

Sec. 31-51qq-27. What notice does an employee have to give an employer when the need for FMLA leave is foreseeable?

(See 29 CFR § 825.302)

(a) An employee shall provide the employer at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement of a son or daughter for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave shall be required to begin, a change in circumstances, or a medical emergency, such notice as is practicable must be given.

(1) For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. Whether the leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall provide such notice as is practicable if dates of scheduled leave change or are extended, or were initially unknown.

(b) "Such notice as is practicable" means notice as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. For foreseeable leave where it is not possible to give as much as 30 days notice, "such notice as is practicable" ordinarily would mean at least verbal notification to the employer within one or two business days of when the need for leave becomes known to the employee.

(c) An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under the FMLA or even mention the FMLA, but may state only that leave is needed for an expected birth or adoption for example. The employer shall inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employer may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave.

(d) An employer may also require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave.

(1) For example, an employer may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. However, failure to follow such internal employer procedures shall not permit an employer to disallow or delay an employee's taking FMLA leave if the employee gives timely verbal or other notice.

(e) When planning medical treatment, the employee shall consult with the employer and make reasonable effort so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employers prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employee. If an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned

medical treatment neglects to consult with the employer to make a reasonable attempt to arrange the schedule of treatments so as not to unduly disrupt the employer's operations, the employer may initiate discussions with the employee and require the employee to attempt to make such arrangements subject to the approval of the health care provider.

(f) In the case of intermittent leave or leave on a reduced leave schedule which is medically necessary, an employee shall advise the employer, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee and employer shall attempt to work out a schedule which meets the employee's needs without unduly disrupting the employer's operations, subject to the approval of the health care provider.

(g) An employer may waive employee's FMLA notice obligations or the employer's own internal rules on leave notice requirements. In addition, an employer may not require compliance with stricter FMLA notice requirements where the provisions of a collective bargaining agreement or applicable leave plan allow less advance notice to the employer.

(1) For example, if an employee (or employer) elects to substitute paid vacation leave for unpaid FMLA leave, and the employer's paid vacation leave plan imposes no prior notification requirements for taking such vacation leave, no advance notice may be required for the FMLA leave taken in these circumstances. On the other hand, FMLA notice requirements would apply to a period of unpaid FMLA leave, unless the employer imposes lesser notice requirements on employees taking leave without pay.

(Adopted effective March 9, 1999)