

## FMLA Overview

### 1. FMLA Definition & Law (DOL Wage & Hour Division)

- a. Signed into law by President Clinton in **1993**; amended & signed by President Bush in 2008 to add military exigency leave provisions & in 2010 by Obama to clarify the definition of son/daughter & serious health condition, expand the military caregiver leave & amendment with regard to airline flight crew ee's; **February 23, 2015**, the U.S. Department of Labor's Wage and Hour Division announced a Final Rule to revise the definition of spouse under the Family and Medical Leave Act of 1993 (FMLA) in light of the United States Supreme Court's decision in **United States v. Windsor**, which found section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional. **The Final Rule amends the definition of spouse so that eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live.**
- b. **The Family and Medical Leave Act (FMLA)** is a federal law that provides eligible employees of covered employers with **unpaid, job-protected** leave for specified family and medical reasons. Eligible employees may take up to 12 workweeks of leave in a 12-month period for one or more of the following **qualifying reasons**:
  - The birth of a child or placement of a child with the employee for adoption or foster care, and to bond with the newborn or newly-placed child;
  - To care for a spouse, son, daughter, or parent who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care;
  - For a serious health condition that makes the employee unable to perform the essential functions of his or her job, including incapacity due to pregnancy and for prenatal medical care; or
  - For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.
    - o Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).
- c. **12 weeks (480/450 hours-intermittent)** of leave in a 12-month period for qualifying reasons
- d. The FMLA requires that employers maintain employees' **health benefits** during leave and **restore employees to their same or an equivalent job** after leave.
- e. The law sets **requirements for notice**, by both the employee and the employer, and provides employers with the **right to require certification** (from certified health care provider) of the need for FMLA leave in certain circumstances.
- f. The law **protects employees** from interference and **retaliation for exercising or attempting to exercise their FMLA rights**.
- g. The law also includes certain employer **recordkeeping requirements; separate medical file according to confidentiality requirements under ADA/GINA (& 3 years records retention) & required display of the general notice**.

### 2. Purpose – To balance work and family life & needs; preserve family integrity – workers should not have to choose between work (the job that they need) or family (that needs their care).

- a. Why is it needed – Flexible practices in the workplace boosts productivity, reduces turnover/increases retention, improves morale, benefits the economy.

### 3. Who is a covered Employer:

- a. Private sector employers with 50 or more employees
- b. Public Agencies (Commonwealth)
- c. Public & Private elementary & secondary schools (IUP-PASSHE)

### 4. Who is a covered Employee:

- a. Employed by covered employer; worked at least 12 months; have at least 1250 hours of service; employed at a work site with 50 ee's within 75 miles

5. Serious Health Condition: A serious health condition is an illness, injury, impairment, or physical or mental condition that involves **inpatient care** or **continuing treatment** by a health care provider.
  - a. Incapacity-inability to work; unable to perform any one of the essential functions of the employee's position
  - b. Chronic conditions, testing, hospital stay, treatments, continuing treatments, pregnancy/prenatal care, permanent/long term conditions
6. **General Notice**-posted on IUP web (Employee Rights & Responsibilities & each employment group specific notice posted)
7. Employees do not need to specifically request FMLA in order to be entitled- Supervisor/Manager training
  - a. Employee's notice of need for leave can be verbal or in writing-if verbally, **employee does not need to specifically mention FMLA.**
  - b. If foreseeable should notify supervisor/IUP with at least 30 days advanced notice
  - c. Supervisors/Managers must be able to recognize FMLA-qualifying reasons for leave and properly initiate the required notifications/and eligibility checks/notify HR.
8. 12 month period used to track FMLA leave usage: **a rolling 12 month period measured backward from the date of any FMLA leave usage.**
9. Immediate Family Members:
  - a. **Spouse** means a husband or wife as defined or recognized in the state where the individual was married, including in a common law marriage or same-sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States, if the marriage could have been entered into in at least one state.
  - b. **Parent** means a biological, adoptive, step or foster father or mother, or any other individual who stood *in loco parentis* to the employee when the employee was a child. This term does not include "parents-in-law."

#### **In Loco Parentis -**

- An individual stands *in loco parentis* to a child if he or she has day-to-day responsibilities to care for or financially support the child. The person standing *in loco parentis* is not required to have a biological or legal relationship with the child. Although no legal or biological relationship is necessary, grandparents or other relatives, such as siblings, may stand *in loco parentis* to a child under the FMLA where all other requirements are met. The *in loco parentis* relationship exists when an individual intends to take on the role of a parent. Similarly, an individual may have stood *in loco parentis* to an employee when the employee was a child even if the individual has no legal or biological relationship to the employee.
  - c. **Son or daughter** means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age or who is 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. The onset of a disability may occur at any age for purposes of the definition of an adult "son or daughter" under the FMLA.
10. **Certification of Healthcare provider:**
    - a. Needed to support the employee's need for FMLA leave.
    - b. Needs to be returned within 15 calendar days
    - c. If employee does not provide, request can be denied.
    - d. Release to return to full duty work

#### **11. Health care Provider:**

- A doctor of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices,*
- A podiatrist, dentist, clinical psychologist, optometrist, or chiropractor (with limitations) authorized to practice in the state and performing within the scope of his or her practice;*
- A nurse practitioner, nurse-midwife, clinical social worker, or physician assistant authorized to practice in the state and performing within the scope of his or her practice;*
- A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston,*

Massachusetts; or

- Any health care provider from whom the employer or the employer's group health plan's benefits manager will accept a medical certification to substantiate a claim for benefits.

**12. Designation:**

- a. Review of certification of health care provider for completion/sufficient information relevant to the request
- b. Continuous vs. Intermittent Leave
- c. If the certification is incomplete or insufficient-must provide written notice to employee- **7 calendar days to correct.**

**13. Exercise right for 2<sup>nd</sup> or 3<sup>rd</sup> opinion:**

- a. If an employer has received a complete and sufficient certification but has a reason to doubt that it is valid, the employer may require the employee to obtain a second opinion at the employer's expense.

**14. Recertification:**

- a. In general, an employer may request the employee provide a recertification no more often than every 30 days and only when the employee is actually absent or has requested to be absent. Where the need for leave for an employee's or family member's serious health condition lasts beyond a single leave year, the employer may require a new certification in each subsequent FMLA leave year.

**15. Workers Comp/LTD run concurrent with FMLA**

**16. Spouses working for the same employer-** Eligible spouses who work for the same employer are limited to a combined total of 12 workweeks of leave in a 12-month period to share for the following FMLA-qualifying reasons:

**17. Substitution of paid leave if available**

- a. Employee may choose or employer may require to substitute accrued paid leave

**18. Restoration:**

- a. When an employee returns from FMLA leave, he or she must be restored to the same job that the employee held when the leave began or to an "equivalent job."
- b. The employee is not guaranteed the actual job he or she held prior to the leave.
- c. An "equivalent job" means a job that is virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions (including shift and location).

**19. Leave may run concurrently with ADA, Pregnancy Discrimination Act, USERRA, HIPAA, Workers' Compensation, etc.**

# EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

## Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

## Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness\*; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.\*

**\*The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

## Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

## Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months\*, and if at least 50 employees are employed by the employer within 75 miles.

**\*Special hours of service eligibility requirements apply to airline flight crew employees.**

## Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and

a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

## Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

## Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

## Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

## Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

## Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

## Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

**FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.**



For additional information:  
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627  
[WWW.WAGEHOUR.DOL.GOV](http://WWW.WAGEHOUR.DOL.GOV)

U.S. Department of Labor | Wage and Hour Division



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## FMLA Absence Checklist for Supervisors

This checklist includes procedures for three different categories of FMLA/SPF Absences: full-time; reduced-time; and intermittent. The absence types are fully described below. Supervisors should use this checklist as a guide for evaluating absence requests, monitoring continuing absences, and evaluating discipline. The checklist includes procedures related to the policy and the law for any approved FMLA Absence. An employee not entitled to FMLA will be involuntarily separated unless the employee: returns to work, uses paid leave in accordance with ordinary rules for the use of paid leave, or resigns the position. Questions should be referred to the Benefits Manager/FMLA/SPF Coordinator in the Human Resource Office at (724) 357-2431.

**Full-Time Absences.** A full-time absence is any absence that is several days in duration.

Examples: Absence and recovery connected to surgery. Absence and recovery from chemotherapy (which might also be an intermittent absence). Absence and recovery from pneumonia or severe influenza.

- ✓ If an employee knows in advance that an FMLA Absence is needed, provide an *FMLA Absence Request* form to the employee or direct them to the IUP Benefits Website regarding Sick Leave, specific to their bargaining unit (<https://www.iup.edu/humanresources/benefits/#1>), and ask the employee to return it to the Benefits Manager/FMLA/SPF Coordinator.
- ✓ Notify the Benefits Manager/SPF Coordinator of each new full-time absence of three (3) or more consecutive days, even if you are unsure that the absence will qualify as FMLA/SPF Absence, unless an approval letter has already been provided for that reason.
- ✓ Verbally notify the employee within two business days that the absence has been provisionally approved as SPF Absence and FMLA leave, even if you are unsure it will qualify as SPF Absence.
- ✓ Notify the FMLA/SPF Coordinator if you learn that an employee will return to work sooner than anticipated.
- ✓ Notify the FMLA/SPF Coordinator if the employee will be absent longer than initially expected to ensure that the employee is entitled to use more leave.
- ✓ Notify the FMLA/SPF Coordinator if you learn of suspicious activities or rumors connected to an employee's activities during an FMLA/SPF Absence.
- ✓ Notify the FMLA/SPF Coordinator when the employee returns to work.

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**Reduced-Time Absences.** A reduced-time absence is a set schedule of absences based on a specific number of work hours per day or per work week that usually continues for more than one week.

Examples: Working four hours each morning with the afternoon off to care for a parent with Alzheimer's due to the normal care provider's extended vacation. Working Monday/ Wednesday/Friday and absent Tuesday/Thursday to rest as ordered by the health care provider.

- ✓ If an employee knows in advance that Sick Leave FMLA/SPF Absence is needed, provide an *FMLA Employee Request* form to the employee or advise them to visit the IUP Benefits Website under Sick Leave to learn more about Sick Leave/FMLA and to obtain the appropriate forms, and ask the employee to return it to the SPF Coordinator.
- ✓ Notify the FMLA/SPF Coordinator when the reduced-time schedule begins, unless an approval letter has already been provided for that reason.

- ✓ Notify the FMLA/SPF Coordinator if you learn that an employee will return to full-time work sooner than anticipated.
- ✓ Notify the FMLA/SPF Coordinator if the employee will use reduced-time leave longer than expected to ensure that the employee is entitled to use more leave.
- ✓ Notify the FMLA/SPF Coordinator if you learn of suspicious activities or rumors connected to an employee's activities while they are supposed to be absent due to an FMLA reason.
- ✓ Notify the FMLA/SPF Coordinator when the employee returns to full-time work.

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**Intermittent Absences.** An intermittent absence includes periodic absences of any duration when unable to work due to a reason certified by the health care provider. Note: An intermittent absence could also be a full-time absence.

Examples: Call-off due to a migraine. Need to leave early due to a flare-up of a child's serious health condition. Off two weeks, return for three days, and then off three weeks.

- ✓ If an employee knows in advance that Sick Leave/FMLA Absence is needed, provide an *FMLA Employee Request* form to the employee or advise them to visit the IUP Benefits Website under Sick Leave to learn more about Sick Leave/FMLA and to obtain the appropriate forms, and ask the employee to return it to the FMLA/SPF Coordinator.
- ✓ Notify the FMLA/SPF Coordinator when the intermittent absences begin, unless an approval letter has already been provided for that reason.
- ✓ When an employee requests an unscheduled absence, ask the employee if the reason for the absence is due to the FMLA Absence approved reason. Note: If the employee has more than one approved reason, ask to which one the absence relates.
- ✓ When an employee requests an FMLA Absence, determine if absence entitlement is available for use. If unsure, do not approve the absence. Instead, obtain the employee's telephone number and call the employee back to approve/reject the absence after obtaining the entitlement from the FMLA/SPF Coordinator. Please note that employees are eligible to take FMLA as unpaid leave within the provisions of each bargaining unit or employment group. As appropriate, if a request is not due to an FMLA approved Absence or the FMLA Absence entitlement has been depleted, consider operational efficiency prior to approving or rejecting the request.
- ✓ Notify the FMLA/SPF Coordinator if you learn that an employee will return to full-time work sooner than anticipated.
- ✓ Notify the FMLA/SPF Coordinator if the employee will use intermittent leave longer than expected to ensure that the employee is entitled to use more leave. The employee should communicate with the FMLA/SPF Coordinator under these circumstances.
- ✓ Notify the FMLA/SPF Coordinator if you learn of suspicious activities or rumors connected to an employee's activities while they are supposed to be absent due to an FMLA reason.
- ✓ Notify the FMLA/SPF Coordinator when the employee returns to full-time work.

## **Manager's/Supervisor's FMLA Q & A**

As a supervisor, you have responsibilities under the FMLA. If you intentionally or unintentionally deny employees' rights under the FMLA, you can be held personally liable. Although you are not expected to know all of the details of the FMLA, you should know the basics and how to recognize a possible serious health condition. This Reference Guide provides information that will answer many of the questions you may have about the FMLA. Human Resources will assist with specific FMLA questions and issues.

### ***1—Can I ask an employee why he/she is absent from work?***

Yes. In fact, you are required to ask. Under the FMLA, an employee does not have to assert their FMLA rights; it is the supervisor's responsibility to recognize that an absence may be FMLA-qualifying. An employee does not have to reveal a diagnosis, but should give a general reason for the absence. (Under the SPF Absence provisions, an employee who is approved for more than one condition/reason should identify which approval the absence falls under.)

### ***2—How do I know if an absence is FMLA-qualifying?***

The FMLA covers absences for serious health conditions. Do not assume that an employee's absence is not serious. The definition of serious health condition can include episodic absences and minor illnesses of more than three consecutive calendar days (including scheduled days off if the doctor certifies inability to work on those days.) The Employee Rights and Responsibilities under the FMLA document lists all of the types of absences that are FMLA-qualifying. If you are unsure, refer to the Benefits Manager for assistance.

### ***3—What do I do if I suspect that an absence could be FMLA qualifying?***

You should have a meeting with the employee in a private place and ask the employee if they or a family member may have a serious health condition or advise the employee to contact HR to discuss further. You should advise the employee to review the Sick Leave/FMLA information available on the IUP Benefits Webpage and to complete the appropriate forms if needed and submit to Human Resources once completed. You should notify the Benefits Manager/FMLA Absence Coordinator if absences continue or of any concerns so contact can be made with the employee if necessary.

### ***4—Do I provide Human Resources with the medical information received?***

Yes. If you receive any medical information to support a serious health condition, it should immediately be forwarded to the Human Resource Office in a sealed envelope marked "personal and confidential". Do not keep a copy. The Human Resource office will maintain all medical information in a confidential medical file. Based on the medical information provided, the Human Resource Office will either approve the leave and properly notify the employee of his/her rights, duties, and responsibilities while using FMLA-qualifying leave or deny the leave. As the supervisor and or manager, you will receive a copy of the designation notice and/or letter.

**5—Do I need to alert Human Resources of an absence when I am sure it is due to a serious health condition?**

Yes. You must notify Human Resources of all FMLA/SPF Absences that are related to a serious health condition. The Human Resource Office must communicate with the employee and if appropriate, send the Sick Leave/FMLA information and required forms to the employee. The entry of leave related to the Sick Leave/FMLA/SPF Absence will need to be coordinated with the employee and HR to ensure entry into the payroll system.

**6—Does Human Resources need to know of each FMLA-qualifying absence?**

Yes. Each FMLA-qualifying absence should be forwarded on to the Benefits Manager/FMLA/SPF Absence Coordinator. The employee should be advised to review the Sick Leave Notice and other important information available on the IUP Benefits Website regarding Sick Leave/FMLA.

**7—Can I disapprove FMLA leave if I believe the absences are excessive?**

You cannot disapprove requests for FMLA-qualifying leave. If you suspect abuse of FMLA privileges, discuss the situation with the Human Resource Office. The Human Resource office may decide to obtain updated medical information or schedule an independent medical examination of the employee (or family member) if appropriate.

**8—What do I need to do when an employee returns from an FMLA absence?**

You should ensure that the employee provided HR with a release to return to full duty work and verify that the employee is released to return to work based on the date on the documentation provided by their health care provider. All documentation should be forwarded to Human Resources if the employee provides the document to you rather than providing it to HR prior to returning to work. You should inform the Benefits Manager/FMLA Absence Coordinator so that the employee can be returned from leave for payroll purposes.

Timeliness is extremely important. As soon as you become aware that an absence may be due to a serious health condition, alert the Human Resource Office. If the absence is not verbally designated as FMLA-qualifying within two business days, with a follow-up in writing by the next pay date, it cannot be retroactively designated.