

# FMLA certification guide for employers



FMLA certification is a key factor in ensuring employees don't abuse FMLA leave. However, handling the process can be challenging even for the most experienced HR team member. Not getting the process right could cause complications down the road.

Fortunately, there are simple steps that employers can follow to ensure that the FMLA certification process runs smoothly.

In this BusinessManagementDaily.com article, we'll discuss:

- The steps necessary for FMLA certification.
- Tips for a smooth FMLA process.
- What FMLA is and why it's important.

## What is FMLA?

The Family And Medical Leave Act is an employment law that requires certain covered employers to provide up to 12 weeks of unpaid leave for an employee's serious health condition or a serious condition of an employee's family member.

When filing for FMLA, an employee may be required to have sufficient certification including medical information and other information like proof of relation to the immediate family member they will be taking care of.

### Employee Responsibility Vs. Employer Responsibility For FMLA

**The employee's responsibilities are to** verbally request leave from their direct manager and to obtain medical certification if the employer requests it.

**The employer's responsibilities are to** notify the employee if certification is required and designate leave as FMLA-protected.

### Why take FMLA leave?

The biggest reason why employees should file for FMLA medical certification is that it guarantees them the same or equal job after their return to work. Without filing for FMLA, your rights as an employee could be compromised.

There is one catch to all this, however, and that is that the employer can deny the leave request if the employee is a key employee that will cause financial hardship for the company. If the employer determines that it is just too hard for them to let the employee take leave, they also have the right to maintain the well-being of their company by denying the leave.

### Here's a quick step by step through the process to help you understand FMLA better:

**Step 1.** Employee Requests Leave From Employer

**Step 2.** Notice Of Eligibility

**Step 3.** Certification Of Health Care Provider

**Step 4.** Employer Notifies Employee Of FMLA Designation

**Step 5.** Employee's Leave Is Protected

**Step 6.** The Employee Receives The Same Or Equal Position Upon Returning To Work

Now let's take a look at each of those steps in more detail.

### Step 1. Employee requests leave from employer

In step one, the employee notifies the employer of their desire to take leave. Employees should try to give the employer at least 30 days of notice when looking to become eligible for FMLA leave.

A request for leave can be simply a verbal request between the employee and the employee's direct supervisor. After the employee requests their leave of absence, management should work with human resources to help facilitate the leave for the employee.

## **Step 2. Notice Of Eligibility (Designation Notice) (Form W-381)**

It's the employer's responsibility to notify the employee whether or not they are eligible for FMLA leave within 5 business days. Eligibility for FMLA leave depends both on the employee and the employer. See bulleted points below for requirements.

After the employer receives the employee's FMLA leave request, they are obligated to provide the employee with the Form W-381 that informs the employee of their approval or denial for leave along with their rights and responsibilities.

## **Step 3. Certification of health care provider (Certification Form [WH-380-E](#))**

Employers have the right to request medical certification, and employees typically have 15 calendar days to provide medical documentation.

Medical certification is the employee's responsibility. During this process, the employee visits the doctor or care facility where their (or their relatives) incapacity will be treated. The doctor or other medical professional documents the medical facts supporting the leave of the employee or their relative.

During and after this period, the employer has the right to a second opinion and even a third opinion (at their own expense). This means the employer can request that the employee be certified by multiple doctors.

The employer can also request documentation proving their relationship to immediate family members (birth certificate, marriage certificate, etc), and the employee will also need to fill out a different form ([WH-380-F](#)) that demands medical information for their direct relative.

The employer will typically have a leave administrator who works in the company's HR office that will work with the employee and management to help facilitate a smooth transition for everyone.

## **Step 4. Employer notifies the employee of FMLA designation**

After the employee has provided the employer with sufficient medical documentation and any other proof of exigency, the employer is obligated to notify the employee of FMLA designation within 5 business days.

## **Step 5. The Employee's Leave Is Protected**

So there you have it, the employee's leave is protected by law. During their leave, the employee still has responsibilities to uphold. For example, if the employer requests updates periodically when filling out the designation notice, the employee is obligated to keep the employer up-to-date with information.

## **Step 6. The employee receives the same or an equal position upon returning to work**

Now it's time for the employee to return to work. What does that mean? It means that the employer is obligated to uphold their end of the deal.

### **The employee is entitled to:**

- The same or an equal position at work.
- The same salary/hourly wage as before.
- A similar work schedule.
- The same insurance benefits, sick leave, vacation, etc...

Keep in mind that if the employee is unable to return to work after the 12 week period then they are no longer

protected under law. However, they could qualify for additional protections under the American's with Disabilities Act (ADA).



**What else you need to know**

## **as an employer about FMLA leave**

### **Substitution of paid leave**

Yes, you can be paid to take leave as long as your employer approves the notion.

### **Employee requirements for FMLA**

The employee must have been employed for a period of 12 months or more prior to requesting leave. The employee has to have logged at least 1250 hours at work in the last 12 months.

The employee must have a reasonable qualifying exigency: these are one of the circumstances that make an employee eligible for FMLA leave.

### **Examples of a qualifying exigency include:**

#### **Birth of a child**

This covers the actual birth of the child for the mother, and it also allows the father to file for leave anywhere within the 12 month period of the child's birth to allow for bonding time between the father and the child.

#### **Serious health conditions**

Serious medical conditions that require an overnight stay at the hospital are one of the main reasons why FMLA regulations were put into place.

#### **Foster care**

Foster care is a respectable and time-consuming service to the community.

#### **Taking care of an immediate family member's serious health condition(e.g., military caregiver leave)**

Employees are entitled to take leave for the care of a family member, but they might be required to show proof of immediate relation to the employer.

## **Adoption**

An expanding family is grounds for taking FMLA leave, and since the adoption process takes time it is suitable grounds for protection under the Family And Medical Leave Act.

## **Mental illness/counseling**

Leave is provided for employees suffering from mental health issues. This is a circumstance where intermittent leave may be permitted for an employee to leave once or twice a week to seek medical attention for their mental health.

## **Military family leave**

There are certain situations where FMLA leave is permitted for family military deployments, and family members of service members have the right to take up to 26 weeks of FMLA every single 12-month period to take care of a service member with a serious illness or injury.

## **Employer requirements**

- The employer must employ 50 or more employees, and those employees have to work within 75 miles of the business.
- The employer is an elementary school, secondary school, or public agency.

The notice of eligibility also informs the employee of their rights and responsibilities when taking their leave.

## **Is intermittent leave possible when taking FMLA time?**

Yes, FMLA does allow employees to take their leave intermittently.

For example, if the employee needs to see a doctor or counselor once every week, the employee will be able to leave work for the time necessary until it amounts to 12 weeks of total absence.

## **Are you an airline employee?**

FMLA eligibility is different for airline employees. You only have to have worked for a total of 504 hours in a 12 month period. See page 2 in the [employee's guide to the family and medical leave act](#) for more info.

## **Do you have the FMLA poster in the workplace?**

Employers covered under the FMLA act are obligated to display a poster in the workplace notifying employees of their right to take leave.

## **The ADA provides equal opportunities to people with disabilities**

Did you know that the Americans with Disabilities Act protects the rights of people with disabilities? Check out [www.ADA.gov](http://www.ADA.gov) for more information.

## **Is Hiring A Lawyer Necessary?**

Hiring a lawyer most likely won't be necessary when going through the FMLA process, however, employees are encouraged, if needed, to contact the U.S. Department Of Labor's Wage And Hour Division (WHD).

## To file a complaint, simply contact the WHD, and give this information:

- The name of the company
- Company phone number
- Location of business
- The name of the manager or owner
- The circumstances of your FMLA request
- Your address and phone number

## FMLA calendars

Employees can file for leave once a year through the DOL. When FMLA leave availability resets depends on the calendar method chosen by the organization. By not choosing a method, you'll have to choose the option that favors each employee, which can cause some challenges for HR. Read more about setting your [FMLA Calendar here](#).

## Avoiding discrimination in the workplace

Discrimination around mental illness and other incapacities can be hard to avoid in the workplace. For this reason, the employer should be as discrete as possible when allowing an employee to take medical leave for mental health and other discriminable issues. Additionally, it's important to ensure that managers and HR staff do not ask questions that appear retaliatory or discriminatory.

## Communication is the key to successful FMLA leave

It might seem like taking protected FMLA leave is complicated, but larger companies should have HR staff dedicated to handling this. In other companies, administrative staff might handle a lot of FMLA processing.

Regardless of the situation, the key to smooth FMLA certification is good communication between the employer and employee. All documentation should be kept on file, and it would even be a smart idea to record any conversations with a voice recorder to remove any doubt from the situation.

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