Leaves of Absences

The Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act (FMLA) is available to an employee who has worked for their employer for at least 12 months and performed more than 1,250 hours of work is entitled to 12 weeks of unpaid leave from their employment during any twelve month period for:

- The birth of a child;
- The placement of an adopted or foster child;
- To care for a close family member with a serious health condition;
- To address the employee's own serious health condition;
- Certain types of military leave; and

The FMLA applies to employers who employ 50 or more individuals.

The 12 weeks of job-protected military leave only applies to individuals in the National Guard or Reserve who are called to duty by the federal government. The 26 weeks of job-protected military leave is available to the spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves who incurred serious injury or illness in the line of duty.

A "Serious Health Condition" is defined as an illness, injury, impairment or physical or mental health condition that involves:

- Inpatient care;
- Continuing treatment (in person) by a health care provider;
- Period of incapacity due to pregnancy;
- Period of incapacity or treatment for incapacity due to a chronic serious health condition, or one which:
    - Requires periodic visits for treatment by a health care provider (at least twice a year);
    - Continues over an extended period of time;
    - May cause episodic rather than a continuing period of incapacity;
- Period of incapacity which is permanent or long term where treatment may not be effective, and for which the individual is under the supervision of a health care provider;
- Period of absence to receive multiple treatments by a health care provider for restorative surgery; and
- Treatment of substance abuse.

The following are exclusions to FMLA:

- Cosmetic treatments, unless inpatient care is required or complications develop.
- Common cold, flu, ear aches, and headaches other than migraines, unless the other criteria are met.

At the expiration of the leave period, the eligible employee is entitled to return to work in the same or similar position, at the same pay rate and with the same terms and conditions of employment. The exception is when the employee is a "highly paid employee" as defined by the Act, and is so designated by the employer prior to leave, no right to reinstatement exists**.**

Americans with Disabilities Act (ADA)

Employers are obligated to provide employees with reasonable accommodations that will allow them to perform the essential functions of their jobs notwithstanding the fact that they have a disability.

There is no "per se" limitation on how long an employee can be on leave pursuant to the ADA.