

The Small Necessities Needs Act

The right to take leave for family obligations

Has the following situation ever happened to you? You're working as a full-time employee. You have a child in elementary school and the school is holding parent-teacher conferences, but only during the daytime hours that you are working. You request time off, but your employer tells you that there is no way that you can have a few hours off to participate in such a meeting. Another school year goes by and you are not able to tend to your child's educational needs.

If this scenario is familiar to you, did you also know that you have legal rights under Massachusetts state law to attend such conferences? In 1998, Massachusetts enacted a law, M.G.L. c. 149, Sec. 52D, called the Small Necessities Leave Act (SNLA). This provides eligible employees with a total of 24 hours of unpaid leave during any 12 month period for certain family obligations. This law covers specific activities that are not covered under the Federal Family and Medical Leave Act of 1993 (FMLA).

Leave similar to FMLA

The 24 hours of leave allowed under the SNLA is in addition to the 12 weeks leave allowed under the FMLA. Furthermore, the 24 hours need not be taken all at once, but can be taken intermittently, as long as it does not exceed 24 hours total.

To be eligible for the SNLA an employee must:

- Have been employed for at least 12 months with the employer.
- Have actually worked for at least 1,250 hours during the previous 12 months with that employer.
- Be employed at a place where there are 50 or more employees within 75 miles.

The purposes for which such a leave may be taken are:

- To participate in school activities directly related to the educational advancement of a son or daughter* of the employee, such as parent-teacher conferences or interviewing for a new school.
- To accompany the son or daughter of the employee to routine medical or dental appointments, such as checkups or vaccinations.
- To accompany an elderly relative of the employee to routine medical or dental appointments or appointments for other professional services related to the elder's care, such as interviewing at nursing homes or group homes.

The employee must give seven days' notice of intent to take such a leave if the leave is foreseeable. However, if the need for the leave is not foreseeable, the employee must give notice as soon as practicable.

Leave can be calendar or fiscal year

The SNLA leave is generally unpaid leave but, similar to the FMLA, employees may use accrued paid time and have the leave paid or the employer may require that the employee use such accrued time. Details as these can be negotiated into the contract.

The "12 month period" in which the 24 hours of leave may be taken can be one of the following: the calendar year; a fiscal year; the employee's anniversary date; the 12-month period measured forward from the employee's first request for SNLA leave; or, a rolling 12-month period measured backward

from the date an employee uses any SNLA leave. Whatever method the employer uses to measure the 12-month period must be applied uniformly and consistently to all employees.

The employer may request from the employee certification to support the leave. Certification materials and the request for such leaves must be kept in the employee's personnel file for three years. However, records and documents relating to medical conditions or histories of family member must be kept as confidential materials in a file separate from the employee's personnel file.

Grievance procedure available

The statute is enforced by the office of the attorney general which may seek criminal action against an employer who violates the act. Violations would include: failure to provide a leave properly requested; failure to restore an employee to the position held by the employee prior to the leave; discriminates against an employee for various actions related to the act. Of course, the employee can also grieve such violations using the contract's grievance and arbitration procedure.

While employers are encouraged to notify employees of their rights under the SNLA, the law does not specifically require that the employer post these rights at the workplace, in the usual manner (on a bulletin board, in a break area, etc.). So it becomes more important that the union itself publicize and promote this comparatively little know leave in the facility, whether on the union's bulletin board, in a unit newsletter, in the contract, or in a memo to bargaining unit members.

**Definitions: The term "son or daughter" is defined as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis. The son or daughter must either be under 18 years of age or 18 years of age or older and incapable of self-care because of mental or physical disability. The term "elderly relative" is defined as an individual of at least 60 years of age who is related by blood or marriage to the employee, including a parent. The term "school" is defined as a public or private elementary or secondary school; a Head Start program assisted under the Head Start Act; or a children's day care facility licensed under G.L. c. 28A. (From an advisory from the attorney general's fair labor and business practices division.)*

Adapted from MNA, J. Twarog