

REST BREAKS AND LEAVE TIME

Unless a collective bargaining agreement provides otherwise, employers generally are free to establish their own policies regarding rest breaks and leave time. This section discusses several exceptions to the general rule.

REST BREAKS

Employers must permit each employee who works eight or more consecutive hours sufficient time to eat a meal. The employer is not required to pay the employee during the meal break as long as the employee is completely relieved of his or her duties for 20 minutes or longer (generally 30 minutes under Federal rules). An employer also must allow each employee adequate time within each four consecutive hours of work to utilize the nearest convenient restroom. A collective bargaining agreement may establish different rest and meal breaks.

Accommodation for Nursing Mothers

Minn. Stat. § 181.939 requires employers to provide “reasonable unpaid break time each day to an employee who needs to express breast milk for her infant child,” unless to do so would “unduly disrupt the operations of the employer.” The statute also provides that the break time must, if possible, run concurrently with any break time already provided to the employee. Additionally, the employer must make “reasonable efforts” to provide a room or other location, in close proximity to the work area (other than a toilet stall), where the employee can express her milk in private. An amendment to Minn. Stat. § 617.23 makes clear that it is not a violation of the state “indecent exposure” law for a woman to breast feed.

LEAVE TIME

Vacation, Holiday, and Sick Leave

Minnesota employers are not required by law to provide vacation, holiday or sick time for their employees. Most employers do provide such leave, however. Employers should provide employees with notice of their vacation, holiday and sick leave policies in an employee handbook, or otherwise communicate these policies to employees in writing. These policies should address whether vacation or sick leave can be carried over from year to year, or whether it is forfeited if unused by the end of the year. The policies also should address whether the employee will be paid for unused leave. If the employer has a policy stating that employees will be paid any unused accrued vacation at termination, failure to make such payments, may result in an employer being found guilty of a gross misdemeanor.

Family Leave

Family and Medical Leave (Federal Law). The federal Family and Medical Leave Act (FMLA) requires employers engaged in interstate commerce or in an industry affecting interstate commerce, of 50 or more employees in 20 or more weeks in the current or prior calendar year to provide up to 12 weeks of unpaid leave or accrued paid leave to eligible employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer

for at least 12 months, and for 1250 hours over the previous 12 months immediately preceding the need for FMLA leave, and are employed at a worksite where the employer employs at least 50 people within 75 miles.¹

In determining if the business meets the 50 or more criteria, the employer should include those people whose names appear on the employer's payroll, including part-time employees, those currently on approved leaves of absence or disciplinary suspensions and jointly owned (e.g., leased) employees. Employees on long term or indefinite layoff are not counted. Employees whose work sites are outside the United States, its territories or possessions are not covered for purposes of determining employer coverage nor are they protected by FMLA.

Employers must grant leave to employees in connection with the birth, placement or adoption of a child, to care for a spouse, minor or incompetent child or parent who has a serious health condition, or for their own serious health condition that makes them unable to perform their job. A serious health condition according to Regulations promulgated by the U.S. Department of Labor, includes an illness, injury, impairment, or physical or mental condition that involves either hospital care; absence plus continuing treatment; pregnancy; a chronic condition requiring treatment; permanent long-term supervision; or multiple treatments (non-chronic conditions). Note that many courts, including the Eighth Circuit Court of Appeals, have been asked to interpret those Regulations; as those courts have reached varying conclusions, anyone with questions in this area is urged to seek the advice of counsel. Employees may be required to provide advance notice of the leave and medical certification as established by the FMLA and Regulations of the U.S. Department of Labor.

The FMLA requires all covered employers to comply with notification requirements, including posting information on the FMLA in a general location where all employees would have an opportunity to see it, providing general written information regarding employee rights under the FMLA to all employees, either in an employee handbook or as a handout, and providing all employees requesting or on FMLA leave with written notice detailing the specific obligations and expectations of the employee, and the consequences of failing to meet such obligations.

Although the law does not require the employer to provide paid leave, in some cases certain kinds of paid leave may run concurrently with FMLA leave. During the leave, employers must maintain group medical insurance coverage under conditions the employer would have provided coverage had the employee continued working. (Employers may in some cases recover premiums paid for maintaining health coverage from employees who do not return to work following the leave.) Upon return from FMLA leave, employees must be restored to their original or an equivalent position with equivalent pay, benefits and other employment terms. The FMLA allows employers to deny job restoration to "key employees" (employees who are paid on a salary basis and are among the highest paid ten percent of the workforce) if reinstatement of the employee would cause "substantial and grievous economic harm" to the employer, and if the employer has provided the specific notification as required by the FMLA for "key employees".

The law does not supersede any state or local law which provides greater family or medical leave rights, nor does it affect greater leave rights provided under a collective bargaining agreement.

¹The U.S. Department of Labor's Regulations on the FMLA are at 29 CFR Chapter 825.

Also, employers may adopt policies more generous than those required by the FMLA. Employers must post a notice, available from the U.S. Department of Labor, explaining employee rights and responsibilities under the law. This notice obligation also includes posting notices in languages necessary to accommodate the employer's workforce.

Editor's note. The US Department of Labor recently issued an Administrative Interpretation clarifying its opinion that employees are entitled to take FMLA leave for birth, bonding or to care for the child of a domestic partner or same-sex domestic partner, as well as other children for whom an employee has responsibility for day-to-day care or financial responsibility, even though the employee has no biological or legal relationship to the child. (Administrator's Interpretation No. 2010-3). Military leave under the FMLA is governed by different definitions.

Parenting Leave (Minnesota Law). A Minnesota employer must grant an unpaid leave of absence to certain employees in conjunction with the birth or adoption of a child. The law applies to employers who have more than 21 employees. The employee must have been employed by the employer for 12 consecutive months immediately preceding the request, on at least a half-time basis.

The length of the leave may not exceed six weeks, unless otherwise agreed to by the employer, and must begin at a time requested by the employee. The employer may adopt reasonable policies governing the timing of requests for unpaid leave. The length of leave may be reduced by any period of paid parental or disability leave, but not accrued sick leave, provided by the employer so that the total leave does not exceed six weeks unless otherwise agreed by the employer. The employer may provide additional parental leave benefits.

The employer must not retaliate against an employee for requesting or obtaining a leave of absence, and must continue to make group insurance or health care coverage available to the employee during the leave. The employer is not required to pay the cost of the insurance or health care coverage while the employee is on leave of absence.

If the leave is longer than one month, the employee must give the employer at least two weeks' notice prior to returning to work.

An employee returning from a leave of absence is entitled to return to employment in the former position or in a position of comparable duties, number of hours, and pay. Certain exceptions apply to situations where the employer experiences a layoff that would have affected the employee and to collective bargaining situations.

Upon return to work, the employee is entitled to the rate of pay the employee was receiving at the time of the leave, plus any automatic adjustments in the employee's pay scale that occurred during the leave period. The employee retains all accrued preleave benefits of employment and seniority.

An employee who is injured by a violation of this law may sue for damages and to recover attorney's fees, and may seek an injunction or other equitable relief from the courts.

Employers or employees with questions about the interaction of federal and state parenting or family leave laws should seek professional advice.

Sick Child Leave (Minnesota Law). Employers with more than 20 employees must allow employees to use personal sick leave benefits for absences due to illness or injury of their children, for reasonable periods of time, on the same terms as the employees are able to use sick leave benefits for their own illness. The child must be under age 18 or under age 20 if he or she is attending secondary school. To qualify for sick child leave, an employee must have worked for the employer for 12 consecutive months immediately preceding the request on at least a half-time basis. Salary continuation and disability payments are not included in determining benefits available for sick child leave. This section applies only to sick leave benefits paid from the employer's general assets, and (presumably) does not apply to sick leave benefits paid by a third-party insurer.

School Leave

Employers with one or more employees must grant leave of up to 16 hours during any twelvemonth period to enable a parent to attend a child's or foster child's school conferences or school-related activities and day care or kindergarten activities if those conferences or activities cannot be scheduled during nonwork hours. Employees are eligible for school leave if they work on at least a half-time basis. Employees need not be paid for school leave, but they may use accrued paid vacation leave or other appropriate leave for this purpose. Where the need for school leave is foreseeable, the employee must give the employer reasonable prior notice and must make a reasonable effort to schedule the leave so as not to unduly disrupt operations.

Bone Marrow Donations

Employers with 20 or more employees must grant paid leaves of absence of up to 40 work hours to an employee who seeks to undergo a medical procedure to donate bone marrow. The employer may not retaliate against the employee for requesting or obtaining the leave. The employer may require a doctor's statement verifying the purpose and length of the leave. If there is a medical determination that the employee does not qualify as a bone marrow donor, paid leave granted prior to the medical determination is not forfeited. There is no requirement that the employee be employed by the employer for a certain period of time before becoming eligible for the leave.

Military Leave

Employers must allow regular employees who are members of the Military Reserve or National Guard or Civil Air Patrol unpaid time off for military duty and training. The employee generally must be reinstated to a position of like seniority, status and pay following discharge or release from active duty.

The federal Uniformed Services Employment and Reemployment Rights Act (USERRA) (38 USC Chap. 43) provides reemployment protection to veterans and employees who perform military service in the active military, the National Guard or Reserves. That law applies to federal, state and local governments and all civilian employers regardless of size. If an employee leaves employment for voluntary or involuntary military service that employee upon his return from active duty is entitled to return to the employee's job, with accrued seniority, provided the employee meets the act's five eligibility criteria: (1) the employee must have held a civilian job

with the employer; (2) the employee must have informed the employer that the employee was leaving for service in the uniformed services; (3) the period of service must not exceed five years; (4) the employee must have been released from the service under honorable conditions; (5) the employee must have reported to his civilian employer in a timely manner or submitted a timely application for reemployment.

New amendments to the FMLA provide two forms of leave. (1) Exigency leave is now available to service members of any branch of the Armed Services deployed to a foreign country. (2) Family caregiver leave now applies to family members of veterans for up to five years after the veteran leaves service. Family leave to care for a covered service member is now available up to five years after the veteran leaves the service if the veteran develops an injury or illness that was incurred or aggravated while on active duty. The new five year window for veterans is intended to help

veterans who suffer from post-traumatic stress disorder and other conditions that are not necessarily evident at the time the service member leaves active duty.

USERRA provides that employees serving in the uniformed services can elect to continue their group health coverage under an employer-sponsored group health plan for a period of up to 18 months. The Act increases that maximum period of group health plan coverage available for employees covered by USERRA from 18 months to 24 months, and applies to continuation coverage elections made on or after December 10, 2004. Employers dealing with service member employment and benefit protections can get more information from the Department of Labor website at www.dol.gov/vets. Information on the USERRA Notice Requirement is covered in the section on Posters.

Employment Protection for Attendance at Military Events

Employers can not fire or take adverse employment action against any employee, or keep them from attending certain events relating to military service of the employee's spouse, parent or child to which the employee is invited. This could include departure or return ceremonies, family training or reintegration programs.

The employee must provide reasonable notice to the employer when requesting time off, and the employer must provide a reasonable amount of nonpaid time off for the employee, not to exceed two consecutive days or six days in a calendar year. The employer must not compel the employee to use accumulated but unused vacation for these events.

Jury Service

Under Minnesota law an employer cannot deprive an employee of employment, or threaten or coerce an employee with respect to his or her employment, because the employee is called for, or responds to, a summons for jury service. An employer who violates the statute may be found guilty of criminal contempt and fined up to \$700 or imprisoned up to six months or both.

If the employer discharges an employee because he or she is called for or responds to a summons for jury service, the employee may bring a civil action for recovery of lost wages and reinstatement. The civil action must be brought within 30 days of the discharge. Recoverable damages cannot exceed lost wages for six weeks. An employee who prevails in the civil action may be allowed

reasonable attorney fees. Minnesota law does not require an employer to pay the employee during the period of jury service unless salaried.

Election Judge

An employee must be given paid time off to serve as an election judge. The employee must give 20 days written notice. The employer may reduce the pay by the amount paid to the election judge by the appointing authority. The paid time off requirement applies to all state elections unless otherwise provided by law.

Time Off to Vote

Employers must allow their employees who are eligible to vote at a regularly scheduled state primary or general election; an election to fill a vacancy in the office of United States senator or United States representative; and a presidential primary election, to be absent from work for the purpose of voting at any time during his or her scheduled hours, without penalty or deduction from salary or wages because of the absence.

Political Convention Leave

An employee who is a member of the state central committee or executive committee of a major political party, or who is a delegate to a political convention, is entitled to an unpaid leave to attend a meeting of the committee or attend the convention. Employees must provide ten day's written notice to the employer.