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Welcome

CFMA FMLA Compliance Overview

Presented by
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Agenda

- Understand the purpose of Family Medical Leave Act (FMLA)
- Review covered employers
- Recognize eligible employees
- Identify qualified leave reasons and amount of leave allowed
- Military FMLA Leave
- Initiating the FMLA process
- Employer responsibilities
- Resources

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History



Enacted in 1993 to help balance work and family life



Amended in 2008 and 2009 to expand leave rights for military families



Covers only certain employers



Provides unpaid, job-protected leave to eligible employees

Employer's General Notice

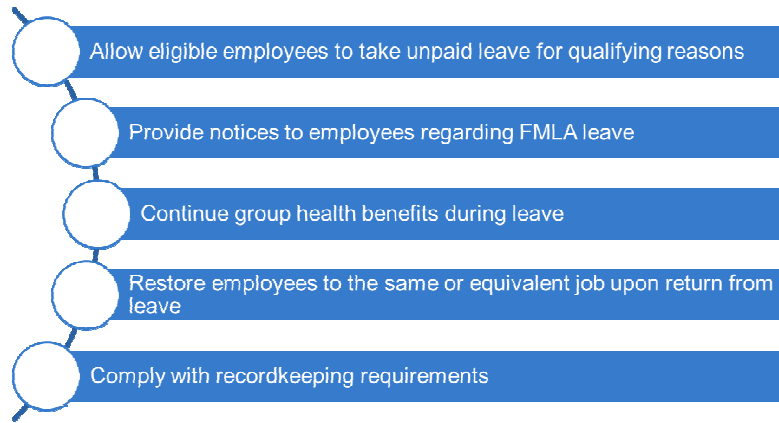
Handbook

- The general notice must be provided in the employee handbook or other written materials about leave and benefits
- Customize policy to fit your policies and procedures

Labor Law Posters

- Employers must display or post a general notice about the FMLA, even if no employees are currently eligible for FMLA leave
- The DOL updated its model poster in April 2016
- Subscriptions for employment posters

FMLA



Employer Eligibility

Private employers

- Employ 50 or more employees during each working day for 20 or more weeks in the current or preceding year
- Within a 75-mile radius

Public agencies

- All agencies regardless of the number of employees they employ
- The federal government
- The government of a state or political subdivision of a state including counties, cities and towns, or any interstate governmental agency.

Elementary and secondary schools

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

Counting Employees

Full-time, part-time, temporary and seasonal employees

Any employees on the payroll, even if they are not receiving compensation for the week

Employees on paid or unpaid leave if there is a reasonable expectation that they will return to work

Employee Eligibility

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

Leave Entitlement

FMLA Maximum leave

- 12 weeks in a 12-month period

Serious Military Injury or Illness Maximum leave

- 26 weeks in a 12-month period

Spouses may be limited to a combined total for certain leave reasons

Qualifying Reasons For Leave

For the birth or placement of a child for adoption or foster care

- Leave must take place within 12 months of the birth or placement
- 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

To care for a spouse, son, daughter, or parent with a serious health condition

For their own serious health condition

Military Family Leave

Eligible Family Members

Spouse

- Husband or wife as defined or recognized in the state where the individual was married, including a common law marriage or same-sex marriage

Parent

- Biological, adoptive, step or foster father or mother, or any other individual who stood "in loco parentis" (in place of a parent) to the employee when the employee was a child
- 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"
- Must be under age 18 unless disabled

FMLA Military Family Leave



Serious injury or illness

- Incurred in (or aggravated by service in) the line of duty on active duty that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating



Qualifying exigency leave

- Short-notice deployment
- Military events and related activities
- Childcare and school activities
- Parental care

Covered Military Members

Active Duty

- **Regular Armed Forces**
 - Deployment of the member with the Armed Forces to a foreign country
- **Reserve Components of Armed Forces**
 - Deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation

Veterans

- **Incurred during**
 - In the line of duty on active duty in the armed forces
- **Existed before**
 - Aggravated by service in the line of duty on active duty and manifested itself before or after the member became a veteran

Covered Military Family Leave

Qualifying exigency leave

- The employee's spouse, son, daughter, or parent is on, or has been notified of an impending call, to "covered active duty"
- To help families manage their affairs when a military member has been deployed to a foreign country

Military caregiver leave

- To help families care for covered service members with a serious injury or illness

Initiating FMLA



Employee's Leave Request

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

Supervisor Training

Identify the purpose and benefits of the FMLA

Understand key provisions of the law

Recognize potential FMLA qualifying events and to whom it applies

Review the process of handling leaves appropriately

Understand how to protect themselves and the organization from liability

Employer Required Notices

Eligibility notice

Required form
Provide to the employee within five business days
Think of this as your guide!

Rights and responsibilities

Initial notice of employee eligibility
Outlines company process
Establishes employees company contact

Certification

Completed by the employee and a healthcare provider (if applicable)
Employees are provided at least 15 days to complete
Each qualified leave has a certification form

Employer Required Notices (continued)

Determination of qualifying leave

Must be based on information received from employee

Employer's designation notice

Update initial form to reflect determination
If additional information is needed, specifically state what is missing

Rights and responsibilities

Update initial form to reflect determination and any changes

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

Internal Process

Identify who is responsible for each task

- Prepare, approve and provide notices
- Maintain copies of leave notices
- Track and document intermittent leave
- Provide documents describing benefits/policies
- Premium payments
- Records of disputes
- Maintain and review periodic status reports
- Review and implement fitness-for-duty certification and restrictions

Types of Leave

Continuous

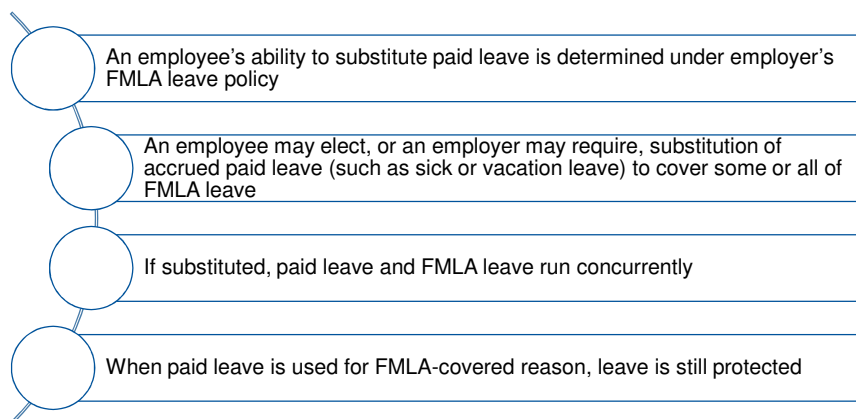
Intermittent leave

- Leave taken in separate blocks of time, rather than continuously
- Example: Leave taken on an occasional basis for medical appointments or taken several days at a time spread over a period of six months for chemotherapy

Reduced schedule leave

- Leave that reduces an employee's usual weekly or daily work schedule
- Example: Employee is recovering from a serious health condition and is not strong enough to work a full-time schedule

Substitution of Paid Leave



Employer Responsibilities



Maintain Group Health Plan Benefits

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

- Employee must continue to pay their share of premiums
- Set rules for making premium payments

Coverage may be terminated if employee informs employer that they will not be returning

Entitlement to other employee benefits during FMLA leave (for example, holiday pay) depends on employer's leave policies

Understand Plan Documents

Definitions

- “Actively at Work”
- Allowances for leave outside of FMLA

Consequences for Covering Ineligible Employees

- Don't leave people on the plan
- Loss of coverage/COBRA qualifying event
- Violate terms and conditions of your policy
- Employer liable for employee benefits – not insurance carrier
- \$110 per day failure to provide CORBA notice

Employers can choose to pay 100% of the COBRA

Maintaining Records

Covered employers must keep and maintain records regarding FMLA obligations, such as:

- 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 disputes regarding leave designation

Must be kept for a minimum of three years

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

An employee is entitled to any

- Unconditional pay increases that occurred during FMLA leave, such as cost of living increases
- Any pay increases conditioned upon seniority, length of service or work performed if employees taking the same type of leave for non-FMLA reasons receive the increases

Taking FMLA leave cannot result in the loss of any employment benefit that employee earned or was entitled to before taking leave

DOL Resources

Available Online Forms



- Certification of Health Provider for Employee's Serious Health Condition
- Certification of Health Provider for Family Member's Serious Health Condition
- Notice of Eligibility and Rights and Responsibilities
- Designation Notice
- Certification of Qualifying Exigency for Military Family Leave
- Certification for Serious Injury or Illness of Covered Service Member
- Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

www.dol.gov/whd/fmla/

Conclusion

- FMLA can be complex
- Understand the requirements
- Ensure you have a policy and procedure
- Be consistent
- Be timely
- Don't be afraid to ask for help!

Questions



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