



PLUNKETT COONEY
ATTORNEYS & COUNSELORS AT LAW

One Fact Matters

Responding to Employee Leave Requests
Under Michigan & Federal Law

Presented by
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Today's Presenters

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What Issues Should be Considered?

- Coverage: Does the law apply to employer?
- Eligibility: Is employee eligible for time off under the law?
- Reason: Does the law permit time off for reason given by employee?
- Policy: What does the employer's policy provide?

These are some of the issues we will consider.

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Overview of Family & Medical Leave Act (FMLA)

- A Covered Employer is:
 - Private employer of 50 or more employees
 - For 20 or more workweeks in the current or preceding calendar year
 - Public agencies
 - Schools



FMLA

- Eligible Employees:
 - Work for covered employer
 - For at least 12 months (over last seven years)
 - Worked at least 1,250 hours for employer during 12 months immediately preceding leave
 - Works in location with 50 employees within 75 miles



FMLA – Leave

- Eligible employees may take up to 12 weeks of leave
- In 12-month period for:
 - Birth of or placement of adopted child or foster child
 - Care for spouse, son, daughter or parent with serious health condition

Continued



FMLA – Leave

- For employee’s serious health condition that makes the employee unable to perform the essential functions of his or her job
- For any qualifying exigency due to call to active duty
- Can take up to 26 weeks in one 12-month period to care for injured service member



Use of FMLA

- Block of time
- Intermittent
- Reduced schedule



FMLA

- Follow employer’s policies, procedures.
- Provide medical/military certification (DOL Forms).
- Request 30 days in advance when need is foreseeable.



Overview of Michigan's Paid Medical Leave Act (PMLA)

- Employer includes any:
 - Person
 - Firm
 - Business
 - Nonprofit
 - Government entity or other entity
 - That employs 50 or more employees

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PMLA

Eligible employee:

- An individual engaged in service to an employer in the business of the employer
- From whom employer is required to withhold for income tax purposes

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PMLA – Not Eligible

- Individuals exempt under FLSA white-collar exemptions
- Employees of private employers subject to collective bargaining agreement that is in effect
- Employees of federal government or another state
- Employees whose primary work location is not in Michigan
- Employees age 20 or younger paid a training wage

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PMLA – Not Eligible

- Employees employed by a temp agency
- Individuals employed by employer for 25 weeks or fewer in calendar year for job scheduled for 25 weeks or fewer
- Individual who worked, on average, fewer than 25 hours per week during the immediately preceding calendar year



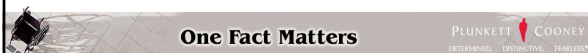
PMLA – Earned

- Employer may provide 40 hours of paid medical leave to eligible employee at beginning of “benefit year”
- “Benefit year” is any consecutive 12-month period used by employer to calculate eligible employee’s benefits
- Can prorate for new employees hired during benefit year
- Do not have to allow carry over if using this method



PMLA – Earned by Accrual

- Eligible employees must accrue paid medical leave:
 - One hour for every 35 hours worked, begin 1st day
 - Can’t use until 90th day of employment
 - Not more than one hour per calendar week
 - Can limit accrual to 40 hours per benefit year
 - Must allow carryover of up to 40 hours
 - Can limit use to 40 hours in a benefit year



PMLA – Allowable Use

- Employee’s mental or physical illness, injury or health condition (includes preventative care)
- Employee’s family member’s mental or physical illness, injury or health condition (includes preventative care)
- For employee or family member needs if victim of domestic violence or sexual assault
- For closure of workplace or school due to public health emergency or communicable disease



PMLA – Broad Definition of Family

- Family member includes:
 - Biological, adopted or foster child, stepchild or legal ward, or child to whom employee stands in locos parentis
 - Biological parent, foster parent, stepparent or adoptive parent or legal guardian of employee or employee’s spouse or person who stood in loco parentis to employee when a minor

Continued



PMLA – Broad Definition of Family

- Legal spouse
- Grandparent or grandchild
- Biological, foster or adopted sibling



PMLA - Rules

- Use in one-hour increments unless employer has different written policy.
- Follow employers customary notice, procedures and documentation requirements.
- Provide documentation within three days.
- Employer posting requirements

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Our Hypothetical

- Urban Revitalization Bank Organization (TURBO) started in 2010.
- TURBO has grown from 20 employees to current 58 employees.
- Some are part-time, some live in Ohio, half are exempt and about a dozen are “under contract.”
- In 2018, during warmer months, 15 employees laid off. All rehired since, but some only part-time.

Continued

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Hypothetical

- TURBO grants paid time off (PTO) to all employees as follows:
 - Work at least 20 hrs/wk = 40 hrs of PTO/year
 - Work 40 hrs/wk = 80 hrs of PTO/year
 - PTO granted on January 1 each year.
 - “Use it or lose it”


Continued

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Hypothetical

- HR Manager, Ms. Ima Right, is confused by Michigan’s new Paid Medical Leave Act
- Employee “Mr. Malingerer” hired February 2019
 - Hours vary, but works three to four days a week
 - Worked for TURBO for eight months in 2012 or 2013


Continued

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Hypothetical

- Mr. Malingerer has two children:
 - Son who is 32 years old
 - Son who is 7 years old
- One son was in auto accident and left with permanent injury.
- Mr. Malingerer lives with a woman in her 40s, and she is pregnant.
- Their relationship is not known, but rumor is pregnancy was result of rape.

Continued


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Hypothetical

Ms. Right called seeking advice because:

- Mr. Malingerer told supervisor he needs time off for “medical related reason.”
- Didn’t specify how much time or how soon, but added “possibly up to 4 months.”

Continued

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Hypothetical

What are Mr. Malingerer’s rights under the Family and Medical Leave Act (**FMLA**), Michigan’s Paid Medical Leave Act(**PMLA**) and possibly the Americans with Disabilities Act (**ADA**)?

What facts should TURBO know and consider when evaluating Mr. Malingerer’s requests?

Let’s dive deeper...



Is TURBO an ‘Employer?’

- Does TURBO have to provide an eligible employee with leave under **FMLA** if 10 of its current employees are part-time and work less than 20 hours a week?
- Does TURBO have to provide eligible employees with paid time off under the **PMLA** if half of the 58 employees are exempt and some live in another state?

Continued



Is TURBO an ‘Employer?’


- About a dozen of the 58 workers are “under contract.” Does that matter for **FMLA** or **PMLA**?
 - If independent contractors?
 - If simply employment contracts?
 - If contract is with a staffing company?



**Is Mr. Malingerer
'an Eligible Employee?'**

- Mr. Malingerer was hired in February 2019, and he worked for TURBO in 2012 or 2013:
 - Can he have a right to leave under **FMLA**?
 - Does he have any right to paid time off under **PMLA**?


Continued

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**Is Mr. Malingerer
'an Eligible Employee?'**

- Mr. Malingerer works three to four days a week:
 - Does he have right to **FMLA** leave based on his hours of work?
 - Does he have any right to take paid time off under **PMLA** based on his hours of work?


Continued

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**Is Mr. Malingerer
'an Eligible Employee?'**

- What if Mr. Malingerer is a vice president of TURBO?
 - Does he qualify for **FMLA**?
 - Does he qualify for **PMLA**?

Continued

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Is Mr. Malingerer 'an Eligible Employee?'

- What if Mr. Malingerer is a bookkeeper who works in Toledo?
 - Could this affect his eligibility under **FMLA**?
- What if Mr. Malingerer lived in Toledo and worked in Monroe?
 - Could this affect his eligibility under **PMLA**?



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Reason for Time Off

- What if reason is for routine medical screening?
 - Does Mr. Malingerer qualify for leave under **FMLA**?
 - Does Mr. Malingerer qualify for paid time off under **PMLA**?



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Person with the Medical Problem

- Assume Mr. Malingerer is qualified employee under both laws and son is having his gallbladder out:
 - If it is the 7-year-old, can Mr. Malingerer take time off under **FMLA**?
 - If it is the 32-year-old, can Mr. Malingerer take time off under **FMLA**?

Continued




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Person with the Medical Problem

- Assume Mr. Malingerer is qualified employee under both laws and his 32-year-old son just has common cold:
 - Would Mr. Malingerer qualify for **FMLA**?
 - Would Mr. Malingerer qualify for paid time off under **PMLA**?


Continued

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Person with the Medical Problem

- Assume Mr. Malingerer is a qualified employee under both laws and the 7-year-old, who is having his gallbladder out, is actually his grandchild:
 - Could Mr. Malingerer take leave under **FMLA**?
 - Could Mr. Malingerer take paid time off under **PMLA**?


Continued

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Person with the Medical Problem

- What if the woman who lived with Mr. Malingerer was not ready to deliver but needed bed rest and other care as part of pre-natal care:
 - Could Mr. Malingerer take time off under **FMLA**?
 - Could Mr. Malingerer take paid time off under **PMLA**?

Continued

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Person with the Medical Problem

- After baby is delivered, can Mr. Malingerer take time off to take baby to wellness medical appointments?
 - Can he take intermittent leave under **FMLA**?
 - Can he take paid time off under **PMLA**?

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Length of Leave – How Much Time?

- Mr. Malingerer said he would need “some time” off, maybe as much as four months.
- If it is **his** medical condition, and he takes last 12 weeks of the year off, how much time could he take off?
 - Under **FMLA**?
 - With **PMLA**?

Continued

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Length of Leave – How Much Time?

- When 12 weeks of **FMLA** ends and there is no more **PMLA** available, can Mr. Malingerer take more leave for his own medical condition?

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Leave Under the ADA

- How long can Mr. Malingerer stay on leave under the ADA for his own medical condition?
- If the leave is extended under the ADA, must TURBO still pay its cost of Mr. Malingerer's health insurance?



Extending Leave to Care for Another

- What happens if Mr. Malingerer needs additional time off (after all FMLA and PMLA exhausted) not because of his own medical problem, but to care for family member?

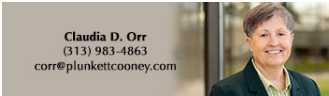


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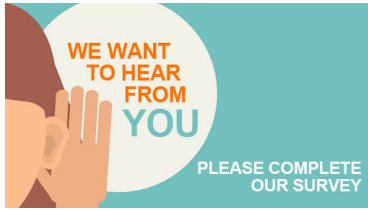
- FMLA, ADA and PMLA can seem like a maze of overlapping requirements.
- Because **just one fact matters** in these situations, it is important to get all the facts from supervisors and employees.
- Analyze the facts under **each** law.
- Seek assistance from your employment attorney when appropriate.



Questions?



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Presentation File of Program

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06/04/2019 | Noon to 1:15 p.m.
Event Sponsor: Labor & Employment Law Practice Group
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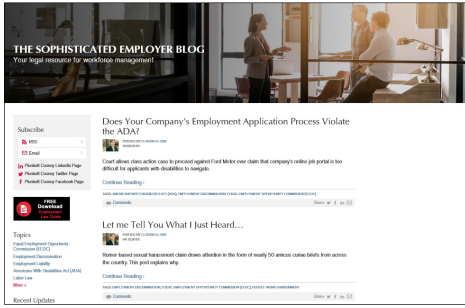
One Fact Matters
June 4 Employment Law Webinar

Date: June 4, 2019
Time: Noon to 1:15 p.m.
Cost: Complimentary

Many employers are still scratching their heads about complying with the recently-enacted Michigan Paid Medical Leave Act (PMLA).



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