

What Every Finance Director Needs to Know About Human Resources

Nikki Larson
Finance Director
Village of Glencoe
nlarson@villageofglencoe.org

Paul Denham
Clark Baird Smith LLP
pdenham@cbslawyers.com

IGFOA 2018 ANNUAL CONFERENCE



What Every Finance Director Needs to Know About Human Resources

- Family Medical Leave Act (FMLA): Employee and employer rights granted by this Act how to accurately track time related to an FMLA Leave.
- Workers' Compensation: Best reporting practices and how to tell the difference between a workers compensation injury and a non-compensable accident or injury.
- The Public Employee Disability Act. To whom and in what situations does it apply, and how does it relates to public safety pensions.

DISCLAIMER!!!

- Each Organization manages situations involving compensatory leave differently. It is important to thoroughly understand your policies and collective bargaining agreements and to collaborate with your Manager, Human Resources Department, and/or your Attorney to make sure your actions are appropriate within the guidelines set for your organization.



FAMILY AND MEDICAL LEAVE ACT



FAMILY AND MEDICAL LEAVE ACT

Eligible Employees:

- have worked for the employer for a total of 12 months;
- have worked at least 1,250 hours over the previous 12 months (only includes hours actually worked—not just paid); and,
- work at a location where at least 50 employees are employed by the employer within 75 miles.

FAMILY AND MEDICAL LEAVE ACT

What if an employee is not eligible under FMLA?

- Check your employee manual for unpaid leave policies.
- Benefits can be more generous than law, but not less.
- Be mindful of precedent setting, especially in union environments as it may relate to collective bargaining agreements (what you do for one, you should be willing to do for all in similar circumstance)

FAMILY AND MEDICAL LEAVE ACT

Definition

- Leave entitlement of up to 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:
 - (1) **To care for or bond with a child after birth, adoption, or foster care placement**
 - Applies to both mothers and fathers
 - Must conclude within 12 months after the birth or placement
 - Generally, must be taken in a continuous block of time
 - Time to appear in court or travel to another country for purposes of adoption is included
 - A person who will co-parent a same-sex partner's biological child may take bonding leave
 - When parents are employed by the same employer, FMLA leave is limited to a combined total of 12 weeks for the birth of a child or bonding time

FAMILY AND MEDICAL LEAVE ACT

Definition

- Leave entitlement of up to 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

(2) To care for a spouse, child, or parent with a serious health condition

Spouse is defined as a husband or wife as defined by or recognized under state law for purposes of marriage in the state where the employee resides (including common law marriages and same-sex marriages)

Parent is defined as a biological, adoptive, step, or foster parent, or an individual who stood in loco parentis to an employee when the employee was a child (parents-in-law are not included)

FAMILY AND MEDICAL LEAVE ACT

Definition

- Leave entitlement of up to 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

(2) To care for a spouse, child, or parent with a serious health condition

Child is defined as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis

Coverage extends to children who are under 18 years of age or children over 18 years of age if they are incapable of self-care because of a mental or physical disability

FAMILY AND MEDICAL LEAVE ACT

Definition

- Leave entitlement of up to 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

(3) To take medical leave when the employee is unable to perform the functions of his or her job because of the employee's own serious health condition

Health care provider must find that the employee is unable to work at all; or that the employee is unable to perform any one of the essential functions of the employee's position

FAMILY AND MEDICAL LEAVE ACT

Definition

- Leave entitlement of up to 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:
 - (4) **Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty"**
 - Making alternative child care arrangements
 - Attending certain military ceremonies and briefings
 - Spending time with a military member on Rest and Recuperation leave during deployment
 - Making financial or legal arrangements to address a covered member's absence
 - Activities related to care of the parent of the military member while the military member is on covered active duty

FAMILY AND MEDICAL LEAVE ACT

Definition

(5) FMLA also provides military leave entitlement of up to 26 weeks of unpaid leave to care for a covered service-member with a serious injury or illness if the eligible employee is the service-member's spouse, son, daughter, parent, or next of kin ("military caregiver leave")



FAMILY AND MEDICAL LEAVE ACT

“Serious Health Condition” Generally includes:

- (1) Inpatient/hospital care with subsequent treatment
- (2) Continuing treatment due to a health condition lasting more than three consecutive calendar days
- (3) Pregnancy or prenatal care
- (4) Chronic health conditions
- (5) Permanent or long-term conditions
- (6) Multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity if not treated



FAMILY AND MEDICAL LEAVE ACT

Continuous Leave

- e.g. more than three days

Intermittent Leave

- Taken to care for a seriously ill family member, or because of the employee's serious health condition
- Episodic
- Reduced Schedule
- Where FMLA leave is for birth and care or placement for adoption or foster care, ***use of intermittent leave is subject to the employer's approval***

FAMILY AND MEDICAL LEAVE ACT

Calculating Time Off

- **How is FMLA leave deducted in conjunction with:**
 - Attendance Policies (e.g. Sick Leave, Regular Absences)?
 - Overtime (mandatory versus voluntary)?
 - Workers' Compensation/TTD?
 - PEDA?
 - Post-FMLA Leaves of Absence?

FAMILY AND MEDICAL LEAVE ACT

Calculating Time Off

How is FMLA leave deducted in conjunction with:

- Non-40 hour per week employees?
e.g. firefighters; police officers; finance directors and other exempt personnel; part-time employees
- If an employee gets 12 workweeks of leave under the FMLA, how many hours per week is in a “workweek”?

FAMILY AND MEDICAL LEAVE ACT

Employer Rights

- An employer may require employees to substitute accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave Calculating Time Off
- Leave requirement may dictate the order in which leave may be taken (*i.e. exhausting sick leave first*)

Review Personnel Policies and Collective Bargaining Agreements and any forms required by your employer

FAMILY AND MEDICAL LEAVE ACT

Employee Notification Requirements

- Employees are required to provide 30-day notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable
- Unforeseeable leaves: employee must notify employer as soon as practicable
- Unless there are unusual circumstances, employees must report absences in accordance with the employer's normal call-in procedures

FAMILY AND MEDICAL LEAVE ACT

- Employees must be restored to their original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment
- Use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave
- FMLA leave cannot be counted against the employee under a "no fault" attendance policy

WORKERS' COMPENSATION ACT



WORKERS' COMPENSATION ACT

Definition:

- For workers who suffer injury or illness, the injury or illness must be work-related “in and out of the course of employment,” regardless of who is at fault for the injury.
- The injured employee is then entitled to wage loss benefits and any medical or rehabilitation treatment required to remedy the injury.



WORKERS' COMPENSATION ACT

Wage Loss / Differential

- Injured workers may receive reimbursement for lost wages in two forms:
 - Temporary Total Disability (TTD) Payments
 - Wage Differential
 - Be mindful of your process – are these employees paid by payroll or your carrier?
- Tax Exemption
 - Public Safety Employees – 100% for the first year
 - All others – 66% of wages tax free

WORKERS' COMPENSATION ACT

Basic Principles:

- Provides employer with immunity from tort liability and gives employees a system of limited benefits for job-related injuries or diseases.
- The Illinois Industrial Commission has authority to decide all matters under the Act not settled by the parties. Where a dispute occurs, the Commission designates an arbitrator to hear the matter.

WORKERS' COMPENSATION ACT

Investigation is Key!!!

- There need to be effective processes in place for reporting an accident/injury to supervisor/Human Resources as soon as possible, including names of witnesses
- Such claims need to be thoroughly investigated ASAP
- Extremely difficult to try to discover this information weeks, months, years later during Workers' Comp., PEDDA, pension and PSEBA processes
- Not all injuries that happen at work qualify for benefits under the Act



WORKERS' COMPENSATION ACT

Ongoing Monitoring

- Work with your Workers Compensation Carrier – Claims Adjuster, Investigator, Attorney
- Familiarize yourself with your Return to Duty/Light Duty Policy
- Be mindful of:
 - Required Accommodations /Working Restrictions for Light Duty
 - OSHA Reporting Requirements – Hospitalization, Amputation or Eye Loss
- Return to Work Requirements – Functional Capacity Exams and Maximum Medical Improvement

WORKERS' COMPENSATION ACT

Risk Management

- How can workers compensation injuries be prevented?
- Safety training & awareness
 - Remember mandated training requirements, especially for Public Safety and Public Works
- Risk management & safety committees
 - Regular walk-throughs of facilities
 - Review safety procedures with staff on regular basis
 - Review accidents regularly, identify preventative measures that can be taken

PUBLIC EMPLOYEE DISABILITY ACT



PUBLIC EMPLOYEE DISABILITY ACT

Firefighter and Law Enforcement Officer Qualifying Event: Any injury in the line of duty which causes the employee to be unable to perform his duties. (5 ILCS § 345/1(a)).

- Benefit: The employee shall continue to be paid by the employing public entity on the same basis as he was paid before the injury, with no deduction from his sick leave credits, compensatory time for overtime accumulations or vacation, or service credits in a public employee pension fund during the time he is unable to perform his duties due to the result of the injury, but not longer than one year in relation to the same injury. (§1(b)).

PUBLIC EMPLOYEE DISABILITY ACT

Limitation on Performing Work:

An employee receiving PEDDA “shall not be employed in any other manner, with or without monetary compensation.” Any person employed in violation of this provision “forfeits the continuing compensation provided by this Act from the time such employment begins,” with any monies improperly received to revert to the employer. (§1(d)).



PUBLIC EMPLOYEE DISABILITY ACT

- Coordination of Benefits: An employee receiving PEDDA benefits shall have his workers' compensation and any other salary due him from any type of insurance which may be carried by the employee to revert to the employer while receiving PEDDA benefits.
- Wages paid under PEDDA are exempt from Federal and State tax withholding; be mindful of policies on additional deductions from wages, including health/dental insurance and union dues
- The employee also is ineligible for disability pension benefits under the pension code while receiving PEDDA. (§1(d)).

PUBLIC EMPLOYEE DISABILITY ACT

- Right to Examination: Employer at any time may order at its expense medical or physical examination to determine the degree of disability. (§1(c)).
- Verify your organization's policy – does your municipality utilize its own doctors, or those recommended by your insurance carrier?



PUBLIC EMPLOYEE DISABILITY ACT

- Employers should investigate PEDDA claims to determine whether they are valid
- Employers should provide the employee with due process –
Notice and an opportunity to be heard

SCENARIO # 1

Your administrative assistant provides you with a doctor's note describing a medical condition in which her tongue may swell in response to certain stressors, rendering her unable to speak. The note describes the condition as "sporadic".

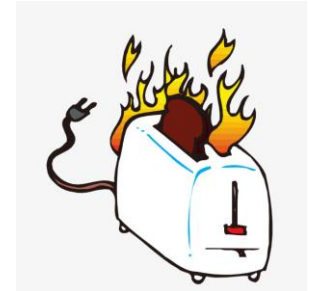
- What is the first step that should be taken in this scenario?
- Is there a statute that applies to this case?
- What, if any, accommodations must the Village make for this employee?



SCENARIO # 2

Your fire department is on a grocery shopping run when they receive a callout for a kitchen fire in a nearby neighborhood. On their way to the call, a hose comes loose from the engine. The team pulls over, and one of the firefighters climbs up the ladder to secure the hose. While climbing, he slips and injures his shoulder.

- What is the first step that should be taken in this scenario?
- Is there a statute that applies to this case?
- What, if any, accommodations must the Village make for this employee?



SCENARIO # 3

A police officer enters the lobby of the Village Hall to grab a donut. As he goes to sit down on the chair next to the table, the chair rolls out from beneath him and he falls, striking his elbow on the table. Upon medical examination, it is revealed that he has torn a tendon.

- What is the first step that should be taken in this scenario?
- Is there a statute that applies to this case?
- What, if any, accommodations must the Village make for this employee?



SCENARIO # 4

Your accountant's wife just had a baby. He would like to take time off to spend time with his wife and newborn baby, but he has exhausted all of his accrued leave time.

- What is the first step that should be taken in this scenario?
- Is there a statute that applies to this case?
- What, if any, accommodations must the Village make for this employee?



QUESTIONS?

