

# Family & Medical Leave Act Compliance Reminders:



The Family and Medical Leave Act (FMLA) allows an employee to balance the stressors of business and family. Businesses with 50 or more workers in a 75-mile radius, must provide up to 12 weeks of unpaid leave for a qualifying individual or family member's serious medical conditions or the birth, adoption or foster care placement of a child. There are also certain benefits protections and reinstatement rights for employees with 12 months of service who have worked 1,250 hours.

When requesting information related to an employee's FMLA leave (i.e., questions about the nature, extent, duration, etc.) the employer is restricted to communicating directly with the employee. Communications between the employer and the employee's health-care provider are not permitted. If adequacy of the medical certification provided by the employee is being

questioned, the employer may, after obtaining permission to do so by the employee, have a health-care provider of its choosing contact the employee's health-care provider to clarify information. This inquiry, however, may not seek additional information regarding the employee's health condition or that of a family member.

Employers frustrated by efforts to obtain adequate medical certifications from an employee on leave often forget their obligation to "advise an employee whenever the employer finds certification incomplete, and provide the employee a reasonable opportunity to cure any such deficiency." Employers are urged to communicate in writing and with sufficient specificity any deficiencies in a medical certification and be clear about the period to cure and the consequences for failing to do so to the affected employee.

Also, employers are reminded that against the general rule that a worker becomes eligible for leave under the FMLA after working for a covered employer, for at least 12 months and if he/she has worked at least 1,250 hours, that a member of the National Guard or Reserve who requests FMLA leave after a Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) qualifying military leave of absence must be credited for the months and hours that the employee would have worked, but for his/her military service.



**For assistance with specific FMLA compliance laws and/or the most up-to-date compliance information, please call our offices at 207-773-4800 or e-mail us at [DGMA@dgallant.com](mailto:DGMA@dgallant.com)**

## **SARBANES-OXLEY Compliance: Are You Ready?**

Panic is beginning to spread as some public companies realize that they will be required to meet Sarbanes-Oxley regulations compliance by **June 1, 2005**. Tracking, managing and reporting every aspect of every dollar spent will now be a part of a company's daily routine and the more complex a company is, the more internal controls are needed.

Compliance regulations require tracking and reporting on the awards issued in reward, recognition, and incentive (RRI) programs. The new compliance regulations may seem to be demanding, but these new regulations ensure that companies will be legally profitable and that they enforce new tracking measures.

## C O U R T R E P O R T



**12/31/04** The definition of 'willful' violation under the FMLA mirrors the definition set out in the FLSA. Under this definition, a willful FMLA violation occurs when "the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute."



**1/7/05** Dogging an employee and writing him/her up more frequently for seemingly trivial issues may be enough to support a retaliation claim.



**1/13/05** Comments by nonsupervisory co-workers about an individual's mental health cannot establish that the employer regarded the individual as mentally impaired.

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**Call our offices today at (207) 773-4800 for more information about how these services can help you!**

## Have You Heard?

Deborah L. Gallant, SPHR  
Keynote Speaker - February 17<sup>th</sup>  
Human Resource Ass'n of Greater Concord, NH

*"Compensation Strategies for a Dynamic Business Environment"*

In addition to being a **Certified Senior Professional in Human Resources (SPHR)**, Deborah is currently enrolled in the **Certified Compensation Professional (CCP)** Program. After completing nine courses and successfully passing a comprehensive exam, she will earn the CCP designation.

**WATCH FOR THE OFFICIAL ANNOUNCEMENT!**



Watch for the *President's Corner* piece on  
**"NEW MANAGER ASSIMILATION"**  
by Deborah Gallant, SPHR  
in the April 2005 issue of this Newsletter!

## **SEARCHES & JOB OPENINGS**

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