

FMLA return to work guidelines for employers



After an employee takes FMLA leave, they're entitled to return to their prior position or an equivalent one. However, there are a number of situations where what that looks like may vary. For example, what exactly counts as an equivalent position may be unclear. Such discrepancies could lead employees to file lawsuits or complaints with the DOL that their rights have been violated, so it's best to fully understand the process before an employee is set to return from FMLA leave.

In this BusinessManagementDaily.com article, we cover FMLA return to work guidelines, including:

- Steps employers need to follow when employees are planning their return to work from FMLA leave
- Tips for employees pertaining to leave laws, entitlement, and FMLA return to work guidelines
- Other helpful tips to help both employers and employees during FMLA leave process

What are an employee's rights when returning from FMLA leave?

FMLA was passed to protect employee jobs during those times where they need a little time off of work for medical reasons or to care for a family member who has a medical condition. That means the employee more or less has the right to return to their equivalent job through FMLA. So what are employees entitled to after they take their 12 weeks of leave?

The same or equal position and terms of pay

Unless the position is a key position that would cost the company a substantial loss, the employee is entitled to

the same position and pay upon their return to work. Key employees aren't as protected under FMLA because companies have the right to maintain essential functions in their workplace.

The same health benefits/worker's compensation

Eligible employees are entitled to the same health insurance/healthcare provider and worker's comp they had before they took the leave. Employers cannot, however, require an employee to take unpaid leave if they have an injury that qualifies under worker's compensation.

Equal job duties/working conditions

An equivalent position *and* working conditions are mandatory and protected under the FMLA. This means that the employer can't have resentment for the employee's absence and stick them into a worse role.

If John was a window cleaner before, he shouldn't be demoted to a toilet cleaner after his leave is up, and if John feels like his rights are violated he can potentially file a lawsuit. The same conditions of employment are also an employment right for an employee when returning to work. Employees deserve to be taken care of throughout the whole FMLA process.

The same or similar work schedule

The employee should expect the same work schedule when returning to work. This means that the employer can't take advantage of the employee by switching them to the graveyard shift or breaking up their shifts into inconvenient blocks.

Employee took more than 12 weeks leave? The deal's off

Employees that take more than 12 weeks of leave lose their FMLA rights and are no longer protected. This means that HR should work closely with employees to make sure they are back to work when they need should be.

With this in mind, however, an employee may be eligible for additional protections under the American's with Disabilities Act.

Avoiding resentment and discrimination in the workplace

Employees taking intermittent leave can sometimes create problems in the workplace.

Say a difficult work task comes up and an employee decides to conveniently take FMLA leave that coincides with this time off. As you could imagine, the other employees/management dealing with the task are not going to be happy. It's generally best to keep information about an employee's medical leave quiet, even if coworkers ask questions, leave information is private.

However, if FMLA leave is legitimate, there's little that can be done. If abuse is expected, then there are other options you can pursue.

Employees can submit complaints about FMLA violations

Your employees can contact the Department Of Labor if they feel their FMLA rights were violated. The US Department Of Labor's Wage And Hour Division is responsible for taking complaints about FMLA violations. Employers are prohibited from retaliating against or denying an employee's right to file a complaint.

Complaints can be submitted through the Wage And Hour Division by including the following information:

- Employee's address and phone number.
- Circumstances(reason) of the complaint.
- Phone number of the company.
- The name of management, HR, owner of the company.
- Company location.

How to properly deal with employee complaints

There will always be situations where the employer has to deal with an employee complaint. It also just so happens that employees often may use FMLA as a baseline for filing a lawsuit.

For example, say John, a government worker, may want to take sick leave because his family member has come down with coronavirus during the pandemic and gets a little bit too comfortable staying at home while on his leave. After his 12 workweeks of leave are over, John requests to work at home out of fear of getting sick. When his employer declines the request, John files a complaint that his FMLA rights were violated.

This lawsuit would likely be thrown out, as the employee expended their leave already and is not entitled to more time off.

Still, any complaints should be handled carefully and seriously. Other complaints may have more merit, like if an employees existing job is not available and they do not feel the new position given to them is a proper match.

Human resources will need to handle the work when dealing with leave complaints as to not create conflict between the worker and their manager. Managers should, however, always be on their toes when dealing with a worker taking leave and should be cautious not to take actions that may appear retaliatory.

Managers and HR should be closely recording and employees' time off, and making sure the employee returns to work promptly after the leave is over.

What is FMLA?

FMLA (The Family And Medical Leave Act) is a law put into place by the DOL (U.S. Department of Labor) protecting employee rights for taking unpaid medical leave for work, and it also allows employees to take time off work to take care of family members or other qualifying reasons.

Here are a few examples of why an employee might want to take unpaid medical leave:

- Birth of a child
- Injured family member
- Anxiety/Depression
- Migraines
- Adopting a child
- Taking care of an injured service member

FMLA is unpaid leave, but it's perfectly okay for employees to request to use their paid leave during their time away if the employer approves.

It's important to note that FMLA is only possible under covered employers, meaning FMLA leave is only valid for government employees and companies with over 50 employees that all work within a 70-mile radius of the company's worksite/location.

When can employees take FMLA leave next?

So, an employee has been back from their leave for a while now, and they are wanting to take more time of for unpaid leave. When will the employee's FMLA leave reset? It varies based on how your business's FMLA calendar is set.

The four FMLA calendaring methods are:

- The calendar year.
- Any fixed 12-month "leave year," such as a fiscal year, a year required by state law, or a year starting on an employee's "anniversary" date.
- The 12-month period measured forward from the date any employee's first FMLA leave begins.
- A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

If the employer doesn't choose a calendaring method, the employer must use the calendaring method most beneficial to the employee. So, if you haven't already chosen a method, do so now. Otherwise, each time you process an FMLA leave request, you must calculate the entitlement four ways.

Communicating properly is the key to successful FMLA return

Are you communicating sufficiently with your employee while they are on leave?

The key to properly taking FMLA leave is proper employee tracking.

For example, Jane took intermittent leave to deal with her chronic migraine problems. Jane's employer required her log her leave hours into an electronic time counter to measure time away.

Once HR noticed that Jane had exhausted her 12 accumulated weeks of leave, they called a meeting with management for proper reinstatement of Jane into her full-time position.

Legal advice: How to avoid FMLA fraud

Both employers and employees need to be wary when dealing with FMLA leave. Proper training and education about FMLA leave policies can prevent drama and lawsuits.

Here are some techniques for employers to keep employees honest:

Recertification of leave request ✓

Employers requiring employees to recertify their FMLA absence every year is totally legal, and it will help keep employees honest. Yearly duty certification means the employee must see a doctor every year to verify their need for continued intermittent leave.

Time tracking/check-ins ✓

Employers can randomly check in with employees to make sure they are actually at the doctor or using their medical leave time effectively.

Private investigation ✓

Hardcore employers might even want to hire a private investigator to track an employee if they have a suspicion about their leave request.

Read more about FMLA return to work guidelines

Want to learn more about FMLA leave and other employment laws? Please visit dol.gov to read documents like [The Employee's Guide To the Family And Medical Leave Act](#).

See the Americans With Disabilities Act to learn about reasonable accommodation for employees with disabilities.