

What is the Family and Medical Leave Act?

Established in 1993, the Family and Medical Leave Act, also referred to as FMLA, is a federal law that guarantees certain employees up to 12 workweeks of unpaid annual leave with no threat of job loss. The FMLA was created to allow workers to balance work and immediate family needs. Employees can qualify if they have a serious medical condition; if any immediate family member (child, spouse, or parent) has a serious medical condition; if it is the birth and/or of their child; if it is the placement and/or care of an adopted or foster care child; or if the spouse, child, or parent is on or has been called to active duty for the National Guard or Reserve in support of a exigency operation.

There are some exceptions for leave when it comes to family members. Employees are not eligible to take leave if an in-law has a serious medical condition or if they have a child over the age of 18 that is ill unless they are incapable of taking care of themselves due to a serious disability.

In order to be eligible for FMLA leave, the employee's employer must be a qualified organization. The FMLA is a requirement for all public agencies including State, Federal, and local as well as most private employers. The employer must have at least 50 employees within a 75-mile radius in order to qualify for FMLA. FMLA also applies to those employers who employed 50 or more employees for at least 20 workweeks during either the current year or the previous year. There are also specific restrictions that apply when it comes to employee eligibility. First, the employer must be qualified. Second, the employee must work for the employer for a minimum period of 12 months, and they must have worked 1,250 hours within those 12

Statistics from the Department of Labor (DOL) state:

- Close to 60% of employees qualified for coverage and eligibility for FMLA.
- In the past 12 months, 13% of all employees reported taking FMLA leave.
- Employers reported the misuse of FMLA is rare. Less than 2% covered employers reported confirmed misuse of FMLA and less than 3% of covered employers reported suspicion of FMLA misuse.
- 85% of employers state that complying with FMLA is very easy, somewhat easy, or has no noticeable effect.

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FMLA Leave Restrictions and Allotment

The FMLA requires employers to inform employees of their rights and responsibilities under FMLA. When an employer is notified of an employee's request for leave, they have 5 business days to respond if the employee is eligible. Once the employee's request has been assessed, the employer is required to issue a designation notice, which consists of information regarding benefits, return from leave requirements, and additional policy information. Some benefits may be lapsed during leave, for instance an employee can choose to use paid FMLA leave even though it isn't guaranteed.

In 2012, the Department of Labor (DOL) released findings of a FMLA survey (Family and Medical Leave in 2012: Executive Summary) to judge its effectiveness within the last two decades. Two different types of surveys were taken to complete the report, an employee survey and a worksite survey. With over 4,500 completed interviews done by the surveys, here are the conclusive findings completed by the DOL:

- Only about one in six worksites reports that it is covered by the FMLA
- For an employee to be completely eligible for FMLA leave, they must work for an employer with 50 employees within 75 miles of the employee's worksite; have 12 months of tenure with this firm; and have 1,250 hours of service in the past year. In 2012, 59% employees reported meeting all three of these conditions to be eligible, but only 13% of all employees took leave for a qualifying FMLA reason.
- Most leave taken is for an employee's own illness (55%). Leave for pregnancy or a new child, or for illness of qualifying relative is less common. Leave for other reasons including military reasons is rare (2%).
- Most leave is short. Nearly half of all leave events last 10 days or less (42%).
- Only two-thirds of all employees have heard of the FMLA.
- Most employees receive some pay while on leave: 48% report receiving full pay and another 17% receive partial pay. Rates of full pay drop sharply for leaves of more than 10 days. Most employees who took leave in the past year report that they returned to work because there was no longer a need for leave (78%). Despite the receipt of some pay, the inability to afford leave is another common reason for returning to work (40%).
- A small proportion of employees report that they needed leave but were unable to take it in the past year (5%).

Employers can require an employee to use paid leave as a part of FMLA leave, but the employer must provide the employee with proper notification before doing so. Other types of leave can also count towards an employee's FMLA leave depending on if the employee meets FMLA requirements; but the employer or human resources will still have to provide the proper notice to decide if the leave will qualify as an employee's FMLA leave.

There are also additional parameters when it comes to an employee requesting FMLA leave. While the employer has to provide proper notification to the employee, the employee has to complete the proper paperwork proving that their reasons for taking FMLA leave are justified under law. For example, FMLA leave can be covered by prescribed therapy sessions. While the employer doesn't have the rights to employees' medical records, they can request an employee to provide them with medical certification of any serious medical condition. If the employee fails to provide medical certification upon the employer's request, the employer may be allowed to cut the FMLA leave short. However, if the employee does provide the proper certification, the employer cannot request that the employee come back to do any type of work including part-time work. Otherwise, the employer cannot confine the employee's actions during leave unless the original reason for leave no longer exists; if the employee fails to provide medical certification; or if the employee lied about reasons for leave.

In the Florida case *Pivac v. Component Services & Logistics, Inc.* (2013), Biljana Pivac is an employee who is eligible for FMLA leave. She does not use FMLA to protect her self from termination because she believed her doctor's note was enough. Her mistake was thinking that her doctor's excuse was all the proof she needed. Due to her increased number of absences, and lack of vacation and personal time off, she should have applied for FMLA leave. But since she refused to use FMLA leave, her employers exercised their right to terminate her. So Pivac, decided to sue Component Services & Logistics, Inc. for FMLA abuse. Pivac claims that due to her depression and anxiety that she could not work. However, Pivac failed to provide the company with any evidence of having a serious medical condition or any continuous treatment.

Biljan Pivac worked from December 5, 2007 to October 18, 2011 as a warehouse clerk for Component Services & Logistics, Inc. Pivac believed she was terminated for unpaid leave and for refusing medical leave. After Pivac used all of her personal and vacation time, she sought to take time off to visit her older parents in Yugoslavia because she was feeling depressed and anxious. The HR representative told her that was not an eligible reason for her to take FMLA leave, however, the representative did instruct her on how to take a FMLA leave for stress and the necessary paperwork she needed to file. In accordance with company policy, Pivac was aware that a day and a half every three months was a personal day, that if an employee was sick more than two days they needed a doctor's note, and if they had excessive unpaid leave the employee might be terminated. Pivac mentioned that she did not know much about the company's family and medical leave procedures. Up until then, Pivac had some performance issues and problems regarding her attendance during an employee evaluation. Pivac visited the doctor once and wasn't given a course of treatment, but instructed by the doctor to take seven days to for herself and gave her a "Medically Excused Absence" form for October 4, 2011 to October 17, 2011. Pivac called on October 6 to inform her employer that she would not return to work for a week, the employer told her to bring her doctor's notes on her return date. Pivac never completed any FMLA paperwork because she believed that her medical note was good enough. Once Pivac returned to work, she and the HR representative spoke again, and he questioned her decision of not taking FMLA leave. The HR representative reported to Sandy Torok the Human Resource Director to explain that Pivac decided not to take FMLA leave and was aware of what FMLA leave was. Ms. Torok made the decision to terminate the Pivac's employment for excessive absenteeism. Sandy Torok stated that Pivac had taken questionable leave during October 2011 leave and during one month in 2010. Due to lack of evidence, the court decided that Pivac failed to establish that there were any material issues of fact to try in the case and it did not violate FMLA. The case was closed and dismissed.

If an employer is FMLA qualified and an employee is FMLA eligible, the employer cannot deny leave request, and cannot use FMLA leave as a factor in employment decisions such as promotions or terminations. Employees are guaranteed to have a job once they

return from FMLA leave, but it does not necessarily mean it will be the same position. Most employees are reinstated to their same position; but if not, the employee must receive the equivalent pay, benefits, and terms and conditions as their prior job position. However, employers can sometimes deny reinstatement to certain high paid, salaried workers. If an employee is eligible for a bonus prior to taking FMLA leave, the employer cannot use the leave as justification for denying the bonus. If an employee complains about an FMLA violation, the employer cannot fire them, and employers cannot retaliate against an employee for alleging a violation of FMLA.

Issues with Processing FMLA Leave

Using software to improve and manage employee leave, especially extended absences, is one of the easiest and best solutions for employers. There are multiple benefits with having a system solution set in place to identify risks and minimize costs. Software programs allow employers to address their employees' medical leave and create proactive wellness programs for all other employees. This can increase benefit plans so employees can seek proper treatment. In addition to that, FMLA software can divide data and create modules to illustrate employee absence and leave. These modules can further be filtered when searching for reasons of leave, uses of workers' compensation, and non-medical leave. This data would be used to identify patterns of absences over a period of days and/or months that may lead to determine if there has been abuse of leave policies by an employee. These software programs measure, monitor, and manage employee absences, workers' compensation, and other leave requests so organizations can analyze better strategies, budget decisions, and avoid costly mistakes.

There are a lot of challenges to administering FMLA leave. With consistent changes to FMLA, it can become harder for human resources to keep track of individual employees' leave eligibility and can lead an organization of running a higher risk of facing liability if an error is made. These fines and violations can cost employees and employers a lot of money. Additional problems include employee notice obligations; updating and implementing new FMLA leave policy procedures; requesting medical and other leave certifications; and keeping track of intermittent leave.

Employers have to provide notice to employees about FMLA qualified leave. If employers are unaware that the employee is taking an FMLA leave, employers can't provide the notice and it could lead to a violation. On another hand, qualifying organizations must practice correct policy in the company and keep track of employee information while updating it in accordance to new changes. With new policies FMLA, some employees may lose eligibility requiring them to request sick or vacation time. Therefore, FMLA mandates that employees can request their leave status every 30 days and employers must respond in writing by the next pay period. This process can be difficult and time-consuming for some companies that lack access to employee time and attendance information. With additional changes to FMLA, employers have to file four different forms depending on employee leave request that must be submitted. These forms include: employee providing certification of serious health condition, certification for a covered family member with a serious health condition, qualifying exigency for an employee under military amendment, and certification for an employee providing care to a family member serving in the military.

Since intermittent leave can be unscheduled and unpredictable, it can create some problems. The employer must gather as much information they can from the employee and as quickly as possible. Otherwise, it can be risky for an employer to hold an employee accountable for an absence without knowing the reason for the absence. For this reason, intermittent FMLA leave can cause tracking difficulties. Due to the unpredictable nature of taking the leave, timing, and questionable documentation, it can have HR questioning leave legitimacy. In other situations, suspicion can arise if FMLA leave is being used by an employee that has started showing signs of lost interest in their job. If absence patterns begin to occur, HR can label an employee with an attendance problem and can lead to disciplinary actions as a result.

In *Hofferica v. St. Mary Medical Center* (2011), Kathleen Hofferica, a nurse at St. Mary Medical Center, was terminated for not showing up for work as scheduled while taking FMLA leave to recover from surgery. Hofferica was diagnosed with Ménière's disease in March 2008 and applied for intermittent leave in April 2008. She was pre-

approved for leave from February 5, 2008, to February 4, 2009. Hofferica learned in September 2008 that she would have a series of surgeries. She began her leave, and she and her husband would call to provide weekly updates to the assistant nurse manager at St. Mary Medical Center. On November 4, Hofferica claimed she called the assistant manager to discuss that she would need to push back her return to work date (November 6, 2008) based on her doctor's orders. The manager did not return the call. The doctor cleared Hofferica to return to work on November 13, 2008. Hofferica called to notify the manager of her return to work date and ask for an extension. The call was not returned again. On November 12, 2008, Hofferica received a letter from her employer informing her that she had been terminated due for not returning to work as her FMLA leave had expired, the letter was dated for November 7. Hofferica filed suit against the hospital, claiming violations of the Americans with Disabilities Act, the Pennsylvania Human Relations Act, and the FMLA. Under the FMLA, she claimed interference and retaliation. St. Mary moved for dismissal of all claims. The court denied the employer's motion to dismiss the claim as the assistant manager's failure to return an employee's calls while they on FMLA leave showed as antagonistic attitude that supported the employee's FMLA retaliation claim.

Employers must be careful when administering and monitoring employee FMLA leave. If an employer fails to provide leave required by FMLA, the employer will face liability. Just as in *Hofferica v. St. Mary Medical Center*, Kathleen Hofferica complied with all of the FMLA rules and regulations while her employer did not. This legal ramification can cause St. Mary Medical Center to pay huge fines for violating FMLA, and the Department of Labor does not take wrongful FMLA claims lightly. If employees make FMLA claims stating they were wrongfully terminated or denied leave, the Department of Labor will most likely begin an investigation. The Department of Labor will monitor and analyze all of the employer's FMLA policies, documents, and communication to employees. With software programs, there is the ability to capture all information, track employee leave and absences, and create automatic reports. This easy FMLA manage solution allows HR professionals to accurately assess an employee's FMLA leave eligibility without worry about liability and time-consumption.

Using Software to Accurately Track FMLA Leave

Due to updates and changes on FMLA laws, employers can run the increased risk of compliance if they don't take the proper steps. Using Advance Systems Human Resources Software, FMLA absences can easily be tracked, send alerts, and automated letters to managers and employees regarding eligibility, time used, and compliance issues. This helps reduce the amount of time, minimizes human error, and improves compliance when managing FMLA leave. The software has the FMLA rules and regulations downloaded into the system and allows employees and employers to determine leave eligibility, track continuous and intermittent leave, and determine when it is appropriate to draw FMLA leave as well as sick, personal, vacation, workers' compensation, and other types of leave. Advance Systems Human Resources Software updates as the FMLA law changes, and lessens the risk of errors such as giving employees more leave than they are entitled to or allowing ineligible employees FMLA leave. The software enables human resources to remain within the law when granting FMLA leave while reducing costly compliance fees and legal defense as well as granting the right amount of leave to employees who meet eligibility requirements.

A company can run the risk of owing fines and penalties if errors are found. With the self-updating system on FMLA state, federal, and union policies, the Advance Systems Human Resources Software can help avoid expensive penalties and legal defense. This also helps reduce the time that human resources would have to take with changing laws and updating eligibility. Advance Systems Human Resources Software also allows employers to log performance tracking as well as Realtime reporting. When a performance review is due, the Advance Systems Human Resources Software will alert the supervisor and employee. The software allows different types of performance reviews to be stored in and done through the system, and provides customizable scorecards to evaluate the employee's performance. It also allows employees and supervisor to revisit past and current reviews so they can compare present reviews with past ones to detect any performance trends. This tool gives supervisors access to an employee's strengths, weaknesses, and work habits. Another feature Advance Systems Human Resources Software is Realtime reporting. This tool allows supervisors to log into the system

to view current time and attendance of a particular employee. It also tracks the amount of vacation time taken, overtime worked, shifts swapped, and any tardiness the employee has had. This data provides accurate and current information that employers need to approve or deny requests for things such as vacation time and overtime. The program can send alerts to employees and managers when attendance violates company policies. Advance Systems Human Resources Software ensures issues are handled before they have a negative impact on the company.

Advance Systems Absence Management Software automates FMLA absence tracking to help organizations mitigate compliance risks associated with FMLA. Similar to Advance Systems Human Resources Software, Advance Systems Absence Management Software also allows human resources to enter an employee's information into the system to check if the worker is eligible for FMLA leave. This software also tracks the employee's leave, and detects errors to notify managers. To protect organizations against compliance errors and legal accountability, the software remains up-to-date with the law and ensures that employee's are not granted more leave time than they are allotted to.

Summary

The purpose of the Family Medical Leave Act is to give American workers better opportunities to balance work and family needs. Whether the employee is dealing with illness, birth of a child, or other reasons, FMLA requests are usually used for serious life events. Advance Systems can properly manage leave eligibility so employers and employees don't have to worry about any oversights. With a solid system in place, employees can take their leave properly without the fear of ramifications. It can take months or years to catch an attendance error that will impact FMLA. Companies must plan ahead to avoid owing lots of fines and penalties that are the result of overpayments. To keep employees satisfied employers should take the precautionary measures to learn how to manage FMLA. With consistent updating and changes to the Family Medical Leave Act, employers must make sure that their organizations are prepared to handle new leave regulations and requirements. Employers can minimize compliance risk, save time, and increase productivity when

using Advance Systems Human Resources Software and Advance Systems Absence Management Software. With this software, employers can track employee leave eligibility accurately and fairly, as well as monitor and automatically update new and changing compliance laws so employers stay up to date.