

The Family and Medical Leave Act



An Overview for Supervisors

Presented by:

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I. Purpose

A. Under the Family and Medical Leave Act (FMLA), eligible employees working for a covered employer have the right to take leave for certain medical and family related situations.

B. While on leave under the FMLA, the employee has job protection and retains full status upon returning to work.

II. Covered employers

A. An employer is covered if it has 50 or more employees during each of 20 or more weeks in the current or preceding calendar year.

B. Public agencies are covered employers regardless of number of employees but employees must meet eligibility requirement to receive benefits.

III. Employee eligibility requirements

A. Employed at least 12 months (need not be consecutive) at the time the leave is to begin.

B. Worked at least 1250 hours during the 12 month period preceding the date the requested leave is to begin

C. Work at or within 75 miles of a worksite that employs 50 or more employees.

IV. Leave benefits

A. Employers covered by the FMLA are required to grant leave to eligible employees:

1. For the birth of a son or daughter and to care for the newborn child;
2. For placement with the employee of a son or daughter for adoption or foster care;
3. To care for the employee's spouse, son, daughter, or parent with a serious health condition; or
4. Because of a serious health condition that makes the employee unable to perform the essential functions of the employee's job.

B. The amount of leave an employer is required to give is up to 12 weeks in a 12 month period for a single event or a combination of events.

C. Both female and male employees have the same right to leave for the birth of a child or the placement of a child for adoption or foster care.

V. FMLA definition of spouse, parent, son or daughter

- A. A spouse is a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriages in states where it is recognized.
- B. A parent means a biological parent or an individual who stood *in loco parentis* to an employee when the employee was a son or daughter as defined below.
- C. Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* where the child is under 18, or age 18 or older and incapable of self-care because of a physical or mental disability.
- D. *In loco parentis* means someone who stands in the place of the parents.
 - 1. This would normally be someone with day to day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child.
 - 2. A biological relationship is not necessary.

VI. Serious health condition

- A. For purposes of the FMLA, serious health condition is an illness, injury, impairment, or physical or mental condition which involves:
 - 1. Inpatient care; or
 - 2. Continuing treatment.
- B. An employee who is unable to perform the functions of his or her job because of a medical condition is considered to have a serious medical condition for purposes of the FMLA.
- C. Under the concept of the employee being needed to care for an eligible family member, this also includes providing psychological comfort and reassurance that would be beneficial to the family member in addition to direct care.

VII. Amount of leave

- A. Under the FMLA, an eligible employee is entitled to leave of up to 12 weeks per 12 month period for a single or multiple qualifying events.
- B. The 12 month period in which the employee is entitled to FMLA leave can be:
 - 1. The calendar year;
 - 2. Any other fixed 12 month period;
 - 3. A “measured forward” year; or
 - 4. A “rolling year.”

C. If the employer has not designated which method of measuring the 12 month period is to be used, the employee is entitled to the method that will be most advantageous to his or her situation.

D. If a husband or wife both work for the same employer, the maximum combined leave that an employer is required to give for the birth or placement of a child is 12 weeks in the designated 12 month period.

VIII. Intermittent leave and reduced schedules

A. An employer may be required to give intermittent leave under certain circumstances.

1. Intermittent leave may be taken for a serious health condition where periodic treatment is required, where it is medically necessary for other reasons, or where it is necessary to meet the needs of an incapacitated eligible family member.

2. An employer is not required to give intermittent leave after the birth of a child or placement of a child in the employee's home for adoption or foster care.

B. A reduced schedule may be required under the same conditions that apply to intermittent leave.

C. Where an employee is taking intermittent leave, or is on a reduced schedule for FMLA purposes, the employer may temporarily transfer the employee to another position that better accommodates the intermittent leave or reduced schedule.

1. The alternative position must have equivalent pay and benefits as the employee's regular position.

2. An employer may not transfer the employee to an alternative position to discourage the employee from taking leave or otherwise work a hardship on the employee.

3. When the need for intermittent leave, or a reduced work schedule, is no longer necessary, the employee must be returned to the same position, or an equivalent position, to that the employee held before being transferred to an alternative position.

IX. Paid and unpaid leave

A. There is no requirement under the FMLA that leave be paid.

B. If an employee has earned leave appropriate to the type of absence under the FMLA, the employee must be allowed to take that leave if it is requested.

C. The employer may require the employee to use earned paid leave appropriate to the type of absence under the FMLA if it is part of the employer's policies.

D. A public sector employer may not require an employee to use compensatory time earned under the provisions of the Fair Labor Standards Act as part of the FMLA leave. Any such compensatory time that the employee requests, and is allowed, to use cannot be counted against the 12 week leave allowance under the FMLA.

E. The maximum amount of FMLA leave time that an employer is required to give an employee within the 12 month designated period is 12 weeks, whether leave be paid, unpaid or a combination of paid and unpaid leave. the

X. Determination of FMLA leave

A. An employee requesting unpaid leave that would qualify as FMLA leave must explain the reasons the leave is needed to the employer or the leave may be denied.

B. An employee requesting paid leave for FMLA qualifying purposes must explain the reasons for the leave or the employer may deny the request in accordance with the employer's leave policies.

C. Employers may develop policies that allow them to designate leave as FMLA leave as soon as the employer learns that the nature of the leave makes it eligible as FMLA leave.

1. When an employer learns that leave is being taken for an FMLA required reason, the employer must notify the employee within two business days, if there are no extenuating circumstances, that the leave will be counted as FMLA leave.

2. This notification may be done orally or in writing but, if done orally, the employee must be notified in writing no later than the following payday. (If the payday is less than one week away, the written notice must be given no later than the next payday.)

D. Employers may not designate leave as FMLA leave after an employee has returned to work except:

1. When the employee was absent for an FMLA reason and the employer did not learn of the reason for the absence until the employee's return (for short absences);

2. When the employer knows the reason for the leave but is not able to confirm that it qualifies as FMLA leave until after the employee returns;

or

3. Where the employer has requested medical certification but has not yet received it or where the parties are in the process of obtaining a second or third medical certification.

XI. Health insurance while on FMLA leave

A. The employer is required to maintain the employee's health insurance at the same level as if the employee were actively at work.

1. The employer must pay any portion of the employee's health insurance that would have been paid if the employee were not on leave and the employee is required to pay the same amount as if he or she were actively at work.

2. The employee is also required to pay the premium for any health coverage he or she carries on dependents at the same level as if he or she were actively at work if that coverage is to remain effective.

3. Under the FMLA, an employer's obligation to maintain health insurance for an employee or the employee's dependents ceases if the employee fails to pay his or her part of the premium within 30 days after the due date established by the employer provided that the employer had given the employee at least 15 days notice prior to the date on which the coverage would be canceled.

4. An employee who elects not to retain health insurance while on FMLA leave, or who loses coverage because of failure to make timely payment, is eligible to have insurance benefits fully reinstated when returning from FMLA leave.

B. The employee on FMLA leave is also entitled to any new health coverage or changes in current coverage that he or she would be entitled to if he or she was actively at work.

XII. Return to work

A. If an employee is ready to return to work after an FMLA absence of 12 weeks or less during the designated 12 month period, the employee must be returned to the same position or to an equivalent position as that held prior to going on leave.

1. An equivalent position is one that is virtually identical in terms of pay, benefits, perquisites, and status to the one held by the employee prior to taking leave

2. The job must involve substantially similar duties and responsibilities and must entail substantially equivalent skill, effort, responsibility, and authority.

B. The employee would also be subject to any changes in the job that would have occurred if he or she had been actively at work.

XIII. Notice to employees

A. Employers are required to notify employees of their rights under FMLA through the display of appropriate posters and through policy statements.

1. Information about FMLA should be written at a level that will easily understood by all employees.

2. In addition to the employee's rights under FMLA, information provided to employees also needs to include the responsibilities of the employees and the consequences of failing to meet those responsibilities.

B. Employers that fail to meet the notification requirements of FMLA may be subject to fines.

XIV. Notice requirements by employees

A. An employee must give an employer 30 days notice of the intent to take FMLA leave where the leave is foreseeable.

B. If giving 30 days notice is not practicable, notice must be given as soon as is practicable.

C. Where the employee will be taking intermittent leave, or working a reduced schedule, the employee must notify the employer, upon request, of the reasons why the intermittent leave or reduced schedule is necessary and the schedule of treatment, if applicable.

D. The employer may delay the taking of FMLA leave for 30 days after being notified of the employee's intent to take FMLA leave provided:

1. The employee fails to give 30 days notice of foreseeable leave with no reasonable excuse for the delay; and

2. It is clear that the employee had actual notice of the FMLA notice requirements.

XV. Medical certification

A. An employer may require the employee to provide medical certification of the serious health condition of the employee or the employee's eligible family member.

B. If the leave is foreseeable and at least 30 days notice has been provided, the medical certification should be provided prior to the start of the leave.

1. When this is not possible, the employee must provide the certification within the time frame requested by the employee, which must be at least 15 calendar days, unless this is not practicable

2. The employer may also request certification at a later date if the employer questions the appropriateness of the leave or its duration.

C. If an employee submits a complete medical certification provided by a health care provider, the employer may not ask for additional information from the employee's health care provider but the employer, with the employee's

permission, may contact the employee's health care provider for purposes of clarification and authenticity of the medical certification.

D. If an employer has reason to doubt the validity of an employee's medical certification, the employer may require the employee to obtain a second opinion at the employer's expense.

1. If the second opinion disagrees with the opinion of the employee's health care provider, a third opinion may be requested from a health care provider agreed upon by both the employer and employee.

2. The opinion of the third health care provider is binding.

E. Under certain circumstances, an employer may request subsequent recertification of a serious medical condition.

XVI. Refusal to grant FMLA leave or to reinstate employee after FMLA leave

A. The employer may refuse to grant FMLA leave under the following circumstances:

1. If the employee fails to give 30 days notice, where practicable, the employer may delay granting the leave until 30 days after the notice is received.

2. If the employee fails to provide, in a timely manner, a requested medical certification, the employer may delay the continuation of FMLA leave until the employee submits the certification.

B. An employer may refuse to reinstate an employee after FMLA under the following circumstances:

1. If the employee fails to provide a fitness for duty statement in accordance with the employer's policy, the employer may refuse to reinstate the employee until the statement is provided.

2. If the employee is unable or refuses to return to work after 12 weeks of FMLA leave in the designated year, the employer does not have to reinstate the employee at a later date.

3. The employee obtains FMLA leave fraudulently.

C. If an employee does not return to work after the end of the 12 week entitled FMLA leave, the employer may collect any payments made toward the employee's health insurance coverage provided the employee's failure to return to work is not because of caring for the continued serious illness of a spouse, child, or parent; the continued serious illness of the employee; or other reasons beyond the control of the employee.

XVII. Other laws and internal policies

A. While FMLA provides certain limited rights to employees, there may be other state or federal laws that give an employee greater rights in certain situations and these should also be considered before taking any adverse action.

B. Internal policies may also provide a greater benefit than is provided under certain areas of FMLA and, in these situations, the employee should receive the greater benefit offered by the internal policies.

***NOTE:** This outline is provided for informational purposes only. It covers some of the key issues of the Family and Medical Leave Act that apply to the role of the supervisor and does not address all aspects of this complex law. The full text of the regulations can be found in 29 C.F.R. Part 825. Nothing in this outline is intended to be, nor should it be construed as, legal advice or guidance. Where legal assistance is needed, the services of a qualified attorney should be sought.*