

Family and Medical Leave Act vs. Sick Leave for Dependent Care

1. Are the Family and Medical Leave Act (FMLA) and Sick Leave for Dependent Care (SLDC) one and the same?

Answer: No.

FMLA is a 1993 federal law which entitles eligible employees to take up to a total of 12 workweeks of unpaid leave during a 12 month period for the birth of a child and to care for such child, for the placement of a child for adoption or foster care, to care for a spouse or an immediate family member with a serious health condition, or when he or she is unable to work because of a serious health condition.

SLDC is a contractual right which enables a letter carrier to use paid sick leave - up to 80 hours per leave year to care for an ailing family member.

2. How are the two similar?

Answer: Just to name a few significant similarities:

- ◆ Both were developed to balance the demands of the work-place with the needs of the families.
- ◆ The definition of a family member is the same (see ELM 515.2)---a son, daughter, parent or spouse. A spouse is defined as “husband or wife”.
- ◆ Neither FMLA nor SLDC entitle an employee to any leave in addition to what the employee currently earns, rather both FMLA and SLDC allow the employee the right to use leave for a new reason-to care for a family member.
- ◆ If the employee needs time off to care for a family member with a serious health condition the employer cannot take disciplinary action against the employee for unscheduled absences.
- ◆ If the family member has a serious health condition and the carrier takes SLDC, the time off will count towards both the 80 hour SLDC and 12 week FMLA entitlement.
- ◆ The employee cannot carry their unused right to FMLA leave or SLDC leave over to following years.
- ◆ The entitlement to both FMLA leave and SLDC leave begin with the first day of the postal leave year.

3. What is a serious health condition?

Answer: There is no laundry list of what qualifies as a serious health condition but if an illness or injury meets one or more of the criteria listed below then it would be considered a serious health condition.

- ◆ An overnight stay in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment for such care
- ◆ A period of incapacity of more than three consecutive calendar days--including any subsequent treatment or period of incapacity relating to the same condition that also includes treatment two or more times by a member of the health care profession or treatment by the health care professional on at least one occasion which results in a regimen of continuing treatment
- ◆ Pregnancy---any period of incapacity due to pregnancy or for prenatal care, including morning sickness or doctor visits.

- ◆ Chronic conditions---conditions which occur repeatedly and require treatment. Some examples of a chronic condition are diabetes, epilepsy or asthma.
- ◆ Permanent long-term conditions requiring supervision due to a condition for which treatment may be effective or a cure imminent. Some examples include Alzheimer's, multiple sclerosis or terminal cancer.
- ◆ Non-chronic conditions which necessitate the need for multiple treatments such as kidney dialysis or physical therapy after an accident.

3. How are FMLA and SLDC different?

Some significant differences are:

- ◆ Unless the illness, injury or other condition is a serious health condition the employee can be disciplined for unscheduled absences when using SLDC whereas when using FMLA the leave is protected and employee cannot be disciplined.
- ◆ FMLA allows the employee 12 workweeks of protected leave (combination of annual, sick or leave without pay depending on the reason for the leave) while SLDC only allows the employee to use 80 hours of earned sick leave.
- ◆ The employee can take up to 80 hours of sick leave to attend to a family member with a minor or serious illness, injury or other condition, while FMLA must be taken to attend to a family member with a serious illness, injury or other condition.
- ◆ FMLA is a federal law and unless the law is appealed it will continue until an Act of Congress changes it. SLDC is a contractual right which must be re-negotiated at the end of the 1998-2001 National Agreement.

3. How do I know what my rights are under FMLA and what my rights are under SLDC?

Answer: An employees rights under FMLA are outlined in the Employee and Labor Relations Manual (ELM), Section 515. The Department of Labor's Poster 1420 which gives a brief summary of employee rights, by law, must be displayed in every postal facility. If the employer suspects the employee's leave is FMLA related the employer is required to supply the employee with a copy of Publication 71, Notice for Employees Requesting Leave for Conditions Covered by the Family and Medial Leave Act.

The Memorandum of Understanding on SLDC can be found in the 1998-2001 National Agreement between the NALC and the USPS.