

The Company is going through what the Department of Labor (DOL) is calling a self-audit. They are going back, during the review period for the 5% attendance clause, and offering the agent FMLA paperwork to see if the absence was FMLA qualifying. There has been a complaint filed on behalf of the membership with the DOL over some of the interpretations and applications of the FMLA Law. The following information was given to the membership starting in our Union newsletter as early as 1997. There have been changes in the administration of the law and those changes are reflected in the bulletin below. Important information to follow on Page 2.

FMLA

(Family Medical Leave Act)

You are entitled to 480 hours per rolling calendar year, provided;
You've been with the Company at least one year
You've worked at least 1250 hours in the previous 12 months

FMLA can be taken for an illness (your own or a family member), the birth of your child, adoption of a child, or OJI (on the job injury).

You are responsible for notifying Kemper, as the Third Party Administrator, 30 days in advance (if the leave is foreseeable) or within 2 business days of returning.

You are responsible for getting the application filled out by your doctor (except for OJI). For non-OJI FMLA, you must use accrued sick time for personal medical reasons. You **must** use any unscheduled vacation time (DAT) for FMLA taken for a family member's medical reason. The Contract gives you a greater benefit than the law on the vacation blocks that are established which entitles you to the greater benefit.

FMLA may be taken intermittently for chronic conditions or illnesses (you or a family member).

Serious Health Condition means, an illness, injury, impairment, or physical or mental condition that involves one of the following;

Hospital Care (must be admitted to the hospital not the emergency room)

A period of incapacity of more than 3 consecutive calendar days

Pregnancy

Chronic conditions requiring treatments

Permanent/Long-Term conditions requiring supervision (i.e. severe stroke or terminal stages of a disease)

Multiple treatments (non-chronic condition) (i.e. chemotherapy, dialysis)

Incapacity, for the purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore and recovery there from of **more** than 3 consecutive calendar days.

While the Company is going through this self-audit, they are doing several things that the agents need to be aware of. Some of these practices are not normal and would not ordinarily have been covered by the proper application of the FMLA.

The law states that the FMLA cannot be retroactively applied to “historic” absences. These absences can be covered currently by FMLA since the Company is attempting to fix their mistakes and did not offer it correctly at the time of the absence. The Third Party Administrator (Kemper) is not making the determination on these cases due to the law stating that they can’t apply it retroactively. These decisions are being made at Headquarters. Some of our members are being told to send your request for back dated absences to Kemper by the Administrative Coordinators. **This instruction is wrong** and will result in your request being denied, simply on the timeliness of the request. The message is not getting to all the Administrative Coordinators in the system on how to handle these requests for absences that the Company are calling “back dated.” **Your request must go to Headquarters and not Kemper!** In 1993, when the law went into effect, the emphasis was placed on the employee to provide notification and then for the Company to designate. Since 1997, when the final regulations came out, the emphasis has shifted from the employee needing to notify, to the Company must designate the absence as FMLA eligible. This shift in responsibility came about due to court decisions, statutes and case laws. The following are points of emphasis about the current situation at Southwest Airlines;

- **To seek “back dated FMLA coverage for previous absences that the Company failed to offer (the triggering of the offer of the FMLA paper work by the Company is any absence of more than 3 consecutive days and the absence could possibly qualify under the FMLA law) at the time of the absences the paper work must be turned into the Company and not Kemper which is the Third Party Administrator for Southwest Airlines.**
- **Under normal circumstances (future absences) the agent has 2 days upon his return to ask for FMLA protection or notify the Company as a possible FMLA qualifying illness. The agent will be given the paper work at that time and it will need to be sent to Kemper. Follow the directions that are given to you by the Company. Always get a copy of the paper work that you turned into Kemper and a fax transmittal report if faxed from the station.**
- **When you are given the paper work for an absence “back dated” or current, you have 15 days to return the paper work to the proper authority, Kemper or Headquarters.**

The purpose of this law originally was to enable the employee to have reasonable leave for medical situations and emergencies to provide for and strengthen their family. The most important thing to remember is that this law is there to protect you and you need to know the law. We need to educate ourselves and each other. There are several web sites that are on the internet that will provide you with answers for your basic questions. The law is enforced by the U.S. Department of Labor, Wage and Hour Division and their web site is www.dol.gov. If you have any questions you can contact them personally. It is your right as an individual citizen! There are three rights that you have as a member of this Union over the handling of your FMLA requests;

1. You have the right to file a grievance, handled by the Union!
2. You have the right, as an individual, to file a complaint with the DOL!
3. You have the right, as an individual, to file a law suit and seek damages!

If you have any questions be sure and contact your District Representative for the phone numbers of the Department of Labor office nearest you. **EDUCATION and KNOWLEDGE IS ENPOWERMENT!!!**