

SUMMARY

Leaves of absence can be granted for a variety of reasons: personal or family illness, pregnancy, military service, and a variety of other personal reasons. Some employers have a single policy that covers many different types of leave; others have a policy statement on leaves of absence in general and separate policies for the various types of leave. The **Family and Medical Leave Act** requires covered employers to provide up to 12 weeks of unpaid leave for a birth or adoption, to care for a close family member with a serious health condition, and for an employee's own serious health condition. A number of additional federal laws must be taken into account when an employer is designing a leave policy or processing a leave request. In addition, many states have their own family leave, disability, workers' compensation, and other laws that can affect the availability of leave and/or its terms. Leaves may also be regulated by a collective bargaining agreement.

FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

FMLA (29 USC 2601) requires covered employers to provide up to 12 weeks of unpaid family and medical leave to eligible employees. FMLA does not supersede state laws if they provide greater leave rights to employees. This means that employers covered by FMLA *and* a state law must take steps to ensure that employees receive the full benefit of both. The U.S. Department of Labor's Wage and Hour Division is responsible for enforcing FMLA. Employers that violate the law are liable for damages for wages, salaries, employment benefits, or other compensation denied or lost to employees because of violations, including interest on the monies. Reinstatement, promotion, or other appropriate remedies may also be ordered.

WHICH EMPLOYERS ARE COVERED BY FMLA?

FMLA affects private employers with 50 or more employees for each working day during each of 20 or more weeks in the current or preceding year. All public employers are covered, regardless of size. There are also special provisions for teachers and other instructional employees of public and private elementary and secondary schools.

WHICH EMPLOYEES ARE COVERED BY FMLA?

Employees eligible for leave are those who have worked for at least 12 months for the employer from whom leave is requested, *and* for at least 1,250 hours during the 12 months immediately preceding the start of the leave. An employee also must work at a worksite where there are 50 or more employees on-site or within a 75-mile radius.

The minimum service requirement is calculated as of the date leave begins, not the date leave is requested. If an employee requests leave before the eligibility criteria have been met, the employer may have to project when the date of eligibility begins. The 12-month service requirement does not require consecutive months of service.

The number of hours an employee has worked is determined in accordance with principles established under the **Fair Labor Standards Act (FLSA)**. FLSA requires that nonexempt employees be paid for the hours they actually worked. Hours an employee was on vacation or on leave, even if the vacation or leave is paid, do not count as time actually worked and, therefore, are not included in determining if an employee satisfies the 1,250-hour threshold.

Note—FMLA and USERRA: The Department of Labor (DOL) issued a memorandum to remind employers that active duty time counts toward eligibility to take time off from work under FMLA. The **Uniformed Services Employment and Reemployment Rights Act (USERRA)** entitles employees who also are members of the U.S.

CROSS-REFERENCE

Death in Family	D-0.1	Maternity and Pregnancy	M-3
Disabilities	D-6.1	Military Service	M-13
ERISA	E-15	Personal Leave	P-11
Fair Labor Standards Act (FLSA)	F-5	Workers' Compensation	W-11
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reserves or the National Guard to absent themselves from employment to perform military service. USERRA protects the employment benefits and reemployment rights of these employees. A reservist or Guard member who is taking military leave under USERRA might not have actually worked for his or her employer for a total of 12 months nor have met the 1,250 hours requirement when he or she left for military duty. The DOL reminds employers that they must count the months and hours that U.S. reservists or National Guard members would have worked if they had not been called to military duty toward the 1,250 hour requirement for FMLA eligibility.

BASIC LEAVE PROVISIONS

The law allows eligible employees to take up to 12 workweeks for leave during any 12-month period, for the following reasons:

- The birth of a child or the placement of a child with the employee for adoption or for foster care
- To care for a spouse, son, daughter, or parent with a serious health condition
- For the employee's own serious health condition

Leave for birth, adoption, or foster care. Employees can take a full 12 weeks of FMLA leave (assuming that they have had no other leave-qualifying events during the 12-month period) for the birth, adoption, or foster care of a child (sometimes referred to as "bonding leave"). Bonding leave is available to either men or women, and no medical certification is required. However, bonding leave must be *completed* within 12 months of the date of birth or placement. *The courts have expressed a clear intent that both men and women be eligible for FMLA leave to care for a newborn or newly placed child. Employers should not under any circumstances question the right of a male parent to take FMLA leave for bonding.*

"Serious health condition" defined. The definition of a serious health condition includes an illness, injury, impairment, or physical or mental condition that involves either inpatient care (i.e., an overnight stay in a hospital, hospice, or residential care facility) *or* continuing treatment by a healthcare provider. To qualify as "continuing treatment," the condition must involve:

- A period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity for the same condition that also involves either treatment two or more times by a healthcare provider or treatment by a healthcare provider at least once that results in a regimen of continuing treatment under the supervision of the healthcare provider.
- Any period of incapacity because of pregnancy or prenatal care.
- Any period of incapacity because of a chronic serious condition.
- A period of incapacity that is permanent or long term because of a condition for which treatment may not be effective (e.g., Alzheimer's disease).
- Any period of absence to receive multiple treatments by a healthcare provider (e.g., for reconstructive surgery after an accident or injury) or for a condition that would likely result in a period of incapacity of more than three consecutive days if untreated, such as for cancer (chemotherapy) or kidney disease (dialysis).

Where there is any doubt as to whether a condition constitutes a serious health condition, it is wise to request medical certification of the condition from a healthcare provider. See **MEDICAL CERTIFICATION** in this section for details.

Calculating and tracking the 12-week limit. Department of Labor regulations allow employers to use any one of four different methods to determine the 12-month period for purposes of counting and tracking leave. Employers may choose any one of the four methods, but the DOL regulations say the method selected must be used consistently and uniformly for all employees nationwide. The only exception to this rule is that when a state FMLA law requires a particular method, the employer must comply with that law. But it may select another method for its employees in other states. If an employer fails to select one of the options for measuring the 12-month period, the option that provides the most beneficial outcome for the employee will be used.

The methods for calculating the FMLA 12-week limit may be based on:

- The calendar year;
- Any fixed 12-month period (such as a fiscal year, year required by state law, or year that begins with an employee's anniversary date);

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- A 12-month period, measured forward, that begins on the date an employee first starts an FMLA leave; *or*
- A “rolling” 12-month period, measured backward, from the date an employee last used any FMLA leave.

A primary advantage shared by the first two methods is that recordkeeping and administration may be easier. This is because the methods used are consistent for all employees and may easily be linked with other systems, such as attendance, that are on the same schedule. A major disadvantage to employers who use the first three methods is that each allows “stacking” of leave time by employees. This means that employees theoretically could take 24 weeks in a row; for example, the last 12 weeks of a calendar year and the first 12 weeks of the next calendar year. Such a protracted leave is not allowed under the final method, rolling calculation of leave. This method avoids any possibility of stacking, but may be more difficult to administer.

Is FMLA leave paid or unpaid? FMLA does not require that leave taken pursuant to the Act be paid. However, an employee’s accrued paid leave may be substituted for certain FMLA purposes—at either the *employee’s* or the *employer’s* option—under the following circumstances:

- Paid vacation or personal leave may be used as a payment source for all or any part of the 12-week leave.
- Paid sick leave may be used for the employee’s own illness or to care for a sick family member, but only in those situations in which an employer would normally allow paid leave. For example, if an employer’s leave plan has not allowed employees to use accrued sick leave to care for a sick family member, then the employer may, but is not required to, allow substitution of paid sick leave for that purpose now under FMLA.
- If an employer offers paid family leave, that accrued family leave may be used for any unpaid FMLA leave relating to birth, adoption, or care of a sick family member.
- Paid leave provided under a plan covering temporary disabilities is considered sick/medical leave for purposes of FMLA substitution. For example, disability leave for the birth of a child would be considered FMLA leave for a serious health condition and counted in the 12 weeks of leave permitted under FMLA.
- If an employee’s occupational injury also meets the definition of a serious health condition, time on workers’ compensation leave may run concurrently with FMLA leave.

Intermittent leave. Leave for adoption, foster care placement, or the birth of a child may not be taken intermittently or on a reduced schedule unless the employer and the employee agree to such an arrangement or—in the case of adoption only—unless the placement is on such short notice that there is not time for the employee to schedule events related to the adoption around his or her work schedule. Leave for a serious health condition may be intermittent or reduced if medically necessary. If an employee requests this type of leave on the basis of planned medical treatment, the employer may require that the worker transfer temporarily to another job, with equivalent pay and benefits, that better accommodates the employee’s need for recurring periods of leave.

Married employees. When both husband and wife work for the same employer, the full amount of leave is limited to an aggregate of 12 weeks for the birth, adoption, or foster care placement of a single child, or to care for a parent with a serious health condition.

MEDICAL CERTIFICATION

Employers may require that a request for leave be supported by a healthcare provider’s certification of the medical condition of the person affected. The certification should include the date on which the serious health condition began, the probable duration of the condition, and other appropriate medical facts.

In addition, the certification should include a statement that the employee needs time off to attend to a serious health condition or is needed to care for a child, spouse, or parent, and an estimate of the amount of time that is needed. If the employee is ill, the certification should include a statement that the employee is unable to perform his or her job. When the certification is for intermittent leave for planned medical treatment, it should include the dates on which the treatment is expected to be given and the duration of the treatment.

When a certification is requested, the employee must return the completed medical certification within a reasonable period of time (which the regulations state is 15 days, absent unusual circumstances). An employer may delay the taking of a scheduled leave if the medical certification is not timely returned. In cases in which the employee fails or refuses to return a certification at all without good cause, the leave need not be treated as authorized under FMLA.

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DOL has developed a medical certification form (Form WH-380) for use by employers. Although employers are not required to use the form suggested by DOL, no information may be requested beyond that specified on the DOL form.

Second opinion. Whenever the employer has reason to doubt the validity of the original certification, the employer is allowed to require a second opinion—paid for by the employer—from a healthcare provider chosen by the employer. This healthcare provider may not be someone who is employed on a regular basis by the employer.

Third opinion. Employers may require the employee to obtain a third opinion—at the expense of the employer—when the second opinion differs from the first. The healthcare provider for the third opinion should be approved by both the employer and the employee. This third opinion is considered to be final and binding on both the employer and employee.

EMPLOYMENT AND BENEFITS PROTECTION

Job on return. With some exceptions, the law requires that employers provide each returning employee with the same position or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. However, the law does not require that employees among the 10 percent highest paid of the company (“key employees”) be restored to their jobs when it would cause substantial and grievous economic injury to the employer’s operations. This does not mean that an employer may deny leave to key employees. There is a fine distinction between a leave without a rehire guarantee and denial of the leave, but there is a distinction—by taking the leave, the highly paid employee may continue healthcare coverage.

Benefits. Employees who have taken leaves will not lose any benefits that accrued before the leave began. However, the law does not require that employees be entitled to any seniority or employment benefits during the period of the leave (29 USC 2614).

Health insurance. Employers are required to maintain coverage for employees during leave under a group health plan at the same level and conditions of coverage that would have been provided had the employees not taken leave. During the leave period, the employer and employee continue to pay their usual respective portions of the premium.

Premium recovery. Employers may require employees to repay the employer’s share of the premium if the employee does not return from a leave for reasons other than a continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee’s control.

NOTICE REQUIREMENTS AND RECORDKEEPING

From employee to employer. Under FMLA, employees need not ever mention FMLA to qualify for FMLA leave. An employee’s sole responsibility is to communicate information sufficient to put an employer on notice that the employee has a reason for missing work that could qualify as a reason for leave under FMLA. If there is doubt whether the reason qualifies, it is the employer’s duty to make appropriate follow-up inquiries.

Employees must provide at least 30 days’ notice when the leave is foreseeable, such as for the expected birth or adoption of a child. When this is not possible, employees are required to provide as much notice as is practical.

When a leave is required for a serious health condition with planned medical treatment, the employee is required to make a reasonable effort to schedule treatment so that disruption of the employer’s operations is minimized.

From employer to employee. Employers covered by FMLA must post a notice to employees of their rights under FMLA. A notice approved by DOL that explains pertinent provisions of the law, as well as information about filing a charge of violation of the law, may be obtained from your regional office of the Wage and Hour Division of DOL. In addition, if the employer has an employee handbook or other written guidance that includes information on employee benefits or leave rights, it must include information on the FMLA. If no such written material exists, employers must provide written guidance concerning FMLA rights and obligations to employees at the time notice is given.

Employers must designate the leave as FMLA-qualifying and notify the employee of that designation within 2 business days from the time the employee gives notice of the need for leave.

The notice should specify the following:

- Whether the leave will count against the employee’s FMLA entitlement
- Any requirement to furnish medical certification of a serious health condition
- The employee’s right to use paid leave as part of the FMLA entitlement and whether the employer will require the employee to use up paid leave

- Whether the employee must pay health insurance premiums and, if so, how they should be paid
- Any requirement for the employee to furnish a fitness-for-duty certificate to return to work
- Any “key employee” return-to-work exception applicable to the employee
- The employee’s right to be restored to the same or an equivalent job
- Any liability to reimburse the employer’s portion of healthcare premiums if the employee does not return

Note: According to DOL regulations, if an employee requests a leave and the employer determines that the employee has not satisfied the eligibility requirements for FMLA, the employer must give the employee notice of his or her ineligibility for FMLA leave *within two business days of the leave request*. If the employer does not provide this notice, the employee shall automatically be presumed to be “eligible.” Once an employer deems an employee eligible for leave, it may not subsequently challenge eligibility. Several courts have declined to enforce the DOL’s 2-day notice of eligibility requirement, finding it to be unreasonably burdensome to employers. However, other courts have upheld the rule. Until the conflict is settled, employers should do their best to comply with the two-day requirement.

Failure to designate leave. In *Ragsdale v. Wolverine Worldwide, Inc.*, 122 S.Ct. 1155 (2002), the U.S. Supreme Court invalidated a DOL regulation that states that if an employer fails to designate leave as FMLA leave, the leave taken does not count against an employee’s FMLA entitlement. In that case, an employee had exhausted the leave allowed under the employer’s own leave plan, but was never told that the employer was also counting her leave time as FMLA leave. When the employee then requested FMLA leave, she was told that she had already used all of her FMLA time. She sued, using the DOL regulation as the basis for her case. Although the Court invalidated the remedy for neglecting to designate leave, it did not decide whether requiring employers to give employees individualized notice also exceeds the DOL’s authority. Thus, employers should still provide notice to employees as required by the law, stating that the requested leave is being counted as FMLA leave and describing whether it runs concurrently with any other leave entitlement.

Recordkeeping. An employer is required to keep certain records under FMLA. Many of these records already are maintained by employers pursuant to FLSA (Section 11(c)) as well as by DOL regulations under that statute. Specifically, FMLA requires that employers maintain the following records for a 3-year period:

- Basic payroll information and identifying employee data, including compensation paid the employee and the manner in which it was determined, including all additions and reductions in pay (even employers with no FMLA-covered employees must keep these records).
- A record of dates FMLA leave is taken by FMLA-eligible employees (e.g., available from time records, requests for leave, etc., if so designated). Leave must be designated in records as FMLA leave. However, leave so designated may not include leave required under state law or an employer plan that is not also covered by FMLA.
- If FMLA leave is taken by eligible employees in increments of less than 1 full day, the hours of the leave.
- Copies of all notices given by the employer to employees, as well as any received by the employer requesting FMLA leave. Copies may be maintained in employee personnel files.
- Information stored in any form (paper or electronic) that explains employer policies and employee benefits and the payment for benefits.
- Records of any dispute between the employer and an eligible employee regarding the designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation or for the disagreement.
- Records similar to those required by FLSA for nonexempt employees are not required for exempt employees or for employers not covered by FLSA as long as: (1) exempt employees who have been employed for at least 12 months are presumed eligible for leave *and* (2) a written record details agreements between employer and employees for the work schedules for reduced and intermittent leaves.
- Records clearly showing that exempt employees worked fewer than 1,250 hours in a 12-month period, if leave is denied.
- FMLA-related medical records and documents, created for the purposes of FMLA, relating to medical certifications, recertifications, or medical histories of employees or employees’ family members.

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Neither FMLA nor its regulations require any specific manner in which records must be maintained to comply with the recordkeeping requirements of FMLA. DOL may inspect these records no more than once every 12 months, unless it is investigating a complaint or has reasonable cause to believe there is a violation.

SPECIAL CONSIDERATIONS FOR EDUCATION EMPLOYERS

Public and private elementary and secondary schools are covered by FMLA regardless of size. For eligibility purposes, full-time teachers of an elementary or secondary school system, institute of higher education, or other educational establishment are deemed to meet the 1,250-hour test. If an employer wants to challenge that, he or she must be able to clearly demonstrate that such an employee did not work 1,250 hours during the previous 12 months. FMLA imposes special conditions for the taking of intermittent leave by instructional employees of such schools. These employees may be required to take leave in a block of time, rather than taking intermittent leave, if they will be absent more than 20 percent of the time. There are also special considerations for the taking of leave near the end of a school term. These requirements are intended to minimize disruption in the classroom.

OTHER LAWS AND REGULATIONS RELATED TO LEAVES OF ABSENCE

STATE LEAVE OF ABSENCE LAWS

Many states have laws regarding family and medical leave. Employers must be careful to coordinate their federal and state leave law compliance programs to ensure full compliance with both. For more information, refer to the state *LEAVE OF ABSENCE* section.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

This law provides that pregnancy and related conditions are to be treated the same as other temporary disabilities for all employment purposes, including leaves of absence. (In other words, if a man who had a heart attack is granted leave, a pregnant woman must be granted leave.) Furthermore, a leave policy that is more liberal toward pregnant employees than other employees may be considered lawful, despite the fact that it may seem to discriminate against workers who request leaves of absence for reasons not related to pregnancy. For details, see the national *MATERNITY AND PREGNANCY* section. Pregnancy is considered to be a serious health condition under FMLA. Employers covered by that law must offer at least 12 weeks of unpaid leave, even if they previously had no other leave policy in place for employees with temporary disabilities.

MILITARY SELECTIVE SERVICE ACT

This law requires employers to grant leaves of absence to all permanent employees who are reservists or members of the National Guard and who must report for active duty or training. For details, see the national *MILITARY SERVICE* section.

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA)

COBRA is a federal law mandating continuation of medical benefits for departing employees under certain circumstances. Pursuant to DOL regulations, the taking of an FMLA leave is not an event that triggers COBRA coverage. However, in cases in which an employee who is covered under the employer's medical plan does not return to work at the end of an FMLA leave, COBRA's notice requirements are triggered. For more on COBRA, see the national *HEALTH INSURANCE CONTINUATION/COBRA* section.

EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA)

FMLA requires that all employee benefits, such as group life, health, or disability insurance, including benefits provided pursuant to an employee benefits plan, as defined by ERISA, be resumed when an employee returns from an FMLA leave, without any qualifying period. This requirement may make it necessary for employers to review their employment benefits plans to ensure that an employee returning from leave will be able to be fully reinstated to all benefits. For example, it may be necessary for the employer to continue life insurance for an employee on FMLA leave to avoid the employee's having to pass a new physical for the life insurance carrier. In addition, any period of FMLA leave must be treated as continued service for purposes of vesting and eligibility to participate in pension and other retirement plans.

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FLSA

FMLA and FLSA interact in two important ways. First, FMLA provides a special FLSA exemption for salaried, exempt employees. Second, FMLA requires that FMLA-covered entities maintain records in accordance with FLSA.

Exemption for salaried employees. FLSA exempts broad categories of “white-collar” jobs from minimum wage and overtime requirements if they meet certain tests regarding job duties and responsibilities and are paid a certain minimum salary. These categories include executives, administrative employees, professional employees, and outside sales personnel. The courts of appeals are split on whether FLSA prohibits employers from “docking” an exempt employee’s pay for time not worked in a day without jeopardizing the employee’s exempt status. Under FMLA, an employer may deduct hourly amounts from an employee’s salary when providing FMLA leave without affecting the employee’s exempt status under FLSA. Thus, an employer may “dock” the pay of otherwise salaried employees for family and medical leave–related absences of less than one full day without affecting their exempt status.

This special exemption to FLSA applies only to eligible employees (12 months’ service, 1,250 hours, and 50 employees in a 75-mile radius) of FMLA-covered entities (50 or more employees) and to leaves that qualify as one of the four types of FMLA leave. Hourly or other deductions may not be taken for exempt employees who work for an entity that is not covered by FMLA or who are on a leave not covered by FMLA (personal or education leaves, for example). In cases in which an employer is not covered by FMLA or an employee is taking a leave not covered by FMLA, an employer should not make hourly deductions for exempt employees; if such deductions are made, the employer may be deemed a nonexempt employee. In that case, the employer may be liable for overtime pay for that employee and possibly for other employees. An employer should periodically review the duties of exempt employees to ensure that they still qualify for exempt status, especially if the company has undergone restructuring or downsizing.

Recordkeeping requirements. The burden of proof is on the employer to prove an employee is ineligible for leave because he or she has not worked the requisite 1,250 hours. In determining an employee’s eligibility for leave under FMLA, the appropriate measure of “hours of service” is the standard used by FLSA that considers only actual hours worked by the employee. Absent time records, the employer may have a difficult time establishing its case. To this end, FMLA requires employers to make, keep, and preserve records related to their obligations under the FMLA, according to the recordkeeping requirements of FLSA. For more on the FLSA recordkeeping requirements that apply to FMLA situations, see **NOTICE REQUIREMENTS AND RECORDKEEPING** in this section.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

The HIPAA Privacy Rules create national standards to protect individuals’ medical records and other personal health information. While the Privacy Rules do not regulate employers as such, it does regulate them in their role as sponsors of group health plans, as health insurers or HMOs, and as healthcare providers.

The HIPAA Privacy Rules affect FMLA compliance. As explained above, the FMLA allows employers to ask for medical certification from an employee requesting FMLA leave for a serious health condition. There is no HIPAA issue when this occurs, because the information flows directly from the employee to the employer. However, providers will not disclose the information directly to employers without a HIPAA-compliant authorization. If the FMLA medical certification process includes a HIPAA authorization, then the employer is spared having to fill one out in the event it becomes necessary down the road, for example, if the employer seeks clarification or a second opinion. Employers may want to amend their FMLA policies to require that employees complete an authorization for disclosure of medical information on the FMLA medical certification form.

The HIPAA Privacy Rules require authorizations to be written in plain language and to contain certain required elements. Consult the national **HEALTHCARE INSURANCE** and **HEALTH INFORMATION PRIVACY** sections for additional information.

WORKERS’ COMPENSATION LAWS (WC LAWS)

Under the laws of many states, employees absent from work for compensable injuries are regarded as being on a leave of absence until final determination of their situation is made, at which time they either return or are separated if unable to continue work. For details, see the state **WORKERS’ COMPENSATION** section. Also, see the following discussion on the complicated interactions of the **Americans with Disabilities Act (ADA)**, FMLA, and workers’ compensation (WC).

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ADA

The granting of leave time may be a reasonable accommodation under ADA. When a disability also qualifies as a serious health condition under the FMLA, a question arises about the extent of the employer's duty to provide leave time. An employee would be entitled to only 12 weeks of leave under FMLA. However, if the disability/health condition continues after 12 weeks, the employer may have an obligation to give more time off as a reasonable accommodation if the employee's condition constitutes a disability under ADA. For more on reasonable accommodations, see the national *DISABILITIES* section. Also, see the following discussion on the complicated interactions of ADA, FMLA, and WC.

HOW ADA, FMLA, AND WC LAWS INTERACT

WHO IS COVERED?

ADA. Private employers of 15 or more people who worked in 20 or more weeks of the current or preceding calendar year.

FMLA. Private employers of 50 or more within a 75-mile radius and at work for 20 or more weeks in the year; virtually all public employees; covered employees must have logged 12 months' and 1,250 hours' service.

WC. Varies by state; in most, all employees have medical coverage from day one, but a 3-day to 2-week wait for wage replacement, usually retroactive.

QUERYING JOB APPLICANTS

Before an offer—

ADA. Can ask about person's ability to perform specific job function, but not if he or she has a disability; accommodation can be discussed if disability is obvious or applicant discloses it.

FMLA. Inadvisable to ask about past use of leave.

WC. No bars under state law, but inquiries prohibited under ADA.

After an offer—

ADA. May ask for medical documentation of need for accommodation; may require medical exam if required of all applicants for same job.

FMLA. N/A.

WC. No bars under state law, but cannot exceed ADA limits.

MEDICAL DOCUMENTATION

ADA. Can be required to explain/support any request for accommodation.

FMLA. Employer can require certification of illness/injury, expected duration, proposed treatment; second opinion can be requested, at employer's expense.

WC. Healthcare provider must keep employer informed; second opinion can be requested, at employer's expense.

QUALIFYING EVENTS

ADA. Employee has record of, or is regarded as having, impairment that substantially limits major life activity.

FMLA. Employee's or his or her parent's, child's, or spouse's serious illness/injury; birth, adoption, foster-care placement of child.

WC. Illness or injury "arising out of" and "in the course of" employment.

DISQUALIFYING EVENTS

ADA. Employee's refusal of a reasonable accommodation; failure to provide medical certification for requested accommodation; in some circuits, getting SSI total disability benefits bars accommodation.

FMLA. Employee's failure to provide medical certification of illness/injury.

WC. Illness or injury not work-related, e.g., "going and coming"; caused by drug or alcohol abuse or employee's misconduct or attempt to harm another; deliberately caused by employer; refusal of medical exam or of work after physician's release.

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NOTIFICATION FROM EMPLOYEES

ADA. Unless disability is obvious, applicants/employees must disclose it and discuss accommodation.

FMLA. Employees who foresee need for leave must give reasonable notice.

WC. Injured/ill employees must give notice promptly; state laws vary, but generally must file claims within two to five years of onset, longer for some hard-to-detect conditions.

EXCEPTIONS FOR EMPLOYERS

ADA. Need not give accommodation that is too expensive, displaces another employee, violates union contract; need not accommodate worker whose impairment poses direct threat/significant risk to self or others.

FMLA. Certain key employees at top 10 percent of salaried compensation cannot demand equivalent positions on return from leave.

WC. Those listed under **DISQUALIFYING EVENTS** and those in certain occupations are generally exempted.

LEAVE REQUIREMENTS

ADA. Absence lengths will be negotiated, depending on case-by-case circumstances; intermittent leave can be a reasonable accommodation.

FMLA. Up to 12 weeks' job-protected leave, normally without pay; employee may be paid, e.g., from concurrently run vacation, sick leave, disability coverage.

WC. Healthcare provider determines length of leave and whether employee returns to light or regular duty.

BENEFIT ISSUES

ADA. If unpaid leave is given, employer cannot modify/restrict worker's pre-leave benefits.

FMLA. Medical coverage and other preexisting benefits must be maintained during leave; leave cannot count against employee for attendance, length-of-service, bonus calculations.

WC. Employers must cover expenses for work-related injury/illness, but state laws generally cannot require them to maintain regular healthcare coverage.

ADDITIONAL INFORMATION

The Department of Labor's Wage and Hour Division administers FMLA. Call 866-487-9243 for basic information and/or information on how to reach your area's regional office. You may also want to visit the Department of Labor's website at <http://www.dol.gov> for information on FMLA, FLSA, and other federal labor laws administered by DOL. For information on ADA, visit the EEOC website at <http://www.eeoc.gov>, or call them at 800-669-4000. For information on HIPAA, visit the Health and Human Services Department website at <http://www.hhs.gov>, or call them at 877-696-6775.

