

GAINSCO , INC. and its subsidiaries (together “GAINSCO” or the “Company”)
COMPANY FMLA POLICIES - GENERAL NOTICE

FMLA Leave of Absence – Overview

GAINSCO complies with the provisions of the Family and Medical Leave Act (“FMLA”). Below is a summary of the eligibility, leave entitlement and job restoration provisions relating to FMLA.

| Topic | FMLA |
|----------------------|--|
| Employee Eligibility | To be eligible for FMLA benefits, an employee must: 1. work for a covered employer; 2. have worked for the employer for a total of 12 months*; 3. have worked at least 1,250 hours over the previous 12 months*; and 4. work at a GAINSCO location in where at least 50 employees are employed by the employer within 75 miles. * Contact Human Resources for special rules for returning reservists. |
| Leave Entitlement | Up to a total of 12 workweeks of unpaid leave during the rolling year for multiple conditions (see FMLA Fact Sheet) |
| Job Restoration | As required under FMLA |

Maintenance of Health Benefits During FMLA

During an FMLA leave the Company would plan to continue to provide benefits under any health benefit plans in effect at the time the leave is taken (currently these plans are the GAINSCO, INC. Flexible Benefits Program and the GAINSCO, INC Flexible Spending Plan). The benefit would be provided per the terms of the employee elections in place at that time (unless modified as the result of a qualifying event). If the employee has employee-related or dependent-related deductions for insurance premiums these deductions would continue to be taken as long as compensation (sick pay or vacation pay) is paid.

During any period of unpaid leave while on FMLA, the employee would be given the following options for funding of the amount of employee-related or dependent-related insurance premiums or for the Flexible Spending Plan (FSA) contributions:

- (i) send a check each month to Human Resources to reimburse the Company for the monthly premium dollars paid and FSA contributions made, or
- (ii) defer reimbursement for premiums and FSA contributions until the employee returns to work.

Unpaid amounts accumulated during the leave period would be totaled and upon return from leave would be deducted from compensation over a time period agreed to by the employee and Human Resources. If employment terminates and an unpaid reimbursement amount is still owed, the employee would be billed for the unpaid amount and the employee would have an obligation to reimburse the Company for that amount.

When FMLA Leave Is Exhausted

If and when FMLA leave is exhausted and the employee has not returned to work, or if employment terminates, the Company would no longer provide Medical, Dental or Vision Insurance Coverage or Flexible Spending Plan participation. The individual would be offered COBRA coverage beginning the month following the month in which the FMLA leave is exhausted or employment terminates.

If the employee has exhausted FMLA leave and does not return to work as the result of a continuing disability, as evidenced by the employee receiving continuing benefits under the Company's Short Term Disability Plan, the Company would continue to pay premiums for the employee's Long Term Disability Plan insurance through that Plan's elimination period as long as employment has not terminated and the individual is not cleared to return to work.

Employees receiving disability benefits while on leave will be advised by the carrier regarding life insurance coverage options. If the employee is receiving disability benefits from the carrier while on leave the life insurance and voluntary life insurance coverages continue. When FMLA leave is exhausted there would no longer be any AD&D coverage.

Summary of Other Benefit Issues: FMLA

401(k) Plan

An employee's election for contribution to the GAINSCO, INC. 401(k) Plan (and any loan repayments to the 401(k) Plan deducted from compensation) would continue during the period of time that compensation is paid. During any unpaid leave period contributions and loan repayments would be suspended. The employee could choose to continue regular loan repayments by submitting a check for the monthly loan payment amount to the Human Resources with instructions to make the loan payment to the 401(k) Plan Trustee. In the case where the loan repayments are suspended, if an employee returns to work after FMLA leave, the 401(k) Plan Trustee would recalculate the amortization of the remaining loan balance and the employee deduction for loan payment would be adjusted to the new amount. In the case of a termination all issues relating to the 401(k) Plan would be handled by the 401(k) Plan Trustee.

Utilizing Sick Time and Vacation Time in FMLA Leave

During an FMLA Leave the employee may choose in a manner that complies with legal requirements and with Company policies how to apply pre-leave balances of accrued sick time and accrued vacation time.

Sick time may not be utilized during any period in which short-term disability payments are being made. Sick time may be used during the waiting period before short-term disability payments begin (generally 14 calendar days).

THE FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

U.S. Department of Labor Employment Standards Administration Wage and Hour Division
Derived from Fact Sheet #28

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employees and some federal employees. Most federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the US Office of Personnel Management or the Congress.

The FMLA became effective on August 5, 1993 for most employers and entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. Amendments to the FMLA by the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, expanded the FMLA to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any "qualifying exigency" arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a "single 12-month period" to care for a covered service member or covered veteran with a serious injury or illness.

EMPLOYER COVERAGE

FMLA applies to all:

- public agencies, including state, local and federal employers, local education agencies (schools), and private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee **must**:

1. work for a covered employer;
2. have worked for the employer for a total of 12 months*;
3. have worked at least 1,250 hours over the previous 12 months*; and
4. work at a GAINSCO location in where at least 50 employees are employed by the employer within 75 miles.

* Contact Human Resources for special rules for returning reservists under the Uniformed Services Employment and Reemployment Rights Act.

LEAVE ENTITLEMENT

An eligible GAINSCO employee is entitled to take up to a total of 12 workweeks of **unpaid** leave during the rolling year for one or more of the following reasons:

- for the birth and care of the newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;

- to take medical leave when the employee is unable to work because of a serious health condition; or
- for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation.

An eligible GAINSCO employee who is a spouse, son, daughter, parent, or next of kin of a current member or covered veteran of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness is also entitled up to a total of 26 workweeks of unpaid leave during a "single 12-month period" to care for the service member or veteran.

Spouses employed by the same employer are limited in the amount of family leave they may take for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition to a combined total of 12 weeks (or 26 weeks if leave to care for a covered service member or veteran with a serious injury or illness is also used).

Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently — which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

- If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.
- FMLA leave may be taken intermittently whenever **medically necessary** to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

All employee benefits that operate on an accrual basis (e.g., vacation and sick time) will cease to accrue during the leave period.

GAINSCO is responsible for designating an employee's use of paid leave as FMLA leave, based on information provided by the employee.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; **or**
- Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:

(1) A health condition (including treatment therefor, or recovery therefrom) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:

- treatment two or more times by or under the supervision of a health care provider; **or**
- one treatment by a health care provider with a continuing regimen of treatment; **or**

(2) Pregnancy or prenatal care. A visit to the health care provider is not necessary for each absence; **or**

(3) A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence; **or**

(4) A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; **or**

(5) Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

"Health care provider" means:

- doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; **or**
- podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; **or**
- nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; **or**
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; **or**
- Any health care provider recognized by the employer or the employer's group health plan benefits manager.

MAINTENANCE OF HEALTH BENEFITS

GAINSCO will maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. Arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, GAINSCO may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

In addition, an employee's use of FMLA leave will not result in the loss of any employment benefit that the employee earned or was entitled to **before** using FMLA leave, nor be counted against the employee under a "no fault" attendance policy.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, an employer may refuse to reinstate certain highly-paid "**key**" employees after using FMLA leave during which health coverage was maintained. In order to do so, the employer must:

- notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;
- notify the employee as soon as the employer decides it will deny job restoration, and explain the reasons for this decision;
- offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; **and**
- make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

A "**key**" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees within 75 miles of the work site.

NOTICE AND CERTIFICATION

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If an employee fails to give 30 days advance notice when the need for leave is foreseeable with no reasonable excuse for the delay, GAINSCO may delay the commencement of FMLA leave until at least 30 days after it received notice of the need for FMLA leave. If the need for leave is not foreseeable, the employee must give notice "as soon as practicable," which generally means at least verbal notice to GAINSCO

within one or two business days of learning of the need for FMLA leave. Where the need for leave is a medical emergency, written advance notice is not required.

GAINSCO will also require its employees to provide:

- medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member within 15 days of the date of request for such certification by GAINSCO (if an employee fails to provide such certification, GAINSCO may delay continuation of FMLA leave until the employee provides it with medical certification of the need for FMLA leave; if the employee fails to provide such certification, the leave will not be counted as FMLA leave);
- second or third medical opinions (at GAINSCO's expense) and periodic recertification; **and**
- periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the employer's operation.

When an employee has been absent from work for FMLA-qualifying reasons, to have the leave counted as FMLA leave the employee must provide timely notice to GAINSCO (generally within two business days of returning to work) that the leave was taken for an FMLA-qualifying reason.

GAINSCO has posted a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA.

FURTHER INFORMATION

The final rule implementing FMLA is contained in the January 6, 1995, Federal Register. For more information, please contact the nearest office of the **Wage and Hour Division**, usually listed under U.S. Government, Department of Labor.

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