

COMPLYING WITH THE FMLA

by

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I. COMPLYING WITH THE FMLA

A. FMLA Employer Checklist

In general, in order to properly manage the FMLA, employers should consider adopting the following practices:

1. Display the FMLA Notice Poster in a conspicuous location, which may be obtained from the Department of Labor, Wage and Hour Division.
2. The employer's handbook should describe the rights afforded to employees under the FMLA, their responsibilities and what benefits they are entitled to receive under the Act. Alternatively, employers may distribute an FMLA fact sheet to employees that contains the same type of information. These materials should provide employees with such information as:
 - a) They are entitled to receive up to 12 weeks of FMLA leave each year and on what basis this leave may be used (i.e., in one lump period of time, intermittently or on a reduced schedule basis, etc.),
 - b) How their 12-month period of calculating FMLA leave will be made (i.e., rolling twelve month period, calendar year, etc.),
 - c) Whether employees will be required to provide a medical certification of their condition, or of a covered family member, if applicable, and the consequences of not providing such documentation to the employer (i.e., non-certification of the employee's condition),

- d) Whether the employer will require its employees to use their paid time off while on FMLA leave, as well as whether any conditions may be placed upon the employees for using their paid time off while on FMLA leave, and if the FMLA leave will run concurrently with any other paid leave taken,
- e) Whether employees will be required to make premium payments for their benefits, including their health care coverage, while on unpaid FMLA leave, where the employee is expected to send these payments, when such payments are due and the consequences for missing any premium payments. (The amount of these payments should also be included in the FMLA Designation and/or Eligibility Notice.)
- f) Whether a return-to-work, or a fit-for-duty, certificate will be required from the employee before being permitted to return to work, and the consequences of not providing one,
- g) Who qualifies as a key employee and what the potential consequences are of being classified as a key employee, and

Note: If the employee qualifies as a "key" employee and will be denied restoration rights by the employer, the employee must also be informed of this in writing and given a reasonable amount of time to return to work after receiving such notice.

- h) What restoration rights employees have regarding their jobs.
3. Employees should be required to contact their employer on a reasonable and periodic basis in order to keep the employer informed of their return-to-work status.
 4. Employers should also reserve the right to have their employees' recertify their serious medical conditions on a **reasonable basis**, but no more frequently than once every 31 days, or sooner if any information regarding the covered individual's serious medical condition changes in any way.
 5. If medical certification or return-to-duty certificate is required, the employee must receive written notice of this fact with every correspondence from the employer, unless the initial notice to the employee ***and*** the employer's handbook, or other written document, has already informed the employee of such requirements.

6. If the employer desires to have its health care provider contact the employee's health care provider, the employee should be asked to sign a consent form and a HIPAA Release form.
7. If the employer intends to cancel the employee's health insurance coverage due to the employee's failure to make timely payments, the employee must be informed of this fact in writing at least 15 days **before** such coverage is terminated.
8. Employers must also adopt and follow confidentiality measures in order to ensure that the medical conditions of their employees remain private.
9. Managers should be trained in what types of conditions may qualify for FMLA coverage, they should be trained to send employees they suspect of being covered by the FMLA to the Human Resource Department for authorization and certification. They should also be instructed to keep such information as an employee's serious health conditions private. Only those who are on a need-to-know basis should be privy to such information.
10. Employers may require that a second and even a third medical opinion be rendered when such opinions conflict. One of the best ways to manage the FMLA is to ensure that any employee's potentially serious health condition is certified as such by a health care provider.
11. Notices should be sent to employees by way of "proof of mailing" or by some method of tracking as proof that proper notices have been provided. If the employer fails to provide any of these notices, the lack of notice will fall to the employee's favor and protection under the FMLA.
12. Human Resource Departments should maintain a standardized collection of the FMLA forms needed to remain in compliance. These forms may then be customized to fit each employee's situation, then sent to the employee in an efficient manner. A list of some of the forms employers should have ready to implement, as previously discussed, are:

- a. General notice
- b. Eligibility and Rights and responsibilities notice
- c. Designation notice
- d. Additional Notice of Eligibility & Rights Information
- e. Medical Certification Form for Family Members
- f. Certification for Serious Injury or Illness of Covered Service Member (FMLA)
- g. Permission from Employee to Contact Health Care Provider,
- h. Notice of Termination of Health Insurance Coverage, and
- i. Key Employee Denial of Job Restoration Letter.