

FAMILY & MEDICAL LEAVE - ACTIVE

April 1994

Dear KCS Employee:

Effective August 5, 1993 (February 5, 1994, for those covered by a collective bargaining agreement), the FMLA requires employers with 50 or more employees to provide eligible employees up to 12 weeks of unpaid, job-protected leave in any 12-month period (at KCS the designated 12 month measurement period is the Calendar Year) for the following reasons: (1) to care for a child upon birth or upon placement for adoption or foster care; (2) to care for a parent, spouse, or child with a serious health condition; or (3) when an employee is unable to work because of a serious health condition. The FMLA defines eligible employees as employees who: (1) have worked for the Company for at least 12 months; (2) have worked for the Company for at least 1250 hours in the previous 12 months; and (3) work at or report to a worksite which has 50 or more employees or is within 75 miles of worksites that taken together have a total of 50 or more employees.

Employees who want to take FMLA leave ordinarily must provide the Company at least 30 days notice of the need for leave, if the need for leave is foreseeable. If the employee's need is not foreseeable, the employee should give as much notice as is practicable. In addition, employees who need leave for their own or a family member's serious health condition must provide medical certification of the serious health condition. The Company also may require a second or third opinion (at the employer's expense), periodic recertifications of the serious health condition, and, when the leave is a result of the employee's own serious health condition, a fitness for duty report to return to work. The Company may deny leave to employees who do not provide proper advance leave notice or medical certification.

Employees taking leave under the FMLA are entitled to receive health benefits during the leave at the same level and terms of coverage as if they had been working throughout the leave. In addition, the Company must reinstate an employee returning from FMLA leave to the same or equivalent position with equivalent pay, benefits, and other employment terms. Certain highly compensated key employees may be denied reinstatement when necessary to prevent "substantial and grievous economic injury" to the Company's operations.

The employee's use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of the employee's leave. However, the employee must first use any accrued paid vacation, personal, and sick days during a FMLA leave for the employee's own serious health condition or for a seriously ill family member. In addition, the employee must use any accrued paid vacation or personal days (but not sick days) during FMLA leave to care for a newborn or newly placed child.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

It is illegal for the Company to interfere with, restrain, or deny the exercise of any right provided by the FMLA, or to discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for being involved in any proceeding under or relating to the FMLA.

The U.S. Department of Labor is authorized to investigate and resolve employee complaints of violations of the FMLA. An eligible employee may also bring a civil action against the employer for violations.

Enclosed is a copy of the U. S. Department of Labor Program Highlights (fact sheet) concerning FMLA. Also enclosed is a copy of the form which is to be used when requesting leave under the FMLA.



H. I. Salmons
Vice President - Human Resources

THE FAMILY AND MEDICAL LEAVE ACT OF 1993

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employees, and some federal employees. Most Federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management or the Congress.

FMLA became effective on August 5, 1993, for most employers. If a collective bargaining agreement (CBA) was in effect on that date, FMLA became effective on the expiration date of the CBA or February 5, 1994, whichever was earlier.

FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. The employer may elect to use the calendar year, a fixed 12-month leave or fiscal year, or a 12-month period prior to or after the commencement of leave as the 12-month period.

The law contains provisions on employer coverage; employee eligibility for the law's benefits; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. The law also requires employers to keep certain records.

EMPLOYER COVERAGE

FMLA applies to all:

- public agencies, including state, local and federal employers, local education agencies (schools), and
- private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year and who are engaged in commerce or in any industry or activity affecting commerce including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee must:

- (1) work for a covered employer;
- (2) have worked for the employer for a total of 12 months;
- (3) have worked at least 1,250 hours over the previous 12 months; and

- (4) work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- for the birth and care of the newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a combined total of 12 workweeks of family leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

- If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.
- FMLA leave may be taken intermittently whenever medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Also, subject to certain conditions, employees or employers may choose to use accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave.

The employer is responsible for designating if an employee's use of paid leave counts as FMLA leave, based on information from the employee.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

- any period of incapacity or treatment connected with inpatient

care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or

- Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:

- (1) A health condition (including treatment therefor, or recovery therefrom) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:
 - treatment two or more times by or under the supervision of a health care provider; or
 - one treatment by a health care provider with a continuing regimen of treatment; or
- (2) Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; or
- (3) A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; or
- (4) A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or
- (5) Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

"Health care provider" means:

- doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or

- podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or

- nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; or

- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or

- Any health care provider recognized by the employer or the employer's group health plan benefits manager.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave, nor be counted against the employee under a "no fault" attendance policy.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid "key" employees after using FMLA leave during which health coverage was maintained. In order to do so, the employer must:

- notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;
- notify the employee as soon as the employer decides it will deny job restoration, and explain the reasons for this decision;
- offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and
- make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

A "key" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees within 75 miles of the work site.

NOTICE AND CERTIFICATION

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable.

Employers may also require employees to provide:

- medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;
- second or third medical opinions (at the employer's expense) and periodic recertification; and
- periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employer's operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$100 for each separate offense.

Also, covered employers must inform employees of their rights and responsibilities under FMLA, including giving specific written information on what is required of the employee and what might happen in certain circumstances, such as if the employee fails to return to work after FMLA leave.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also bring a private civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules provide for FMLA leave to be taken in

blocks of time when intermittent leave is needed or the leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other federal or state law which prohibits discrimination, nor supersede any state or local law which provides greater family or medical leave protection. Nor does it affect an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan. The FMLA also encourages employers to provide more generous leave rights.

FURTHER INFORMATION

The final rule implementing FMLA is contained in the January 6, 1995, Federal Register. (An interim final rule was published in the Federal Register on June 4, 1993.) For more information, please contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.

REQUEST FOR FAMILY AND MEDICAL LEAVE

Please Complete the Following Information:

Name: _____ SS#: _____ Date Request Submitted: _____

Position: _____ Department: _____

Location: _____ Vacation Allotment: _____

Date of Employment: _____ No. of Days Remaining: _____

The Kansas City Southern Railway Company provides for Family and Medical leaves, which allows eligible employees to take up to 12 work weeks of job-protected, unpaid leave for any of the following reasons: **A)** because of the birth of, and care for, the employee's child ("leave for birth of a child"); **B)** because of the placement of a child with the employee for adoption or foster care ("leave for placement of a child"); **C)** in order to care for yourself, the employee's spouse, child (including adopted or foster child or stepchild), or parent, if that employee, spouse, child, or parent has a "serious health condition" ("leave to care for employee or a family member:).

All leave is to be unpaid except for all unused vacation time which must be used as part of the Family and Medical Leave.

Benefits during the approved leave period, will continue the same as those provided during active employment. If you are currently contributing to medical insurance premiums, you will be required to continue doing so during the leave period.

Leave for the birth of a child or placement of a child require certification from the treating physician or providing agency, regarding the due date or placement date.

Leave for the care of a spouse, child or parent require medical certification from the treating physician justifying why the employee must have the particular requested leave.

Employees are required to give at least 30 days notice before the date the leave is anticipated to begin unless such notice is not practical.

The company reserves the right during the course of the leave to require the employee to provide subsequent recertification on a reasonable basis.

Should the employee violate the terms of the approval leave the employee may be subject to loss of employment, benefits, restoration rights to his/her previous position, pay, terms and conditions of employment and/or discontinuation of the leave. The company may also have the right to recover from the employee the cost of medical insurance premiums paid on behalf of the employee during the leave period if:

1. You fail to return to work beginning on the first work day following the date the approved leave expires.
2. You provide fraudulent information or documentation in the processing of the approval of the leave and/or for the continuation of the leave.
3. You fail to provide information pertaining to the leave (after it has been approved and commences) as required by the company.

Any question regarding the Family and Medical leave policy should be directed to the Human Resources Department.