

FMLA eligibility checklist — is your employee eligible for FMLA leave?



Is an employee looking to take time off for medical reasons by utilizing their FMLA rights? While the FMLA can be a valuable tool for both employees and employers, it can also be a hassle for HR departments. Save yourself time and energy by using an FMLA eligibility checklist to determine if an employee is truly eligible to take leave before starting on the next steps.

In this article, we'll cover:

- An FMLA eligibility checklist for employers
- Tips for a smooth FMLA process
- Notice requirements required for FMLA eligibility

Our FMLA eligibility checklist will help you understand the basic requirements for eligibility and the procedure to follow once you receive an FMLA request.

What is FMLA?

The Family & Medical Leave Act is a law that allows employees 12 workweeks of unpaid leave in cases of serious injury, the birth of a child, active duty/military service, adoption of a child, or to care for a spouse or child with a serious medical condition/incapacity.

After your employee's return from 12 weeks of leave, you as an employer are obligated (by law) to give your employee the same job (or an equivalent position). An employee's leave entitlement will reset every single 12-month period (see more on setting [FMLA calendars](#) here). In some cases, employees may take intermittent leave over an extended period of time and could have to recertify documentation periodically.

Family And Medical Leave Act Poster

Covered employers are required to keep [a poster of the Family And Medical Leave Act](#) somewhere in the workplace to educate employees of their rights.

Designation Notice (Form W-382)

Form [WH-382](#) is mandatory when an employee files for FMLA. The designation notice is a legal contract between the employer and the employee that will help prevent lawsuits and other troubles when going through the FMLA process.

As an employer, you are obligated to provide your employee with a designation notice 5 business days after receiving a sufficient amount of information to either authorize or decline the leave.

This document will notify employees of important information, including:

- FMLA leave approval.
- FMLA leave denial.
- A request for more information, if necessary, before a decision can be made.

Employers should be adamant about getting the right documents before permitting the leave.

Read here for more tips on [how to approve or deny FMLA leave](#).

Second and third opinions

As stated in the WH-382 form, second and third opinions can be requested at the expense of the employer.

FMLA eligibility checklist

The first criteria for determining if an employee is eligible is to ensure that the employer is a covered employer. Otherwise, the FMLA does not apply to your business.

A covered employer:

- Is a private employer with at least 50 employees.
- Is a government agency (regardless of the number of employees).
- Is a Public or private elementary or secondary school (regardless of the number of employees).

However, there are some circumstances where businesses may still be held accountable for FMLA leave even if they're not normally considered cover. For example, say your business includes in its handbook that you will offer leave in alignment with the FMLA, even with fewer than 50 employees. If you deny an FMLA leave request, the court is likely to rule in an employee's favor.

Additionally, multi-armed businesses beware. If a smaller division of your company only employs 20 employees but is owned by a larger parent company, courts have generally ruled that those employees are still eligible for FMLA leave.

If you're a covered employer, then you'll now need to determine if the employee is eligible.

If an employee checks all the following criteria, then they are likely eligible for FMLA leave.

- Has your employee been working for you for 12 months or longer? These 12 months do not have to be consecutive as long as they have been within the last 7 years. ✓
- Has the employee logged at least 1,250 hours of work in the last 12 months? If an employee has only worked 6 months in the last year but meets the above criteria, they will still be eligible if they have worked at least 1,250 hours in those 6 months. ✓
- Does the employee work at a location with 50 employees or more, or within a 75-mile radius of the worksite? ✓
- Did your employee give you at least 30 days notice or "as soon as practicable?" ✓
- Did your employee provide you with a doctor's note of eligibility? ✓

Your employee is obligated to provide you with doctor's orders from a health care provider before taking medical leave. Give them a copy of [this medical certification form](#) (either a wh-380-f or wh-380-e) for their doctor to fill out and send back.

If you answered no to any of the previous questions, you may not be obligated to provide FMLA leave for your employees.

If you answered yes to all of the questions above, your employee can most likely qualify for FMLA leave *if they* have the correct qualifying exigency. So what is a qualifying exigency?

A qualifying exigency or qualifying reason is one of the following circumstances that may qualify you for FMLA leave, including:

- Adoption.
- Preparation for the birth of a child/newborn child.
- Taking care of a personal serious health condition (physical or mental).
- Foster care.
- Inpatient care.
- Taking care of a family member with a serious health condition (employees will get up to 26 weeks of military caregiver leave/military family leave to care for a covered servicemember next of kin suffering from serious injury or illness).

Note: As of 2014, FMLA rights have been extended to all same-sex marriages.

Notice Of Eligibility/Rights And Responsibilities Notice (Form W-381)

After the employee is deemed eligible for FMLA, it is then the employee's responsibility to get certification.

[Form WH-381](#) is the employee's request for leave, and it will help employees determine if they are eligible for FMLA. Employers are obligated to provide this form for the employee wanting to file for requested leave.

Form WH-381 requires/provides the following:

- Certification of health care provider.
- Given dates of the requested leave.
- Employee's rights and responsibilities when filing for FMLA.
- Additional information that may be necessary (proof of relation to said family member with ailment).

Intermittent leave

Did you know that employees can take FMLA intermittently for conditions like anxiety and other medical treatments? Taking leave intermittently helps employees be able to leave work at certain times to go to the doctor for treatment. (See more in [intermittent FMLA leave](#) here.)

Avoiding problems with FMLA leave



Human resources

And employee training for FMLA

If you're a covered employer, then your employees have a right to FMLA leave, so educating them about the subject matter is an important part of hiring them. Be sure to have employee training before the employee starts work that explains to them the FMLA and the eligibility criteria.

HR employees and managers should also be trained on the FMLA. This helps avoid legal issues down the road and ensures leave requests are handled properly.

Communication is key

Employees should give you at least 30 days' notice if possible when planning on taking FMLA leave. Proper notice ensures you can make arrangements to cover the employee's work while they're out. It will also give you the opportunity to verify their FMLA eligibility, especially if additional documentation is needed.

Typically, if the employee fails to give 30 days notice, you are not obligated to let them take leave until at least 30 days after notice. However, if the need for FMLA was unforeseeable like a sudden illness or accident, then such requirements are generally waived.

You should try to work with employees as much as possible and keep an open line of communication. Failing to do so and failing to make good faith efforts will reflect poorly on your organization should you ever find yourself in court.

Record everything

One way to help make sure you are going about FMLA leave correctly is by documenting and recording all interactions made while going through the process. Nobody likes to talk lawsuits, but be sure you document all parts of the FMLA process. This may even include recording important conversations with a voice recorder.

To learn more about FMLA, read [The Employer's Guide To The Family And Medical Leave Act](#)

Recertification

Does your employee need to continue utilizing FMLA leave as new complications arise or as part of an intermittent FMLA agreement? It may be necessary for you to request new documentation for recertification. When doing so, however, it's important to follow the law carefully. Requesting recertification when you are not permitted to do so could be seen as employee retaliation and harassment.

Avoiding discrimination in the workplace

Even well-meaning managers could ask questions or make comments that trigger a discrimination case, especially when it comes to FMLA. Ensure that managers do not ask unnecessarily probing questions of employees requesting FMLA. Additionally, ensure to keep an employee's information confidential. Doing these things can prevent future lawsuits.

Additional resource: Read more about [FMLA requirements](#) and what they mean for your business.