

Navigating Family Leave Laws



When members are experiencing family or medical issues and need time away from work, stewards are well-positioned to provide support and guidance during what can be a stressful time. By understanding family and medical leave laws, you can ensure that your co-workers both comply with rules for requesting leave and take full advantage of their rights and benefits. Here's a brief guide to help members navigate these laws.

Does the Member Qualify for Leave?

Under the U.S. Family and Medical Leave Act (FMLA), eligible employees may take up to 12 workweeks of unpaid leave during any 12 month period for one or more of the following reasons:

- The birth of a son or daughter;
- The placement of a son or daughter with the employee for adoption or foster care;
- To care for a spouse, son, daughter or parent of the employee suffering from a "serious health condition";
- The employee is suffering from a "serious health condition" that makes him/her unable to perform their job;
- The employee's spouse, son, daughter or parent is on active duty in the armed forces.

Canadian family and medical leave laws vary by province and are typically more generous than the U.S. law, providing in some cases up to 15 weeks paid, job-protected medical leave and up to 52 weeks of unpaid parental leave.

Notice and Medical Certification Requirements

Of all the members' burdens that may be eased by a steward's guidance, assistance with the notice and certification requirements may be the most welcomed. Under the FMLA, where the need for leave is foreseeable, employees must give the employer thirty days' notice. Otherwise, the employee is required to give the most notice possible.

An employer may require that a request for leave be supported by medical documentation, which should include the

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expected duration of the medical condition and a statement that either the employee cannot perform his or her job or is needed to provide family care.

Member Benefits While on Leave

The law is clear that an employer must maintain coverage under any health plan for an employee on FMLA leave.

As to other employment benefits, such as seniority and paid time off, members should be advised that unless your collective bargaining agreement provides otherwise, the employer is not required to continue accruals during an FMLA leave.

Understand Employer Rules on Concurrent Leave

Let's assume that a member has accrued three weeks of vacation, one week sick time and three days personal time off, all of which are paid. Suddenly the member's mother is diagnosed with a "serious health condition" as defined by the FMLA. The member submits a request for 12 weeks leave, which is approved.

While the member is willing to use her paid sick and personal time while on FMLA, she does not want to use her three weeks of vacation time because she has already booked non-refundable travel for later that year. Can the employer force her to exhaust the three weeks of vacation while on FMLA, even though she would rather have unpaid time off?

Unfortunately, yes. While the employer must allow a member to use accrued paid time off while on FMLA if he or she so chooses, the FMLA also makes clear that an employer may establish a rule requiring that employees exhaust *all* accrued paid time off while on leave. However, employers generally may not implement a *new* rule requiring that employees exhaust all accrued paid leave without first bargaining with the union. Stewards—as the eyes and ears of the

union—should be on the lookout for this and keep the union informed of any unilateral changes the employer makes to its FMLA policies.

Returning to Work

So what happens when the member is prepared to return to work? The FMLA is intended to provide leave that is "job protected," meaning that members may take time off without worrying whether a position will be available when they are ready to return.

Ideally, when a member is prepared to return from leave, they will be reinstated to their former position. If that's not possible, the employer must restore the employee to an "equivalent position," with virtually identical pay, benefits, working conditions and privileges. Since defining what an "equivalent position" is can be difficult, members are likely to need the steward's help to make sure the employer lives up to that obligation.

A Floor, Not a Ceiling

When dealing with family or medical leave issues, remember: The contract is king. The FMLA provides the minimum leave that must be granted to employees. If your collective bargaining agreement provides better benefits than the law, the employer *must* abide by the contract.

The FMLA also encourages employers to adopt more generous leave policies beyond what the law provides. Stewards should relay member concerns regarding family and medical leave to the union, which better enables the union to try to negotiate more generous benefits including paid leave, extended leave, "family leave banks" and less restrictive rules on exhausting accrued leave.

—Nolan J. Laffer, Esq. The writer is an associate attorney at Blitman & King LLP in Rochester, New York, where he represents public and private sector labor organizations.

Members are More Likely to Help If...

One of a steward's biggest challenges is convincing members to help the union do its work. There are many ways to ask for help. Your members are more likely to help if you:

Build Relationships

Imagine that your best friend calls and says, "I need your help, now." Do you think about whether you feel like helping? Do you focus on all the other things you have to do?

If the request is from a true best friend, you probably ask, "What do you need me to do?" and get ready to help any way you can.

You can't be best friends with all the members you represent, but you can build relationships that cause members to be more open to helping. If every time members see you coming they think, "What does she/he want now?" you are not going to get help when you need it.

By regularly saying hello and asking how your members are doing, listening to what they have to say, showing concern for them and their families, providing information that will interest or help them and being there for them when needed, you are likely to get much better results when you ask them to volunteer for union events and tasks.

Listen to What They Care About

Everyone likes to be heard, so just listening goes a long way. Responding in a supportive way to what you hear goes even further.

For example, if a member is having difficulties with health insurance you can provide a contact and other information the member needs to get the issue resolved. Don't solve the problem for the member, but follow up and find out if they are satisfied.

You might find out that a member is thinking about seeking a college degree or going for training. You can provide information about the benefits in your contract for tuition reimbursement, or time off, or flexible hours to attend classes.

Let's say you find out that a member has family in another country and you hear on the news there has been a natural disaster there. You might approach that member and say, "I hope your relatives are all safe." This will show that you care about them beyond strictly work or union related matters.

Understand Their Reasons

Remember that last time you were in a group and someone asked for volunteers? What went through your head? If you

knew and trusted the person making the request and saw the importance of helping, you might have readily volunteered. But what might others be thinking? Perhaps they have had a bad experience when they volunteered in the past. They might not see how they could find time

or worry that they won't know how to do what is requested. Often members think, "Someone else will do it" or "If I do this I may get sucked into more than I can handle."

That's why, when asking for help, always be very clear and specific about what the task entails, why it's important, and the training or support available for volunteers. Limit the amount of time you are asking people to commit, or for those who can't give up time after work, show how they can help during breaks or lunch. Get the most likely volunteers first so others will see they won't be alone. Always explain why volunteering achieves something the member cares about.

Limit the amount of time you are asking people to commit.

Ask Them to Do Something They are Good At

Perhaps you learn that a member likes to spend time on social media. You might ask for help keeping other members informed about union matters through Twitter, Facebook, Snapchat or other sites. Some people like talking to others and others prefer more behind-the-scenes tasks, so match your requests for help accordingly. Some members might be reluctant to talk to people they don't know well, but happy to relay information to their friends. Others might enjoy a task that involves meeting new people.

Ask Them to Do Things that are Fun and Important

Some unions have found that involving members in events that aren't strictly union business builds unity and interest among members. One group of co-workers had a group lunch once a month where everyone brought ingredients for a giant salad that everyone shared. Others organize bowling nights or informal get-togethers after work. One union found that members who had never done much with the union were happy to participate in or even help organize union-sponsored walks for breast cancer awareness or to support other causes.

Recognize When Others Help

Acknowledging your members' efforts can help build a culture of enthusiasm for volunteering. In addition to a "thank-you" from a steward, public recognition motivates members to volunteer again, and it motivates those who held back before to step forward next time. Recognition can be as simple as asking all the volunteers to stand for a round of applause at a meeting. Taking pictures and publishing the names and photos of those who volunteered in a union newsletter or website is a great way to show appreciation.

Always follow up to see how the member felt about the experience of volunteering. Make sure that those who helped know that their efforts were noticed and appreciated, and that they understand how it helped build the union.

—Ken Margolies. The writer is a senior associate of the Worker Institute at Cornell University's School of Industrial and Labor Relations.

New Hires and Union Protections

A common misunderstanding for both stewards and new hires is that “the union can’t do anything for a worker on probation.” Not only is that wrong, the fact is that from the moment a new worker first hits the time clock, there are enormous benefits to being under a union contract. It’s critically important that stewards make that clear to new employees as soon as they come on the job.

All new workers (except the boss’s children!) have to go through a probation period, the length of which is defined in your union contract. At the same time, a union security agreement in the contract may compel a new worker to join the union long before the probation period is up, so the new hire asks: “If the union can’t protect me, why do I have to pay dues?” In an open shop of course, a worker can refuse to join the union.

A steward has to deal with the fact that most probationary workers are ignorant about the union, and unionism generally. Many workers have been taught in school, and often at home, that “Big Labor” is only after your money. New hires are often brainwashed into believing that any benefits they get are gifts from a generous and benevolent employer. The phrase that tips off their thinking is “Our employer gives us . . .” A union history page on your local’s website should include all the important clauses of the contract, and say exactly when the union won that extra week of vacation, or daily overtime, or tuition reimbursement. This illustrates that the boss didn’t give these benefits, the union won them—and wants to keep them. Encourage new hires to check out the page, and e-mail or text them the link yourself.

Contractual Protections Start on Day One

Below are just some of the benefits that stewards should be prepared to reel off to new workers on that first day, stressing

that the laws require only that a boss provide a worker with the minimum wage, time and one-half over 40 hours in a week, and workers’ compensation if they’re injured on the job. Other laws, like the U.S. Family and Medical Leave Act, may eventually apply, but the union contract is an immediate protection.

■ Because you’re working in a unionized workplace, starting pay is generally much higher than minimum wage, with guaranteed wage progressions usually built into the contract. A worker may get one of these automatic step increases even before the end of a probationary period, and it comes because the contract requires it, not because a boss takes a liking to you.

■ Many union contracts provide time and one half after eight hours, so new workers, from the very first day on the job, will be entitled to overtime if they work beyond the normal workday. In fact, by getting overtime pay for just one shift, an individual worker may pocket more than the cost of an entire month’s worth of union dues—a clear sign of the cash value of a union contract.

■ Many union contracts allow all workers—including probationary workers—to get paid holidays, or to gain coverage under a health insurance plan, or to pick up any of the other economic benefits that the union has negotiated.

In addition to the economic benefits, probationary workers immediately gain the protection of the union organization in the workplace. Who better than a steward to protect a new worker against unsafe working conditions or against an abusive supervisor—and on his or her very first day of work! Or who better than a steward to tell a probationary worker about workers’ compensation or about the right to full break periods? What if a female worker is harassed by a boss on her first day on the job? In a non-union workplace, she would likely suffer in silence. In a union workplace, she can call for the steward—on Day One. New workers are protected by all of the areas of the non-discrimination clause as well, so if they feel

they have been treated differently because of their race, gender or other characteristics, they can turn to the union for help, rather than being limited to filing a claim of discrimination with federal, state or provincial agencies. This represents a huge improvement over the sometimes prejudicial practices of a non-union workplace.

One unpleasant feature of the new workplace is that many employers, especially in retail, are not willing to post a schedule in advance. Their policy is to force workers to call in every day to see if they are needed, and to accept being sent home early if work is slow. The union contract that requires a schedule, posted a week or so in advance, and guaranteeing a full shift can be worth more money in a day than union dues for a month.

Welcome New Workers Immediately

None of this matters if new hires don’t get introduced to the union by a friendly face and a handshake. They need to know on that first day that the union is well worth the dues money for every worker. And don’t let your boss tell you—and many will try—that probationary workers cannot file a grievance. They are protected by all terms and conditions of the union contract, even if specifically excluded from a grievance over discharge. So make sure the newcomers in your workplace get a positive first impression of the union, so they can start to learn the rights and benefits of a union contract from Day One.

—Bill Barry. The writer is the retired director of labor studies at the Community College of Baltimore County.

A Temporary Victory for Fair Share

You’ve likely heard that the Supreme Court recently deadlocked 4-4 in *Friedrichs v. California Teachers*. This case challenged public sector unions’ right to charge nonmembers in the bargaining unit, who benefit from a union contract, a “fair share” to help pay for winning those benefits. This means the lower court’s ruling, allowing fair share fees, stands. But anti-union forces have several similar cases in lower courts, and they are coming after the private sector fair share next. Filling the vacancy created by the death of Justice Antonin Scalia with someone who supports labor is crucial. Be sure to make new workers feel welcomed by the union!

Grievance Negotiating

You may think that the only people in your union who need negotiation skills are the ones who sit down at the bargaining table to hammer out agreements. Not so.

Every steward needs to be a shrewd negotiator—because every meeting with management about grievances is a kind of bargaining. You are trying to resolve the meaning of the contract in a particular situation as well as trying to demonstrate how management may have violated the contract. And you want the best possible settlement for the grievant and the union.

To get such results from grievance negotiations, try these basic guidelines:

Separate the People from the Problem

Any grievance meeting has two sides—the *merits* of the grievance and the *relationship* between the parties involved. The mistake is to confuse the two.

For example, if you have a bad relationship with your supervisor, you may walk into every grievance meeting determined to show how tough you are. You become a *hard* negotiator, determined to win at any price. But usually such a stance triggers an equally hard response from management. And nothing gets settled—and nobody wins.

On the other hand, you don't want to be a *soft* negotiator. If you have a good relationship with a supervisor, you may be tempted to give in more easily to protect that relationship. But that's not good for the grievant, the union or for yourself—because eventually you'll end up feeling resentful and used.

The solution is to be *soft* on the people and *hard* on the merits. It may sound psychologically difficult to be “tough” and “friendly” at the same time. But with practice, you can learn the technique. And experience has shown that it works.

Remember that you want to build and maintain a good working relationship with the supervisor. There may be times when you must “agree to disagree,” but you still need to keep communication lines open.

With individual grievances, the best approach may be to set up the grievance as a problem that you and the supervisor can work on as partners, searching for a solution that may be fair to both sides. Say, for example, “Can we put our heads together to find a way to fix this?” Above all, don't let egos get in the way of a settlement that is best for the union and the grievant.

Don't let egos get in the way of a settlement.

Negotiate over Interests, not Positions

Perhaps the best way to reach such a settlement is to resist adopting a hard-and-fast *position* about an issue. In a negotiation, both parties start out with positions that are far from any likely settlement point. Negotiations then become a slow tug-of-war as each side reluctantly shifts its position closer toward settlement.

A better way is to begin by explaining your *interests*. For any grievance, the union's basic interest is to find a fair settlement that upholds the contract's integrity.

But management has interests, too. A supervisor is unlikely to settle any grievance against those interests. So it's up to you to find out what that supervisor needs.

When you know what management's interests are, you can focus your efforts on the next step—a search for workable solutions that meet the interests of both sides.

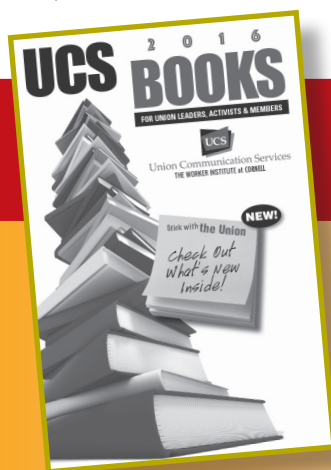
Invent Options for Mutual Gain

Mutual gains are often possible in negotiations because both parties share some interests. Inventing options can help you satisfy the other side's interests as well as your own.

Assume that both sides can achieve something positive in each grievance negotiation—even if it is just an understanding, or an improved relationship. At a minimum, bringing multiple options into a grievance meeting can provide some new energy and a different focus for discussion.

With experience, stewards can learn how and when to practice these guidelines most effectively. In all cases, the goal of these suggested strategies remains the same as for any negotiation: to win settlements that are consistent with the contract and add strength to the union.

—Sue Dawson. The writer was formerly editor of the *NALC Activist*, a newsletter for stewards and local officers of the National Association of Letter Carriers.



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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear Brothers and Sisters,

As a Shop Steward and a leader in this union, you are a catalyst of change. I need your help. On top of providing the best service we can to our current members, we're also embarking on a historic journey to grow the IAM. When you see workers being mistreated or underappreciated, strike up a conversation. Let them know the Machinists Union is here to help. Remember, we're all organizers.

We're also changing the way we organize. I won't mince words – we've become predictable. In response, we recently gathered some of the IAM's brightest organizing minds at the Winpisinger Center to brainstorm on how we can become more flexible and strategic in the way we organize the modern day worker.

At the negotiating table, we're going to be demanding more from employers. Corporate profits are at record levels, and our members deserve to reap the benefits. Long-term collective bargaining agreements without strict job security language don't serve the best interests of our members, and I've instructed our negotiators in the field to shift strategy accordingly. We must present a united front at every contract negotiation.

I also want to address a topic at many of our dinner tables: Donald Trump. Let me be clear, he is no friend of labor. He talks about bringing home American jobs while offshoring his own work, boasts about gutting the federal workforce and the few government agencies that actually work for workers. Trump is a divider, and he doesn't represent any of the values the IAM holds dear. Your vote will always be yours, but be aware that a vote for Trump is not a vote for workers.

Whether we're organizing, negotiating or voting, we're working toward a stronger IAM and a better life for all workers. I look forward to this journey with all of you.

In Solidarity,

Bob Martinez, Jr.
International President



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