

July 26, 1996

## **ADMINISTRATIVE MEMORANDUM NO. 76**

To: Vice Presidents, Deans, Directors, Department Chairs, and Other Administrative Officials

From: Salme H. Steinberg, President

Subject: Family and Medical Leave Act (FMLA)

### THE FAMILY AND MEDICAL LEAVE ACT: GUIDELINES FOR NEIU SUPERVISORS

The Family and Medical Leave Act of 1993 and NEIU Board Regulations require NEIU to allow eligible employees to take up to 12 weeks of leave per fiscal year. Leave may be intermittent or a reduced work schedule.

#### **What is the purpose of this leave?**

- 1) To **care for a child** following birth, adoption, or placement in foster care. This leave will be given only after 30 days' advance notice.
- 2) To **care for an immediate family member** with a serious health condition.
- 3) Because of the **employee's own serious health condition**.

#### **Which employees are eligible? Those who:**

- 1) have worked for NEIU for at least 12 months, not necessarily consecutively, and
- 2) have worked at NEIU at least 1,250 hours during the previous 12 months.

#### **Who is considered an immediate family member?**

- 1) Sons/daughters, those to whom the employee "stands in the place of a parent" (a child the employee is raising).
- 2) Spouses, including "common law" spouse.
- 3) Parents, including the persons who raised the employee as a child. This does not apply to parents-in-law.

**What constitutes a serious health condition?** The Dept. of Labor has an extremely broad view of this. It may be any condition requiring:

- 1) **inpatient care**, or

- 2) **continuing treatment** including a period of incapacity,
  - a) due to pregnancy or for prenatal care
  - b) requiring **absence** from regular daily activities of more than 3 consecutive calendar days
  - c) due to a **chronic serious condition** (such as but not limited to asthma, epilepsy, diabetes, etc.)
  - d) that is **permanent or long-term**
  - e) to **receive multiple treatments** (dialysis, physical therapy, chemotherapy, etc.)

**When may an employee be absent for a family member's serious health condition?** If the employee is needed to provide care (medical, hygienic, nutritional, safety, transportation, psychological comfort) for the family member.

Remember that the FMLA considers serious health conditions and the ADA considers disabilities -- not necessarily the same thing.

### **How does an employee request FMLA leave?**

- 1) Give notice 30 days in advance or as soon as practicable. Where the need for this leave is based on planned medical treatment, the employee shall make a reasonable effort to schedule the treatment in an operationally non-disruptive manner.
- 2) **Supervisors need to take responsibility for an initial assessment clarifying whether the reason given for an employee's need for leave, absence, or tardiness might be covered by the FMLA.** When discussing absences or tardiness, say something along the lines of: Is there something I should know about?" Avoid the word "disability" which is a conclusion. Instead you may refer to the person's medical condition (because we don't want to be in the position of perceiving as disabled someone who is not).

As a practical matter, when the employees you supervise are tardy or absent, write down what the employee tells you the reason is (if they provide it). **If you have the slightest inkling that the tardiness or absence might be due to an FMLA situation, contact: Judy R. Cascone, Personnel (x3045) for Civil Service employees or Patricia K. Rea, Academic Affairs (x3220) for all other employees. They can explain the FMLA in detail, provide our form, etc.** Because FMLA leave can't be assigned retroactively, ask about tardiness and absences when they occur. For an intermittent condition which is covered by the FMLA, **it is up to you as the supervisor to keep track of the time the employee is absent/tardy due to the FMLA condition vs. absences/tardiness due to other reasons.** Likewise, if an employee uses sick leave for more than three days, the absence probably qualifies for FMLA.

**NEIU requests medical certification of the condition. If we do not do this correctly, this may force your department to give the employee 12 additional weeks of leave beyond what you may have already given the person.** NEIU must request the medical certification orally within 2 days of the employee's request for leave. NEIU may not contact the employee's doctor directly. Thus, **it is essential to contact Judy Cascone or Patricia Rea promptly so that this request for medical certification can be made in a timely way.**

If NEIU doubts the validity of the medical certification, we must have facts to back this up. If this is a supervisor's concern, you might meet with the employee and have a conversation along the lines of "Tell me about your (whatever their medical condition is). Tell me about what you have been doing (in terms of physical activities)." If you still have concerns about the validity of the medical certification, contact Judy Cascone or Patricia Rea concerning the next steps.

**Is FMLA leave paid or unpaid?** At NEIU, the employee may use sick leave, accrued (vacation) leave, comp time, personal leave, or family or parental leave for this purpose, in which case the leave would be paid, so long as the employee has a positive balance in those categories. Subsequently, the leave would be unpaid. However, the employee may choose unpaid leave.

NEIU requires a fitness for duty release when the employee returns to work from FMLA leave taken because of the serious health condition of the employee.

**When the employee returns to work, she/he must return to the same or equivalent (pay, benefits, responsibilities, status, work site, etc.) position. As a practical matter, put the person back in the same job.**

The FMLA prohibits retaliation against an employee

- 1) for asserting FMLA rights
- 2) for taking FMLA leave
  - a) **inconvenience caused by a reduced schedule** or intermittent leave can't be a factor in discipline
  - b) **can't be mentioned in regular evaluations;** but the employee may be disciplined for non FMLA absences/tardiness

**Before you recommend any employee for discipline or termination based on attendance, make sure that FMLA provisions are not violated by consulting with Judy R. Cascone or Patricia Rea.**

These guidelines do not summarize all provisions of the FMLA and the Board Reg. (II-A-9.1), but are intended to provide assistance to employees' immediate supervisors. Any supervisor who has any questions about the provisions or implementation of the FMLA in a particular case should contact: Judy R. Cascone, Patricia K. Rea, or Margo L. Smith (Affirmative Action, x 3375).