

FMLA PROTECTION

On the last day of the recent SAMLU meeting in New Orleans, LA, the NPMHU conducted a one-day training on the rights of mail handlers under the Family and Medical Leave Act. The purpose of the training was to familiarize those in attendance with the basic principles, rules, and postal policies under the Act and to give them the tools to protect our members' FMLA rights.

The Family and Medical Leave Act was enacted in 1993 and allows Postal Service employees (including MHAs) who have worked at least 12 months for the Postal Service and have worked at least 1,250 hours in the year prior to the start of their leave not to have to choose between their job and leave which they need for their own illness or to help family members who need their care. The 1,250 hours are counted as they would under the Fair Labor Standards Act (FLSA), and only hours actually worked count toward the 1,250-hour requirement with some exceptions. In calculating the 1,250 work hour eligibility period, per condition per leave year, the FMLA leave year is defined as the Postal Service's leave year.

Eligible employees can take unpaid leave for specific individual or family medical reasons, with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

In accordance with the Act, eligible employees are entitled to twelve workweeks or 480

hours (workers' compensation leave may count against FMLA entitlements) of leave in a 12-month period for:

- The birth of a child or to care for the newborn child within one year of birth;
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement; intermittent leave can be taken with the permission of the employee's supervisor;
- FMLA leave can also be taken to care for the employee's "spouse," defined as husband or wife as defined under the law of the state in which the employee was married (including same sex and common law);
- To care for a "child," defined as a biological, adopted or foster child, stepchild, legal ward or a child whom the employee has the day-to-day responsibility to care for, who is under 18 or who is older than 18 and incapable of self-care;
- To care for a "parent" who has a serious health condition. A parent is defined as the biological parent, adoptive step-parent or any individual who had the day-to-day responsibility to care for;
- A serious health condition is a condition that makes the employee unable to perform the essential functions of his or her job;
- 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"; or



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"...eligible employees are entitled to twelve workweeks or 480 hours of leave in a 12-month period."

- Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service



More from SAMLU New Orleans: 1 • Wayne Lynch Local 303 with a question to the trainers. 2 • Local 305 Dwight Burnside. 3 • Local 303 Treasurer Van Cunningham engaging the trainers. 4 • Local 305 President Felandria Jackson. 5 • Local 317 Maria Boucher with a question for the trainers.

member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

For purposes of the Act, a "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition involving one or more of the following:

- A one night stay in the hospital which includes any period of inpatient care in a hospital, nursing home, or hospice.
- Incapacitation of three days or treatment of two or more times by a health care provider within 30 days or one visit plus a continuing regimen of treatment.
- Pregnancy, adoption, foster care to include any period of incapacity, or time missed due to prenatal medical appointments or legally-required preparations.
- A Chronic Condition to include any period of incapacity due to a serious health condition that continues over an extended period of time.
- Permanent or Long Term Incapacity which includes any period of incapacity due to a condition of the employee or qualified family member that is permanent or long term for which treatment may not be effective.
- Receiving Multiple Treatments which include any period of incapacity to receive treatments that would result in a period of incapacity of more than three consecutive full calendar days. Examples include chemotherapy, physical therapy or pregnancy.

Under the FMLA, employees may take leave on an intermittent basis or on a reduced schedule under certain circumstances. The Act defines *intermittent leave* as leave taken in separate blocks of time due to a single qualifying reason. A

reduced leave schedule is a schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.

It is important to note that, in determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, in accordance with the Act, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.

While FMLA leave is unpaid leave, the FMLA permits an eligible employee to substitute accrued paid leave for FMLA leave. The term substitute means that the paid leave provided by the Postal Service, and accrued pursuant to established policies of the National Agreement and the Employee and Labor Relations Manual, will run concurrently with the unpaid FMLA leave. Accordingly, the employee receives pay pursuant to the employer's applicable paid leave policy during the period of otherwise unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the Postal Service's normal leave policy.

When using paid leave, Arbitrator Shyam Das has ruled in a National level arbitration decision that "[t]he FMLA requires the employer, subject to certain exceptions, to accept certification of the need for intermittent leave as sufficient documentation for unpaid FMLA leave. The Postal Service has complied with the FMLA in that respect. The FMLA, however, does not require the employer to accept that certification for paid leave, if – as in the case

here – the employer's uniform policy requires different documentation for paid leave."

The Act requires the Postal Service to make employees aware of their rights under the law by posting notices of FMLA rights and responsibilities on Postal Service bulletin boards. The Postal Service is also required to provide written notice of FMLA expectations and obligations to any employee taking FMLA leave.

The Department of Labor's Wage and Hour Division (WHD) enforces FMLA. The Act forbids the Postal Service from discouraging or denying an employee's right to take FMLA leave. The Act also prohibits retaliating against employees who take or attempt to take FMLA leave; it also prohibits discharging or discriminating against employees who have made a complaint about unlawful practices under the Act.

Employees who believe their FMLA rights have been violated may file a grievance under Article 15 of the National Agreement. The NPMHU and the Postal Service have agreed in a Step 4 Grievance No. C06M-1C-C 10158799 dated February 12, 2013 (citing National arbitration award No. Q98N-4Q-01090839, dated April 28, 2002) that arbitrators have the authority to interpret and apply statutory law, including the Family and Medical Leave Act, when necessary to their decision in a pending grievance.

In addition, employees may file a complaint with the WHD or file a private lawsuit against the employer. FMLA enforcement depends on employees being aware of their rights, making the Union aware of any violation of these rights, and taking the initiative to ensure that these rights are not violated by USPS management.

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6 • NPMHU FMLA Trainers (l-r) Eastern Region Vice President John Gibson, General Counsel Kathleen Keller, CAD Manager TJ Branch, National Trainer Tim Dwyer, and National President Paul Hogrogian. 7 & 8 • NPMHU members fully engaged at the FMLA training.