

How to Manage Employee Leave Requests and Control Absence Abuse

May 2018



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Welcome! Before we get started...

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What We'll Cover

- Major laws protecting employee absences
- Typical scenarios that qualify for leave
- Helpful tips to manage leave requests
- The Bermuda Triangle of employee leave
- Warning phrases that indicate you might be dealing with protected leave
- Red flags of leave abuse

Major Laws Protecting Absences

- Family and Medical Leave Act
- Americans with Disabilities Act
- Pregnancy Discrimination Act
- State Workers' Compensation Laws
- USERRA
- EEO laws protecting religious activities
- State and local leave laws

Supervisor Responsibilities

- Managers are responsible for recognizing when an employee's absence is covered by any of these laws
- Supervisors must know how to respond when an employee asks for time off for a legally protected reason
- More than one law may apply to the same absence

Family and Medical Leave Act

- FMLA is a federal law enacted to help American workers balance work and family
- Allows eligible employees to take time off from work for certain medical conditions and family obligations
- Upon return, the employee should be restored to his or her original position (or equivalent)

FMLA: Employer Coverage

- Applies to employers with 50 or more employees on the payroll in 20 or more workweeks in the current or preceding calendar year
- FMLA also applies to public agencies - including federal, state and local and federal employers regardless of size
- Covered employers must grant up to 12 weeks of job protected leave in any 12 month period

FMLA: Employee Eligibility

To be eligible for FMLA benefits, an employee must have worked:

- For the employer for a total of 12 months
- A minimum of 1,250 hours for the employer in the last 12 months prior to the leave
- At a location where at least 50 employees are employed within a 75-mile radius

FMLA Qualifying Events

- Birth and care of employee's newborn child
- Placement of a child with the employee for adoption or foster care
- Care of immediate family member with a serious health condition
- The employee's own serious health condition

What Is a Serious Health Condition?

An illness, injury, impairment or physical mental condition that:

- Involves inpatient care, such as an overnight stay in a hospital or medical care facility

OR

- Requires “continuing treatment by a healthcare provider”

What Is Continuing Treatment?

“Continuing treatment by a healthcare provider” generally includes any period of incapacity:

- Lasting more than three consecutive days
- Due to pregnancy or prenatal care
- That is permanent or long-term
- For treatment of a chronic condition
- Resulting from multiple treatments

Manager Responsibilities

- Your managers must be able to recognize potential FMLA-qualifying absences and properly facilitate the leave process
- Managers can be held individually liable for violating the FMLA
- Employees are not required to ask for “FMLA leave” or refer to the FMLA at all

If You're Notified of an FMLA Event (as a manager)

- Refer the employee to the appropriate personnel or seek advice from an expert
- Do not ask detailed questions regarding an employee's medical condition
- You can ask:
 - If the absence is due to a personal illness or an illness of a family member
 - If the employee has been treated by a healthcare provider
 - How long the employee anticipates being absent

FMLA: Use of Paid Time Off

- Generally, FMLA leave is unpaid
- Eligible employees can choose to use earned paid leave (e.g., PTO)
- Employers may require employees to use earned paid leave
- When employees use earned paid leave during FMLA leave, FMLA leave runs concurrently

FMLA Tips

- Don't discourage an employee from using FMLA leave
- Don't discriminate against employees who have used FMLA leave
- Don't consider an employee's FMLA leave as a negative factor in any employment decision
- Do remember that many cities and states have laws that give employees greater rights

FMLA Administration Tips

- Make sure employees meet basic criteria
- Once approved, supply employee with DOL certification forms within 15 days
- Verify information once you receive certification from an employee
- Provide employee with a Designation Notice and Rights and Responsibilities Form
- If the request does not meet the criteria, share the reason with the employee

Americans with Disabilities Act

- ADA often comes into play when employees need leave
- The ADA prohibits discrimination against qualified individuals with disabilities
- Applies to businesses with 15 or more employees
- ADA covers individuals who have a physical or mental impairment that significantly limits a “major life activity”

Major Life Activities

- Activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning and working
- To be protected, a person must have a disability AND be qualified to perform the job
- The individual must have the skill, experience, education, etc. to perform the essential functions of the job with or without reasonable accommodation

Duty to Accommodate

Absences related to a person's disability may qualify as reasonable accommodations under the ADA, including:

- Leave or extended leave of absence - even beyond the 12 weeks required by the FMLA
- Part-time, reduced or modified work schedules
- Periodic absences or time off - from partial days to full weeks

Absences granted as reasonable accommodation should not count against the employee

Leave Under the FMLA and ADA

Let's look at a scenario:

- *An employee is granted FMLA leave for a serious health condition. After 12 weeks, the employee doesn't return. Employee is fired for violating the absence policy. You gave the full 12 weeks so you're in the clear. Right?*

Not necessarily - if the employee's condition is also considered a disability, the ADA may apply

Workers' Compensation

- Designed to assist workers who suffer injury or illness on the job
- Programs vary from state to state and are governed by local laws
- Most accidents and injuries will qualify as serious health conditions under the FMLA
- If the injury or illness is serious, it may also be a disabling condition under the ADA

Pregnancy Discrimination Act

- Prohibits employers from discriminating against workers on the basis of pregnancy, childbirth or related medical conditions
- Pregnant employees must be permitted to work as long as they can perform their jobs
- Employers must hold a job for a pregnancy-related absence for the same length of time jobs are open for employees on sick or disability leave

USERRA

- Uniformed Services Employment and Reemployment Rights Act (USERRA) protects members of the military from discrimination
- USERRA requires you to grant time off for military service and reinstate employees from military leave
- Applies to nearly all employers regardless of number of employees
- Employers are not required to pay salary

Absences for Religious Reasons

- Employers must reasonably accommodate employees' sincerely held religious beliefs unless doing so would pose a hardship on the business
- This can involve flexible scheduling, voluntary shift swaps, floating holidays, etc.
- If an employee asks for time off for something relating to a sincerely held religious belief, it's best to check with an HR professional before denying the request

State and Local Laws

- Many cities and states have laws providing employees with additional rights and protections for certain absences from work
- These laws often apply to small businesses
- Protected leave may be for school activities, jury duty, voting, etc.
- Laws vary widely on how much time is allowed for the activity and whether the employee must be paid

Watch for these Phrases

Look for these “triggers” whenever an employee requests time off or misses work:

- Pregnancy, birth or adoption
- Ongoing medical condition or disability
- A sick relative
- Religious holiday or practice
- On-the-job injury
- Military service obligation
- Voting or jury duty

Employee Leave Abuse

- Failing to get permission to come in late or leave early
- Failing to submit medical updates upon request (e.g., FMLA certifications)
- Exceeding allotted number of absences
- Generic or incomplete doctors' notes (e.g. "Mary should be off work for the next week")

Get It Under Control

- Have a clear policy with employee acknowledgment
- Have a formal leave request process
- Document all absences to spot troubling patterns
- Train your managers on your policies and procedures

Quick Review

- 7 major laws that protect employee absences
- Manager and supervisor responsibilities regarding protected leave:
 - How to identify
 - What questions you can ask
 - How to manage protected leave
- Key phrases to listen for as employees request leave
- Employee leave abuse:
 - Why it happens
 - How to get it under control

HR Solutions



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Time Off Request

- Web-based solution
- Easy-to-use and implement
- Affordable for small businesses
- Comes with FREE Employee Records App
- Employee Self-Service enabled
- View other employees requesting same time off dates
- Provide manager permissions

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Questions



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