

FMLA

(FAMILY MEDICAL LEAVE ACT)

What is FMLA?

The FMLA applies to all:

- public agencies, including local, State, and Federal employers, and local education agencies (schools); and
- private sector employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year

In order to be eligible to take leave under the FMLA, an employee must:

- work for a covered employer;
- have worked 1,250 hours during the 12 months prior to the start of leave; and
- Is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite (*NOTE: This eligibility condition must be in the handbook*)

NOTE: The 1,250 hours include only those hours actually worked for the employer. Paid leave and unpaid leave, including FMLA leave, are not included.

Amount of FMLA Leave

Eligible employees may take up to 12 workweeks of FMLA leave

Reasons for Leave

Employee is entitled to take leave for:

- Employee's or qualifying family member's serious health condition when the leave is medically necessary
- Covered service member's serious injury or illness when the leave is medically necessary
- A qualifying exigency arising out of a military member's covered active-duty status

Leave to bond with a child after the birth or placement must be taken as a continuous block of leave unless the employer agrees to allow intermittent or reduced schedule leave.

NOTE: Partner with your HR/Legal team regarding questions

Common FMLA Questions

Is FMLA paid?

- No, is not paid. It only offers job protection. Paid leave can be used concurrently with it.

Can an employee decline FMLA protection?

- No, employers are required to place employees on FMLA.

Timing of request for FMLA

- If FMLA is foreseeable then at least 30 days in advance or if not foreseeable then as soon as practicable. The employee does not need to reference FMLA. A request can be triggered when an employee has provided enough information to reasonably determine that FMLA may apply.

Employer Responsibilities

Employers must return the individual to the same or equivalent job

- Equivalent pay
- Equivalent benefits
- Equivalent terms and conditions

Employee has no greater right to reinstatement than had the employee continued to work

Employers must also provide the Notice of Eligibility (DOL's WH381 form) within 5 business days of a request for FMLA leave.

Employee has 15 days to complete the medical certification.

Employers also must provide the Designation Notice (DOL's WH382 form) within 5 business days of receiving the complete & sufficient medical certification.

Employers Cannot

- Interfere with, restrain or deny employees' FMLA rights
- Discriminate or retaliate against an employee for having exercised FMLA rights
- Discharge or in any other way discriminate against an employee because of involvement in any proceeding related to FMLA
- Use the taking of FMLA leave as a negative factor in employment actions (evaluations, excessive absenteeism, raises, etc.)

FMLA Resources

- FMLA (Department of Labor)
<https://www.dol.gov/agencies/whd/fmla>
- FMLA (FAQs)
<https://www.dol.gov/agencies/whd/fmla/faq>

ADAAA (AMERICANS WITH DISABILITIES ACT AS AMENDED)

Definition of Disability

A person can show that he or she has a disability in one of three ways:

- Has a physical or mental condition that substantially limits one or more major life activities
- Has a history of a disability
- Being regarded as having a disability

Disability Discrimination Examples

- Treating a qualified individual with a disability who is an employee or applicant unfavorably because he/she has a disability.
- Also occurs when an applicant or employee is treated less favorably because she has a history of a disability (such as cancer) or because she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if she does not have such an impairment).
- The law also protects people from discrimination based on their relationship with a person with a disability (even if they do not themselves have a disability). For example, it is illegal to discriminate against an employee because her husband or child has a disability.

Possible Job Accommodation

- Communication about possible accommodations is key.
- Employers must participate in an interactive process with the employee to determine the essential functions of the job that may or may not be eligible for an accommodation.
- Work with your HR Department as they will generally be able to assist with this process.

Interactive Process

As part of the interactive process, the EEOC recommends that employers:

- Analyze the particular job involved and determine its purpose and essential functions;
- Consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation;
- In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position; and
- Consider the preference of the individual requesting accommodation and select and implement the accommodation that is most appropriate for both the employee and the employer.

ADAAA Resources

- The Americans with Disabilities Act Amendments Act of 2008
<https://www.eeoc.gov/statutes/americans-disabilities-act-amendments-act-2008>
- Office of Disability Employment Policy – US Department of Labor
<https://www.dol.gov/agencies/odep>
- Job Accommodation Network (JAN) Interactive Process Example
<https://askjan.org/training/library.htm>

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