

FMLA BEST PRACTICES CHECKLIST

This checklist features essential steps for maintaining compliance with the Family and Medical Leave Act (FMLA) and curbing FMLA abuse by employees. Use this tool as you update and refine your absence management processes.

BEST PRACTICES

CHECKLIST

Define Your FMLA Year

Employers have multiple options when they select their organization's leave year, including the calendar year, the fixed year, the rolling forward 12-month year, and the rolling backward 12-month year. Whichever year you select, use must be uniform across all FMLA leaves. Many employers select the "rolling backward 12-month period" as it prevents employees from stacking leaves.

An employer can change the leave year used to manage FMLA leaves if changes are communicated to all employees at least 60 days in advance.

- Select and/or review your organization's leave year.
- Build a communication plan to inform employees of the leave year and/or any changes to the leave year at least 60 days prior to implementation.

Require Written Leave Requests

Require employees to submit all leave requests in writing and deliver them electronically, by mail, or in person. While an employer may not deny a verbal FMLA request, requiring employees to write and sign requests makes it more difficult for them to abuse FMLA leave.

- Develop an FMLA request form and provide easy access to the form.
- Outline and communicate the request process with all employees.

Require Proper Notice

Enforce standard notice and procedural requirements for requesting leave. Train managers on this process and ensure that notice procedures are well documented.

If the need for leave is foreseeable, require advance notice. The FMLA requires at least 30 days' notice if the need for the leave is foreseeable for:

- An expected birth
- Placement for adoption or foster care
- Planned medical treatment
- Illness of a covered military member

Employees should be held to this requirement as it allows departments to plan and prepare for absences.

- Document, communicate, and train all employees about notice requirements for FMLA leaves.

BEST PRACTICES

CHECKLIST

Qualify the Employee

To qualify an employee for an FMLA leave, ensure they are eligible under the FMLA: hours and length of service have been met and the request is for a qualified leave reason.

Collect information from employees when they request an absence. Questions to ask may include:

- The reason for the absence
- The functions of the job they cannot perform
- When they first learned that they would need to be absent
- Why they are reporting the need for leave late (if applicable)
- The employee's expected return date

The Department of Labor has standard forms to collect this information. Employers can use the forms or create their own; however, they cannot collect information beyond what the law allows.

- Develop a process for determining leave eligibility.
- Use a standard form to collect information when an employee requests an FMLA leave.

Use Medical Certifications

Arguably the best tool for curbing leave abuse is medical certifications which require the employee to substantiate the claim in writing and generally must be returned within 15 calendar days.

Employers should watch for and cure any incomplete certifications and clarify/authenticate any insufficient or questionable certifications.

Recertifications are allowed every 30 days in connection with an absence, or when the minimum leave duration expires. Recertifications can be requested in fewer than 30 days (or the minimum duration) when:

- an employee requests a leave extension;
- the circumstances of the condition significantly change; or
- an employer receives information casting doubt on employee's stated reason for leave.

- Regularly update job descriptions and essential functions for positions.
- Provide a standard medical form for employees to deliver to their healthcare provider.
- Establish and consistently follow a process for recertification.

Get Second/Third Opinions

Employers are not bound by an employee's certification. If an employer has reason to doubt its validity, they can request a second opinion.

The second opinion is at the employer's expense, and the employer may designate the healthcare provider to furnish the second opinion.

If the original certification and the second opinion differ, an employer may require a third opinion. For the third opinion, which is binding:

- The employer and employee must agree on the physician.
- The employer must pay for the expense.

- Create a process for second and third opinions, including a list of healthcare providers that can be used as needed.

Confirm Fitness for Duty

Require fitness-for-duty certifications for employees returning from leave. The fitness-for-duty exam is completed at the employee's expense, and employers should limit the certification to the specific health condition that caused the need for FMLA leave.

- Communicate the fitness-for-duty requirement and process in the designation notice.

BEST PRACTICES

CHECKLIST

Enforce Substitutions	FMLA leave is generally unpaid, but employers can require substitution of paid leave for employees. This approach may deter fraudulent leave requests when other paid leave, such as vacation, is involved, and it may reduce the duration of eligible leaves.	<input type="checkbox"/> Determine what paid leave is available and should be used by employees during an FMLA leave. <input type="checkbox"/> Communicate requirements in FMLA notices to employees.
Manage Schedules	If leave is taken for scheduled medical treatment, employers may ask that it not unduly disrupt operations (subject to approval by the healthcare provider). Employees may be able to schedule a treatment before or after work or during non-critical business hours.	<input type="checkbox"/> Communicate with employees which time periods are critical to operations and which time periods are preferable for appointments.
Consider Transfers for Intermittent or Reduced Schedule Leave	When the need for intermittent or reduced schedule leave is foreseeable, you may temporarily transfer an employee to a non-disruptive position. The employee must be qualified for the new position, and the transfer should lessen disruption to operations. Alternative positions must have equivalent pay and benefits; however, the duties do not need to be equivalent.	<input type="checkbox"/> Create an active list of non-disruptive positions that can be used if an employee needs to be transferred. <input type="checkbox"/> Provide any necessary training and/or onboarding when an employee moves to the temporary position.
Ban Second Jobs	Establish a policy prohibiting active employees from working other jobs, including while on approved leave from the company. This practice deters employees from taking leave to earn additional income.	<input type="checkbox"/> Document and apply this requirement consistently for employees.
Document All Absences and Automate When Possible	Maintain complete records of all leave entitlements and leave taken. This allows for comparison of time-off requests. Automate reporting to allow for review of absence patterns such as leave occurring disproportionately near weekends, paydays, and holidays; and absences concentrated in certain departments.	<input type="checkbox"/> Review your leave records and adjust as necessary to capture all leave entitlements and leaves taken. <input type="checkbox"/> Explore and implement automated reporting options. <input type="checkbox"/> Build in time to review reports and create action plans based on the data.