

## FMLA for Supervisors

**A**s a supervisor, do you like to pretend that the FMLA doesn't exist? Or, do you really wish you could just get rid of it altogether? Well, it does exist and it isn't going to go away. The FMLA, for good or bad, is a federal law and as a supervisor you must comply with this, often misunderstood, requirement.

The FMLA can be complicated – and supervisors need to understand the fundamentals. Your department can set up training. If you haven't received training in the last year, ask them to – soon! In the meantime, the following tips should help.

### The FMLA Basics

The FMLA requires covered employers to give eligible employees up to 12 weeks of unpaid leave per year when they have a serious health condition, are pregnant, or adopt a child. It also allows eligible employees time off to care for a family member with a serious health condition. In addition, it requires employers to grant up to 26 weeks of leave to military families in certain circumstances. Leave may be taken all at once or intermittently.

### Covered Employers

In general, the FMLA applies to:

- ♦ private employers with 50 or more employees or who jointly employ enough other workers to meet the 50-employee requirement;
- ♦ all public agencies – state, local, and federal governments; and
- ♦ public/private elementary or secondary schools.

### Eligible Employees

To be eligible, employees must:

- ♦ have worked for you for at least 12 months;
- ♦ worked at least 1,250 hours in the past year; and
- ♦ work at a work site where the employer has at least 50 employees within a 75-mile radius.

### Supervisor Liability

Supervisors can be held liable for their comments and actions with regard to administering the FMLA. So, always forward information concerning the medical and



health issues of employees and their family members to your HR department. This includes questions they have about whether their situation qualifies for FMLA leave. Also, avoid negative comments about FMLA leave – both in general and about employees who have requested and/or used leave.

### FMLA Leave Abuse

It's OK to track patterns of FMLA leave that seem suspicious (*e.g.*, employees who use intermittent FMLA leave only on Fridays or around company holidays). However, communications about suspicious leave should be conveyed to HR orally whenever possible. Any written documentation that you send to HR should: 1) accurately summarize the dates or other factual circumstances involved; and 2) be free of any editorial comments.

### Supervisor Rights

A supervisor has the right to:

### Tip

Don't believe "myths" such as: that taking FMLA leave requires an employee to stay confined to his home or requires a doctor's note every time the employee is out of work.



## Legal Guarantees for Employees

The FMLA contains several legal guarantees for employees in addition to the main leave requirements. They include:

- ◆ **Job protections.** The FMLA generally prohibits firing an employee while he is on FMLA leave or refusing to rehire him when he comes back. When employees return from leave, they are entitled to the same position they held before the leave or to an equivalent po-

sition with equivalent benefits, pay, and other terms and conditions of employment. (There are exceptions to this requirement so check with your HR department for more details.)

- ◆ **Pay and benefits protections.** Employers are required to continue employees' group health benefits while they are on FMLA leave. In addition, they can't reduce an employee's bene-

fits or salary because they took leave.

- ◆ **Retaliation and discrimination.** Employers are prohibited from discriminating or retaliating against employees for exercising their rights under the FMLA. This means they cannot be penalized for FMLA absences in any way – such as by giving them a poor review or reducing their raises due to poor attendance.

- ◆ know whether an approved FMLA leave is related to the employee's serious health condition or that of a family member;
- ◆ be notified by the employee that she is going to miss work, even after she has been approved for intermittent FMLA leave; and
- ◆ ask for details about why the employee needs to be out on a particular day. A supervisor is entitled to know whether the leave is needed for planned medical treatment or because of a sudden symptom flare-up. He is not entitled to intimate details about the condition or specifically how it is "flaring up." Rather, he can simply ask, "Is your absence for a doctor's appointment?"

*Tip*

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◆ Convey all information regarding FMLA leave to HR orally whenever possible.  
◆ Under most circumstances, written communications would have to be provided to an employee's attorney as part of a lawsuit involving an alleged FMLA violation.



## Employee Rights

Employee rights under the FMLA include that:

- ◆ they must be reinstated at the end of leave;
  - ◆ their performance reviews and raises may not be adversely affected due to their having taken FMLA leave; and
  - ◆ no attendance points may be assessed against them for absences that qualify as FMLA leave.
- The FMLA *does not* entitle employees to:
- ◆ paid leave (unless the employee has accrued time);
  - ◆ bonuses based on attendance or other criteria (unless the employee earns them); and
  - ◆ exemption from discipline for failing to follow the company's usual notice-of-absence requirements (although employees are exempt from being disciplined for the absences themselves).

## Bottom Line

If you follow these tips, you should be able to align your actions with your HR department when it comes to the FMLA. Not only will it make them happy, but it just might keep you out of court, too.

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