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# Training for Supervisors

## Family and Medical Leave Act

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Prepared by the Law Department  
United States Postal Service



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A. What does  
the FMLA  
provide?

**Protected absence from workplace**

- Right to be absent from workplace for up to 12 workweeks of unpaid leave for the following events:
  - Ⓒ birth of son or daughter
  - Ⓒ placement of son or daughter for adoption or foster care
  - Ⓒ to care for certain family members with serious health conditions
  - Ⓒ because of employee's own serious health condition
- No loss of benefits accrued prior to taking FMLA-protected leave
- Continuation of health care benefits
- Right to return to same or equivalent position after FMLA-protected leave
- Right to use accrued paid leave during FMLA-protected leave, if taken in accordance with postal policies on paid leave

A. What does  
the FMLA  
provide? (cont'd)

**No interference with employee's rights**

- No discipline for FMLA-protected absences
- No retaliation for exercising FMLA rights
- No consideration of the use of FMLA leave in making employment decisions
- No discrimination against prospective employees for FMLA use
- No attempts to discourage FMLA use or avoid FMLA responsibilities

B. Who is eligible for FMLA-protected leave?

Eligible employees must meet two requirements:

â **12 months of Postal Service employment**

- Includes any postal employment during lifetime
- Does not have to be consecutive
- Leave time counts
- Round up for part week employment (if any day, get whole week)
- Rarely does other federal employment count
- Military leave taken while a postal employee counts

ã **1,250 work hours in year preceding beginning of leave**

- Work hours includes straight time and overtime actually worked
- Includes Union steward time when on the clock.
- Does not include leave time (exception: military leave)
- Does include time that would have been worked as part of make whole backpay relief ordered by an appropriate judicial authority (MSPB award, arbitration award, etc.).



B. Who is  
eligible for  
FMLA-  
protected  
leave? (cont'd)

- T** Once an employee is eligible for a condition, he or she remains eligible for absences related to that condition for the rest of the postal leave year.
- T** Once eligible, eligibility will not be reassessed for this condition until the first absence for this condition in the new leave year.

C. How much  
FMLA-  
protected  
leave do they  
get?

Total of 12 workweeks for all FMLA-protected absences, combined, during postal leave year.

**Full-time employees**

- 12 workweeks amounts to 480 hours
- Overtime not considered in workweek determination; therefore, FMLA-protected absence during overtime is not counted against the 480-hour entitlement.

**Part-time and flexible schedule employees**

- 12 workweeks based on the employee's normal workweek (e.g. 12x30 hours per week = 360 a year)
- Calculated by averaging number of hours worked for 12 weeks prior to beginning of the leave

C. How much  
FMLA-  
protected  
leave do they  
get? (cont'd)

**Stacking FMLA leave between postal leave  
years**

- If an employee's absence continues without a break from one postal leave year to the next, and the employee's FMLA protection does not end before the beginning of the new leave year, the employee's FMLA protection also continues unbroken; and the employee may use his or her new FMLA leave 12 workweek entitlement at the beginning of the new leave year.
- If employee is eligible at the beginning of the FMLA-protected absence that carries over between leave years, he or she remains eligible for the duration of that continuous unbroken absence.

## D. How may the employee take the leave?

Three common types of leave schedules:

### â **Intermittent leave**

- Includes multiple, episodic absences for the same qualifying event (e.g., episodic flare-ups of a condition).
- An employee is entitled to intermittent leave for a serious health condition only when it is medically necessary to take leave in this way.

### ã **Reduced leave schedule**

- A reduction in the regularly scheduled number of hours per day or per week due to a single qualifying event (e.g., increasing number of work hours a day over a period of weeks after returning from a serious injury).
- An employee is entitled to a reduced leave schedule for a serious health condition only when it is medically necessary to take leave in this way.

### ä **Block leave**

- Covers one continuous absence made up of consecutive days.

D. How may  
the employee  
take the  
leave? (cont'd)

**Foreseeable leave schedules**

- Employees must attempt to schedule such leave so as not to disrupt postal operations, subject to approval by health care provider.
- During leave schedule, employees can be temporarily reassigned to an alternative position that better accommodates the leave schedule. This alternative position may not be one with different work hours.

E. For whose  
care may the  
employee  
take FMLA-  
protected  
leave?

Eligible employees may use FMLA-protected leave to care for certain family members with serious health conditions:

- Spouse
- Parent
- Son or daughter

**Spouse**

- Legally married pursuant to state law
- Includes common law marriages pursuant to state law
- Same sex unions are not recognized under the FMLA

**Parent**

- Biological parents
- Individuals deemed to have acted "in loco parentis" (had primary responsibility for the day to day care and financial support of the employee prior to the employee's 18th birthday)
- Even if the employee had an "in loco parentis" parent, the employee always has rights to care for biological parents.

E. For whose  
care may the  
employee  
take FMLA-  
protected  
leave? (cont'd)

**Son or daughter**

- Biological, adopted, foster child
- Legal ward
- Stepchild
- Child of a person acting "in loco parentis"
- If the son or daughter is 18 or over, he or she must have a mental or physical impairment, of a long term or permanent nature, that substantially limits one or more major life activities **and** such impairment must make the son or daughter incapable of self care.

F. When is an employee "needed to care for" the family member?

Employee must be "needed to care for" the family member with the serious health condition.

**Physical needs**

- Medical needs
- Hygiene
- Nutrition
- Safety
- Cannot drive themselves to doctor

**Psychological needs**

- Leave allowed for psychological comfort and reassurance
- Limited to family members receiving inpatient or home care

Leave allowed for making arrangements for changes in care, such as nursing home, and where employee is filling in for other caregivers.



## G. For what health conditions?

If leave is for a health condition, the employee or family member must have a "serious health condition" as defined by the FMLA.

### **6 types of serious health conditions**

1. Overnight hospital stay
2. Over three-day incapacity plus treatment
3. Pregnancy
4. Chronic condition
5. Permanent or long term incapacity
6. Multiple treatments

All serious health conditions require "incapacity." When applying the definitions listed below, "incapacity" means:

- Inability to work at all
- Inability to perform any one essential function of position because of the condition or because of absence for treatment
- Inability to attend school for children

G. For what  
health  
conditions?  
(cont'd)

All serious health conditions except pregnancy and permanent/long term incapacity require active "treatment." When applying the definitions listed below, "treatment" includes:

- Examination to determine if a serious health condition exists
- Evaluations of a serious health condition
- Does not include routine physical, eye, or dental examinations

G. For what  
health  
conditions?  
(cont'd)

**Serious health conditions defined**

â Overnight hospital stay

Incapacity related to condition for which an overnight stay in a hospital, hospice or residential medical care facility occurred

ã Over three-day incapacity plus treatment

Period of incapacity of more than three consecutive calendar days and . . .

- treatment by health care provider two or more times
- or one treatment by health care provider resulting in a "regimen of continuing treatment" (generally, course of prescription medication or therapy requiring special equipment, not activities that may be self-initiated such as over-the-counter medications, bed rest, increased fluids, etc.)

ä Pregnancy

- Any period of incapacity due to pregnancy or for prenatal care
- Includes morning sickness, doctor-ordered bed rest, medical appointments, recovery

G. For what  
health  
conditions?  
(cont'd)

ā Chronic condition

- Health condition requires periodic visits for treatment
- Continues over an extended time period
- Causes incapacities on an episodic basis

æ Permanent or long term condition

- A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective (e.g., Alzheimer's)
- Must be under the care of health care provider, but does not need to be receiving active treatment
- Mostly used in needed to care for family member situations

Ç Multiple treatments

Any period of incapacity to receive multiple treatments by a health care provider or under the supervision of a health care provider for . . .

- restorative surgery after an accident
- or a condition which, if untreated, would likely cause more than 3 days of incapacity

## H. Who is a health care provider?

Types of acceptable "health care providers" (HCPs) are listed in the DOL regulations at 29 C.F.R. 825.118. They include:

- medical doctors and doctors of osteopathy
- chiropractors (only for treatment of manipulation of spine to correct a subluxation verified by x-rays)
- nurse practitioners and clinical social workers who can diagnose and treat without supervision
- Christian Science practitioners
- health care providers that insurance covers
- health care providers who practice in a foreign country

All must be authorized to practice under applicable state or foreign country law and performing within the scope of their practice as defined by such laws.

Absence for substance abuse treatment is limited to treatment by a health care provider or a provider of health care services on referral of a health care provider.

## I. May the employer require a certification of the health condition?

An employer may require a "certification" of the serious health condition of the employee or the family member.

Once fully certified for a condition, the employee remains certified for the condition for the life of the condition or until recertification.

To be complete, a certification should include:

- medical facts that support that a serious health condition is causing a current incapacity
- date which the condition began and probable duration of condition
- whether the individual is currently incapacitated and for how long
- specific guidance about expected future incapacities related to this condition (i.e., expected frequency and duration of future flare ups and treatment schedule)
- if requested leave schedule is intermittent or reduced leave, whether the schedule is medically necessary
- if family member has the condition, facts supporting the "needed to care for" analysis
- be signed by a "health care provider"

I. May the employer require a certification of the health condition?  
(cont'd)

**Procedure for requesting certification of a serious health condition**

- Request certification in writing within 2 business days of learning of the need for the potentially FMLA-protected leave (sending the Publication 71 with the 3971 serves this purpose)
- Inform the employee that he or she has a minimum of 15 days to return a complete certification, with extensions for good cause (the Publication 71 serves this purpose)
- Inform the employee that failure to provide the certification in a timely manner will result in the denial of FMLA protection (the Publication 71 serves this purpose)
- Provide the employee a 4-page DOL Form WH-380
- Provisionally protect the absence as FMLA-protected, pending documentation
- If the employee returns a complete certification in a timely manner, consider options for complete certifications (see below)
- If the employee returns no medical documentation, provide the employee notice of the denial of FMLA-protection

I. May the employer require a certification of the health condition?  
(cont'd)

**Procedure for requesting certification of a serious health condition** (cont'd)

- If the employee returns untimely medical documentation, provide the employee notice that the absence prior to the date that the documentation was provided is not FMLA-protected; determine whether the documentation is being submitted in connection with a current absence; and if so, determine whether the certification is complete or incomplete
- If the employee returns incomplete medical documentation in a timely manner, provide the employee an opportunity to cure deficiencies (see below)

Certifications may be returned in any form as long as they contain the required information and are signed by a health care provider. Returning the DOL Form WH-380 is not a requirement. Regardless of the form, the certification must be complete.

Do not accept unsolicited certifications for unforeseeable leave (i.e., migraines, asthma) offered by employee not in connection with an absence. Accept unsolicited certifications for foreseeable leave (i.e., scheduled operation, scheduled treatment) offered in connection with an upcoming absence.



I. May the employer require a certification of the health condition?  
(cont'd)

**Cure procedures for incomplete certifications**

- If the certification is returned and it is incomplete, the employer must provide the employee an opportunity to cure the deficiencies
- Send the employee a letter which describes the deficiencies
- Inform the employee that he or she has another reasonable time period to return a complete certification, generally 15 days (extensions may be granted)
- Inform the employee that failure to provide the certification in a timely manner will result in the denial of FMLA protection
- Maintain the provisional protection during the cure procedures
- Provide the employee a copy of the incomplete certification submitted and the 3971 showing you have provisionally protected the leave.
- If the employee does not cure the deficiencies in a timely manner, provide the employee written notice that the absence is not FMLA-protected by completing the 3971 and giving a copy to the employee.

I. May the employer require a certification of the health condition?  
(cont'd)

**Cure procedures for incomplete certifications**  
(cont'd)

- If the employee returns an untimely cure, provide the employee written notice that the absence prior to the date that the additional documentation was provided is not FMLA-protected; determine whether the documentation is being submitted in connection with a current absence; and if so, consider options for complete certification with regard to the current absence forward (see below)

**Options when certification is complete**

- Complete, and you do not intend to request "clarification" (see below) or second opinion, notify employee of FMLA approval or disapproval within 2 business days (change the provisional protection to a final designation of FMLA-protected or not)
- Complete, but you reasonably suspect alteration or other fraud on certification – seek "clarification" (see below) or send the original certification to the HCP for confirmation of provided medical information only (no request for additional medical information) and copy the employee

I. May the employer require a certification of the health condition?  
(cont'd)

**Options when certification is complete (cont'd)**

- Complete, but unclear or you question validity of medical opinion
  - T Seek "clarification"
    - C Get employee's permission.
    - C Then ask medical unit to contact employee's HCP for medical information necessary to clarify the certification
  - T Consider second medical opinion
    - C Second opinions must take place before a recertification of the condition is requested or accepted
    - C Should be within a reasonable time after the initial certification is offered or accepted (generally within first 3-6 months after original certification)
    - C Employee permission is not required (second opinion is just an examination and evaluation, not treatment)
    - C Employer chooses HCP, must not be one regularly used by USPS
    - C HCP should be a board certified specialist in the medical area in question

I. May the employer require a certification of the health condition?  
(cont'd)

**Options when certification is complete (cont'd)**

■ Complete, but unclear or you question validity of medical opinion (cont'd)

T Consider second medical opinion (cont'd)

C HCP should be within employee's normal commuting distance with limited exception.

C USPS pays exam and travel expenses

C Employee is not on work time or paid administrative leave for time attending exam. Bargaining Unit employees may use appropriate paid leave. Exempt employees can be scheduled on off days unpaid or scheduled on a workday and paid or not according to existing office policy regarding leaves for medical appointments.

C Can request a second opinion for a family member's serious health condition

C Employer should inform second opinion HCP that the inquiry should be limited to the condition in the original FMLA certification.

I. May the employer require a certification of the health condition?  
(cont'd)

**Options when certification is complete (cont'd)**

- Complete, but unclear or you question validity of medical opinion (cont'd)
- T Consider second medical opinion (cont'd)
  - C A medical exam providing information relevant to FMLA certification requirements will be considered a second opinion exam, with applicable limitations; you cannot call it a "Fitness For Duty" exam and dodge the second opinion rules.
  - C If the second opinion results differ from the initial certification, provide the employee with the option of a third opinion.
    - Third opinions are at the employee's discretion
    - If employee refuses third opinion, second opinion stands
    - If employee attends third opinion, third opinion stands
    - Employer and employee jointly designate HCP
    - Employer pays exam and travel expenses

I. May the employer require a certification of the health condition?  
(cont'd)

**Options when certification is complete (cont'd)**

- Complete, but unclear or you question validity of medical opinion (cont'd)
- T Consider second medical opinion (cont'd)
  - C If employee requests results of second or third opinion, employer must provide results within 2 business days
  - C Refusal to attend a second opinion or to cooperate in the process results in a denial of FMLA protection for absences related to the condition at issue
  - C Continue provisional protection during second and third opinion process
  - C Notify employee of final designation of FMLA-protection or not within two business days of attaining all results/information

## J. May the employer request an update of the certification?

An employer may request a recertification of a condition (i.e., updated medical information provided by employee's health care provider).

### **Recertifications**

- Recertifications should be requested due to changes in the condition (e.g., absences exceeding expected frequency and duration) or due to the staleness of the prior certification
- Deciding whether to request or accept a recertification should be made on a case-by-case basis
- Once a condition is recertified, employer cannot request or require a second/third opinion
- Recertifications must be requested in connection with an absence caused by the serious health condition being recertified
- Recertifications should provide "complete" medical information (same information required in a complete certification, and same requirement to provide an opportunity to cure; see Section I)

J. May the  
employer  
request an  
update of the  
certification?  
(cont'd)

**Recertifications** (cont'd)

- If recertification is incomplete and employee fails to cure deficiencies, employee's protection is delayed until complete information is provided (delayed protection means a denial of protection between date of request for recertification and return of complete medical information)
- Employee pays for recertification
- Can request recertifications of family member's serious health condition



J. May the  
employer  
request an  
update of the  
certification?  
(cont'd)

### **Recertifications** (cont'd)

- Minimum times periods must pass:
  - T Chronic conditions, permanent/long term incapacities, pregnancy – no sooner than every 30 days (exceptions: manifest change in condition or doubt reason for absence)
  - T Incapacity lasts more than 30 days – no sooner than length of incapacity certified (exceptions: manifest change in condition, doubt reason for absence, or employee requests extension of leave)
  - T Intermittent or reduced leave schedule: no sooner than duration of schedule certified (exceptions: manifest change in condition, doubt reason for absence, or employee requests extension of leave schedule)
  - T For all other conditions: no sooner than every 30 days (exceptions = manifest change in condition, doubt reason for absence, or employee requests extension of leave)
- If offered an unsolicited recertification, decide whether to accept it or not considering preservation of second opinion rights, etc. If would be requesting one soon, accept.

K. When may  
an employee  
take FMLA-  
protected  
leave to bond  
with a child?

FMLA-protected absences may be taken for purposes of bonding with a child, after birth or placement for adoption or foster care.

- Applies to fathers and mothers
- FMLA-protected leave for bonding purposes must be taken within 1 year of the birth or placement
- Employees are only entitled to bonding time if taken as block absence
- Bonding time may be taken intermittently at the employer's discretion (first absence is entitlement, subsequent absences are at employer's discretion)
- Bonding time does not have to begin on the date of birth or placement
- Bonding time may take place with children placed for adoption or foster care but only if there is a state action, (i.e. court order or order of a child welfare agency), confirming the placement
- Each birth or each placement is a new qualifying event

K. When may  
an employee  
take FMLA-  
protected  
leave to bond  
with a child?  
(cont'd)

- FMLA-protection must be granted for absences before the actual placement for adoption or foster care, if necessary for the placement (e.g., court appearances, lawyer consultation, counseling sessions)
- May require reasonable documentation for confirmation of family relationship (return official documents, keep copies)
- If still available for the leave year, each parent may use his/her entire available FMLA leave bank (up to 12 weeks) for bonding, even if both parents work for the USPS

L. When and how must the employee notify the employer about the need for the leave?

- Employee need not mention FMLA in order to be entitled to its protection
- Employee must present facts that indicate potential FMLA protection
- Verbal notification is sufficient
- Employee may use spokesperson, if employee is unable to provide notice
- Employer is required to make follow up inquiries to determine if FMLA protection is required
- Employee may not choose to forego FMLA protection; if it applies and other requirements are met, employer must designate absence as FMLA-protected.

L. When and how must the employee notify the employer about the need for the leave? (cont'd)

- Employee must provide FMLA notice in a timely manner:
  - T If the need for leave is foreseeable, more than 30 days in advance, employee must notify at least 30 days in advance.
  - T If the need for leave is unforeseeable, or foreseeable but not 30 days in advance, employee must provide notice as soon as practicable under the circumstances (generally, within two business days of learning of the need for leave)
  - T This does not alter or affect Postal Service sick leave policy, which requires employees to call in as soon as possible in order to receive paid leave.
- Employee must provide FMLA notice once per condition, except that unforeseen absences and changes in leave schedule require notice as soon as practicable under the circumstances (generally, within two business days of learning of the need for the absence or the change in schedule)
- Lack of timely notice may result in delay of FMLA protection
- Failure to provide any notice that the leave may be FMLA-protected results in denial of FMLA protection

M. What must the employer do when it receives the notification?

**Individual notice requirement**

- Employer must provide individual notice of rights and responsibilities to employee when the employee either seeks the protection of FMLA or the employee's absence might be protected by FMLA based on information provided by the employee
- Publication 71 and PS Form 3971 with FMLA information completed meets the Postal Service's individual notice requirements
- Provide employee with Publication 71 and PS Form 3971 with FMLA information completed within 2 business days of receiving employee notice (if serious health condition is involved, also provide DOL WH-380)
- PS Form 3971 should be used to notify the employee about FMLA eligibility:
  - T Upon receiving employee notice, make eligibility determination.
  - T If employee does not meet FMLA eligibility requirements, notify the employee by using the PS Form 3971.
  - T Notify the employee of estimated date that the employee will meet the eligibility requirements by using the PS Form 3971

M. What must  
the employer  
do when it  
receives the  
notification?  
(cont'd)

**Individual notice requirement (cont'd)**

- PS Form 3971 should be used to notify the employee about FMLA designations:
  - T Upon receiving employee notice, designate the absence as provisionally FMLA protected, pending documentation (if additional documentation is required)
  - T Provide employee notice of the provisional designation by using the PS Form 3971
  - T After all documentation is received, or time to submit has expired, provide employee notice of the final designation of FMLA-protection or not by using an edited version of the PS Form 3971 already created for this absence
- Note on PS Form 3971 if employee is provided Publication 71 and if documentation is required.
- For chronic conditions, pregnancy, permanent/long term conditions, or conditions requiring multiple treatments, individual notice must be provided at least once every six months.

M. What must  
the employer  
do when it  
receives the  
notification?  
(cont'd)

**General notice requirement**

- DOL Poster WH-1420 must be posted in every facility in a conspicuous place where employees are likely to read it
- Penalties for failing to post include a fine and losing the employer's right to enforce employee notice requirements



N. What may the employer require when an employee returns from FMLA-protected leave?

Employees have a right under the FMLA to return to same or equivalent job after a FMLA-protected absence if the employee can perform the essential functions of his or her job.

- Other laws may provide a greater return to work right than the FMLA, such as Rehabilitation Act.
- FMLA does not provide a right to a modified position or to another position.
- If other actions (such as a RIF or removal for reasons unrelated to the FMLA absence) would cause a person's employment to end, FMLA does not provide a right to return.

N. What may the employer require when an employee returns from FMLA-protected leave? (cont'd)

FMLA allows employer to require a return to work statement when returning from an FMLA-protected absence in certain circumstances.

- Under FMLA, a simple statement by a health care provider of the ability to perform the essential function of the position is sufficient for non-bargaining unit employees. In addition, employers cannot require a return to work statement for each return from intermittent absences.
- Employee pays for return to work statement
- Cannot attain a second or third opinion on a return to work statement
- Under FMLA, employers may enforce collective bargaining agreements; therefore, bargaining unit employees are subject to different requirements in certain circumstances:

**T** If the return is from an FMLA-protected absence, and the condition causing the absence is listed in ELM Part 865, USPS can require a return to work clearance through the medical unit.

**T** If the return is from an FMLA-protected "intermittent" absence, and the condition causing the absence is listed in ELM Part 865, the medical unit will make a determination at the return from the first absence whether return to work clearances will be required for return from all intermittent absences.

O. Where  
should  
FMLA-related  
records be  
maintained?

**Where IRM/RMD is operational**

- All FMLA information, medical and non-medical, is kept in the FMLA Coordinator's Office.
- Restricted medical information, such as certifications, must be kept in a locked file cabinet.
- This filing system is a Privacy Act System of Records defined in the Appendix to the ASM.
- Documentation must be maintained for three years.

**Where IRM/RMD is not operational**

- All non-medical FMLA information is kept by the employee's supervisor.
- Employee's supervisor also keeps redacted medical documentation, redacting restricted medical information (such as diagnoses, but not absence schedules)
- Medical unit maintains complete, unredacted medical documentation
- Documentation must be maintained for three years.

## P. What about fraud?

FMLA does not protect employees who engage in fraud.

- An employee who fraudulently seeks leave under the FMLA is not entitled to FMLA protection and the leave may be denied or designated as AWOL.
- Postal Service may take corrective action regarding fraudulent FMLA claims.

Q. Where will FMLA disputes be processed?

Available forums for FMLA dispute resolution

- APWU-USPS pairs at Area level resolve disputes not taken to the grievance process
- Grievance process
- Department of Labor
- Federal district court
- Arbitrators, MSPB administrative judges, and 650 Hearing Officers decide if action was appropriate, but not whether FMLA was violated
- Two-year statute of limitations on complaints to DOL or district court
- Three-year statute of limitations if willful violation is found

R. How do  
other laws,  
postal policies  
and National  
Agreements  
relate to  
FMLA?

**Privacy Act**

- Agency official making the FMLA decision has a need to know all the information necessary to make an FMLA determination.
- Agency official making the FMLA decision may review certification that provides restricted medical information.
- Agency official making FMLA decision may share information on a need-to-know basis with a more knowledgeable person within the USPS for advice if necessary.
- See Section O for FMLA documentation maintenance requirements.
- Willful violations of the Privacy Act can lead to individual liability.

R. How do other laws, postal policies, and National Agreements relate to FMLA? (cont'd)

### **Federal Employees Compensation Act**

- FECA provides compensation to the employee if the injury/illness is job-related.
- FMLA provides the right to be absent due to a "serious health condition," regardless of the cause of the condition.
- Many absences caused by job-related injury or illness are also absences protected by the FMLA.
- Employees do not choose between the two laws, each provides distinct entitlements and may relate to the same condition.
- Employee may be absent due to a job-related injury, being paid by continuation of pay (COP), and the absence may be FMLA-protected and count against the 12 workweek entitlement.
- An employee who refuses a limited duty job offer will not generally continue to receive compensation benefits under the FECA.
- An employee who refuses a limited duty job offer can remain away from work under FMLA if he is unable to perform one essential function of his position, but only as long as his 12 workweek bank of FMLA-protected leave will allow.
- Employer must meet FMLA notice requirements, even for job-related injuries, which includes eligibility determinations and provisional/final designations.

R. How do other laws, postal policies, and National Agreements relate to FMLA? (cont'd)

### **Rehabilitation Act**

- Qualified individual with a disability may be entitled to a reasonable accommodation to enable him or her to be able to perform the essential functions of his or her position under the Rehabilitation Act.
- Reasonable accommodation under the Rehabilitation Act is an obligation separate from those required by the FMLA, but each law may relate to same condition.
- Requests for intermittent leave or reduced schedule because of the employee's own serious health condition under the FMLA may also be requests for reasonable accommodation under the Rehabilitation Act.
- Light duty requests may be requests for reasonable accommodation under the Rehabilitation Act, but light duty is not an entitlement under the FMLA.
- FMLA does not provide a right to a modified job or another job; it protects absences and provides the right to return from a protected absence to the position if the employee can perform all of the essential functions of the position.



R. How do other laws, postal policies, and National Agreements relate to FMLA? (cont'd)

### **Fair Labor Standards Act (FLSA)**

- Only "actual work hours," as defined by the FLSA, are used to compute the 1250 work hours eligibility requirement, with the exception of military leave, which is also counted, and the time the employee would have worked as part of a make whole backpay relief ordered by an appropriate judicial authority (MSPB award, arbitration award, etc.).
- An exempt employee's pay can be "docked" for absences of less than one day due to an FMLA-covered condition.
- The Postal Service is an "employer" for FMLA purposes because of its inclusion under the FLSA.

### **Title VII**

- Avoid complaints of Title VII discrimination by treating employees similarly under similar circumstances when making FMLA determinations.
- Avoid sex discrimination complaints by remembering that husbands are entitled to leave if needed to care for their wives when their wives are incapacitated due to pregnancy.
- Avoid sex discrimination complaints by remembering that both fathers and mothers are entitled to leave for bonding purposes.

R. How do  
other laws,  
postal  
policies, and  
National  
Agreements  
relate to  
FMLA? (cont'd)

### **Merit Systems Protection Board**

- Enforced leave is the involuntary placement of an employee on any type of leave, other than administrative leave.
- Claims of enforced leave for a period of more than 14 calendar days may be appealed to the Merit Systems Protection Board (MSPB), provided that the employee is in a group with rights to appeal certain actions to the MSPB.
- An employee may be considered on enforced leave when the Postal Service bars the employee from returning to work when he or she is ready, willing, and able to work, either with or without medical limitations.
- This situation often occurs when an employee requests light duty work, and the Postal Service bars the employee from working because it determines that it does not have any work available within the employee's restrictions.
- Under these circumstances, the USPS must provide the employee with procedural due process and notice of his or her MSPB appeal rights, even if the employee's absence is being protected by the FMLA.

R. How do other laws, postal policies, and National Agreements relate to FMLA? (cont'd)

**ELM requirements for paid leave and call-in procedures**

- FMLA does not alter ELM requirements that must be met to obtain paid leave (sick leave and annual leave), including notice requirements and documentation requirements.
- USPS cannot require sick leave documentation if employee elects FMLA/LWOP as opposed to FMLA/SL, FMLA/SLDC or FMLA/AI in lieu of SL.
- If employee fails to comply with call in procedures, but meets the FMLA certification requirements, and the absence is otherwise FMLA-protected, the employee should be charged LWOP -- never AWOL. However, corrective action may be taken with regard to the failure to follow call in procedures.

R. How do  
other laws,  
postal  
policies, and  
National  
Agreements  
relate to  
FMLA? (cont'd)

### **National Agreements**

- FMLA is not intended to change bargained-for agreements between employer and employees.
- Sick leave for dependent care is a paid leave category separate from FMLA.
- USPS limitation of sick leave for dependent care to 80 hours a leave year to care for ill family members should be enforced; once the 80 hours are exhausted, the employee must use annual leave or LWOP.
- Light duty is separate from FMLA, which does not provide a right to a modified position or another position.