

## MEDICAL LEAVES

### (For Employers with fewer than 50 Employees)

The medical leave policy examples below are intended for employers with fewer than 50 employees who provide employees with a leave of absence for medical reasons. Under the Americans With Disabilities Act (ADA) and applicable state and local law, providing a medical leave of absence may be considered a “reasonable accommodation.” Employers with at least 15 employees are covered by the federal ADA and required to provide reasonable medical leaves unless they cause an undue hardship to the organization. Smaller employers may also be required to provide such leave under state or local law.

Employers with 50 or more employees have different obligations that are specifically covered under the Family and Medical Leave Act (FMLA). These larger employers should review the *FMLA KeyNote* to become familiar with this federal regulation.

Medical leaves may include pregnancy disability leaves, which are legally protected absences. Employers may be required to provide a pregnant employee a leave of absence for the full period of the employee’s disability, regardless of the individual’s length of service with the employer. An employer may require this period of disability due to pregnancy or childbirth to be verified by the employee’s physician. A separate pregnancy disability policy is recommended. Refer to Archbright KeyNote *Summary of Laws Affecting Pregnancy, Childbirth and Related Leaves of Absence* and sample *Pregnancy Disability* policies.

An employer may be able to require employees to use paid time for medical or pregnancy disability leaves from either (or both) sick leave or vacation accruals.<sup>1</sup>

Also refer to Archbright KeyNote, *ADA Guide*.

## WASHINGTON

The Washington Law Against Discrimination (WLAD) covers employers who employ eight or more employees. Washington State defines “disability” to mean “the presence of a sensory, mental, or physical impairment that: (i) is medically cognizable or diagnosable; or (ii) exists as a record or history; or (iii) **is perceived to exist whether or not it exists in fact.**” Washington State employers also are required to take affirmative steps to identify reasonable accommodations once the employer has notice of the employee’s disability.

## OREGON

Oregon follows federal law (ADA) and Oregon’s disability law (ORS 659A.103 to 659A.145) enforced by the Civil Rights Division of the Oregon Bureau of Labor and Industries (BOLI). Oregon state law covers employers who employ six or more employees.

## IDAHO

The Idaho Human Rights Act (IHRA) prohibits employers from discriminating against applicants and employees on the basis of disability (ID Code Sec. 67-5901 et seq.). All employers with five or more workers, any government entity regardless of size, a contractor, or subcontractor for the state, and their agents must comply.

<sup>1</sup> Washington’s Department of Labor & Industries states that paid sick leave is a worker’s right under the State’s paid sick leave requirements, which only an employee may authorize the use of. Under this interpretation, an employer may not force or automatically apply an employee’s accrued paid sick leave. If the employee requests the use of accrued paid sick leave, then the employer could apply it.

## Example #1

An unpaid leave of absence may be granted to employees for medical reasons. Except for pregnancy-related or disability-related leaves, which may be legally required, leaves of absence are approved subject to [Employer Name]'s operational requirements. All leaves of absence must be authorized by \_\_\_\_\_.

Any planned absence from work for more than five consecutive days requires advance written approval from \_\_\_\_\_. If you have not previously requested leave, or if you fail to report to work after the expiration of an approved leave, you will be considered to have voluntarily resigned.

Approved medical leaves may not exceed \_\_\_\_\_ days unless provided otherwise by state or federal law. In situations involving pregnancy-related leaves, the length of the leave of absence is based on the actual time period an employee is sick or temporarily disabled because of pregnancy or childbirth related conditions. Paid time off such as sick or vacation leave may be used prior to the time being designated as unpaid leave.

You must present a doctor's certificate stating the dates of the medical leave, the reason for the leave, and the expected date you will be medically able to return to work. You may also be required to present a fitness-for-duty verification from your doctor before actually returning to active employment.

Your medical coverage [will / will not] be continued during your leave. [*Check with your insurance subscription agreement.*] Benefit accruals, such as vacation, sick leave, or holiday benefits will be suspended during unpaid leaves of absence under this policy and will resume upon your return to active employment.

## Example #2

[Employer Name] is not subject to the Family & Medical Leave Act (FMLA). However, employees may request a medical leave of absence, which should include the reason for the leave and the anticipated beginning and ending dates of the leave. Requests will be considered by [Employer Name] in accordance with state and federal law and with regard to the needs of [Employer Name].

Medical certification of the need for the leave, as well as the employee's fitness to return to work following the leave, may be required. Employees may be required<sup>2</sup> to use any accumulated sick or vacation pay at the onset of the approved leave prior to the leave being designated as unpaid. Benefit accruals, such as vacation, sick leave, or holiday benefits are suspended during the unpaid leave, and will resume upon return to active employment.

When a medical leave ends, reasonable efforts will be made to return the employee to the former position, if available, or to a similar available position for which the employee is qualified. [Employer Name] cannot assure reinstatement in all cases, unless otherwise provided by law. If an employee fails to report to work promptly at the expiration of the approved leave period, [Employer Name] will interpret the employee's failure to return to work as a voluntary resignation.

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