



Family And Medical Leave Act (FMLA)

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Background

The Family and Medical Leave Act (FMLA) was signed into law in 1993 as a means of addressing the changing needs of workers' family responsibilities. Under the law, anyone who works in a company that employs 50 or more people can take up to 12 weeks of medical leave per year without threat of losing his or her job. FMLA covers both pregnancy and [ADOPTION](#), as well as caring for a seriously ill relative. It also covers the individual employee's own serious illnesses.

Many companies already had leave policies in place before the enactment of FMLA. Some companies, not surprisingly, are more generous than others. The need for federally mandated protection stems from several issues. First is the fact that families are changing. The two-parent one-income family, once the norm in American society, is less and less common. Two-income families and single-parent families have to deal with pregnancy, childhood illness, and a host of other situations that may require time away from work. In addition, a growing number of people are serving as caregivers for elderly parents. Whether in their home or the parent's home, this service can turn into a significant expenditure of time.

Second is the changing structure of the workplace. With medical costs skyrocketing and wide economic shifts, some companies may be inclined to cut back on the amount of leave they want their employees to take. Or they may wish to withhold payment of medical benefits while an employee is on leave, even if that leave is related to a medical condition. Some companies may allow employees to take several weeks of medical leave and then not reinstate them. FMLA offers protection to employees so that they can take the time off they need without fear of recriminations.

The Basics of FMLA

Simply stated, FMLA guarantees employees that they can take up to 12 weeks of either family leave (to handle adoption proceedings, for example) or medical leave (to take care of a recuperating parent) per year. Anyone who has worked for an employer for at least 1,250 hours and 12 months is entitled to leave under FMLA. Employees can take both family and medical leave during the year, but the total amount of time cannot exceed 12 weeks. If an employee requesting leave under FMLA has accrued sick time and vacation time, the employer can require that this time be included in the 12-week leave. In other words, if an employee has two weeks of paid vacation time accrued, he or she cannot automatically take those two weeks *and* an additional 12 weeks; the employer can be generous and allow that but is not obligated to do so.

Encyclopedia of Everyday Law: Family And Medical Leave Act (FMLA)

Under FMLA, the employee taking leave is entitled to reinstatement upon returning to work. If the employee's old job is not available, he or she is entitled to another job at a similar level of responsibility. A company cannot punish an employee who takes FMLA leave by firing or demoting that person simply for taking the time off.

It is important to understand that FMLA is not an extended personal leave program. Employers have a right to know the specific reasons the employee is applying for leave under FMLA. If an employee requests leave because of illness, the employer has a right to ask for proof from a physician. Moreover, the employer also has a right to ask for proof from a physician that an employee is able to return to work.

Having or Adopting a Baby

Anyone who is pregnant or who is adopting a baby (or taking in a foster child) can take FMLA leave. A woman who takes her leave for pregnancy can use her accrued sick time as part of her leave; those who are adopting cannot. FMLA leave for the arrival of a baby is not limited to women. Men who want to take time off after a child is born and single men who decide to adopt a child are entitled to the same 12 weeks of FMLA leave that women can get. Moreover, a married couple can take 12 weeks *apiece*, so that, for example, a new baby could have at least one parent home for 24 weeks. If the couple works for the same company, however, they are only entitled to a total of 12 weeks between them.

Family Members and Serious Illness

FMLA allows employees to take up to 12 weeks off to take care of an immediate family member who is seriously ill. A child who is recuperating from major surgery, a parent suffering from Alzheimer's disease, or a spouse recovering from an auto accident are examples. The stipulation is that the person being cared for must be immediate family; an in-law or a favorite second cousin would not count. Serious illness can include stroke and heart attack, complications from pregnancy, pneumonia, severe arthritis, and epilepsy. Clearly not every condition will require the full 12-week leave to be used up at one time. But FMLA allows employees to break up their leave time, so long as it does not exceed 12 weeks per year.

Employee's Illness

Employees who suffer serious illness are also covered under FMLA. If, for example, a worker needs to stay home for six weeks to recuperate from back surgery but the worker only has two weeks sick leave, that worker is entitled to FMLA leave. The employer has the right to require the employee to take accrued paid time as part of the 12-week leave.

FMLA, ADA, and Title VII

With the existence of the Americans with Disabilities Act (ADA) and Title VII of the CIVIL RIGHTS Act (both of which predate FMLA), why bother with a family medical leave act at all? While there is some overlap between the three, each plays a different role.

ADA focuses on people who have disabilities that affect their ability to perform activities that are regarded as part of normal everyday life. A person who cannot walk or see is covered under ADA. Title VII prohibits [DISCRIMINATION](#) on the basis of race, color, sex, religion, or national origin. A company cannot provide leave to one group and not another.

Why FMLA? The most important difference between it and ADA and Title VII is probably that it has a more

direct effect on an employee's family. Neither ADA nor Title VII provide guarantees to individuals who wish to take leave to look after a sick child or spouse. Nor do they provide for full medical insurance coverage the way FMLA does. Under ADA, an employee who chooses to work part-time because of a [DISABILITY](#) is only entitled to whatever insurance is provided to other part-timers. Under Title VII, an employer cannot provide one employee with insurance and another with none solely on the basis of race, color, religion, sex, or nationality. But there is no provision guaranteeing insurance.

Under FMLA, employers must maintain the employee's insurance at its current level (that includes covering a spouse and children who are on the plan), so long as the employee keeps making his or her regular contribution (if any) into the policy.

The Employer's Perspective

It may seem as though FMLA and similar laws are all designed to protect employees and not those who hire them. While protection of workers' rights is clearly important, no law is designed with the intention of crushing businesses under a mountain of untenable regulations.

It is important to understand that laws such as FMLA serve as a framework for minimum acceptable standards. Many companies offer more than 12 weeks leave to employees, and a number also offer at least partial paid leave. Interestingly, a survey of 1,000 employers conducted by the research firm Hewitt Associates just at the time FMLA was becoming law in 1993 indicated that some 63 percent already had some sort of family leave program in place, and 56 percent had medical leave programs. To be sure, many of these companies were not offering benefits at the same level guaranteed under FMLA. But they were not ignoring employee needs, either.

During the economic boom of the 1990s, many companies found that they had to offer more and better benefits to attract employees from a shrinking applicant pool. In leaner economic times that line of reasoning does shift, but top companies have long known that one of the best ways to attract the best employees is to give them good benefits.

Sometimes it is difficult to get employees to take their full benefits. For example, even though FMLA allows men to take time off during and after the arrival of a baby, far fewer men take time off than women. Part of the reason is that in many companies there is still a perception that someone who takes time off to raise a child is not committed to his or her career. For men this is still a more difficult hurdle, since even in the most enlightened companies there is still the perception that men should exhibit an almost over-riding commitment to their job. One thing that laws such as FMLA may ultimately do is help break down stereotypes like these, so that more people can benefit.

Laws such as FMLA, ADA, and Title VII are geared toward protecting employees, but that does not mean employers must bankrupt themselves to accommodate only a few employees who choose to take advantage of such protections. For example, under FMLA an employer has the right to know precisely what the leave is intended for. Lack of protection would give companies the right to terminate employees rather than give them even unpaid leave. But protection without requirements and guidelines could be misused by unscrupulous employees.

In the years since FMLA was enacted, a number of business groups have asked for adjustments and clarifications. Although there is much support for the spirit of FMLA, many say that as a practical matter there is too much room for abuse. Reports of people taking FMLA time off for the flu or a simple cold, or taking their FMLA leave time in small increments (so-called "intermittent leave" that allows people to take an hour at

a time off, or even less, under the current regulations) only fuel the complaints of skeptics.

Ideally, the company and the employee should work together to find arrangements that are suitable to both. FMLA allows such flexibility. For example, an employee may choose to take FMLA-approved leave intermittently (perhaps a few days or a week at a time) during the year instead of in one 12-week chunk. Or the employee may be able to work on a part-time schedule.

Other Elements of FMLA

Federal vs. State Regulations

Under the terms of FMLA, state regulations that are more generous than FMLA accommodations will take precedence over FMLA regulations. Where this is not the case, FMLA regulations will supersede the state rules. Each state has its own department of labor and its own set of guidelines for employee rights. Those who wish to know about the rules in a specific state should contact that state's labor department to find out precisely how its regulations work and how they mesh with FMLA and other federal laws.

Currently, 18 states, as well as the District of Columbia and Puerto Rico, have laws that are more comprehensive than FMLA. For example, in Vermont, Oregon, and the District of Columbia, the 50-employee minimum is significantly lower. In Hawaii and Montana, companies with one or more employees must offer leave for maternity disability. An employee can take leave to care for an in-law in the District of Columbia, Hawaii, Oregon, and Vermont. In Massachusetts, employees receive 24 hours leave per year to accompany a child or relative to routine medical or dental appointments. Louisiana and Tennessee provide four months leave for maternity disability.

Proposed Changes to FMLA

In 2001, two amendments to FMLA with very different outcomes were introduced in Congress. The Right Start Act is designed to expand FMLA by including employers with 25 or more employees instead of the current 50. It would also offer employees 24 extra hours of leave per year to visit their children's school (for parent-teacher conferences or literacy programs, for example). A quite different measure, the Family Leave Clarification Act, would toughen the rules on what constitutes a "serious illness" and set the minimum increment of leave time to one half-day. Both of these bills were pending action in early 2002, and each has strong supporters and opponents.

Employers and employees should work together as much as possible, but they also need to know enough of the regulations to avoid making an inadvertent mistake. Organizations such as the U. S. Department of Labor, the Equal Employment Opportunity Commission, and the Society for Human Resource management can provide useful information. Employers that seek legal [COUNSEL](#) would do well to remember that for a subject this complex it makes sense to look for attorneys or firms who specialize in employment law.

Additional Resources

Family and Medical Leave in a Nutshell. Decker, Kurt H., West Group, 2000.

Paid Family Leave: At What Cost? Hattiangadi, Anita U., Employment Policy Foundation, 2000.

Taking Time: Parental Leave Policy and Corporate Culture. Fried, Mindy, Temple University Press, 1998.

Organizations

Society for Human Resource Management (SHRM)

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