

# FMLA: What managers need to know

The Family and Medical Leave Act (FMLA) is more than 20 years old, but surveys show that it still ranks as one of the most confusing and frustrating employment laws for companies to administer. And in those 20 years, employees have learned how to use the FMLA to their advantage.

It's important for managers to understand whether an employee's request for leave could qualify as FMLA leave, and how to respond once an employee is on FMLA leave.

Editorial Director Pat DiDomenico provides a brief overview of the FMLA and covers the top five things that managers need to know about the law.

## 1. Which employees are eligible and why?

The FMLA allows qualified employees to take up to 12 weeks of unpaid leave from their jobs each year. To be eligible, employees must have worked at your organization for at least 12 months and logged at least 1,250 hours of service during that time.

If employees are qualified, they can take FMLA leave for any of these three reasons:

1. To care for their child after birth, adoption or foster care. (This includes both women and men.)
2. To care for the employee's spouse, child or parent who has a "serious" health condition.
3. The employee's own "serious" health condition makes him or her unable to perform the job.

**Two other important points to remember:** Only companies with 50 or more employees are required to offer FMLA leave. Also, many states have their own FMLA-like laws that employers need to understand.

## 2. What counts as a "serious" health condition?

The law allows FMLA leave only for "serious" health conditions to prevent employees from using it for colds and headaches. But there's no precise list of conditions that qualify as "serious" conditions.

Basically, the law defines a "serious condition" as one that requires in-patient hospital care or a three-day incapacity requiring continuing treatment from a doctor. That can include anything from a stroke to severe arthritis. And it includes incapacity due to chronic conditions like asthma and diabetes.

Courts are constantly debating which ailments qualify as "serious" and which don't. Employers have the right to demand medical certification from a doctor to make a decision on whether a condition qualifies.

**Best bet:** Managers should bring the issue to HR's attention whenever they suspect an ailment might qualify for FMLA protections.

## 3. How much FMLA leave can employees take?

Eligible employees can take up to 12 weeks of unpaid, job-protected leave during a 12-month period. The law refers to unpaid leave — it doesn't require paid leave during those 12 weeks.

Eligible leave doesn't have to come in one-week or even one-day chunks. The law allows some employees to take "intermittent" FMLA leave, which can be for one hour or less.

The FMLA does permit employees to elect (or employers to require the employee) to use accrued paid leave, such as vacation or sick leave, for some or all of the FMLA leave period.

#### **4. What's an "illegal" manager action?**

The law says managers can never block eligible employees from taking FMLA leave. An employee's FMLA leave may be inconvenient, but it's illegal to retaliate. Nor can you consider an employee's FMLA leave as a negative factor when deciding on his pay, benefits or promotions.

After FMLA leave is over, employees must be able to return to the same or an equivalent position with equal pay, benefits and perks. The new position must involve the same or substantially similar duties, responsibilities and authority as the pre-leave position.

Employees on FMLA leave continue to earn health benefits.

#### **5. Must employees notify you?**

If employees can foresee their need for FMLA leave—say in a pregnancy—they must give you at least 30 days' advance notice.

When FMLA leave is not foreseeable, they need to inform you as soon possible, which usually means one or two business days.

**One final important point:** Employees don't specifically need to cite the law or say they need "FMLA leave." It's the employer's responsibility to identify leave requests that could qualify as job-protected FMLA leave. If you suspect a leave request could qualify, it's important to notify HR right away.