

Resource

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## Overview

The FMLA is a federal law mandating certain employers to offer unpaid family or medical leave to eligible employees. This article briefly outlines the obligations, eligibility criteria, and protections under the FMLA.

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The Family and Medical Leave Act (FMLA) is a federal statute that requires covered employers to provide eligible employees with unpaid family or medical leave for specific qualifying reasons. Generally, FMLA leave extends up to 12 weeks during a 12-month period, but it can be up to 26 weeks for military family care. Employees' jobs are protected during this period and they typically resume work afterwards.

## Coverage of Employers

A private business is covered under the FMLA if it has 50 or more employees on its payroll for at least 20 calendar workweeks, in either the current or preceding calendar year. This employee count includes full-time, part-time, suspended, and leave-taking employees working in the U.S., the District of Columbia, and US territories.

## Coverage of Employees

To be eligible for FMLA leave, an employee must have worked for a covered employer for at least 12 months and 1,250 hours during the 12 months before the requested leave. The FMLA does not apply to an employee if the facility they work in has fewer than 50 employees, and the employer has fewer than 50 employees within 75 road miles of that facility.

## Calculating Eligibility

Considerations include work duration (12 months, non-consecutive, not looking back over seven years) and hours worked (1,250 hours within those 12 months).

## Permissible Reasons for FMLA Leave

FMLA leave is authorized for several reasons, including, but not limited to, leave related to:

- pregnancy;
- birth, adoption, and foster care;
- care for family members with serious health conditions;
- personal serious health conditions;
- military qualifying exigency leave; and
- care for a military family member with an injury or illness.

# Returning to Work

Employees returning after FMLA leave have the right to return to the same position they held before taking leave, or to a position with equivalent:

- Pay;
- Benefits;
- Working conditions;
- Privileges; and
- Status

Equivalent pay includes bonuses and payments, whether discretionary or non-discretionary. Certain bonuses or payments may be denied, unless they would have been paid to an employee on equivalent leave that did not qualify under the FMLA.

The right to return to the same position also means it must involve the same or substantially similar duties and responsibilities, including:

- Skill;
- Effort;
- Responsibility; and
- Authority

## During FMLA Leave

While an employee is on FMLA leave, the employer must maintain the employee's coverage under its group health plan on the same terms as if the employee had been continuously employed during the entire leave period.

Other than health care coverage, employees are generally not entitled to job benefits or seniority accrual during the leave period. However, employees may not lose any benefits or seniority accrued before their leave.

Any period of unpaid FMLA leave should not be counted as a break in service for purposes of vesting and eligibility to participate in pension and other retirement plans. While an employee is on a reduced schedule, the employer may not eliminate any benefits to which the employee was entitled as a full-time employee. An employer

may, however, proportionately reduce benefits such as vacation leave where an employer's normal practice is to base such benefits on the number of hours worked.

Similarly, service is deemed to continue during FMLA leave for purposes of an employee's outstanding options and other stock-based awards. An employer may, subject to the terms of the applicable stock plan or agreement, adjust or suspend vesting schedules as determined by the board/management and consistent with any employer-established leave of absence policies. The employer should review its stock plan documents and leave of absence policies to determine what is possible during FMLA leave and evaluate any potential tax implications related to stock-based awards such as loss of ISO status.

## Avoiding Penalties

Retaliating against employees for utilizing or advocating for FMLA rights is prohibited. Employers must recognize and uphold the principle of non-retaliation under the FMLA.

## State & Local Family and Medical Leave Laws

Many states and localities have their own family and medical leave laws. These laws may apply to smaller employers than FMLA, and may provide employees with more benefits and protections than FMLA. Employers should familiarize themselves with all relevant state and local laws.

## Conclusion

This high-level overview introduces some of the critical aspects of FMLA for employers. For tailored assistance regarding your specific obligations under FMLA, please contact Gunderson's Employment & Labor Group.

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