250 hours during that time. The employer must have 50 or more employees within a 75-mile radius of the work site or be a public agency. Further, the law states that the 12 months need not be consecutive. The proposed amendment places a cap on how much time can elapse between nonconsecutive periods of employment to meet the 12 month requirement, stating that employment prior to a continuous break in service of five years or more need not be counted. The proposed amendment is inconsistent with the legislative history of the rule and would impose further barriers for people who seek to return to the labor force after taking extended leave from their job. Further, the proposed amendment would disproportionately affect women taking time off from work to care for a young child, making it increasingly difficult for women to re-enter the workforce.
- ❑ *Limiting the use of accrued paid leave while on FMLA leave.* Currently workers are relatively free to use their earned paid leave (vacation time and personal time) so that they may be paid while on FMLA leave. Under the proposed amendments, in order for an eligible worker to use earned vacation or personal time while on FMLA leave, the worker must meet the employer's rules for using vacation or personal time (e.g., employer's policy that employee give 10-day notice of intent to take vacation time). This would make it more difficult for workers to use their accrued paid time off, and many workers will not be able to afford to take the leave.
- ❑ *Increased requirements for workers who seek leave.* For leave that the worker can plan for (foreseeable leave), a worker will have to notify the employer on the same or next business day from the time she finds out that leave is needed. For unplanned leave (unforeseeable leave), absent extraordinary circumstances, the worker will have to call in before her shift begins. In addition, the proposed amendments would require workers to give more specific information about the reason for the leave, whether the leave is foreseeable or not, including how long the leave will be and if the worker is going to visit a health care provider. Meanwhile, as employee requirements are increasing, the proposed amendments would give employers more time to respond to requests for FMLA leave and more time to determine if the worker is eligible.
- ❑ *Allowing employers direct access to an employee's health care provider and medical information.* Currently if an employer wants to clarify or authenticate medical information, the employer must obtain the worker's permission to talk to her doctor and then the employer must have a medical professional talk directly with the worker's doctor. The regulations were set up this way because employers are not medically qualified to ask questions to clarify medical conditions, and this helps address privacy and ethical concerns. Under the proposed amendments, an employer may contact an employee's health care provider directly to clarify information on a medical certification form after obtaining permission from the employee. An employer may contact an employee's health care provider directly

without the employee's permission in order to confirm that the doctor listed on the certificate in fact completed the medical certificate. This has the potential to undermine workers' privacy and put employers who are not trained health professionals directly in contact with a worker's physician.

- ❑ *Excessive requirements for more frequent medical visits.* The proposed amendments require employees with a chronic condition to recertify medically their need for FMLA every six months even if a medical professional indicates that the condition will last longer than six months.
- ❑ *Allowing workers to waive their FMLA claims without review.* Current regulations do not allow FMLA rights to be waived. The proposed amendments would allow a workers' right to bring a lawsuit alleging FMLA violations to be waived as part of a settlement or severance agreement without the Labor Department or a court validating that the waiver is fair. This is a problem because workers often lack legal representation in these matters or simply need the money too much to argue with the employer.

The Labor Department's proposed amendments would further limit workers' access to FMLA leave and would implement additional barriers for some of the most vulnerable workers. The public has until April 11, 2008, to comment on these damaging amendments and urge the government to maintain the integrity of the current FMLA. Comments must be identified as RIN 1215-AB35 and can be submitted via the federal eRulemaking portal at <http://www.regulations.gov/search/index.jsp> or via mail. The National Partnership for Women and Families, a leader in the fight for the original FMLA legislation, has drafted a sample letter to the Labor Department to be used as a guide. Go to [http://www.nationalpartnership.org/site/PageServer?pagename=ourwork\\_fmla\\_FMLARegulations](http://www.nationalpartnership.org/site/PageServer?pagename=ourwork_fmla_FMLARegulations) and click on "sample comments."

The National Partnership for Women and Families (<http://www.nationalpartnership.org/>) is collecting stories in order to send a clear message to elected leaders that the FMLA is a critical protection, that this law needs to be expanded to cover more workers, and that leave needs to be paid. To access the National Partnership for Women and Families' summary of the proposed amendments, go to [http://www.nationalpartnership.org/site/DocServer/Proposed\\_Regulations\\_Overview.pdf?docID=2961](http://www.nationalpartnership.org/site/DocServer/Proposed_Regulations_Overview.pdf?docID=2961).

On a more positive note, last January the Military Expansion for Injured Service members Act went into effect. The Act expands the FMLA to support families caring for injured service members by lengthening the time a family member may take leave to care for a wounded service member; the Act expands the definition of family member to include adult children and next of kin, who may be siblings, grandparents, or other relatives; and the Act allows leave to help with circumstances that arise from the deployment and return from duty of a service member. Although the Act has become law, the Labor Department has yet to issue regulations on how to implement the expanded FMLA provisions, thus delaying access to injured service members' families.

### Sick Days Legislation

Women and workers' rights advocates are promoting paid sick days legislation on the federal and state level. At the federal level the Healthy Families Act (H.R. 1542, S.910), sponsored by Rep. Rosa DeLauro (D-CT), promotes paid sick days for all working people by requiring employers to provide a minimum level of paid sick leave, including leave for family care. To follow the Healthy Families Act, go to <http://thomas.loc.gov/> and search under the bill number. You may also get involved at the federal level by signing the National Partnership for Women and Families' petition at <https://secure2.convio.net/npwf/site/Advocacy?cmd=display&page=UserAction&id=117>.

In Illinois, Rep. Julie Hamos (D-18) introduced the Healthy Workplace Act (H.B. 5320) in the General Assembly. H.B. 5320 would require an employer to provide an employee with seven paid sick days during a 12-month period. The Shriver Center is part of a statewide coalition advocating this bill. Visit the Women Employed's website, <http://www.womenemployed.org/index.php?id=121>, to learn more about the bill and how to become involved in the effort to pass the legislation in Illinois.

For more information, contact [Wendy Pollack](#), director, Women's Law and Policy Project, Shriver Center, at 312.263.3830 ext. 238 or [wendypollack@povertylaw.org](mailto:wendypollack@povertylaw.org).

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