Happy Birthday FMLA. FMLA Now and What is Ahead.

Client Alert
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The Family and Medical Leave Act turned 30-years old on February 5, 2023. The FMLA was passed with bipartisan support during the Clinton administration and was signed into law on February 5, 1993. The FMLA's longevity has cemented its role in the American workplace.

For covered employers, the FMLA allows eligible employees to take up to 12 work weeks of unpaid leave during a 12-month period. To be eligible for leave, an employee must have been employed for 12 months (which can be non-consecutive), must have worked at least 1,250 hours over the past 12 months, and must work at a location where the company employs 50 or more employees within 75 miles.

Covered employers must provide an eligible employee with up to 12 weeks of unpaid leave each year for any of the following reasons:

- For the birth and care of a newborn child of the employee;
- For placement with the employee of a child for adoption or foster care;
- To care for an immediate family member (i.e., spouse, child, or parent) with a serious health condition;
- To take medical leave when the employee is unable to work because of his or her own serious health condition; or
- For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or call to covered active duty status as a member of the National Guard, Reserves, or Regular Armed Forces.

While it appears simple at first glance, the FMLA is not without its issues. The FMLA regulations are complex and lengthy and it is not always clear whether the Act applies to specific employees and employers. It can often be difficult to determine what is

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considered a "serious health condition," what paperwork and notices are required, and the time frame for providing information and documents.

The option for employees to take intermittent leave also adds a layer of complexity and can create administrative difficulties for employers. For example, on February 9, 2023, the Department of Labor ("DOL") issued an opinion letter addressing whether the FMLA entitles an employee to limit their workday to eight hours a day for an indefinite period of time because of a chronic serious health condition, in a situation in which the employee is normally required to work in excess of eight hours a day. The DOL ultimately opined that it could be possible for an employee to be entitled to indefinite FMLA leave in that situation, if the employee did not otherwise exhaust their FMLA leave. As highlighted in the DOL's opinion letter, the FMLA often overlaps with the Americans with Disabilities Act, in which accommodations for protected disabilities can be required, and that interplay can cause additional confusion. And for employers in Michigan the Paid Sick Leave Act further complicates the issue. Moreover, unlike most statutes, the FMLA can impose an affirmative obligation on employers to inquire into the situation when the employer has a basis to reasonably believe that circumstances might qualify for FMLA leave, even when the employee has not requested FMLA.

Moreover, as the workplace rapidly evolves, the FMLA's job restoration obligation is becoming increasingly more difficult, as employers attempt to adapt to the ever-changing workplace. For employers that run afoul of the FMLA, the penalties can be swift and severe.

The 30-year anniversary of the FMLA serves to remind employers that requests for leave must be carefully considered and analyzed. If you have any questions about the FMLA, its overlap with the ADA, or any other Labor & Employment issue, please contact your Butzel Labor & Employment attorney.

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