



Family Medical Leave Act:

Who Should Manage It?

Family Medical Leave Act – FMLA, What is it

The FMLA was passed in 1993 to provide unpaid job protection for employees having qualifying medical conditions themselves or other covered family members. The act was revised in January, 2009, to include covered service member's serious injury or for military related exigencies of covered service members. An employee who meets the criteria for a qualifying event can take up to 12 weeks of leave (26 weeks to care for military injuries) in a 12 month period if they have worked for their employer for 12 months and have worked a minimum of 1250 hours in the last 12 months. A qualifying employee can take Family Medical leave in a continuous block of time and/or intermittently, depending on the circumstances.

In a nutshell, qualifying employers need to communicate, offer and administrate FMLA leave to employees who may have met a qualifying event.

Employers' Responsibility

Employers who have 50 or more employees in a 75 mile radius are required to offer FMLA to their employees. Qualifying employers are required to post the Department of Labor's FMLA Rights & Responsibilities in a conspicuous place (a break room is fine) and to additionally include your FMLA policy in your employee policy manual/handbook (electronic versions are acceptable).

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Employer should develop and communicate policies and procedures on managing and administering FMLA. These procedures at a minimum should include:

- Call-out procedures
- How FMLA is calculated, i.e. rolling forward, rolling backward, calendar year
- If FMLA is run concurrent with paid or other medical leaves
- Whether accrued sick, vacation, or PTO must be used concurrently
- Advanced notification requirements
- Return to work policy
- Timing of status reports
- Health insurance payment arrangements
- Reinstatement of position or transfers during reduced schedule leaves
- Consequences of not following procedures

Additionally, employers should provide and document annual supervisor training on FMLA. This training is key to preventing FMLA interference and retaliation claims which can be costly.

Lastly the employer should offer FMLA to any employee who indicates verbally or by lack of attendance (overnight stay in a hospital or absent more than 3 consecutive days) that they are in need of leave. Always document any conversations regarding FMLA with an employee. Unfortunately, employees do not need to state "I need FMLA" - rather just giving you some indication of a possible serious health condition or other qualifying event is enough according to recent court cases.

Paperwork

When the need for FMLA is identified or requested, the employers are to provide the employee with the proper forms within 5 business days. These forms minimally include:

- Caregiver or Self FMLA Certification Form
- Employees Rights & Responsibilities under FMLA
- Notice of Rights & Responsibilities for FMLA
- FMLA Eligibility Notification
- State or local leave notices

Additional information that an employer may want to send is an Employee's Request for Medical Leave, Authorization to Release Medical Information (except in CA) with HIPAA and GINA safe harbor language and a Return to Work Form to be completed prior to reinstatement (if on a continuous leave).

Employee's Responsibility

Employees need to provide an indication to the employer that FMLA is needed, and while taking FMLA leave, follow the employer's leave policies and procedures.

Employees must provide their employer or their employer's third party administrator medical certification from their treating health care provider within 15 calendar days of receiving their FMLA paperwork. Failure to meet this deadline can be reason to deny or delay an FMLA request. Failure to make group health insurance payment arrangements may cause a loss of coverage.

Pitfalls of Noncompliance

Not following the FMLA Regulations can be costly to not only your company but your supervisors. Employees, who feel their FMLA rights have been interfered with or their employer retaliated against them because they took FMLA, can sue their employer and/or their immediate supervisor. Once the lawyers get involved, they dig deep to find a violation. Recently, jurors awarded payouts to employees due to:

- The employer's failure to provide all of the correct notices and forms
- Supervisors discouraging employees by calling them too often, mentioning transfers or pay cuts, and pressuring them to return to work prematurely.
- Employer's failure to respond to an employee's numerous calls while on FMLA
- Employer's failure to offer FMLA to a person who never asked for FMLA but may have indicated they met a qualifying reason
- The employee did not understand the FMLA process
- Incorrectly calculating leave entitlements

In several FMLA cases, employee awards have been well over a million dollars. What can you do to protect your company and supervisors while ensuring your employees are treated fairly. The answer is simple; outsource.

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Outsourcing Benefits

When evaluating whether or not to outsource your FMLA cases, there are many things to consider. Start by asking yourself the following questions:

- Can the time spent managing FMLA cases be better spent implementing other Company Objectives?
- Are you approving cases that may not qualify because the person reviewing the FMLA request does not have a medical background and cannot identify if the case is medically valid? Is lost time of concern in your organization?
- Are your supervisors and/or internal FMLA administrator receiving sensitive medical information?
- Are you worried about different company locations and/or departments administering FMLA leave differently?
- Are you up to date on all FMLA Federal and State Regulations?
- Has the number of Intermittent FMLA cases in your organization grown in recent years?

About the Author

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- Do you suspect that some of your FMLA cases are fraudulent?
- Do your supervisors know and follow proper FMLA procedures?
- Do you properly document all activities involving all FMLA cases, including employee conversations?
- Is anyone monitoring the amount of FMLA time an employee is using to confirm it is within their certification?
- Can you afford an FMLA interference or retaliation lawsuit?

If your answers to any of these questions concern you, then you are a prime candidate for outsourcing. By outsourcing to the right company that does a robust medical review of every case you will;

- Save time, anywhere from 3 to 8 hours per case
- Mitigate your legal risk by following an objective, consistent process for every case
- Ensure sound medical reviews of your cases
- Alleviate the documentation burden associated with FMLA and storage of data
- Reduce your FMLA days by curbing abuse
- Decrease your costs associated with overtime and temporary help to cover an employee on FMLA.

Speak with your Benefits Concept Representative for a vendor recommendation to manage your FMLA Cases.