

CHECKLIST | Complying With the FMLA

Presented by Cowden Associates, Inc.

The Family and Medical Leave Act (FMLA) is a federal law that provides eligible employees of covered employers with unpaid, job-protected leave for certain family and medical reasons. In addition to providing eligible employees with leave for qualifying reasons, covered employers must maintain employees' health benefits during leave and restore employees to their same (or equivalent) jobs after leave.

This checklist outlines key steps for employers to comply with the FMLA. Keep in mind that complying with the FMLA may involve additional steps depending on the facts of a specific situation. Also, many states (and some localities) have their own family and medical leave laws that provide broader leave protections to employees. Employers will need to comply with the FMLA and any applicable state and local leave laws.

General Requirements

| Covered Employers | Yes | No |
|--|--------------------------|--------------------------|
| Is your company subject to the FMLA? Select "yes" if your company is any of the following: <ul style="list-style-type: none">A private-sector employer with 50 or more employees in 20 or more workweeks in the current or preceding calendar year;A public agency (including state and local governments and governmental agencies) of any size; orA public or private school (elementary or secondary) of any size. | <input type="checkbox"/> | <input type="checkbox"/> |

| FMLA Requirements | Complete |
|---|--------------------------|
| Display the FMLA poster in plain view where employees and applicants can readily see it. A model poster is available from the U.S. Department of Labor (DOL). Employers may use the model poster, create their own poster or use another format, as long as it provides all of the information in the model poster and meets all of the posting requirements. | <input type="checkbox"/> |
| If your company has employees eligible for FMLA leave, provide employees with a general notice about the FMLA in the employee handbook or other written materials about leave and benefits. Employers can use the text from the DOL's model poster for this notice or another format as long as it provides all of the information in the model poster. | <input type="checkbox"/> |
| Create and maintain records related to FMLA compliance (e.g., copies of FMLA notices and dates of FMLA leave). These records must be kept for at least three years. | <input type="checkbox"/> |

This checklist is merely a guideline. It is neither meant to be exhaustive nor meant to be construed as legal advice. It does not address all potential compliance issues with federal, state or local standards. Consult your licensed representative at Cowden Associates, Inc. or legal counsel to address possible compliance requirements. © 2022 Zywave, Inc. All rights reserved.

| FMLA Administration | Complete |
|--|--------------------------|
| <p>Select the 12-month period used for calculating FMLA leave (or the “leave year”) and confirm that it is accurately described in employee communications.</p> <p>An employer’s options for the leave year are:</p> <ul style="list-style-type: none"> • The calendar year (Jan. 1 through Dec. 31) • Any fixed 12-month period, such as a fiscal year or a leave year beginning on the first day of an employee’s employment • A 12-month period measured forward from the first date an employee takes FMLA leave • A rolling 12-month period measured backward from the date an employee uses FMLA leave | <input type="checkbox"/> |
| <p>Implement a method for tracking employees’ use of FMLA leave throughout the year, including leave taken on an intermittent or reduced schedule basis.</p> | <input type="checkbox"/> |
| <p>Train managers on FMLA compliance, including how to identify leave requests that may be for FMLA qualifying reasons and the law’s prohibitions on interference and retaliation.</p> | <input type="checkbox"/> |
| <p>Download and use the DOL’s model forms for administering FMLA leaves or create your own versions of these forms.</p> <p>The DOL’s model FMLA forms are available here</p> | <input type="checkbox"/> |
| <p>Determine how employees will pay health plan premiums during unpaid FMLA leave and communicate this method to employees taking leave.</p> | <input type="checkbox"/> |
| <p>Review how taking FMLA leave may relate to other types of employee absences, including employer-provided paid time off, short-term disability, workers’ compensation and local paid leave law requirements, and run leaves concurrently when possible.</p> | <input type="checkbox"/> |

Administering FMLA Leave

| | |
|----------------------------|--|
| Employee name | |
| Date of leave request | |
| Dates of anticipated leave | |

| Employee Eligibility | Yes | No |
|---|--------------------------|--------------------------|
| <p>Is the employee eligible for FMLA leave?</p> <p>To be eligible for FMLA leave, an employee must satisfy ALL of the following criteria:</p> | <input type="checkbox"/> | <input type="checkbox"/> |

| Employee Eligibility | Yes | No |
|---|--------------------------|--------------------------|
| <ul style="list-style-type: none"> The employee works for an employer covered by the FMLA; The employee has worked for the employer for at least 12 months as of the date leave is to start (it does not need to be consecutive); The employee has at least 1,250 hours of service for the employer during the 12-month period before the leave is to start; and The employee works at a location where the employer has at least 50 employees within 75 miles of that worksite. | | |
| <p>Is the employee’s leave for a qualifying reason? Is the leave for one of the following FMLA-qualifying reasons?</p> <ul style="list-style-type: none"> The birth of a child and to bond with the newborn child within one year of birth The placement of a child for adoption or foster care and to bond with the newly-placed child within one year of placement A serious health condition that makes the employee unable to perform the functions of their job To care for the employee’s spouse, child or parent who has a serious health condition Any qualifying exigency arising out of the fact that the employee’s spouse, child or parent is a military member on covered active duty (or call to covered active duty status) To care for a covered servicemember with a serious injury or illness if the employee is the spouse, child, parent or next of kin of the servicemember | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>If the employee has already used FMLA leave this year, does the employee still have FMLA leave available? Eligible employees are entitled to take up to 12 weeks of FMLA leave during a 12-month period (26 weeks to care for a covered servicemember).</p> | <input type="checkbox"/> | <input type="checkbox"/> |

| Leave Process | Complete |
|---|--------------------------|
| <p>Provide the Notice of Eligibility and Rights & Responsibilities within five business days of the employee’s request for leave, unless there are extenuating circumstances. The DOL has a model notice (Form WH-381, Notice of Eligibility and Rights & Responsibilities) that employers may use for this notice requirement.</p> | <input type="checkbox"/> |
| <p>If a medical certification is required for the requested leave, give the appropriate form to the employee and provide the employee with 15 calendar days to return the form An employer may require a medical certification when leave is requested for the employee’s own serious health condition or the serious health condition of a family member. Employers</p> | <input type="checkbox"/> |

| Leave Process | Complete |
|---|--------------------------|
| <p>can also require certification for military family leave. The DOL has model forms that employers may use for obtaining certifications. An employee requesting leave should be informed of this requirement, and the appropriate certification form should be provided with the Notice of Eligibility and Rights & Responsibilities.</p> | |
| <p>Grant or deny the FMLA leave by providing the Designation Notice on a timely basis</p> <p>This notice must be provided once the employer has enough information to determine if the employee’s requested leave qualifies as FMLA leave, as follows:</p> <ul style="list-style-type: none"> • If a medical certification is not required for the requested leave, provide the Designation Notice within five business days of the leave request • If a medical certification is required, provide the Designation Notice within five business days of when the employee submits a complete and sufficient certification form. The Designation Form can also inform the employee that the certification is incomplete or insufficient and additional information is needed. <p>The DOL has a model Designation Notice (Form WH-382) that employers may use.</p> | <input type="checkbox"/> |
| <p>During leave, maintain coverage under the group health plan on the same basis as coverage would have been provided if the employee had been continuously employed during the entire leave period</p> <p>During the FMLA leave period, an employee must continue to pay whatever share of group health plan premiums the employee paid prior to FMLA leave. The employer must provide the employee with advance written notice of the terms and conditions under which these payments must be made.</p> | <input type="checkbox"/> |
| <p>If applicable, the employee must provide a fitness-for-duty certification to show that they can resume work after taking a leave for their own serious health condition.</p> <p>Employers may have a uniform policy requiring all similarly-situated employees who take leave for serious health conditions to provide a fitness-for-duty certification.</p> | <input type="checkbox"/> |
| <p>Restore the employee to the same job (or an equivalent job) at the end of the leave.</p> | <input type="checkbox"/> |

Use this checklist as a guide when reviewing your company’s compliance with the FMLA. For assistance, contact Cowden Associates, Inc..