**Ask an HR Advisor: FMLA and In Loco Parentis**

The term “in loco parentis”, Latin for “in the place of a parent”, refers to the legal responsibility of a person or organization to take on some of the functions and responsibilities of a parent.  Under FMLA, it specifically references a relationship whereby an individual takes on the role of “parent” to a child who is under the age of 18, or an adult (18 years of age or older) who is incapable of taking care of themselves due to a mental or physical disability.   No legal or biological relationship is necessary, provided the individual can satisfy the “in loco parentis” requirements under FMLA.   Below I review some of the more likely questions that come up and provide our insight as to how you should address them in your workplace.  As always, please reach out to our Advice & Resolution team if you need to discuss your particular situation in more detail.

**Q.  An employee’s grandson has a serious health condition and s/he needs to be home to take care of him.  Can the grandparent be considered eligible for FMLA ?**

A.  Grandparents are not typically considered a covered family member under FMLA. Covered family members under FMLA are parent, spouse, son or daughter.  However, if a grandparent stood in loco parentis for this child and has assumed ongoing responsibility, s/he would be eligible to care for the child who has a serious health condition.

**Q.  Would an uncle be a covered family member under FMLA?**

A.  Uncle, aunt and cousin would NOT typically be a covered family member under FMLA.  But if an uncle was needed to care for his nephew with a serious health condition, provided he has previously assumed responsibility for the child say after the death of the child’s parents, then, yes, the uncle would be eligible for FMLA provided he met the eligibility requirement (12 months employed and 1250 hours worked).

**Q.  What if the child’s parents are still living but the uncle needs to care for the child?**

A.  If the uncle truly assumed the role of parent, and meets the criteria for in loco parentis (click here to view article with criteria), regardless of what other family members may be available or able to take care of the child, as the “parent – in loco parentis”, the uncle would still be eligible for FMLA to care for his nephew or niece with a serious health condition.

**Q. Sally and Susan are same-sex partners. Susan will co-parent Sally’s biological child.  Can she take FMLA when Sally gives birth?**

A. An individual who will co-parent a same-sex partner’s biological child may take leave for the birth of the child and for bonding. The Family and Medical Leave Act (FMLA) entitles an eligible employee to take up to 12 workweeks of job-protected unpaid leave for the birth or placement of a son or daughter, to bond with a newborn or newly placed son or daughter, or to care for a son or daughter with a serious health condition.

**Q.  Leigh is the child of Sally and Susan who are same-sex partners who raised Leigh together as her parents. Leigh requests FMLA to care for her biological mother’s partner, Susan.   Is Leigh eligible for FMLA?**

A.  Yes.  A “son or daughter” of a same-sex partnership may take leave to care for the non-adoptive or non-biological partner who stood in loco parentis.

**Q.  So can an adult child use FMLA to care for his/her "parent" who stood in loco parentis for that adult child as a child?**

A.  Yes.  An eligible employee is entitled to take FMLA leave to care for a person who provided such care to the employee when the employee was a child.  If the individual stood in loco parentis to the employee when the employee was a child, the employee may be entitlted to take FMLA leave even if he or she also has a biolgoical, step, foster, or other parent, provided that the in loco parentis relationship existed between the employee and the individual when the employee met the FMLA's definition of a "son or daughter".  Although no legal or biological relationship is necessary, grandparents or other relatives, such as siblings, may stand in loco parentis to a child under the FMLA as long as the relative satisfies the in loco parentis requirements.  See DOL Fact Sheet 28C for further information.

**Q. What may be required to document an in loco parentis relationship?**

A.  The employer’s right to documentation of family relationship is the same for an individual who asserts an in loco parentis relationship as it is for a biological, adoptive, foster or step parent. Such documentation may take the form of a simple statement asserting the relationship. For an individual who stands in loco parentis to a child, such statement may include, for example, the name of the child and a statement of the employee’s in loco parentis relationship to the child. An employee should provide sufficient information to make the employer aware of the in loco parentis relationship. From a practical standpoint, employers should have a consistently-applied, non-discriminatory policy when asking for confirmation that a family relationship exists. Otherwise, employers risk a claim that they are treating certain employees in a discriminatory manner, thereby interfering with their FMLA rights.

Written by a Catapult Advisor