

Federal FMLA Compliance: A Step-by-Step Guide



Federal FMLA Compliance: A Step-by-Step Guide

Passed in 1993 to help employees better balance work and family demands, the federal Family Medical Leave Act (FMLA) requires employers to provide job-protected, unpaid leave to employees for qualifying reasons. While complying with the requirements – from notices to recordkeeping – can be challenging, it is essential: employees or the Department of Labor can sue for damages or injunctive relief

To ensure you understand the rules and what they require, this guide outlines a step-wise approach to getting it right. For more information, contact Complete Payroll Solutions at 401-332-9325.

Covered Employers

The first thing to consider with FMLA compliance is to determine whether your organization is subject to the law's requirements. The federal FMLA only applies to covered employers, which can be a private employer, public agency, or school.

- **Private Employer:** A private employer is covered if it employs 50 or more employees during each working day for 20 or more weeks in the current or preceding year.
- **Public Agency:** Any size public agency is considered a covered employer under the FMLA.
- **Schools:** Both private and public elementary and secondary schools as well as public school boards are covered under the FMLA regardless of the number of employees.

When determining the number of employees, private employers must pay attention to specific rules that determine who must be counted, which include:

- Any employees on the payroll, even if they are not receiving compensation for the week
- Employees on leave if there is a reasonable expectation that they will return to work
- Full-time, part-time, seasonal, and temporary employees

Required Notices

Once an employer determines that it is covered under the FMLA, it must satisfy the general notice requirement or risk penalties for purposeful violations. The law requires employers to display or post a general notice about the FMLA in plain view, even if there are not any employees currently eligible for leave. Employers can use the current or previous model poster from the Department of Labor or utilize their own notice that contains all the necessary information. In organizations where a significant portion of the workforce is not literate in English, a general notice in a language employees can read and write must be provided.

In addition to the general notice, if a covered employer has FMLA-eligible employees, it must also provide a notice to each employee. This notice must be included in the employee handbook or other written materials about the employer's leave and benefits. If the organization does not have a handbook, it must distribute a general notice to each new employee upon hire, which can be done electronically. The notice can use the language from the DOL's model poster or follow another format as long as it includes all of the information contained in the model poster.

Eligible Employees

As a covered employer, one of the most challenging aspects of compliance with the FMLA is determining if an employee is eligible for leave under the law. In order for an employer to consider a request, the employee has certain responsibilities.

- The employee must comply with the employer's usual and customary procedures for requesting leave; however, they do not need to specifically mention FMLA in the request but must give enough information that the employer understands it may be covered.
- If the leave is foreseeable, the employee must provide at least 30-days' advance notice, if practical, and include when and how much leave is needed. If the leave is unforeseeable, they need to provide it as soon as possible and practical.

As soon as the employer receives enough information that indicates an employee's request may be for an FMLA-qualifying reason, the employer should begin the process of determining employee eligibility. Eligible employees are those that have:

- Worked for the employer for at least a total of 12 months (these do not need to be consecutive)
- Worked at least 1,250 hours during the 12-month period immediately before the leave
- Work at a location where the employer has at least 50 employees within a 75-mile radius

If an employer determines that an employee has met the eligibility criteria, they need to furnish the required notices to the employee:

- **Eligibility Notice:** This notice, which can be oral or written, must inform the employee if they are eligible for leave. If the employer determines the employee is not eligible, they must provide at least one reason.
- **Rights and Responsibilities Notice:** Employers must provide a written Rights and Responsibilities Notice, which details specific expectations and obligations of the employee, each time they issue an eligible employee the Eligibility Notice.

Both notices must be provided within five business days of the FMLA leave request. If the employer elects to provide the Eligibility Notice in writing, the DOL has a model notice that can be used which combines both the Eligibility Notice and Rights and Responsibilities Notice in one form, or employers can use their own version.

Qualifying Reasons

When assessing an employee's request, it is important to understand what is considered a qualifying reason under the law. Employees who meet the eligibility criteria can take up to 12 workweeks of FMLA leave for any of the following reasons:

- The birth and care of the employee's newborn child
- Placement of a child with the employee for adoption or foster care
- Care of a family member with a serious health condition
- The employee's own serious health condition
- Military family leave (up to 26 weeks for a qualifying exigency involving a family member or to care for a covered servicemember – spouse, child, parent, or next of kin – with a serious injury or illness)

One of the most common qualifying reasons for FMLA leave is the birth or adoption of a child, and there are specific rules governing these situations. First, the leave must be taken within 12 months of the birth or placement of the child and, second, spouses employed by the same employer are limited to a combined total of 12 workweeks of leave.

Another frequent reason for leave is a serious health condition. A serious health is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider. When the employee requests leave to care for a family member with a serious health condition, only certain individuals are considered family:

- Spouse: A spouse is a husband or wife as defined or recognized under state law, including a common law marriage or same-sex marriage. Domestic partners and civil union partners are not considered spouses.
- Parent: A parent is a biological, adoptive, step, or foster father or mother or any other individual who stood "in loco parentis" (in place of a parent); however, it does not include parents-in-law.
- Son or Daughter: A son or daughter can be a biological child adopted or foster child, stepchild, and legal wards. It can also be the child of a person standing "in loco parentis."

Leave Determinations

When an employer decides whether to approve or deny leave, they must base their decision on information received from the employee; however, they can request additional information and, depending on the situation, can also ask for documentation of the family relationship as well as certification, which is a document or form completed by the employee and a healthcare provider (if applicable). Specifically, employers may require certification for leave due to a serious health condition of the employee or their family members or for military family leave to verify the reason. Certification must typically be provided within 15 days; if the employee does not provide it, the employer can deny the leave request.

If an employer concludes that it will designate leave as FMLA leave, it must provide a Designation Notice to the employee within five business days of when the employer received all of the information. Even if the employee uses paid leave and does not request FMLA leave, the employer must still designate it as FMLA leave. The DOL has a model notice for this purpose or an employer can create their own that includes:

- The amount of leave that will count against the employee's FMLA leave entitlement, if known
- Whether the employee is required to substitute paid leave for unpaid FMLA leave
- Whether the employee will be required to submit a fitness-for-duty certification to return to work

Maintaining Group Health Benefits

After an employer grants a leave request, it is important to follow the rules that apply during an employee's leave. One of the most important is that the employer must maintain group health benefits for the employee on leave on the same terms as if the employee had continued to work, including new options being offered to employees.

During the leave, the employee must continue to pay their share of the premiums. If a premium payment is more than 30 days late, the employer may drop the employee's coverage; however, the coverage must be reinstated when the employee returns. There is one exception to maintaining health benefits: coverage can be terminated if an employee informs the employer that they will not be returning.

Job Restoration

When an employee returns from FMLA leave, they must be restored to the job they had when leave began or an equivalent role with equal pay, benefits, and other terms and conditions of employment. However, there are some exceptions to this rule:

- Employees are not protected from actions that would have affected them if they were not on FMLA leave, for example, if a shift has been eliminated
- An employer may deny restoration to “key employees” to prevent substantial and grievous economic injury; however, since key employees are those among the highest paid 10 percent of all employees, this is a fairly narrow group
- In some cases, an employer may delay restoration to employees who do not provide fitness-for-duty certification

Employer Recordkeeping

The responsibilities of employers do not end when a leave is completed. The employer must keep and maintain FMLA records for three years, including:

- Basic payroll and identifying employee data
- Dates of FMLA leave
- Hours of leave (if taken in increments of less than a day)
- Employee notices
- Documents describing employee benefits or policies regarding the taking of leave
- Premium payments for employee benefits
- Records of any disputes regarding leave designation

The records can be kept in any form, including electronic. While the documents are not required to be submitted to the DOL, they must be available for inspection upon request.

Interaction With Other Types of Leave

Federal FMLA leave is typically unpaid. However, the employee may choose or the employer may require them to take paid leave, such as sick time or paid time off (PTO), to cover some or all of the leave. This option would be determined under an employer’s normal leave policy.

When a substitution occurs, the paid leave and FMLA leave run concurrently. Keep in mind that when leave is used for an FMLA-covered reason, for example, for the birth of a child, it is still protected.

There are other instances when different federal or state laws come into play.

Federal FMLA Compliance: A Step-by-Step Guide

- **Workers' Compensation:** A workers' compensation absence for the employee's own serious health condition may also be designated as FMLA leave. When that happens, the leave counts towards the employee's FMLA leave entitlement. However, because the leave is paid, the employer cannot require other accrued paid leave (for example, sick leave) to be substituted. However, if the employer and employee agree and state law permits, accrued paid leave may supplement the plan's benefits to bring the employee up to their salary level.
- **Americans with Disabilities Act (ADA):** The ADA, which applies to employers with 15 or more employees, requires employers to provide reasonable accommodations to disabled employees. Leave may be a reasonable accommodation and, if provided, it runs concurrently with FMLA-protected leave. Keep in mind that the FMLA's leave provisions differ from the ADA's reasonable accommodation requirements so employers must provide leave under the provision that gives the employee the greatest protections.
- **State Leave Laws:** Many states have enacted their own laws to provide different, or additional, leave rights. These laws may provide longer leave periods, greater benefits, or leave for other reasons. While employers must follow the rules for the state and federal laws when they are both applicable, employees must be afforded the rights and protections of the more generous law. However, leave would count against both leave entitlements. When only FMLA or the state leave law covers the leave, then it would only count against the applicable law's leave entitlement. Since the laws change frequently, employers should stay up to date on the laws that apply to them, particularly for those companies operating in more than one state.

Complete Payroll Solutions is the Northeast's largest and fastest-growing Human Resource, benefits, and payroll service provider, helping employers address the ever-changing complexities of employee life cycle management. Founded in 2003 by owners with a long tradition in the industry, Complete Payroll Solutions has maintained its "customer-first" philosophy that has defined the company since its inception, even amid rapid growth. Investing heavily in the belief that local is better, the company continues its mission to deliver cutting-edge technology with world-class products and services at the community level. Complete Payroll Solutions now services more than 7,000 business customers and is continuing to expand in area communities. To learn more about the company, visit www.completepayrollsolutions.com.