DISCLAIMER: The principles and suggestions in this handout and the ELIMINATE THE CONFUSION OF FMLA webinar are presented to apply to diverse personal and company situations. These materials and the overall seminar are for general informational and educational purposes only. The materials and the seminar, in general, are presented with the understanding that CareerTrack is not engaged in rendering legal advice. You should always consult an attorney with any legal issues.

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FMLA Basics

• The Family Medical Leave Act is a federal law. Employers in all states are required to comply with the FMLA.

• Some states have enacted family medical leave laws similar to FMLA. Employers in those states must comply with both the federal and the state laws.

Who is Covered?

Employer has 50 or more employees, OR

Employer is a public agency, elementary, or secondary school

**YES**

Employer is covered by FMLA, AND

Employee has worked for the employer for at least 12 months, AND

Employee has worked for the employer for at least 1250 hours in the last 12 months, AND

Employer has 50 or more employees within 75 miles of the employee’s jobsite.

Employee is eligible for FMLA.

**NO**

Employer is not covered by FMLA and does not have to offer FMLA leave.

Employee is not eligible for FMLA.
Ten Things You Need To Know About FMLA

1. Covered employees can take up to 12 weeks of FMLA leave in any 12-month period.
   - Each employer determines how to define the 12-month period:
     - Calendar year.
     - Fixed year.
     - Rolling 12-month period.

2. When can FMLA leave be used?
   - Serious Health Condition.
   - Military Family Leave.
   - Expanding the Family.

3. Who is a family member?
   - Spouse.
   - Parent.
   - Child.
   - Next of Kin for covered military members.

4. When employees request FMLA leave, and they have sick time, personal leave, or vacation time, either the employee or the employer can choose to use that time to cover some or all of the FMLA leave.
5. If the employee’s FMLA leave is due to a work-related injury or illness, worker’s compensation leave can be counted against the employee’s FMLA leave entitlement.

6. Employers are required to inform their employees about their rights under the FMLA.

7. A serious health condition is defined as an illness or injury that involves.
   • Inpatient care
   • Continuing treatment
   • Period of incapacity of more than 3 calendar days
   • Pregnancy or pre-natal care
   • Chronic conditions
   • Permanent long-term conditions
   • Conditions requiring multiple treatments

8. A health provider is not limited to licensed physicians. Other health providers such as a dentist, a psychologist, optometrist, chiropractor, nurse practitioner, midwife, social worker, physician assistant, or a Christian Science Practitioner also qualify.

9. FMLA leave does not exempt an employee from the effects of a reduction in force or lay-off. If it can be demonstrated that the reduction in force would have affected the employee if the employee had been working and not on FMLA leave, the employer can proceed with the reduction in force.

10. Certain “Key” employees may not be guaranteed reinstatement to their positions following FMLA leave. "Key employees" are defined as salaried, FMLA-eligible employees who are among the highest paid 10 percent of all employees working for the employer within 75 miles of the employee’s worksite.
MODULE THREE

Common Compliance Problems

When both FMLA and ADA affect the same period of leave:
Is a “serious health condition” the same as a disability?

When the employer believes the medical certification provided by the employee is bogus:

What happens if an employee is unable to return to work after exhausting 12 weeks of leave?
Be aware that ADA and FMLA have different levels of protection

When the employee just requests time off, how does the company know if the employee is requesting FMLA leave, ADA reasonable accommodation, or both?

Intermittent leave:

Accommodating nursing mothers:

Calculating and Recording FMLA leave:

Defining a serious health condition:

Enforcing attendance and conduct policies:

Eligibility errors:
### FMLA Do’s and Don’ts

**DO:**

- Establish detailed policies which lead to consistent practices.
- Visit the U.S. Department of Labor’s website for information on FLMA: [http://www.dol.gov/whd/fmla/](http://www.dol.gov/whd/fmla/)
- Keep up with changes in the law. Such revisions often have legal and practical consequences that are not readily apparent.
- Post the required FMLA notice in the workplace.
- Train managers on the employee and company right and responsibilities under FMLA.
- Conduct annual FMLA “refresher” training for all supervisors.
- Advise employees of certification requirements and consequences.
- Make sure that you count all FMLA-qualifying absences towards the employee’s 12-week FMLA entitlement.
- Ensure that you manage intermittent FMLA leave properly.
- Grant FMLA leave to same-sex parents - The definition of “son or daughter” under the FMLA includes “a child of a person standing in loco parentis.”
- Discipline an employee for non-FMLA-related misconduct that you learn about as a result of the FMLA absence.
- Discipline someone who is taking intermittent FMLA leave and fails to meet an agreed-upon, adjusted level of performance.
- Make sure that the same rules are in place for everyone.
- Keep track of leave days/hours taken using the same formula companywide (and make sure it is in compliance with the law).
DON’T:

Assume you know it all - employee leave issues can be complex.

Discipline an employee for making mistakes or missing deadlines as a direct result of FMLA leave if you have not adjusted your expectations.

Mistakenly assume that it is the employee that requests FMLA leave, and if they have not requested it then the absence is not FMLA leave.

Put the responsibility for assessing the need for FMLA solely on employees.

Require an independent medical examination for FMLA unless the circumstances give rise to reasonable suspicion.

Terminate or demote an employee during or after FMLA leave without clear prior cause.

Ask for excuses, excuses, excuses - A federal court ruled that an employer was not entitled to request a doctor’s note for every FMLA absence where that employee had already provided FMLA certification in support of intermittent absences.
Determining When to Deny or Approve Requests for FMLA Leave

The FMLA is intended to provide a means for employees to balance their work and their family responsibilities by taking unpaid leave for certain reasons. The Act is intended to promote both the stability and economic security of families, and the national interests in preserving family integrity.

However, the FMLA has allowed many employees to take advantage of their employer’s leave of absence policies - and caused many headaches for companies.

Reminder: The FMLA is one of the few laws that allows individual supervisor liability.

Establish and enforce reasonable attendance and call-in rules for all leave

Learn your rights and responsibilities under FMLA.

Don’t give FMLA leave to employees who are not entitled to FMLA.

Don’t give FMLA leave for reasons that are not covered by the Act.

The burden is on the employer to recognize FMLA situations.
Make sure you understand the definitions of these terms and review all FMLA leave requests to ensure that they meet these definitions.

- Serious medical condition
- Family:
  - Spouse
  - Parent
  - Child
  - Next of kin
- Intermittent leave or reduced schedule
- Absence Plus Treatment
- Chronic Condition
- Multiple Treatments
- Incapacity
- Rolling 12-month calendar
- Change in circumstance
- Health care provider
- Intent to return to work
- Notice for foreseeable leave
- Notice for unforeseeable leave
- Protection from discrimination
- Family leave
- Medical certification
- Military Family Leave
- Key employee