

# CE

## INDEPENDENT STUDY

### 1.0 contact hour

This continuing education activity is in effect from October 2015 through October 2017.

*Developed by the MNA Congress on Workplace Health and Safety.*

This independent study has been developed to provide nurses with information regarding worker's protections. Although the scope of these programs is either defined by law, a collective bargaining agreement or by employer policy, nurses will gain basic knowledge through this study of worker's protection programs and the best way to access them.

### Awarding of CE

*Participants who achieve a minimum passing score of 80% (8 correct answers) will receive a certificate awarding 1.0 contact hour. Certificates will be mailed within six weeks. Participants who do not achieve a passing score will have the option to retake the test at no additional cost.*

*Michigan Nurses Association is accredited as a provider of continuing nursing education by the American Nurses Credentialing Center's Commission on Accreditation.*

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# FMLA, LOA, Short Term Disability & Worker's Compensation: A Nurse's Guide to Worker's Protections

## Objectives

- Define the basic protections of the Family Medical Leave Act, short-term disability, Worker's Compensation, and leave of absence.
- Describe methods of accessing each program relating to government regulation, health care facility employment policies, and contractual protections.
- Demonstrate an improved knowledge of worker benefits and their practical application.

Understanding worker's protections is akin to changing a flat tire – everyone knows the basic concept but actually hauling out the jack and struggling with the lug nuts is different than knowing the general process. If it comes time to access a worker's protection program such as the Family Medical Leave Act (FMLA) or worker's compensation, there are basic provisions that will benefit a nurse's understanding of how best to use the program. In this study, nurses will be introduced to the rules of each program and gain knowledge and an understanding of how they can be used separately or together.

## Worker's Compensation

All 50 states have some form of Worker's Compensation programs. Some of them are more favorable to labor, some are more favorable to employers. In Michigan, the Worker's Disability Compensation Act, MCL 418.101 et seq., governs employers and their employees and was adopted in 1969. The Michigan Workers' Compensation Agency (WCA) administers the Act and the Agency itself is housed in the Michigan Department of Licensing and Regulatory Affairs.

The role of the WCA is to make sure a nurse's claim is accurate, timely, that any payment of the claim is fiscally responsible and to make sure that the recipient has access to all of the benefits under Worker's Compensation if the claim is accepted.

Worker's Compensation pays an employee who cannot work because he or she has been injured while working.<sup>1</sup> A key point to remember – Worker's Compensation is for injuries that occur at work in the course of performing duties for the employer. This includes any injury that happens on the grounds of the employer; for instance, slipping on ice in the parking lot on the way in to or leaving work.

Nurses should understand their personal responsibility in reporting an injury by knowing the answers to the following questions:

1. Does the hospital have an incident report?
2. If so, how do I access it?
3. How long do I have to fill it out?
4. How do I include the names and contact information of eyewitnesses?



The faster an incident report is compiled and submitted, the more beneficial it will be to the nurse. Memories can change over time as to how the incident took place. This can also happen with eyewitnesses, who are key in the incident report whether they are co-workers, bystanders, visitors or patients. Having others corroborate the incident in a timely manner strengthens the claim for worker's compensation.

Once the incident report is submitted to the employer, the employer files the "Employers Basic Report of Injury" form with the WCA for all wage loss cases. The employer has three additional responsibilities:

1. To notify the employer's insurance company for the medical-only cases
2. To provide the physician/health care professionals the contact information for medical bills
3. To forward any medical bills and documentation for medical treatment to the insurer

Every Michigan employer is required to cover payments to an injured worker by purchasing insurance or obtaining a state-approved self-insured status. The cost of this insurance is not deducted from the nurse's paycheck, and no part of the nurse's salary is paid into a worker's compensation fund.<sup>2</sup>

Occasionally, a situation arises in which the employer refuses to file the necessary paperwork to the WCA. In this event, the nurse can call 1-888-396-5041 or email [winfo@michigan.gov](mailto:winfo@michigan.gov) to access the information on how to file his or her own claim. This procedure can also be followed if the employer or the insurance company disputes the claim. Additionally, the nurse can hire an attorney specializing in worker's compensation claims.

It is important for nurses to realize that worker's compensation does not pay 100% of the missing salary. Worker's compensation pays approximately 80% of the after-tax value of the wage loss. This payment is based on the "average weekly wage", which is computed with the insurance company prior to an injury. The "average weekly wage" is the highest 39 weeks of wages during the 52 weeks immediately prior to the injury.

The maximum weekly wage benefit is 90% of the state average weekly wage for the year prior to the injury. Wage loss and medical benefits can be lifetime benefits depending on the severity of the injury and loss of wages.

Some important things to remember about Worker's Compensation:

- An employee must have a wage loss of at least one week in order to receive any benefits.
- Payment comes to the employee for wage loss from the employer's worker's compensation insurance company.
- The employer or the employer's worker's compensation insurance agency, depending on whether they are self-insured or have insurance, pays for medical treatment.



- The employer can choose the employee's doctor or medical facility treatment for the first 28 days of treatment.
- After 28 days the employee can seek treatment from their own doctor but must notify the employer of the change.<sup>3</sup>

Because worker's compensation is a federally mandated program and is governed as such, union representatives cannot negotiate or address worker's compensation issues. However, if the injury happened because of low staffing, workplace environmental issues or other concerns that could harm patients or other health care professionals, nurses should notify their local leadership of the potential injuries. In this way, the local nurse leadership can assess and act upon safety issues.

## Worker's Compensation and Short-Term Disability

In the same way that worker's compensation is for accidents on work property, short-term disability is for accidents **outside** of work as well as surgeries, etc. It is important for nurses to know that taking short-term disability benefits after an accident on work property can waive the employee's ability to receive Worker's Compensation benefits.

Big injuries, such as someone hurting a nurse in front of multiple witnesses in the ED is easy to prove while a nurse hurting her back while lifting a patient is harder. To speed the process of being able to use short-term disability in conjunction with Worker's Compensation benefits, eyewitnesses and immediate reporting is key.

Additionally, a nurse should never brush off an injury by saying that he or she is okay when they are not sure that they actually are. Many injuries can take several days to appear in full; an admission of being “fine” in front of eyewitnesses and supervisors and returning to work can hurt a worker’s compensation claim. A prudent visit to the ED or a physician immediately after an injury is not only beneficial for the employee’s safety but also for any future Worker’s Compensation claims. When in doubt about whether you have actually suffered an injury, file an incident report with your employer.

## Family Medical Leave Act (FMLA)

FMLA became federal law in 1993 and was created “to grant family and temporary medical leave under certain circumstances.” This law must be offered by every employer who has 50 or more employees. FMLA guarantees 12 work weeks of leave during any 12 month period; it can only be used once in a rolling 12 months time period but the entire 12 weeks do not have to be used in one block of time.

There are five categories of employees who are eligible for FMLA:

1. The employee has a baby and cares for the baby.
2. A baby or child is placed with the employee for adoption or foster care.
3. The employee must care for a spouse, child or parent if there is a serious health condition.
4. The employee has a serious health condition that makes the employees unable to perform the functions of their job.
5. Any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty;” **or** Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member’s spouse, son, daughter, parent, or next of kin (military caregiver leave).<sup>4</sup>

To be eligible for FMLA leave, an employee must work for a covered employer and:

- have worked for that employer for at least 12 months; and

- have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave; and,
- work at a location where at least 50 employees are employed at the location or within 75 miles of the location.

Covered employers include public agencies, including state, local and federal employers, and schools; and private sector employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year, including joint employers and successors of covered employers.<sup>5</sup>

It is important for nurses to understand that while FMLA protects his or her job for a certain period, short-term/long-term disability protects the employee’s income. Worker’s Compensation does both. Using FMLA is unpaid time away unless it is for the nurse’s health condition AND the nurse has a short-term disability plan OR the nurse has vacation/sick/PTO time. While FMLA can be used concurrently with a short-term disability plan, FMLA in itself does not provide an income.

## Leave of Absence

The federal government recognizes at least two leaves of absence: the Uniformed Services Employment and Reemployment Act (USERRA) and FMLA.<sup>6</sup> Most other leaves of absence are part of an employer’s benefit package or are negotiated through a union contract. These leaves could be a personal leave, education leave, sick leave beyond the terms of FMLA, and a union leave.

Employers are not required by law to offer general leaves of absence and the majority of leaves of absence are unpaid. Many union contracts include specific language so that specific leaves of absence can be offered to union members. Additionally, a union-negotiated leave of absence can be grieved if the employer violates the language.

Nurses who plan to request a leave of absence should carefully study the specific language in their union contract or employee policy guide so the terms and requirements are familiar. Any leave of absence request should include the specific reasons and the facts behind the request. Additionally, the employee should show record of accomplishing or attempt to accomplish the

Short Term Disability	FMLA
Usually covers up to 12 weeks	Covers 12 weeks
Frequently requires a “deductible” period of time (out of pocket or PTO)	No “deductible” period of time
The short-term disability policy might have a provision in the contract for an extension	Never covers more than 12 weeks

purpose of the leave, especially in regard to educational and personal leaves of absence.

## **The Union and Worker's Protections**

While some worker's protections are set in stone, collective bargaining has allowed some improvements to the law. FMLA allows and most employers require an employee to use up all of his or her acquired vacation, PTO and sick time. Unions have worked to retain some of the employee's PTO hours so an employee is not left without any time off for the remainder of the work year after the FMLA is used. Additionally, unions have guaranteed other types of leaves in the contracts such as education, personal, sickness and union. In certain circumstances, unions have negotiated paid leaves.

## **Avoiding Worker's Protections Claim and Need Challenges**

When accessing any worker's protection program, timely and correct reporting is key to making sure claims are approved. Workplace injuries must be reported through the employer's process as quickly as possible and include reports of eyewitnesses. Employees using FMLA to care for a child, spouse or parent should provide accurate documentation from physicians and specialists. Union members should carefully review the provisions for worker's protections in their contract to learn what has been negotiated on their behalf.

## **Conclusion**

The need for using FMLA, leaves of absence, Worker's Compensation and short-term disability can come at a time of great personal and emotional stress. Nurses should not be afraid to reach out to advocates for help. Union nurses should be in touch with their local leadership to make sure their protections under the contract provisions are being followed. The Michigan Worker's Compensation website at <http://www.michigan.gov/wca> offers many helpful tools for employees who have questions. The federal FMLA site at <http://www.dol.gov/whd/fmla/> answers numerous questions regarding the law.

Nurses are offered a variety of worker's protections. A prudent nurse will learn his or her employee's process for reporting injuries, study the provisions in the union contract or employee policies, and be prepared should the need arise to use the protections provided for them.

## **References**

<sup>1</sup><http://www.michigan.gov/wca/0,4682,7-191-26931-82339--,00.html>

<sup>2</sup><http://www.michigan.gov/wca/0,4682,7-191-60874---,00.html>

<sup>3</sup><http://www.michigan.gov/wca/0,4682,7-191-60870---,00.html>

<sup>4</sup><http://www.dol.gov/whd/fmla/>

<sup>5</sup><http://www.dol.gov/whd/regs/compliance/1421.htm>

<sup>6</sup><https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/leave-without-pay/>

# **FMLA, LOA, Short Term Disability & Worker's Compensation: A Nurse's Guide to Worker's Protections**

## **POST-TEST DIRECTIONS**

- Carefully read the entire article.
- This CE is free for MNA members and \$20 for non-members.
- Complete the evaluation and post-test response form and make your payment [ONLINE](#).

OR

- Complete the evaluation and post-test response [PDF FORM](#) and mail or fax to MNA.

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## **AWARDING OF CE**

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