

A few things that your company should know about the FMLA.

What is the FMLA?



The Family and Medical Leave Act allows eligible employees of an eligible employer to take job protected unpaid leave or to substitute appropriate paid leave if the employee has earned or accrued it for up to a total of 12 weeks per year for the birth, adoption or care of a new child or to care for themselves or a family member with a serious health condition.

Who is eligible for FMLA?

Employers who employ 50 or more employees may be a covered employer under the FMLA. Employees who work at a work-site with at least 50 employees within 75 miles and have worked for the employer at least 12 months and 1250 hours in the previous 12 months may be eligible.

What special rules apply to military service?

Employers are required to allow up to 26 weeks of leave in a 12 month period for employees who wish to care for an injured spouse, child, parent or “next of kin” who is injured while serving in the armed forces. An additional requirement under the military FMLA amendment allows for up to 12 weeks of leave for a “qualifying exigency.”



What are some of the common pitfalls for employers?

Unfortunately, there are many. One of the most common is not having an effective written FMLA policy or perhaps not following the policy that is in place. If an employer has no policy, it is largely left up to the employee who takes leave to decide what they want the policy to be.

Supervisor training is critical. FMLA places a great deal of responsibility upon the employer to designate FMLA in circumstances where an employee may be eligible. If supervisors do not understand FMLA rules, they may be unable to assist the HR department in making prospective FMLA designations.

Another area of risk for employers is properly coordinating FMLA leave with insurance benefits, Workers Compensation and the ADA.



For more information on these or other Compliance issues, contact your **Dexter & Company** Compliance Check specialist at 214-526-5646 or visit our website at www.dextercompany.com

A few FMLA situations you may someday encounter.

Your policy states that an employee may take 12 weeks of leave in a 12 month period. Is it really that simple?

Unfortunately, no, it isn't. According to FMLA regulation 852.200 (e), "if an employer fails to select one of the options in paragraph (b) of this section measuring the 12 month period, the option that provides the most beneficial outcome for the employee will be used." This means that an employee would have the right to choose amongst the following methods; calendar year, fiscal year or a year starting on the employees anniversary date. In these situations, an employee may be able to "double dip" by taking 12 weeks from one "year" and then 12 weeks from the next "year" consecutively resulting in leave of up to 24 weeks.

You deny FMLA because you don't consider a health condition to be serious, "Serious" means serious, doesn't it?

Actually, a "serious health condition" under FMLA isn't necessarily all that serious. For example, FMLA may be available to an employee who simply has an overnight stay in a hospital, An employee may also be eligible for FMLA if they are treated two or more times by a health care provider for the same condition. Even a single visit to a health care provider could trigger FMLA if that visit results in a continuing regimen of treatment, for example taking a prescribed drug for the treatment of the condition. Employees with chronic conditions almost always are eligible for FMLA; for example, an employee with asthma or diabetes.

An employee is seriously injured through the carelessness of another employee and is receiving Workers Compensation Benefits while on FMLA, the employee would also like to use his accrued sick and vacation time to supplement his income while he is out, is that a problem?

It could be a big problem. Since Workers Compensation is not an unpaid leave, the provisions for the substitution of the employees paid leave is not applicable. Employers should not allow employees to use sick, vacation or other paid time off benefits while on a Workers Compensation / FMLA leave of absence.

You review an employee's personnel file to determine if she is eligible for a safety bonus. Your safety bonus is based upon missed days of work due to on the job injuries. You find that her records reflect a single injury to her hand that required a hospitalization and an FMLA leave of absence of two weeks. Should she receive her safety bonus?

To the extent that an employee who takes FMLA leave has met all the requirements of the safety bonus before the leave began, the employee may not be disqualified for the safety bonus for taking FMLA leave. The days missed while on FMLA cannot be considered missed days for any attendance based incentive. This includes attendance bonuses and safety bonuses that are based upon missed days of work. If she had been treated on an outpatient basis and returned to work the next day with no further treatment, FMLA may not have been triggered and she may have lost her safety bonus.

How can we help?

The Family and Medical Leave Act is a complex law. There are numerous intricacies that must be followed in order to achieve compliance and reduce your exposure. We can help in a number of ways.

- Review your existing policies and procedures and make recommendations based upon government guidance and best practices.
- Assist in drafting or updating your FMLA policy.
- Provide supervisor training to educate supervisors on their responsibilities in regards to this important law.
- Provide administrative tools and forms to aid in ongoing administration of FMLA.
- Keep you updated on FMLA and how it effects other important HR and Insurance topics.

Compliance



Anyone can sell you an insurance policy. Our agency believes in proactive risk management, which is why we provide Compliance Check services.