HELPSIDE

FAMILY MEDICAL LEAVE ACT (FMLA) FACT SHEET

FMLA Brief Overview and Eligibility:

The FMLA is a federal law that provides 12 weeks of unpaid leave for an employee's own or a family member's serious health condition, for the birth or adoption of a child and for military exigencies. The law also provides 26 weeks for Military Caregiver Leave. To be eligible for FMLA leave, an employee must:

- Have a qualifying medical reason
- Work a total of 12 months for the employer within the last 7 years
- Work at least 1,250 hours in the last 12 months prior to the start of leave
- Work for a covered employer

What does the Family and Medical Leave Act provide?

- FMLA provides eligible employees up to 12 weeks of unpaid leave per year
- FMLA requires group employee benefits to be maintained during the leave as if the employee had continued to work
- Employees are entitled to return to their same or an equivalent job at the end of their FMLA leave (with few exceptions)

What is a covered employer?

Employers must offer FMLA to their employees if they are either:

- **A private employer with 50 or more employees** employed within a 75-mile radius in at least 20 weeks of the current or preceding calendar year
- A public agency, including Local, State, and Federal employers and local education agencies
    - Public agencies are required to offer FMLA to their employees, regardless of the number of employees they have

Can employers offer FMLA if not required by law?

Employers may still choose to opt in and participate in FMLA even if they have less than 50 employees. Businesses over 15 employees, who choose to opt in and offer FMLA, would need to continue offering it for at least a year before reevaluating their position.

Why would an employer choose to offer FMLA if they are not required to do so?

Offering FMLA to your employees can be beneficial in several ways. Employees will view this as an additional benefit provided by your company, and it is the only way an employee is able to maintain employer sponsored benefits during a leave longer than 30 days for certain health plans. Offering FMLA can limit your risk of discrimination lawsuits.

What is a qualifying reason to take FMLA leave? (https://www.dol.gov/whd/regs/compliance/whdfs28f.pdf)

The following are qualifying reasons for FMLA leave:

- The birth of a son or daughter, and to bond with the newborn child
- For the placement with the employee of a child for adoption or foster care, and to bond with that child
- To care for an immediate family member (spouse, child, or parent – but not a parent "in-law") with a serious health condition
- To take medical leave when the employee is unable to work because of a serious health condition; or
- For Military Caregiver Leave (https://www.dol.gov/whd/regs/compliance/whdfs28m.pdf)

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What are the different types of FMLA leave?

- **Continuous FMLA Leave** – an approved continuous leave for a specified amount of time (up to 12 weeks)
- **Intermittent/Reduced Leave** – taking leave in separate blocks of time for a single qualifying reason or reducing the employee's usual weekly or daily work schedule

Do I have to pay an employee while they are out FMLA leave?

No, FMLA provides unpaid leave. You may require employees to use accrued PTO concurrently during their FMLA leave. Whatever you decide, make sure its detailed in your policy guide. If your employee is on benefits, you are required to maintain those benefits during the period they are on leave. Once the employee returns, employers can require employees to reimburse any premiums paid on their behalf while on leave.

How does PTO work with FMLA?

Employers may require the employee to use accrued PTO concurrently with FMLA leave. An employee may not use PTO to extend their FMLA leave once the employee has maxed out the 12 weeks or 480 hours allowable.

Who is responsible to initiate FMLA?

Covered employers are responsible for initially offering FMLA to an employee.

- Example: *An employee who sustains an on-the-job injury will now miss several days of work due to said injury. They have submitted a Workers Compensation Claim. The covered employer is responsible for also recognizing that the missed work might be covered under the FMLA.*
- Example: *An employee tells their supervisor that they have an upcoming surgery and will need time off for the surgery and to recover before returning to work. The covered employer is responsible for initially recognizing that this leave might be protected under the FMLA.*

What is the employee's responsibility?

Employees are responsible for:

- Providing enough information for an employer to know their leave request may be FMLA eligible
- Foreseeable need = 30+ days' notice
- Unforeseeable need = as soon as practicable
- Complying with the employer's attendance policy requirements

  Example: If an employee currently on FMLA leave fails to designate their absence as FMLA leave, the absence may be counted as "unexcused" leading to disciplinary action up to and including termination

How do I begin the FMLA Process through Helpside?

Beginning the FMLA process is easy.

- Have the employee complete an FMLA Request form found on Employee Tools. For questions on how to locate that form email: humanresources@helpside.com
- Within 5 days we will notify both you and the employee of their eligibility and provide information on next steps

What happens when FMLA is exhausted and the employee is unable to return to work at full capacity?

If an employee is certified by a medical professional as able to return to work but with reduced hours or on light-duty, the employer may need to make additional accommodations under the ADA. Call Helpside to discuss potential options.

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How do FMLA, Workers Compensation and the ADA work together?

FMLA can and should run concurrently with other applicable laws that help protect employees. Generally, whichever law offers the greatest rights and benefits to the employee must be followed but **doing this protects the employer as well**. Running FMLA concurrently with both the ADA and Workers Compensation minimizes the risk of an employee being away from work longer than they would otherwise be entitled.

- Example: *An employee is injured at work, absent for three months, and placed on workers' compensation only. A few months later, the same employee requests to go on FMLA leave for three months due to a separate non-work-related medical need. Because FMLA was not run concurrent with the first injury, the employer is required to give the additional time off under FMLA for a total of six months time off. This can be burdensome for the business.*
- Example*: An employee is taking six weeks of leave due to an on the job injury that is covered by Workers Compensation. FMLA should be offered concurrently to protect the employee's job and benefits. Without FMLA, the employee will be dropped from their employer sponsored benefits after 30 days for not meeting the hours worked requirement.*

FMLA, ADA, AND WORKERS COMPENSATION COMPARISON			
	ADA	**Workers Compensation**	**FMLA**
Purpose	Prohibits Discrimination	Provides for payment of lost wages and rehabilitation	Provides unpaid, job protected leave for eligible individuals
Basic Provisions	Provides reasonable accommodations including leave if applicable.	Defined by state statute *(Employer may not retaliate against employee for filing a WC claim)*	Up to 12 weeks of benefit and job protected leave.
Job Protection	Protects from job discrimination based on a disability.	No	Yes
Benefits Protection	No	No	Yes
Time Limit	No specific time limit: Accommodations must be reasonable and can't pose an undue hardship on the employer	Employees have 2 years to file a claim. Claims last a lifetime unless there is no activity.	12 weeks per year or 26 weeks for Military Caregiver Leave.

ADDITIONAL RESOURCES:

https://www.dol.gov/whd/fmla/