



LAW OFFICES OF MIDDLETON, YOUNG & MINNEY, LLP

ENSURE COMPLIANCE WITH NEW FMLA REGULATIONS EFFECTIVE JANUARY 16, 2009

Although it is a common misconception that California charter schools with fewer than fifty (50) employees are not obligated to do so, all California charter schools, regardless of the number of employees, must provide both Family and Medical Leave Act (“FMLA”) and California Family Rights Act (“FMLA”) leave to eligible employees.¹ For purposes of this legal alert, these leaves shall collectively be referred to as “FMLA” leave.

Charter schools must be aware that effective January 16, 2009, the FMLA regulations were amended, primarily to provide two (2) new leave entitlements. Prior to the FMLA regulatory amendments, charter schools were required to provide up to twelve (12) workweeks of unpaid leave in any twelve (12) month period to eligible employees for bonding with a newborn or adopted child, caring for a family member with a serious health condition, or due to the employee’s own serious health condition. The new FMLA regulations now identify two (2) additional employee leaves as follows:

1. **Qualifying Exigency Leave** - Up to twelve (12) workweeks of leave for a “qualifying exigency” arising out of a covered military member’s active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation; and
2. **Military Caregiver/Covered Servicemember Leave** - Up to twenty-six (26) workweeks of leave for an employee who is the spouse, son, daughter, parent or next of kin to care for a covered service member recovering from a serious injury or illness incurred in the line of duty on active duty.

With regard to Qualifying Exigency Leave, covered military members include the employee’s spouse, son, daughter, or parent. Leave because of a “qualifying exigency” has been defined to include, but is not limited to, short notice deployment, attendance at official military events, family support or informational briefings, the need to provide or arrange childcare, the need to make or update financial or legal arrangements, counseling, rest and recuperation, and post-deployment activities.

Employees do not need to ask specifically for FMLA leave. The employee is simply obligated to provide verbal notice, at a minimum, to the employer that the employee needs leave, the leave’s anticipated timing and duration, and the reason for leave (i.e., a serious health condition, need to care for an injured military spouse, etc.). If the employee is eligible for FMLA leave, the charter school must notify the employee within five (5) business days of the employee’s request that the employee’s leave shall be designated as FMLA leave and document such leave in the employee’s personnel file.

¹ Despite the fact that many legal questions may arise regarding whether a charter school, especially one operated by a nonprofit public benefit corporation, is, in fact, a public school employer, this legal alert assumes that charter schools are public employers for purposes of FMLA leave determinations.

Upon receiving a leave request from an employee that may be FMLA leave related, a charter school employer is entitled to request from the employee a medical certification from a health-care provider attesting to the need for the employee to take leave for his/her own serious illness or to care for a family member. Although medical privacy laws limit the type of information an employer may require on such certification, the certification should at least include the date the medical condition came into existence, the anticipated duration of the condition, and a statement concluding that the employee must be on leave for a specified period due to the condition.

While employees are on FMLA leave, they are afforded strict job protection rights and must be reinstated to either the same or a comparable position occupied prior to taking FMLA leave. Only in very limited circumstances may an employer deny reinstatement to an employee on FMLA leave. Any decisions regarding the refusal to reinstate an employee on FMLA leave should be thoroughly discussed with legal counsel to avoid the harsh penalties associated with family leave violations including civil lawsuits or administrative proceedings.

It is important to note that this legal alert does not discuss all of the additional amendments made to the FMLA leave laws. Accordingly, charter schools should be reminded of the importance of maintaining comprehensive and updated leave policies and utilizing notices/forms reflecting applicable current law.

If you have questions, please contact Jim Young (jyoung@mymlaw.com) or Chastin Pierman (cpierman@mymlaw.com) at the Law Offices of Middleton, Young & Minney, LLP at (916) 646-1400.

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