



**ACADEMICA**WEST

# What is FMLA?

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# What is FMLA?

- The Family and Medical Leave Act (FMLA) is a federal law that provides eligible employees of covered employers with unpaid, job-protected leave for qualifying family and medical reasons.



# What does the Family and Medical Leave Act provide?

- FMLA provides eligible employees up to 12 work weeks of unpaid leave per year.
- FMLA requires group employee benefits to be maintained during the leave as if the employee continued to work instead of taking leave.
- Employees are also entitled to return to their same or an equivalent job at the end of their FMLA leave.



# What is a covered employer?

- **A covered employer is one of the following:**
  - Private employers with 50 or more employees in at least 20 weeks of the current or preceding calendar year
  - Public agencies, including Local, State, and Federal employers and local education agencies.
    - If an employer meets these requirements, that employer is required to offer FMLA to its' employees, regardless of the number of employees it has.
    - This exception includes charter schools



# What is an eligible employee?

- **An employee is eligible for FMLA leave if he or she has met all the following:**
  - Worked for the employer for at least 12 months (does not need to be consecutive); and
  - Worked at least 1,250 hours for the employer during the 12-month period immediately preceding the leave request; and
  - Is employed at a location where the employer has at least 50 employees within a 75-mile radius.



# What are qualifying reasons?

- **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 qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on covered active duty or call to covered active duty status as a member of the National Guard, Reserves, or Regular Armed Forces.

The FMLA also allows eligible employees to take up to 26 workweeks of unpaid, job-protected leave in a “single 12- month period” to care for a covered service member with a serious injury or illness.





# What is a serious health condition?

- **A serious health condition is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.**
- **The most common serious health conditions that qualify for FMLA leave include but are not limited to:**
  - Conditions requiring an overnight stay in a hospital or other medical care facility;
  - Conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than three consecutive days and have ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
  - Chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and
  - Pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).





# 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 max.)
- 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.



# How does PTO work with FMLA?

- Employees may choose to use, or employers may require the employee to use accrued paid leave, paid vacation, paid personal time or other PTO to cover all or part of the FMLA leave taken.



# When should an employee notify the employer of an FMLA need?

- Foreseeable Need Greater Than 30 Days: Employees seeking FMLA are required to provide 30-days or more advanced notice to employers when such notice is practicable.
- Foreseeable Need Less Than 30 Days: Employees seeking FMLA are required to provide notice as soon as practicable. Generally, either same day or next business day.
- Unforeseeable Need: The employee must provide notice to the employer as soon as practicable under the facts and circumstances of the case.
- Call-in Procedure: If an employee has been approved for FMLA leave, employees are required to comply with the employer's usual and customary notice and procedural requirements for requesting leave and/or as soon as practicable. If an employee on FMLA leave fails to designate an absence, tardy, or leave early as FMLA leave, the absence, tardy or leave early, may be counted as an unexcused occurrence and therefore disciplinary action up to and including termination may occur.



# What forms are required for the FMLA process?

- **The following forms are recommended to process an FMLA need:**
  - FMLA Request Form – This form is used by the employee to request an FMLA leave.
  - WH-381 Notice of Eligibility and Rights & Responsibilities – This form is provided by the US Department of Labor, Wage and Hour Division and is used to notify the employee of their FMLA eligibility once the Request Form has been received. This form is to be completed within five business days to notify the employee of their eligibility status to take FMLA leave.
  - WH-382 Designation Notice – This form is provided by the US Department of Labor, Wage and Hour Division and is used to inform the employee of the specific expectations and obligations of the employee and explain any consequences of a failure to meet the obligations. This notice may be accompanied with any other required certification form.
  - Medical Certification Forms – This form is either for the employee or an eligible family member of the employee to complete with their doctor.
  - 2 Week Reminder Letter – This letter is a reminder letter that is sent to the employee on approved FMLA leave that reminds the employee that their approved FMLA time is about to expire and to contact their HR department if they are unable to return by the required date.
  - Return to Work/Fit for Duty Medical Certification (when needed) – This is a medical certification that states the employee is fit for duty and able to return to work (with or without work restrictions) following an approved FMLA leave.



# How do I Reinststate an Employee?

- When an employee returns from FMLA leave, the employee must be restored to their original job, or to an equivalent job with equivalent pay, benefits and other terms and conditions of employment.



# What if an employee can return to work but on light-duty?

- If an employee is certified by a medical professional as able to return to work in a light-duty job but is unable to return to the same or equivalent job, the employee has the option of declining to return and remaining on continuous unpaid FMLA leave until the 12-week FMLA entitlement period is exhausted. This decision may result in the loss of workers' compensation benefits if applicable.



# Who Enforces FMLA?

- The Department of Labor Wage and Hour Division investigates FMLA complaints.





# How to handle the interaction of FMLA, ADA and Workers' Compensation Laws:

- FMLA Brief Overview: The FMLA is a federal law that provides for 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. An employer must return an employee to the same or an equivalent position (with some exceptions). Leave may be taken in one block, intermittently or on a reduced schedule. To be eligible for FMLA leave, an employee must work for 12 months for an employer, work at least 1,250 hours in the 12 months prior to the start of the leave and work at a worksite where 50 or more employees are employed by the employer within 75 miles.



# How to handle the interaction of FMLA, ADA and Workers' Compensation Laws:

- Workers' Compensation Brief Overview: Workers' compensation is generally a state-run program that allows workers who were injured on the job to receive compensation while they are out of work. It generally does not provide any job protected leave, but an employer may not retaliate against an employee for filing a workers' compensation claim. Workers' compensation laws also minimize liability for employers. In some instances, workers compensation benefits (compensation) can be reduced if the injury involves willful disregard of safety rules or intoxication from alcohol or illegal drugs.



# How to handle the interaction of FMLA, ADA and Workers' Compensation Laws:

- Americans with Disabilities Act (ADA) Brief Overview: The ADA is a federal law that prevents employers from discriminating against employees or job applicants because they are a qualified individual with a disability. The ADA does not explicitly provide payment or leave rights to the employee. The ADA requires an employer to reasonably accommodate an employee or prospective employee with a disability, and leave may be considered a reasonable accommodation in certain situations. A disability is an impairment that substantially interferes with a major life function or activity. The definition of substantially interfering has been significantly broadened by the ADA Amendments Act, which requires courts to construe the ADA broadly. The Act applies to employers with at least 15 employees. The ADA also contains an exception if the leave for reasonable accommodation causes an undue hardship for the employer.



# How Does Workers' Compensation work with FMLA?

- The U.S. Department of Labor acknowledges that there are times where employees may be entitled to time off under FMLA and workers' compensation laws concurrently. In situations where both the FMLA and workers' compensation laws apply, employers must provide leave under whichever law provides the greater rights and benefits to employees. Therefore, employers cannot require an employee to take time off under FMLA instead of workers' compensation if the employee's injury makes them eligible for workers' compensation benefits, but they can run concurrent with one another.



# Can an employee be on both FMLA and workers' compensation?

- Not only can the employee be on FMLA and workers comp, it is highly recommended that the two run concurrently. An employer may require an employee to use FMLA while on workers' compensation when the employer is put on notice of an FMLA qualifying event. By running them concurrently, an employer minimizes the risk on an employee being away from work longer than they would otherwise be entitled.
- Example: An employee is injured at work and is absent for three months and is placed on workers' compensation only. A few months later, the same employee requests to go on FMLA leave and needs to be absent for three months due to a separate non-work related medical need. Because FMLA was not run concurrent with the first injury, the employee now is allowed to be absent for six months and be protected. That can be burdensome for the employer.
- If an employee uses all 12 weeks of FMLA leave and needs more time off, their job is no longer protected by FMLA leave and the employee may lose their benefit coverage. The workers' compensation benefit status does not provide them with job protection.



# How does FMLA work with Americans with Disabilities Act (ADA)?

- If an employee exhausts the allotted 12 weeks of FMLA but still needs time off to recover, it is possible that the employee may be entitled to more time off under the ADA if the injury qualifies as for ADA protection. The EEOC has stated that additional time to recover is a reasonable accommodation. It has been said by the EEOC that an employer cannot have an auto-terminate policy which means an employer cannot give an employee a specified maximum period of leave. Even if the leave period is more than the required 12 weeks under FMLA, if the employee does not return by that date they cannot be automatically terminated. Rather, if an employee has exhausted his or her FMLA leave or was ineligible for FMLA leave, the employer needs to engage in the interactive process with the employee and find out if there are any accommodations the employee needs to return to work, including additional leave time.





# Can an employee have both FMLA leave and ADA accommodations?

- When applicable and in many cases, yes, they can and should be run concurrently.





# Scenario

A teacher at the school has had some medical conditions and has notified their administrator of their medical issues. The employee's attendance has suffered due to taking time off for their medical conditions.

The school has been conducting evaluations. When visiting this same employee's classroom recently, the administrator witnesses poor classroom management and sees that the teacher is not the most knowledgeable on his subject matter. These concerns are serious enough that the administrator would like to terminate the employee for failure to meet performance expectations.

What issues need to be considered in determining how to proceed with this employee?



# Best Practices

- Arrange witnesses for meetings
- Plan ahead; be thorough
- Follow discipline steps (warnings/write-ups/corrective action)
  - Don't wait until employee becomes a problem
- Document, document, document
  - Offering FMLA
  - FMLA required notices
  - Performance Evaluations, Investigations, Discipline, Meetings
- Avoid discriminatory remarks
- Consistency with other employees
- Enforce expectations evenly
- Follow the law and your policies
- Consult with legal and HR





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