

Family Medical Leave 2009

Eligibility Notice

An “Eligibility Notice” is one that tells the employee if they have met the statutory requirements to qualify for leave: working at least one year and 1250 hours. It should include a copy of the employee’s “rights and responsibilities”.

The employer must tell the employee whether or not the employee is eligible for FMLA within 5 business days after the employee makes the request or when the employer becomes aware that an employee’s leave may be FMLA qualifying, absent extenuating circumstances. Formerly, this was two days. The notice of eligibility may be oral or in writing.

If the county denies the request, the county must give the employee at least one reason why the request was denied.

The employer need only give an employee one eligibility notice in twelve months, provided the eligibility of the employee has not changed in that period. If the eligibility of the employee changes within that twelve month period, the employer must give notice of that to the employee within five business days. (29 C.F.R. §825.300(b)(3)).

Notice of Designation

A “Notice of Designation” is given after the employee is determined to be eligible. This notice from the county gives the employee written notice of the designation of leave as FMLA qualified, under a specific request. It must be given within five business days of receiving sufficient information to

determine whether the leave qualifies.

It must also tell the employee whether and how much FMLA leave is available to the employee, and a statement of his or her rights and responsibilities under FMLA. This is required each time in a twelve month period that an employee requests leave in a twelve month period for the same reason. The Designation notice must also tell the employee which applicable twelve month period that the employer is using to determine leave entitlement.

If the employer requires a fitness for duty certification that addresses the employee’s ability to perform essential job functions at the time of return, then the employer must also provide the employee with a list of the essential job functions at the time the leave is designated.

What This Means For Counties

Make sure your FMLA procedures define notice to employer as written notice to the HR representative’s office on approved leave forms. Always give a notice of eligibility in writing, especially if the eligibility is lost. Make sure your job descriptions have essential duties clearly spelled out at all times. The Eligibility Notice and the Notice of Designation Form approved by the DOL is available for download on the CTSI website, www.ctsi.org.

For more information, contact CTSI at 303-861-0507.