



# Guam Family and Medical Leave Act (GFMLA)

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# Family Medical Leave Act and Guam Family Medical Leave Act

- The Family Medical Leave Act of 1993 29 U.S.C. §§2601 et seq
- US Department of Labor Wage and Hour Division administers the FMLA
  
- Guam Family Medical Leave Act 22 GCA Business Regulations, Ch. 3 Fair Labor Standards
- GFMLA was enacted in June of 2016 as Public Law 33-170 and amended by Public Law 34-40 and Public Law 34-41
- The Guam Department of Labor administers the GFMLA
  
- Some companies are covered by both the FMLA and the GFMLA
- Generally the employer must comply with the provision that is most favorable to the employees.



# The Guam Family Medical Leave Act

- One sentence sums it up:

Eligible employees of covered employers who have a qualifying event and provide appropriate notice and requested certifications are entitled to at least 12 weeks of health insurance continuation and job-protected leave per defined 12-month period.

## Who is entitled to 12 weeks of Job protected leave and Health Insurance continuation under GFMLA?

- 1) An **eligible employee** is an employee who has been with your company for at least a total of 12 months, **and** has worked at least 1,000 hours during the previous 12 month period.
- 2) You are a **covered employer** if you employ 20 or more people on Guam.
- 3) **Qualifying event** means the reasons for taking the leave and include **a)** birth of a child of the employee or the placement of a child with the employee for adoption or foster care, **b)** care for a spouse, child or parent of an employee, or a parent or child of the spouse of an employee with a serious health condition, **c)** the employee's own serious health condition, **d)** death of a family member of an employee (14 days, family member is defined).
- 4) At least 30 days, or as soon as practicable is **appropriate notice**.
- 5) The **requested certifications** are a matter of company policy but must be within the parameters set by GFMLA.

## What else should Covered Employers do?

- 1) Post **appropriate notices**. The notice should summarize the law and advise your employees who to see if requesting leave;
- 2) Have a comprehensive **leave of absence policy**. We are going to look at a model federal FMLA policy developed by SHRM; and
- 3) Develop a **standard notice/certification procedure** to ensure compliance. GFMLA sets the contents of the certification.

At this point, these are best practices. Rules and regulations may be developed by Guam Department of Labor. We do not know the status.

## *SHRM Template*

### Guam Family and Medical Leave Act (GFMLA)

(does not include qualifying exigency or military caregiver leave-these are federal only)

[Company Name] will provide Guam Family and Medical Leave to its eligible employees. The company posts the mandatory GFMLA Notice and upon hire provides all new employees with notices required by the Guam Department of Labor (GDOL) on Employee Rights and Responsibilities under the Guam Family and Medical Leave Act

The function of this policy is to provide employees with a general description of their GFMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

If you have any questions, concerns, or disputes with this policy, you must contact [insert name and contact information] .



## GFMLA POLICY CONTINUED

### A. General Provisions

Under this policy, [Company Name] will grant up to 12 weeks of leave ~~(or up to 26 weeks of military caregiver leave to care for a covered servicemember with a serious injury or illness)~~ during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.



## GFMLA POLICY CONTINUED

### **B. Eligibility**

To qualify to take Guam family or medical leave under this policy, the employee must meet all of the following conditions:

- 1) The employee must have worked for the company for 12 months. The 12 months need not have been consecutive.
- 2) The employee must have worked at least ~~1,000~~ 1,250 hours during the 12-month period immediately preceding the commencement of the leave. The ~~1,000~~ 1,250 hours do not include time spent on paid or unpaid leave.



# GFMLA POLICY CONTINUED

## C. Type of Leave Covered

To qualify as GFMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

1) The birth of a child of the employee or the placement of a child with an employee for adoption or foster care.

2) To care for a spouse, child or parent of an employee, or a parent or child of the spouse of an employee with a serious health condition. Child means biological, adopted, or foster child, a step child, a legal ward or a child of a person standing in loco parentis who is either under 18 years of age or an adult dependent child. Parent means biological, adoptive or foster parent, a step parent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.



## GFMLA POLICY CONTINUED

### C. Type of leave Covered Cont.

3) An employee may take leave because of their own serious health condition that makes the employee unable to perform the functions of the employee's position.

A serious health condition means an illness, injury, impairment, or physical or mental condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care, or a condition that requires continuing treatment of supervision by a health care provider.

## GFMLA POLICY CONTINUED

### C. Type of Leave Covered Cont. – Bereavement

4) An employee may take bereavement leave for reason of the death of a family member of the employee. For purposes of bereavement leave, family member means a) the employee's spouse, b) the biological, adoptive, foster, stepparent or legal guardian of the employee or spouse of the employee, c) the biological, adoptive, foster, stepchild or legal ward of the employee or spouse of the employee d) a person with whom an employee was or is in a relationship of in loco parentis, e) a sibling of an employee, or f) a person within one degree of consanguinity or affinity.

# GFMLA POLICY CONTINUED

## D. Amount of Leave

An eligible employee can take up to 12 weeks for the GFMLA circumstances (1) through (3) above under this policy during any 12-month period. The company will measure the 12-month period on a calendar year basis or based on the employee's date of hire or as a rolling 12-month period measured backward from the date an employee uses any leave under this policy.

If both parents work for the company and each wishes to take leave for the birth of child, adoption or placement of a child in foster care the parents may only take a combined total of 12 weeks leave.

An eligible employee can take up to 14 calendar days for the death of each family member circumstance (4) above during a single 12-month period not to exceed the total 12 weeks of GFMLA leave. The leave must be completed within 60 days of the date the employee receives notice of the death of a family member.

# GFMLA POLICY CONTINUED

## **E. Employee Status and Benefits During Leave**

While an employee is on leave, the company will continue the employee's group health plan benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the company will require the employee to reimburse the company the amount it paid for the employee's health insurance premium during the leave period.

If the employee pays a portion of the health care premium, while on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Accounting Department by the \_\_\_\_\_ day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave.



## GFMLA POLICY CONTINUED

### E. Employee Status and Benefits During Leave cont.

The employer will provide notification prior to the employee's loss of coverage as required by COBRA.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.



## GFMLA POLICY CONTINUED

### **F. Employee Status After Leave**

An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from the health care provider. This requirement will be included in the employer's response to the GFMLA request.

Generally, an employee who takes GFMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one which is virtually identical in terms of pay, benefits and working conditions. The company may choose to exempt certain key employees from this requirement and not return them to the same or similar position.



## GMFLA POLICY CONTINUED

### **G. Use of Paid and Unpaid Leave**

Unpaid GFMLA leave, and paid vacation or paid sick leave will run concurrently. For example, an employee's own serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as GFMLA leave and will run concurrently with any paid sick leave the employee is entitled to under the company's sick leave policy and paid vacation leave. An employee who is taking leave for reasons other than their own serious health condition will use all paid vacation concurrently with the GFMLA leave.





## GFMLA POLICY CONTINUED

### **H. Intermittent Leave or a Reduced Work Schedule**

The employee may take GFMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks.

The company may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

# GFMLA POLICY CONTINUED

## I. Certification for the Employee's Serious Health Condition

The company will require certification for the employee's serious health condition. The employee must respond to such a request within ~~15~~ \_\_\_ days of the request or provide a reasonable explanation for the delay.

Failure to provide certification may result in a denial of continuation of leave. Medical certification must be provided.

~~using the DOL Certification of Health Care Provider for Employee's Serious Health Condition.~~

The Certification must contain all of the following:

- 1) The date on which the serious health condition commenced;
- 2) The probable duration of the condition; and
- 3) A statement that, due to the serious health condition, the employee is unable to perform the functions of his or her position.



## GFMLA POLICY CONTINUED

### I. Certification for the Employee's Serious Health Condition cont.

The company has the right to ask for a second opinion if it has reason to doubt the certification. The company will pay for the employee to get a certification from a second doctor, which the company will select. The company may deny GFMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the company will require the opinion of a third doctor. The company and the employee will mutually select the third doctor, and the company will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the GFMLA pending the second and/or third opinion.

The company may require the employee obtain subsequent recertification regarding the employees own serious health condition on a reasonable basis if additional leave is required.

## GFMLA POLICY CONTINUED

### J. Certification for the Family Member's Serious Health Condition

The company will require certification for the family member's serious health condition. The employee must respond to such a request within ~~15~~        days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification must be provided. ~~using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition.~~

The certificate must contain all of the following:

- 1) The date on which the serious health condition commenced;
- 2) The probable duration of the condition;
- 3) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care;
- 4) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

The company may require recertification if additional leave is required.

## GFMLA POLICY CONTINUED

J. Certification for the Family Member's Serious Health Condition cont.

The company has the right to ask for a second opinion if it has reason to doubt the certification. The company will pay for the employee's family member to get a certification from a second doctor, which the company will select. The company may deny GFMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the company will require the opinion of a third doctor. The company and the employee will mutually select the third doctor, and the company will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the GFMLA pending the second and/or third opinion.

### **K. Certification for Bereavement Leave**

Employer may require leave be supported by a death certificate or obituary.

## GFMLA POLICY CONTINUED

### K. Procedure for Requesting GFMLA Leave

All employees requesting GFMLA leave must provide verbal or written notice of the need for the leave to the HR Manger. Within ~~five~~ \_\_\_\_\_ business days after the employee has provided this notice, the HR Manger will complete and provide the employee with the form requesting certification from the employees health care provider. ~~using the DOL Notice of Eligibility and Rights.~~

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for GFMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for GFMLA leave is not foreseeable, the employee must comply with the company's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

# GFMLA POLICY CONTINUED

## L. Designation of GFMLA Leave

Within ~~five~~      business days after the employee has submitted the appropriate certification form, the HR manager will complete and provide the employee with a written response to the employee's request for GFMLA leave. ~~using the DOL Designation Notice.~~



## GFMLA POLICY CONTINUED

### **M. Intent to Return to Work From GFMLA Leave**

The company may require an employee on GFMLA leave to report periodically on the employee's status and intent to return to work.



## More GFMLA details

- Some of the definitions do not make sense or do not work or do not exist: expectant mothers, child, spouse.
- Where do I get forms?
- What if my employees abuse the leave?
- How does intermittent leave work?
- Records storage – which file?
- Can an employee take leave under the FMLA and then GFMLA ?
- How does this work with ADA or Workers Comp or USERRA or my other policies?

## What if I do not comply with GFMLA?

It *shall* be an unlawful employment practice for an employer to refuse to hire, or to terminate, fine suspend, discriminate against any individual who exercises their rights under the GFMLA, or gives information or testimony regarding the individual's own or another's GFMLA leave.

It *shall* be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise any right provide under the GFMLA.

- In other words, employers who fail to comply with the GFMLA may be subject to civil suits for damages and equitable relief.

# SCENARIOS

## Scenario 1:

Mary, the company's accounts payables manager, takes three months GFMLA leave to care for her spouse. Jane, who replaced Mary, ends up doing the job better. Dave, her supervisor, is thinking, "why did I put up with Mary for so long? She was incompetent and I didn't even realize it. When Jane took over for her while Mary was on leave, Jane completely reorganized the department and it now runs like a clock. So what am I supposed to do? Put Mary back in charge? That's not in the best interests of the company. I think I'll just put Mary in another role and hope she's happy."

Mary said: "When I Left I had a position of authority and responsibility; now they've put me out to pasture in a low-level role. Sure, my pay is the same, but it's not a 'similar or equivalent' position. This is retaliation and I'm going to sue."

- Could Mary win?



## Scenario 2:

Bill was out on leave for three months for a major health crisis. When he returned to work he was still not 100%. He couldn't lift things as well as before. He wasn't as focused, and he tired easily. Fact is, he couldn't perform his old job at the level he used to, and others in the department wouldn't tolerate sub-par performance.

Bill's boss, Jackie, carefully documented Bill's inability to handle the basic tasks of the job. She talked many times with Bill about his deficiencies and finally offered to transfer him to another position that was much less demanding. He refused to take it. So Jackie fired him. Bill then sued for violation of his GFMLA rights.

Bill's argument to the judge was that, "they got angry because I took leave and now they're punishing me."

- Will Bill prevail?



### Scenario 3:

Jan comes to you and says she needs to take leave because she has a back condition. What should you say?

a) “I’m sorry to hear you’re not feeling well. We need to know if this is a condition that qualifies for GFMLA leave. You need to take our company GFMLA Form to your doctor, have the doctor complete the form and then return it to me.”

**OR**

b) “You know, your timing couldn’t be worse. Your colleagues are really counting on you right now. Are you sure you can’t stay on a few more days?”

**OR**

c) “I saw you lifting boxes just yesterday. You didn’t seem to be having any problems. Are you sure you’re really ailing?”



## Scenario 4:

Dave calls in and says he has the flu and stays out two days, then returns to work on the third day. Two days later he calls in sick again for another day. During the two weeks that follow he leaves work early several times without providing prior notice but tells you he was attending doctor's appointments to treat his condition. Dave's boss, Rick, thinks Dave is malingering and fires him for violating the company's strict attendance policy. Dave sues, claiming he qualifies for GFMLA leave and the company can't fire him.

- What do you think? Do Dave's absences qualify for GFMLA leave?



## Scenario 5:

Diane walks into your office and tells you she intends to have elective surgery the next day, and that she'll be out of work for four weeks recovering. You recognize that this is a violation of your company GFMLA policy, which requires 30 days advance notice for foreseeable leave. Diane's absence will throw your entire department into chaos because you have no one to replace her, and you're angry. So you tell Diane that if she takes the leave on such short notice, you'll have to fire her.

- Can she sue you for GFMLA retaliation?

## Scenario 6:

John returns from one year of leave for military service. Within days of being back on the job, he requests GFMLA leave to care for his sick mother. His manager denies the leave because John is not eligible for leave; John did not work 1,000 hours during the 12 month period immediately preceding the commencement of the leave.

- Is the manager correct?

## Scenario 7:

Steve's wife is a few days past her due date to deliver her first child. So Steve calls Will, his supervisor, to request GFMLA leave to care for his pregnant wife. Will says no. Steve misses nine consecutive shifts and Will fires him. Steve sues the company for denying his legitimate GFMLA leave, claiming that his leave was "unforeseeable" because his wife was unexpectedly overdue and he couldn't predict when she was going to deliver.

- How do you think the court ruled?





# Resources:

- SHRM toolkits
- White Papers
- Forms
  
- Federal Department of Labor  
[www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla)
- Guiding an Employer through the FMLA Leave Process
- Need Time? Employees Guide to the FMLA

[www.dol.gov](http://www.dol.gov)



# Any Questions?

## Thank You!

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