

# **Extended Medical/Disability Leaves of Absence**

(non-work related)

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# Extended Medical/Disability Leaves of Absence

- For example:
  - Employee with serious back/neck injury
  - Employee diagnosed with cancer
  - Employee suffers heart attack with long recover period
  - Employee with life-threatening tetanus
- What lies ahead for city or county?

# What lies ahead?

- FMLA leave notification
- Possible ADA accommodation
- Termination of group health insurance coverage & COBRA
- Short & long-term disability benefit coverage, if purchased
- Confidentiality of medical information
- Utah Retirement System contribution/service credit determination
- Accrued leaves and leave banks
- All employee benefits (life insurance, EAP, day care, dental, others)
- Return to work or release from employment

# Family Medical Leave Act

- Is employee eligible?
  - Employment for 12 months with at least 1,250 hours
    - Be aware of cross over between USERRA and FMLA
  - Serious medical condition
- What is benefit?
  - 12 weeks unpaid leave
  - Job protection
- City or county must give FMLA notice
  - Employee's health care provider completes form
  - City or county may not inquire of employee regarding medical condition

# Group Health Insurance

- Group health plans typically require “termination” of employee after 12-week FMLA period
  - Termination here means termination of benefits, not termination of employment
- Upon termination of coverage employee receives COBRA notice
  - Employee is now responsible for premiums
  - Can (or should) city or county pay premiums?

# Other Employee Benefits

- Short & Long Term Disability policies (employer-funded)
  - Employer may not have right to employee's application for benefits
  - Question: Does city or county consider this insurance a "wage or income replacement" benefit?
- Employee Assistance Program (EAP)
- Day care
- Dental Insurance
- Leave accrual and leave banks
- Other benefits (401k match, etc)

# Utah Retirement System

- Affirmative obligation of city or county to report changes in employee status to URS
- Any FMLA period which is unpaid must be reported, with no contribution made or service credit earned
- If city or county has employer-funded short & long term disability insurance program:
  - City or County should have pre-qualified that program with the URS; and
  - If the disability insurance program was qualified with URS, employee may receive service credit (and city/county continues contributions)
- ***Best practice:*** talk, talk confirm each case with URS

# Confidential Employee Medical Information

- Employee medical information classified at “protected” under GRAMA
  - Sanctions for improper disclosure of protected information
- ADA medical information requirements
  - Employers must keep employee medical information in separate files from regular personnel records
  - Learn what ADA provides regarding who may have access (“need to know”) information in an employee’s medical file
- HIPAA requirements
  - Employee medical records held by an employer are excluded from the definition of Protected Health Information (PHI) under HIPAA
  - However, enrollment, treatment, payment and related records of an employer-sponsored health plan are deemed to be PHI under HIPAA, if individually identifiable



# ADA Accommodation

- May arise after FMLA 12 weeks
  - If employee requests more time beyond 12 weeks to recover, that request is considered a request for ADA reasonable accommodation
    - Employees are not required to specifically ask for ADA accommodation
- What are the employee's essential functions?
  - An employee's "essential functions" are key
- Understand "interactive" process

# ADA Accommodation

- What accommodation is reasonable?
  - Accommodation cannot create “undue hardship” on employer
    - But, stress on budget is not “undue hardship”
  - Some additional time beyond 12 weeks may be reasonable – unless it creates serious impacts on service delivery – but
    - If additional budget may resolve the operational issue, likely not undue hardship
  - Indefinite leave of absence would not be a reasonable accommodation
  - What about limited/light/part-time duty?
    - Not a good idea

# Possible return to work

- Fitness for duty evaluation
  - Issue here is: Can employee return to work safely –not can the employee perform essential functions of job
    - OSHA standard – employer is required to assure workplace is safe
  - Fitness for duty evaluation is responsibility of employer
    - Employee should be on paid administrative leave
    - Find and use a qualified occupational health physician, if possible
    - City or county covers cost of fitness for duty evaluation
    - Employer receives results of evaluation
      - Still consider medical privacy issues
  - How about monitoring or evaluation after return to work
    - Probably a good practice- for a limited time

# Termination of Employment

- Should be based on employer's written policy
  - If policy states that employee must be available for work (regardless of reason) – that is the best basis for release from employment
  - Other bases?
    - Not fit for duty (safety concerns)
    - Cannot perform essential functions of job
      - Probably only a basis for termination after ADA interactive process
- Due process
  - Adequate fact finding by employer
    - Note: restrictions imposed by medical privacy (if termination relates to being medically unable to perform essential functions)
  - Pre-determination notice and opportunity to respond
  - Post-deprivation hearing

# What should we do now?

- Look at essential functions in your employee job descriptions
- Review all insurance policies and employee benefits – in light of possible extended medical leave of an employee
- Understand impacts of extended employee leave on URS contributions – focus on your city or county pension program and practice
- Review your medical privacy confidentiality procedures
- Review your termination of employment due process procedures (making sure they apply to terminations relating to extended medical/disability leaves of absence)

**Questions?**