



FMLA: A Step-by-Step Compliance Overview

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Introduction 



Agenda

- FMLA Overview
- Covered Employers and Eligible Employees
- Qualifying Reasons for Leave
- Notice and Recordkeeping Requirements
- Interaction with Other Types of Leave

FMLA Overview

➤ The Family and Medical Leave Act (FMLA)



Enacted in 1993 to help balance work and family life



Amended to expand leave rights for military families



Covers only certain employers



Provides unpaid, job-protected leave to eligible employees



FMLA Requirements

- Allow eligible employees to take unpaid leave for qualifying reasons
- Provide notices to employees regarding FMLA leave
- Continue group health benefits during leave
- Restore employees to the same or equivalent job after leave
- Comply with recordkeeping requirements

➤ Enforcement and Penalties



Lawsuits:

Employees or the DOL can sue for damages or injunctive relief



DOL Audits:

The DOL enforces FMLA compliance

Knowing and following the FMLA's rules can avoid many problems for employers

Step 1: Is Your Company
Subject to the FMLA?





Covered Employers

Private employers

- Employ **50 or more employees** during each working day for 20 or more weeks in the current or preceding year

Public agencies

- Any size

Elementary and secondary schools

- Public schools and school boards
- Private schools
- Any size

➤ Counting Employees

Private employers must count:

- Any employees on the payroll, even if not receiving compensation for the week
- Employees on leave if there is a reasonable expectation that they will return to work
- Employees to include:
 - Full time
 - Part time
 - Seasonal
 - Temporary



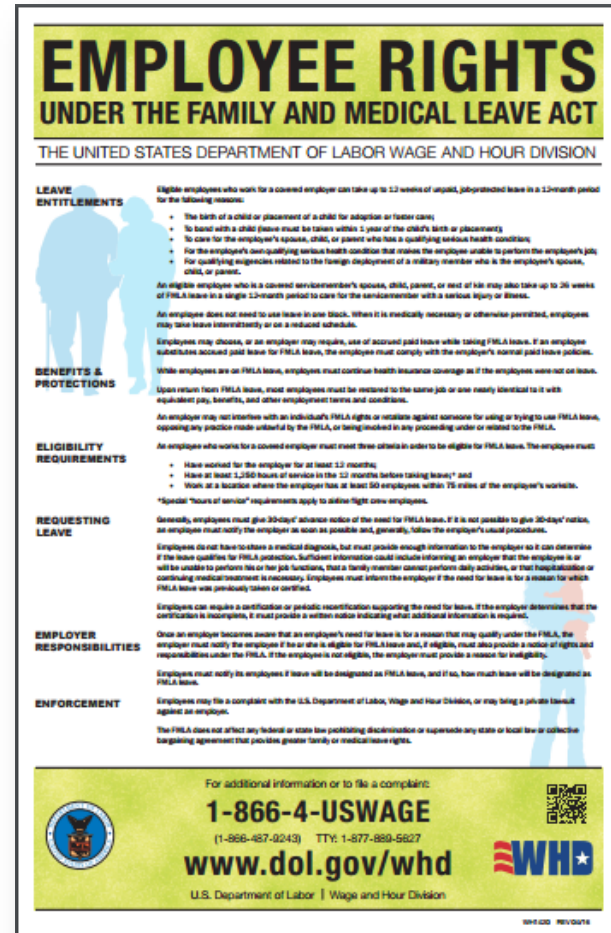
Step 2: Follow Poster
and Notice Rules





FMLA Poster

- Employers must display or post a general notice about the FMLA, even if no employees are currently eligible for FMLA leave
- Violations can trigger penalties of up to \$176 per offense
- DOL has a model poster that employers may use



EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

LEAVE ENTITLEMENTS

Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To care for a child (leave must be taken within 1 year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may use leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

*Specific "hours of service" requirements apply to certain flight crew employees.

Generally, employees must give 30-day* advance notice of the need for FMLA leave. If it is not possible to give 30-day* notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to obtain a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must return the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employees can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a notice of ineligibility.




Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

For additional information or to file a complaint:
1-866-4-USWAGE
(1-866-487-6243) TTY: 1-877-889-5627
www.dol.gov/whd

U.S. Department of Labor | Wage and Hour Division



➤ Employer's General Notice

Covered employers with any FMLA-eligible employees must provide employees with a **general notice** about the FMLA

The general notice must be provided in the employee handbook or other written materials about leave and benefits

If no handbook or written leave materials exist, employer must distribute general notice to each new employee upon hire

Can use the language from DOL's model poster or another format, as long as it includes all the information contained in DOL's model poster

Step 3: Is the
Employee Eligible for
FMLA Leave? 

➤ Employee's Leave Notice

Employees must notify their employers when they need FMLA leave

General Rules

- Must comply with employer's **usual and customary procedures** for requesting leave
- Employee does not have to specifically mention FMLA in leave request

Timing

- If leave is foreseeable, must provide at least 30 days' advance notice of leave (if practicable)
- Otherwise must provide notice as soon as possible and practicable

➤ Eligible Employees

Months of service

- Worked for the employer for at least a total of 12 months (need not be consecutive)

Hours of service

- Worked at least 1,250 hours during the 12-month period immediately before the leave

Location

- Work at a location where employer has at least 50 employees within a 75-mile radius

➤ Required Notices

After determining whether employee is eligible for FMLA leave, the employer must provide required notices

Notices

- Eligibility Notice
- Rights and Responsibilities Notice
- DOL model notice combines these two notice requirements into one notice

Rules

- Must be provided within five business days of FMLA leave request (unless there are extenuating circumstances)
- If employee is not eligible, must provide at least one reason

Step 4: Is the Leave for
a Qualifying Reason?



➤ What Is a Qualifying Reason?

Qualifying Reasons

Birth and care of employee's newborn child

Placement of child with employee for adoption or foster care

Care of family member with a serious health condition

Employee's own serious health condition

Military family leave (qualifying exigency and military caregiver)

➤ Birth or Adoption of a Child

- Time limit: leave must take place within 12 months of the birth or placement
- Spouses employed by same employer are limited to a combined total of 12 workweeks of leave



➤ Serious Health Condition



An illness, injury, impairment or physical or mental condition that involves **inpatient care** or **continuing treatment** by a health care provider

The common cold, flu, headaches other than migraines and routine dental problems ordinarily are not serious health conditions for FMLA



Family Members

Spouse

- Husband or wife as defined or recognized under state law, including a common law marriage or same-sex marriage
- Does not include domestic partners or civil union partners

Parent

- Biological, adoptive, step or foster father or mother or any other individual who stood “in loco parentis” (in place of a parent)
- Does not include “parents-in-law”

Son or Daughter

- Biological, adopted or foster child, stepchild or legal ward
- Child of a person standing “in loco parentis”

Step 5: Grant or Deny the
Leave (and Provide Notice)





Employer's Designation Notice

The employer is responsible for designating leave as FMLA leave and providing a Designation Notice

Determination of Qualifying Leave

- Must be based on information received from employee
- Can ask for documentation of family relationship and certification
- State what information is missing, if any

Designation Notice

- Informs the employee that the leave will be designated as FMLA leave
- Sets out the requirements for while the employee is on leave
- Provide within five business days

➤ Certification

Employer may require certification:

- For leave due to serious health condition of the employee or family members
- For military family leave

Certification

- A document or form completed by the employee and a health care provider (if applicable)
- Must normally provide within 15 days

If the employee does not provide the certification, the employer may deny the request for FMLA leave

Step 6: Maintain Group
Health Benefits



➤ Group Health Benefits

Employers must maintain group health benefits during leave on the same terms as if employee had continued to work

Rules

- Employee must continue to pay his or her share of premiums during leave
- If a premium payment is more than 30 days late, may drop the employee's coverage (unless employer has a policy of a longer grace period)
- If coverage is dropped during leave, must be reinstated when employee returns

Step 7: Provide Job
Restoration Rights



Job Restoration

- An employee returning from leave must be restored to:
 - The employee's original job; or
 - An equivalent job with equivalent pay, benefits and other terms and conditions of employment
- Exceptions:
 - Employees are not protected from actions that would have affected them if they were not on FMLA leave
 - May deny restoration to “key employees” to prevent substantial and grievous economic injury
 - In some cases, may delay restoration to employees who do not provide fitness-for-duty certification

Step 8: Maintain
Records Properly





Employer Recordkeeping

Must keep and maintain FMLA records for **three years**, including:

Dates of FMLA leave

Hours of leave (if taken in increments of less than a day)

Employee notices

Premium payments for employee benefits

Records of any disputes regarding leave designation

Step 9: Think About
Interaction with
Other Rules



➤ Substitution of Paid Leave

- An employee may elect, or an employer may require, substitution of accrued paid leave (such as sick leave or PTO) to cover some or all of FMLA leave
- If substituted, paid leave and FMLA leave run concurrently
- When paid leave is used for FMLA-covered reason, leave is still protected
- An employee's ability to substitute paid leave is determined under employer's normal leave policy

Workers' Compensation

Workers' compensation absence for employee's own serious health condition may also be designated as FMLA leave

Rules

- If designated as FMLA leave, leave counts against employee's FMLA leave entitlement
- Because this leave is paid, cannot require other accrued paid leave (for example, sick leave) to be substituted
- Employee and employer may agree (if state law permits) to have accrued paid leave supplement plan's benefits

➤ Americans with Disabilities Act (ADA)

- Applies to employers with 15 or more employees
- Must provide reasonable accommodations to disabled employees
- Leave may be a reasonable accommodation
 - Employees not eligible for FMLA
 - Additional leave following FMLA
- Indefinite leave is not a reasonable accommodation





State Leave Laws

- Many states have enacted their own laws to provide different, or additional, leave rights for employees
- State laws may provide longer leave periods, greater benefits or leave for other reasons
- Because these laws change frequently, employers should stay up-to-date on the laws that apply to them



Interaction with Federal Laws

Depending on an employer's size and location, it may be subject to the FMLA and state leave laws

Leave covered by FMLA and state law

Leave counts against both leave entitlements (if permitted under state law)

Follow the rules that give greater leave rights

Leave only covered by FMLA or state leave law

The leave will only count against the applicable law's leave entitlement

New Employer Tax Credit

- Created by the tax law signed at the end of 2017 (Tax Cuts and Jobs Act)
- A business tax credit for eligible employers that provide **paid family and medical leave**
- Only effective for 2018 and 2019 tax years
- To be eligible, employers must adopt written paid leave policies that satisfy specific criteria



New Employer Tax Credit

Key Points

- Equal to a **percentage of wages** paid during leave
- Applicable percentage amount depends on rate of payment on leave
- To be eligible, employer must provide at least **two weeks** of paid leave at a payment rate that is at least **50 percent** of normal wages

Limitations

- Only applies to leave that is taken for an FMLA qualifying reason
- Paid time off (e.g., vacation or PTO) used for FMLA reasons does not count
- Leave required under state law does not count

Questions? 

Thank you! 

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