

Summer School Back to Basics: The Family and Medical Leave Act

Thursday, June 17, 2021



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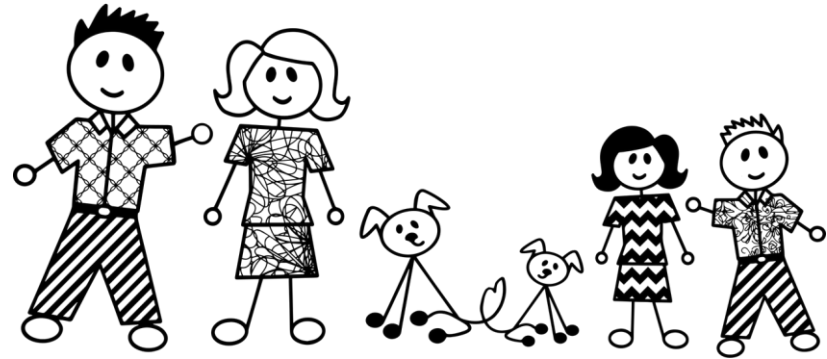
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Agenda

- The Family and Medical Leave Act, 29 U.S.C. §§ 2601 to 2654
 - Basics of FMLA
 - FMLA Process
- State FMLA
 - Connecticut FMLA, Conn. Gen. Stat. Ann. §§ 31-51kk to 31-51rr
 - Maine FMLA, 26 M.R.S.A. §§ 843 to 848
 - Massachusetts FMLA, M.G.L. c. 175M, §§ 1 to 11
- Hypothetical

The Family and Medical Leave Act (FMLA)



Basics of FMLA

FMLA process

Performance standards and discipline

FMLA's relationship to other statutes

The Basics of FMLA

- Employers with 50 or more employees
- Up to 12 weeks of unpaid leave
 - Within a 12-month period for employees who have worked for a covered employer for at least 12 months (which need not be consecutive)
 - Worked at least 1,250 hours during the 12 months before the first day of the requested leave
 - Leave can be taken on a continuous or intermittent basis
- Because of:
 - Own “Serious Health Condition”
 - Family Member’s “Serious Health Condition”
 - Birth or Placement of Child
 - Active-Duty Armed Forces
- Maintenance of health benefits and other employment-related benefits while on leave
- Reinstatement to their previous position or an equivalent position at the end of the leave



Identifying the 12-Month Period

- Leave is authorized in 12 or 26 week increments over a 12-month period
- Employer can select the 12-month period, for example,
 - The calendar year
 - The year beginning on the employee's anniversary date of hire
 - The fiscal year
 - A rolling 12-month period
- Generally, the rolling 12-month period is most advantageous to employers

FMLA Process

- Employee notifies employer of need, or employer notifies employee of eligibility
- Although not required by FMLA, an employer can require medical certification of the serious health condition
- During the leave, remember communication and record keeping
- No ability to “choose” to not have FMLA apply



Certification/Recertification/No Certification

- Request and assess Medical Certification from the employee
- Vague or ambiguous information
- Authenticity of the Medical Certification
- Second and third opinions
- Recertification
 - Every 30 days
 - Change in conditions
- Remember, an employee's direct supervisor is expressly prohibited from contacting an employee's health care provider 29 C.F.R. §825.307(a).

Eligibility Notice & Rights and Responsibilities

- <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-381.pdf>
- Previously two documents, now one document
- Four Sections each completed by Employer:
 - General Information
 - Notice of Eligibility
 - Additional Information Needed
 - Notice of Rights and Responsibilities

Certification of Health Care Provider

- For Employee's Own Serious Health Condition:
<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-E.pdf>
 - Employer completes Section I
 - Employee's healthcare provider completes Section II
- For Family Member's Serious Health Condition:
<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-F.pdf>
 - Employer completes Section I
 - Employee completes Section II
 - Employee's family member's healthcare provider completes Section III

Designation Notice

- <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-382.pdf>
- Employer Completes all sections
 - Section I – Employer
 - Section II – Additional Information Needed
 - Section III – FMLA Leave Approved



Quick Tips: Clarifying the Certification

- Remember that FMLA does not live in a vacuum, consider rights/obligations under ADA/Workers' Compensation
- Do
 - Verify the health care provider completed
 - Clarify handwriting or understanding of a response
- Don't
 - Seek information from a health care provider that the certification form itself does not request
 - Allow supervisor/manager to contact



Communicating With Your Employee

- Too often employers allow employees on FMLA to get away with not bringing in medical documentation, not calling out on a timely basis, coming into work late, etc.
- Be clear regarding expectations and enforce those expectations
- Be prepared to “go the extra step” before terminating for non-compliance

Recordkeeping

- Maintaining accurate time records for employees on intermittent leave
- Reducing pay of salaried employees
- Sick time/vacation time
- Multiple FMLA leaves

Performance Standards and FMLA

- An employer must adjust expectations regarding performance when performance is going to be impacted by use of protected leave time
- Production standards and sales quotas are most common examples
- Still can impose requirements regarding transition and communication



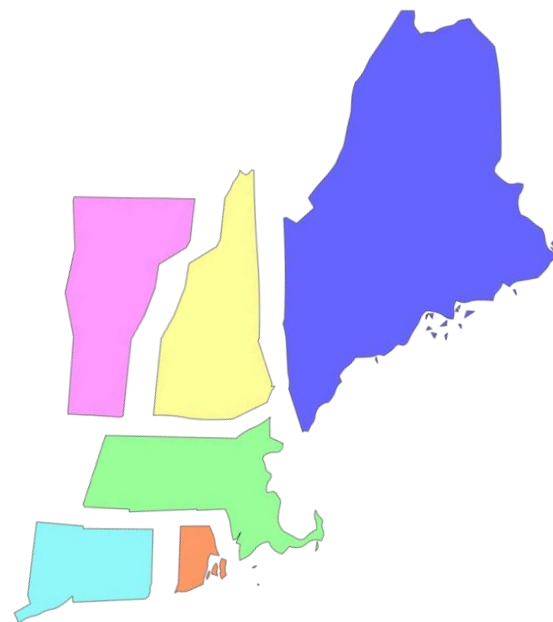
Discipline and FMLA

- Illegal to hold against employees the fact that they exercised their rights under the FMLA
- Not illegal to fire, reassign, demote, discipline employees for reasons un-related to the use of FMLA
- Becomes a question of proof

Relationship with Other Statutes

- Workers' Compensation
- ADA
- GINA

State FMLA



Connecticut FMLA

Maine FMLA

Massachusetts FMLA

Connecticut FMLA

- Paid FMLA benefit launching Jan 1, 2022
- Applies to all private employers
- Up to 12 weeks in a 12-month period for all leave reasons
- Job Protection after 3 months of employment (same or equivalent position “same pay, benefits and conditions of employment”)
- An additional 2 weeks of leave may be available for incapacitation during pregnancy
- Effective July 1, 2022, employers must provide notice of rights to new hires, and an annual notice to all employees

Maine FMLA

- Unpaid leave benefit
- Applies to employees who work at a permanent worksite with 15+ employees
- Employees who have been employed for 12 consecutive months are entitled to up to 10 work weeks of family medical leave in any two-year period
- Legislative update

Massachusetts FMLA

- Paid leave benefits became available on January 1, 2021
- Employees who meet the eligibility requirements for state unemployment insurance working for a MA employer and having earned at least \$5,400 during the last 4 calendar quarters and at least 26x the eligible weekly benefit amount
- All private sector employers are covered
- Retroactive benefit available for births/adoption/foster care placement which occurred during 2020, where leave is used during 2021. 458 Code Mass. Regs. 3.02
- Family member: expanded to include grandchild, grandparent, sibling. M.G.L. c. 175M § 1; 458 Code Mass. Regs 2.02
- Employer notice requirements include posting, provide new employees written notice within 30 days of hire, and obtain acknowledgement of receipt by employee
- Reinstatement to the same position, or a similar position with equal pay/seniority/benefits



Hypothetical

- Your company—Widgets For Everyone—has 75 employees in its Biddeford, ME headquarters. Sally comes to you and complains that her boss Robby is hostile and is causing her extreme stress and anxiety to the point that she had to take all of last week off because she felt so sick to her stomach at the thought of coming into work and seeing him. She said that she's talked to her therapist and is trying to work on ways to process some of the past trauma that Robby is bringing to the surface, but to date has been unsuccessful.

Thank You!

Check for real-time updates on Verrill's Taking Care of HR Blog!

<https://www.verrill-law.com/taking-care-of-hr-business/>

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