

NOTICE OF ELIGIBILITY AND RIGHTS & RESPONSIBILITIES (FAMILY AND MEDICAL LEAVE ACT)

OMB Control Number: 1215-0181
Form WH-381 November 2008

In general, to be eligible an employee must have worked for an employer for at least 12 months, have worked at least 1,250 hours in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form by employers is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. § 825.300(b), which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by 29 C.F.R. § 825.300(b),(c).

Part A: NOTICE OF ELIGIBILITY

To: _____
Employee

From: _____
Employer Representative

Date: _____

On _____, you informed us that you needed leave beginning on _____ and that you expect leave to continue until on or about _____ for:

- The birth of a child, or placement of a child with you for adoption or foster care;
- Your own serious health condition.
- Because you are needed to care for your spouse, child, parent due to his/her serious health condition.
- Because of a qualifying exigency arising out of the fact that your spouse; son or daughter; parent is on active duty or status in support of a contingency operation as a member of the National Guard or Reserves.
- Because you are the spouse; son or daughter; parent; next of kin of a covered service-member with a serious injury or illness.

This notice is to inform you that you:

- Are eligible for FMLA leave (See Part B below for Rights and Responsibilities)
- Are **not** eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):
 - You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately _ months towards this requirement.
 - You have not met the FMLA's 1,250-hours-worked requirement.
 - You do not work and/or report to a site with 50 or more employees within 75 miles.

If you have any questions, contact _____ or view the FMLA poster located in _____.

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Part B: RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. **However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by _____.** (If certification is requested, employers must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

- Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request is/ is not enclosed.
- Sufficient documentation to establish the required relationship between you and your family member.
- Other information needed: _____

No additional information requested.

If your leave does qualify as FMLA leave you will have the following responsibilities while on FMLA leave (only checked blanks apply):

- Contact _____ at _____ to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day grace period (or indicate longer period, if applicable) in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.
- You will be required to use your available paid sick, personal leaves other leave during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected under FMLA leave and counted against your FMLA leave entitlement.
- Due to your status within the company, you are considered a “key employee” as defined in the FMLA. As a “key employee,” restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We have/ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us.
- While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every _____.

If the circumstances of your leave change, and you are able to return to work earlier than the date indicated, you will be required to notify us at least two workdays prior to the date you intend to report for work.

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If your leave does qualify as FMLA leave you will have the following **rights** while on FMLA leave:

- You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated _____.
 - You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered service-member with a serious injury or illness. This single 12-month period commenced on _____.
 - Your health benefits must be maintained during any period of unpaid leave under the conditions as if you continued to work.
 - You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. (If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.)
 - If you do not return to work following FMLA leave for a reason other than 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.
 - If we have not informed you above that you must use accrued paid leave while taking your unpaid FMLA leave entitlement, you have the right to have **sick**, **personal leave**, and **other leave** run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA leave.
- For a copy of conditions applicable to sick/personal leave/other leave usage please refer to _____.
- Applicable conditions for use of paid leave: _____
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Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA leave and count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact Fred Herrera at (915) 886-6502 or Karen Elmore at (915) 886-6508.

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

It is mandatory for employers to provide employees with notice of their eligibility for FMLA protection and their rights and responsibilities. 29 U.S.C. § 2617; 29 C.F.R. § 825.300 (b), (c). It is mandatory for employers to retain a copy of this disclosure in their records for three years, 29 U.S.C. § 2616, 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave. N.W., Washington, DC 20210. **DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.**