



Human Resource Leadership for Improved Profitability

STRATEGIC WORKPLACE SOLUTIONS, LLC

The Lighthouse Report

FEBRUARY 2008

Focus on Leaves of Absence

Depending on the size of your organization, your employees may be eligible for various types of leaves of absence. By definition, a leave of absence is an authorization for an employee to be away from duty, with or without pay.

Most of you are (painfully) aware of requirements of the Family Medical Leave Act of 1993 (FMLA), if it is applicable to your organization. But, you may not be aware that there are

critical changes on the horizon.

We are also finding that some of you are less familiar with other types of leave and may not have policies for leaves for which your employees may be eligible.

These leaves include Military Leave, Workplace Violence Prevention Leave, and Parental School Leave. Most of this Lighthouse Report is dedicated to catching you up with these leave requirements and issues.

NC Parental Leave

Parental involvement is an essential component of school success and positive student outcomes. The North Carolina statute for leave for parent involvement in schools provides for leave of up to four hours per year without penalty to any employee who is a parent, guardian, or person standing in loco parentis for a school-aged child or children so that the employee may attend or otherwise be involved with school matters. The use of school leave has no adverse effect on an employee's attendance record.

Leave time under this provision is subject to the following conditions:

- Leave will be at a mutually agreed upon time between the employee's supervisor and the employee.
- The employee may be required to make a written request for the leave at least 48 hours before the time desired for the leave.

- The employee may be required to furnish written verification of attendance from the child's school during the time of the leave.

For purposes of this regulation, the term "school" means: public school; private church school, school of religious charter, or non-public school that regularly provides a course of grade school instruction; preschool; and child day care facility with a structured program.

An adverse employment action taken against an employee who requests or takes leave under this statute may result in a civil action within one year of the date of the alleged violation. An employer is not required to pay an employee for Parental Leave, but many employers allow hourly workers to use accrued paid time off hours if available.

Source: NC Gen. Stat. 95-28.3

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US Dept. of Labor

EEOC

NC Dept. of Labor

IRS

WNC Human Resource Assoc.

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Meet SWS Team Member Bonnie Snyder

Bonnie Snyder has over 25 years of human resource leadership experience, with a focus on professional development. Prior to joining SWS in January, she worked as an independent consultant and instructor after retiring from a Fortune 20 company where she served as a Director of Human Resources.

Bonnie brings extensive experience in leadership development; OD - strategic planning, change management, and performance management. She has a Bachelor's Degree in Human Resources and a Master's Degree in Instructional Technology. She also has a number of related certifications.



NC Workplace Violence Prevention Act

The Workplace Violence Prevention Act of 2004 allows employers to take more proactive steps against workplace violence, but also places new restrictions on employers' ability to discipline or discharge for attendance.

Workplace violence includes, but is not limited to, intimidation, threats, physical attack, domestic violence or property damage and includes acts of violence committed by employees, clients, customers, relatives, acquaintances or strangers against employees in the workplace.

Under the law, North Carolina employers can apply for civil "no contact orders" on behalf of their employees to protect them from workplace violence resulting from domestic violence, stalking and harassment. Before seeking an injunction on behalf of an em-

ployee, the employer must consult with the employee to determine whether he or she has any safety-related concerns about participating in the process.

The law prohibits discrimination against employees who take reasonable unpaid time off to deal with domestic violence issues such as court appearances, counseling sessions, and changing homes. Other protected activities include seeking a protective order or emergency relief for the employee or for a minor child who lives with or is in the custody of the employee. Employees who miss work to seek domestic violence relief must follow the attendance policy and departmental procedures, including requirements to give advance notice of absences, unless an emergency prevents this. Employees may be required to sub-

mit available documentation regarding reasons for absences or documentation of the emergency that prevented complying with policy.

The Employment Security Commission makes all decisions regarding eligibility for unemployment compensation. Employees may apply for this benefit with the Commission if they have left work as a direct response to domestic violence to the employee or any minor claimed by the employee.

Source:
NC Gen. Stat. 95,
Article 23, rev. 5/07

"The law prohibits discrimination against employees who take reasonable time off to deal with domestic violence issues."

Changes to Family Medical Leave Act

On Monday, January 28, 2008, the President signed into law (P.L. # not yet available) the first expansion of the Family and Medical Leave Act (FMLA). The National Defense Authorization Act (H.R. 4986) provides additional FMLA leave for military families. Specifically, Section 585 of the bill adds two new FMLA-qualifying events, expanding FMLA to include employees caring for an injured service member as well as family members who have a family member called to active duty.

Under the new law, FMLA-eligible employees will now be entitled to the following:

Family Leave Due to a Call to Active Duty—

This benefit provides 12 weeks of FMLA leave due to a spouse, son, daughter or parent being on active

duty or having been notified of an impending call or order to active duty in the Armed Forces. Leave may be used for any “qualifying exigency” arising out of the service member’s current tour of active duty or because the service member is notified of an impending call to duty in support of a contingency operation.

Caregiver Leave for an Injured Service Member—

This benefit provides 26 weeks of FMLA leave during a single 12-month period for a spouse, son, daughter, parent, or nearest blood relative caring for a recovering service member. A recovering service member is defined as a member of the Armed Forces who suffered an injury or illness while on active-duty that may render the person unable to perform the duties of the member’s office, grade,

rank or rating.

Most of the provisions of the FMLA remain unchanged and will apply to these new types of FMLA leave, including employer coverage, employee eligibility requirements, health insurance continuation, and reinstatement rights. Employees can utilize the leave on an incremental basis or in the smallest increment that the employer’s payroll system tracks under both of these new leave requirements,

While the Department of Labor (DOL) will need to issue regulations to fully implement this new law, they have released guidance that indicates the caregiver provision of the law is effective as of January 28, 2008, but the call to active duty provision will not be effective until the Secretary of Labor issues final regulations defining “any qualifying exigency.” In the interim, the DOL encourages employers to provide this type of leave to qualifying employees. **Source: SHRM**

Please note that the FMLA only applies to employers having at least 50 employees within a 75 mile radius.

Reminder: Start Date for I-9 was 12-31-07

In the November Lighthouse Report, we let you know that a new Employment Eligibility Verification Form (I-9) was developed by the United States Citizenship and Immigration Service (USCIS). In the November 26th Federal Register, the USCIS announced that all employers must **begin using the new I-9 by December 26th.**

Employers who fail to use the new form will be subject to the applicable penalties. This can be \$3500 for each form that has invalid information, is not fully completed, or is incorrectly completed.

The I-9 is also available in Spanish, which you may use as a translation guide. However, the

English version must be completed and retained.

If you did not receive the November Lighthouse Report and the I-9 associated attachments, we would be happy to send or resend them. Email your request to info@strategic-workplace-solutions.com.

Military Leave - USERRA

Military leave is granted pursuant to the Uniformed Services Employment and Reemployment Rights Act (USERRA) and North Carolina law. The following applies to a military leave of absence:

- Employees must give advance notice of leave for military service unless circumstances make it unreasonable.
- There is a five-year cumulative limit for benefit eligibility and reemployment.
- Employees returning from military leave are assigned to the job classification and pay or to the position and pay they would have attained if they were not on military

leave.

- Compensation is continued for the duration of the leave and the hourly rate may be reduced by the amount of military pay.
- Deductions for insurance continue if the employee decides to continue coverage.
- Some death and disability benefits may be subject to wartime exclusion.
- Employees have the option of using accrued vacation or paid time off. This time off does not accrue during leave but accrual is reinstated upon return to work.

USERRA preempts any state law that is less protective of the employment and reem-

ployment rights of uniformed service people. North Carolina public and private employers may not discriminate against or discharge an individual because of membership in the state or federal military forces, or discharge an employee because he or she must perform emergency military duty. (*NC Gen. Stat. Sec. 127B-10 et seq.*).

Discrimination or retaliation is also prohibited against an employee or applicant for employment based on membership or application for membership in the North Carolina National Guard (*NC Gen. Stat. Sec. 127A-202.1*).

"USERRA preempts any state law that is less protective of the employment and reemployment rights of uniformed service people."

What are the legal requirements related to vacations and breaks?

Employee vacation time and breaks benefit employers in that they provide an opportunity for employees to rest. Although they are expected by employees, there are no federal or state laws that require employers to provide vacations or breaks for employees over 18. If you provide vacation leave and breaks, however, there are some rules you have to follow.

Accrued vacation time must be paid unless you notify employees in advance and in writing of any circumstances under which this pay is forfeited. Most employers provide this notification in their employee handbook. A situation where an employer might not wish to pay an employee

for accrued, unused vacation time could include a resignation without sufficient notice or when an employee does not take their time within a defined period.

Regarding breaks, remember that you can't deduct break time from the pay of an exempt employee. For a non-exempt employee, breaks of short duration, typically less than 20 minutes, must be considered work time. If you provide a meal break, usually at least a half hour, and the employee is completely off duty during this time, you may consider this to be unpaid time and require the non-exempt employee to sign out during this period.



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**The right human resource decision today
improves your profitability tomorrow.**

SWS helps organizations to:

- Improve individual and organizational performance
- Identify and resolve HR challenges
- Enhance employee relations/communications



Strategic Workplace Solutions News

We welcomed new client, **Cheryl Smith Associates**, in December. Cheryl Smith opened her interior design business in 1983, working first in the hospitality industry and then expanding to medical, institutional, educational, and high-end residential. With a staff of six, Cheryl Smith Associates currently provides interior design services in North Carolina, South Carolina, and Georgia.

In January, we enjoyed working with the **Metropolitan Sewage District of Buncombe County**. The MSDBC is a special purpose governmental unit established by North Carolina General Statute. Located in Buncombe County, the District serves

about 40,000 residences and businesses, which comprise more than 80% of the population of Buncombe County.

Carol Rovello was elected to serve a second term as the WNC Human Resource Association President.



We hope you have had a good start to the new year!