

Managing Unpaid Leave Requests Under the FMLA

The Family and Medical Leave Act (“FMLA”) provides eligible employees with up to 12 weeks of unpaid, job-protected leave, continuous healthcare benefits, and job protection. Managing leave requests can be a difficult task for human resources or payroll professionals. It is not uncommon for employers to make mistakes in handling leave requests.

Unpaid leave is granted for the following circumstances: the arrival of a new child through birth, adoption, or foster care, the care of a seriously ill family member, or to deal with your own serious health condition. When employees return to work after FMLA leave, employers must allow them to return either to the same position, or to a position equal in pay, benefits, and other terms, and conditions of employment. However, the FMLA does not prohibit an employer from firing or laying off an employee on FMLA leave, as long as the employer would have made the same decision if the employee were not on FMLA leave. In such a situation, the employee has no right to reinstatement, continued leave, or continued benefits.

Employee FMLA Eligibility

More than 50 million Americans have taken leave since the FMLA was passed in 1993. Employers that must comply with the FMLA are private employers with 50 or more employees, federal government offices, state and local government offices, and public and private elementary and secondary schools. To be eligible to take leave under the FMLA, an employee must have worked for a covered employer for at least 12 months, they must have worked at least 1,250 hours for the employer in the 12 months immediately preceding leave, and work at a location with at least 50 or more employees within a 75-mile radius. Employees who take military leave are entitled to count the time spent on military leave as hours worked for all purposes, including eligibility for the FMLA. Employers may not prevent employees from exercising their FMLA rights, nor may they discriminate against employees for exercising these rights.

The FMLA is administered and enforced by the Department of Labor’s (“DOL”) Wage and Hour Division, which can investigate complaints brought by employees. If an employee believes their employer has violated their FMLA rights, they can file a complaint with the DOL within two years of the violation, or they may file a private lawsuit. Employees may sue employers to recover lost wages and benefits, as well as for reinstatement and promotion. Successful employees are entitled to additional liquidated damages (equal to the actual damages) unless the employer acted in good faith when it violated the FMLA, plus attorney’s fees, expert witness fees, and court costs.

Recordkeeping Requirements

The FMLA often creates an administrative burden that can tie up important company resources in payroll and human resources departments. State and Federal FMLA laws and regulations can change nearly every month, making it a daunting task to stay up-to-date with the new requirements. If not managed effectively, FMLA administration can offer numerous challenges to employers, in addition to causing extensive problems with employees.

In general, the FMLA requires employers to keep basic payroll records regarding hours worked, rate of pay, and deduction from wages, as well as records detailing the dates and amount of FMLA leave taken and copies of notices and documents related to FMLA leave. The records must be provided to U.S. Department of Labor officials on request. These records include:

- Payroll information for each employee, including name, address, job title, rate or basis of pay, terms of compensation, daily and weekly hours worked per pay period, additions to wages, deductions from wages, and total compensation paid
- Dates the employee has taken FMLA leave
- If the employee has taken less than a day of FMLA leave, the number of hours of leave taken
- Copies of any written notices the employee has given the employer about FMLA leave
- Copies of written notices the employer has given the employee about FMLA leave
- Documents describing employee benefits
- Documents describing employer policies regarding paid and unpaid leave
- Documents recording employer-paid health insurance premiums
- Records of any disputes between the employer and the employee regarding FMLA leave

An Automated Approach

Heightened awareness of the Family and Medical Leave Act has increased costs and compliance risks for employers. Complex, manually administered leave programs are expensive to manage, and often result in error. There are substantial pressures on human resources and payroll personnel to provide accurate tracking of leave accrual, which if improperly managed, can result in serious financial liabilities, productivity drains, and stiff “failure to comply” penalties. To alleviate some of the stress placed on HR and payroll, many companies are implementing advanced [time and attendance systems](#) that are software-based and provide accurate and efficient records to easily track employee hours. Time and attendance software simplifies payroll processes by calculating work hours, vacation & sick hours, FMLA and other information that can be exported to popular payroll software programs.

For complete details on the FMLA, contact the U.S. Department of Labor Employment Standards Administration, Wage and Hour Division.