

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

Developed by the MNA Council on Workplace Health and Safety



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1.0 contact hour

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Outcomes

- 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.

Worker's Compensation

- All 50 states have some form of Worker's Compensation.
- Michigan has the Worker's Disability Compensation Act, MCL 418.101 et seq. which 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

- Determine that a nurse's claim is accurate.
- Ascertain that any payment made is fiscally responsible.
- Make sure the recipient has access to all of the benefits under Worker's Compensation if the claim is accepted.

The logo for the LARA Workers' Compensation Agency is set against a blue background with a blurred image of a train. The text "LARA Workers' Compensation Agency" is in white, with "LARA" in a larger, bold font. Below it, "Department of Licensing and Regulatory Affairs" is written in a smaller white font.

LARA Workers' Compensation Agency
Department of Licensing and Regulatory Affairs

The logo for the MI Nurses Association features the text "MI NURSES Association" in a bold, sans-serif font. "MI" is in blue, "NURSES" is in red, and "Association" is in blue. The text is centered within a white rectangular box.

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When is a Worker's Compensation claim appropriate?

- Worker's Compensation pays a worker who cannot work because he/she has been injured while working.
- Injuries must have occurred while in the course of performing duties for the employer.
- This includes any injury that happens on the grounds of the employer, ex. slipping on ice in the parking lot on the way into or leaving work.

Three things to know before filing an incident report:

- Does the healthcare workplace have an incident report?
- If so, how is it accessed?
- What is the duration of the time period for filling out the incident report?



How long does a worker have to file a claim?

- Provide notice of injury to the employer within 90 days.
- The claim should be filed within two years from the date of the injury, or the date the disability manifests itself.
- Past due benefits cannot be received for more than two years back from the date of filing for a hearing application.

Why is it important to file the report quickly?

- Memories can change over time as to how the incident took place.
- Eyewitnesses, who are key in the incident report, can forget the details. Eyewitnesses could be co-workers, bystanders, visitors or patients.
- Having others corroborate the incident in a timely manner strengthens the claim for worker's compensation.

Responsibilities of the Employer

- File the “Employers Basic Report of Injury” form with the WCA for all wage loss cases.
- Notify the employer’s insurance company for the medical-only cases.
- Provide the physician/health care professionals the contact information for medical bills.
- Forward any medical bills and documentation for medical treatment to the insurer.

Things to Know

- Every Michigan employer is required to cover payments to an injured worker by purchasing insurance or obtaining a state-approved self-insurance status.
- The cost of this insurance is not deducted from the worker's paycheck.
- No part of the worker's salary is paid into a worker's compensation fund.

What happens if an employer fails to file a report of injury?

- Call 1-800-396-5401 or email winfo@michigan.gov to file the claim.
- Hire an attorney specializing in Worker's Compensation claims.

What does Worker's Compensation pay?

- 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 the injury.
- Wage loss and medical benefits can be lifetime benefits depending on the severity of the injury and loss of wages.

Things to Note

- 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-insurance 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.

More Things to Note

- Notify your employer or their insurance carrier of any wages earned during the benefit period.
- Seek jobs that may be available to you and within your post-injury abilities, especially if your employer is unable to accommodate your restrictions.
- Your employer or their insurance carrier can request a medical examination at certain periods during the claim.
- Nurses should comply with rehabilitation efforts such as physical and occupational therapy.
- Valid employment offers from the employer or another employer should be accepted if they are within the physical restrictions.

Addressing the Safety Issue

- Because Worker's Compensation is a federally mandated program, union representatives cannot negotiate or address Worker's Compensation issues.
- However, if the injury happened because of low staffing, work environmental issues or other concerns that could harm patients or other healthcare professionals, nurses should notify their local leadership of the potential injuries.
- The local nurse leadership can then assess and act upon safety issues.

Worker's Compensation and Short-Term Disability

- Short-term disability is for accidents outside of work as well as surgeries, etc.
- **Important** – Nurses taking short-term disability benefits after an accident on work property can stop the employee's ability to receive Worker's Compensation benefits.



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Things to Know about Short Term Disability

- Nurses should not brush off an injury by admitting they're "fine" in front of eyewitnesses and supervisors.
 - Returning to work can hurt a nurse's compensation claim
 - Some injuries can take days to appear
- Nurses should go to the Emergency Department or a physician not only for their safety but also for any future Worker's Compensation claims.
- When in doubt, nurses should file an incident report with the employer.

Family Medical Leave Act (FMLA)

- Became federal law in 1993 and was created “to grant family and temporary medical leave under certain circumstances.”
- The 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.

5 Categories of Life Experiences Qualify for FMLA



- The employee has a baby and cares for the baby.
- A baby or child is placed with the employee for adoption or foster care.
- The employee must care for a spouse, child or parent if there is a serious health condition.
- The employee has a serious health condition that makes the employee unable to perform the functions of their job.
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or a parent is a covered military member on

“covered active duty;” or 26 work weeks 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).

Eligibility for FMLA

- Employee must work for a covered healthcare institution.
- Employee must have worked for that employer for at least 12 months.
- Employee must have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave.
- Employee must work at a location where at least 50 employees are employed at the location or within 75 miles of the location.



The Difference Between FMLA and Disability

FMLA protects a nurse's **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.

Short-Term Disability vs. FMLA

Short Term Disability

- Usually covers up to 12 weeks.
- Frequently requires a “deductible” period of time (out of pocket PTO).
- The short-term disability policy might have a provision in the contract for an extension.
- Provides an income depending on the Short Term Disability Plan

FMLA

- Covers 12 weeks.
- No “deductible” period of time.
- Never covers more than 12 weeks
- Does not provide an income

Leave of Absence

- Two leaves of absence are recognized by the federal government:
 - Uniformed Services Employment and Reemployment Act (USERRA)
 - FMLA
- Other leaves include: personal leave, education leave, sick leave beyond the terms of FMLA, and a union leave.
- These benefits are negotiated through a union contract or are part of the employer's benefit package.
- Employers are not required by law to offer general leaves of absence and the majority of leaves are unpaid.
- Union contracts include specific language so that specific leaves of absence can be offered to union members.
- A union-negotiated leave of absence can be grieved if the employer violates the language.

When requesting a leave of absence:



- Carefully study the specific language in the 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.
- The employee should show a record of accomplishing or attempt to accomplish the purpose of the leave, especially in regard to educational and personal leaves of absence.

Conclusion

- 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.

Resources

- Union leadership and union contract
- Employer's policy handbook
- michigan.gov/wca
- Dol.gov/whd/fmla/

Be Prepared

- A prudent nurse will learn his or her employer's policies for reporting injuries;
- Study the provisions in the union contract or employee policies; and
- Be prepared should the need arise to use the protections that are provided.

References

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POST-TEST DIRECTIONS

Complete the evaluation and post-test response form and make your payment online by clicking [HERE](#).

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