

Guide to Family and Medical Leave

6th Edition

**Lisa Guerin, J.D.
Attorney Deborah C. England**

Table of Contents

Chapter 1 – An Overview of Family and Medical Leave.....	1
Learning Objectives	1
Introduction.....	1
What the FMLA Requires.....	2
Your Obligations as a Manager	3
Ten Steps to FMLA Compliance.....	3
The Compassionate Manager	4
Why You Need to Get It Right.....	4
How Other Laws and Company Policies Come Into Play.....	5
Overlapping Laws	5
Company Policies	6
How to Use This Book	7
Review Questions.....	9
Review Answers	10
Chapter 2 – Is Your Company Covered by the FMLA?	11
Learning Objectives	11
Introduction.....	11
Calculating the Size of Your Company	12
Step 1: Does Your Company Employ 50 or More People?.....	12
Step 2: Did Your Company Employ 50 or More Employees for 20 or More Workweeks?	12
Joint Employers and the FMLA	13
Is Your Company a Joint Employer?	13
Primary and Secondary Employers	14
Integrated Employers.....	16
If Your Company Is Covered	17
Posting Requirements.....	17
Written FMLA Policies.....	18
Common Mistakes Regarding Employer Coverage and How to Avoid Them	19
Review Questions.....	20
Review Answers	21
Chapter 3 – Is the Employee Covered by the FMLA?	23
Learning Objectives	23
Introduction.....	23
Employee Eligibility, Step by Step	24
Step 1: Are There 50 Employees Within 75 Miles?	24
Step 2: Has the Employee Worked for the Company for 12 Months?	25
Step 3: Has the Employee Worked Enough Hours?	26
Keeping Track of Employees' Work Hours	29
Common Mistakes Regarding Employee Eligibility and How to Avoid Them	30
Review Questions.....	33
Review Answers	34
Chapter 4 – Leave for a Serious Health Condition.....	35
Learning Objectives	35
Introduction.....	35
Your Role in Identifying a Serious Health Condition.....	35
What Is a Serious Health Condition?.....	36
Inpatient Care	37
Inc incapacity for More Than Three Days Plus Continuing Treatment	38
Pregnancy or Prenatal Care.....	41
Chronic Serious Health Condition	41
Permanent or Long-Term Incapacity	42
Multiple Treatments	43

Table of Contents

Conditions That Are Not Typically Covered	43
Leave for Employee's Own Serious Health Condition	44
Leave for a Family Member's Serious Health Condition	45
Who Is a Family Member Under the FMLA	45
Proving a Family Relationship	46
Caring for a Family Member	47
Common Mistakes Regarding Serious Health Conditions and How to Avoid Them	49
Review Questions	50
Review Answers	51
Chapter 5 – Leave for a New Child.....	53
Learning Objectives	53
Introduction.....	53
Leave for Birth	54
Multiple Births in the Same Year	54
Conditions That Don't Count	55
Leave for Adoption.....	55
Leave for Placement of a Foster Child.....	55
Parental Certifications.....	56
Timing of Parenting Leave	56
Intermittent or Reduced-Schedule Leave	57
Substitution of Paid Leave	58
Parents Who Work for the Same Company	58
Combining Parenting Leave With Leave for a Serious Health Condition	59
Pregnancy	60
Caring for a Child.....	61
Common Mistakes Regarding Leave for a New Child and How to Avoid Them	61
Review Questions	64
Review Answers	65
Chapter 6 – Military Family Leave.....	67
Learning Objectives	67
Introduction.....	67
Leave for a Qualifying Exigency	68
Covered Active Duty	68
Family Members	70
Qualifying Exigencies.....	70
Intermittent or Reduced-Schedule Leave	73
Substitution of Paid Leave	73
Leave to Care for an Injured Servicemember	73
Which Servicemembers Are Covered.....	74
Covered Family Members	75
How Much Leave an Employee May Take.....	76
Limits on Leave Available to Married Couples	77
Intermittent or Reduced-Schedule Leave	77
Substitution of Paid Leave	77
Common Mistakes Regarding Military Family Leave and How to Avoid Them.....	77
Review Questions	80
Review Answers	81
Chapter 7 – How Much Leave Can an Employee Take?.....	83
Learning Objectives	83
Introduction.....	83
Counting the 12-Month Leave Year.....	84
Calculating the Leave Year for Military Caregiver Leave.....	84
Calculating the Leave Year for Other Types of FMLA Leave.....	84
Choosing a Leave Year Method	86

Table of Contents

Applying the Leave Year Consistently	87
How Many Weeks May an Employee Take?	87
Employees Who Don't Use Military Caregiver Leave.....	87
Employees Who Use Only Military Caregiver Leave.....	88
Employees Who Use Both Military Caregiver Leave and Other Types of FMLA Leave.....	88
Counting Time Off as FMLA Leave	90
Intermittent and Reduced-Schedule Leave.....	91
When Can an Employee Take Intermittent or Reduced-Schedule Leave?	91
Part-Time Employees	94
Employees Who Work Overtime	94
Exempt Employees.....	95
Administering Intermittent or Reduced-Schedule Leave	95
Common Mistakes Regarding Leave Duration and How to Avoid Them.....	96
Review Questions.....	99
Review Answers	100
Chapter 8 – Giving Notice and Designating Leave.....	103
Learning Objectives	103
Introduction.....	103
Counting Time Off as FMLA Leave	104
Substituting Paid Leave for FMLA Leave.....	104
Designating FMLA Leave Retroactively.....	106
“Involuntary” Designation	106
Individual Notice Requirements.....	107
General Notice.....	107
Eligibility Notice	107
Rights and Responsibilities Notice	108
Designation Notice.....	109
Employee Notice Requirements	111
Methods of Employee Notification	111
Getting More Information From the Employee	113
How Much Notice the Employee Must Give.....	113
Employee Failure to Give Notice	115
Notice Based on Employer Observations	115
Common Mistakes Regarding Giving Notice and Designating Leave and How to Avoid Them	116
Review Questions.....	119
Review Answers	120
Chapter 9 – Certifications	123
Learning Objectives	123
Introduction.....	123
Types of Certifications	124
Certification of the Employee's Own Serious Health Condition	124
Certification of a Family Member's Serious Health Condition.....	125
Certification for Military Caregiver Leave for Current Servicemembers	125
Certification for Military Caregiver Leave for Veterans	127
Certification of Qualifying Exigency	127
Requesting Certification.....	128
Why You Should Always Request Certification.....	128
Procedures and Deadlines for Requesting a Certification	130
Employee Deadline for Returning the Certification.....	131
After You Receive the Certification.....	132
Certifications in a Foreign Language	132
Incomplete or Insufficient Certifications	132
Verifying a Certification for a Qualifying Exigency.....	133
Authenticating or Clarifying Medical Certifications	133
Second Opinions	134

Table of Contents

Third Opinions	135
Recertifications	135
Common Mistakes Regarding Medical Certifications and How to Avoid Them	136
Review Questions	139
Review Answers	140
Chapter 10 – Managing an Employee’s Leave	141
Learning Objectives	141
Introduction	141
Scheduling Leave	142
Postponing the Start of Leave	142
Rescheduling Leave	143
Unforeseeable Leave	144
Covering an Employee’s Duties During Leave	144
Available Options	144
Talk to the Employee	146
Handle Logistics	148
Continuing Employee Benefits During Leave	148
What Is a Group Health Plan?	148
Other Types of Benefits	150
Premium Payments	150
Managing Intermittent Leave	151
Scheduling	152
Transfers	152
Tips to Prevent Abuse	153
Requesting Status Reports	154
Disciplining or Firing an Employee During Leave	155
Common Mistakes Regarding Managing Leave and How to Avoid Them	157
Review Questions	160
Review Answers	161
Chapter 11 – Reinstatement	163
Learning Objectives	163
Introduction	163
The Basic Reinstatement Right	164
What Is an Equivalent Position?	164
Deadlines for Reinstatement	165
Fitness-for-Duty Certifications	166
Contents of the Certification	166
Notice and Deadlines	167
Special Rules for Intermittent and Reduced-Schedule Leave	167
Restoring Pay and Benefits	167
Pay	167
Benefits	169
When Reinstatement Might Not Be Required	170
Employee Would Have Lost the Job Regardless of Leave	170
Employee Cannot Perform an Essential Job Function	172
Fraud	172
Key Employees	173
When Employees Don’t Return From Leave	176
When You Can Seek Reimbursement for Benefits	176
What Your Company Can Recover	177
How to Seek Reimbursement	177
Common Mistakes Regarding Reinstatement and How to Avoid Them	178
Review Questions	181
Review Answers	182

Table of Contents

Chapter 12 – How Other Laws Affect FMLA Leave	185
Learning Objectives	185
Introduction.....	186
Federal Laws	186
Americans with Disabilities Act (ADA)	186
Consolidated Omnibus Budget Reconciliation Act (COBRA)	191
Title VII of the Civil Rights Act	191
Uniformed Services Employment and Reemployment Rights Act (USERRA).....	192
State Laws.....	193
State Family and Medical Leave Laws	193
Workers' Compensation.....	198
State Disability Insurance Programs.....	199
Common Mistakes Regarding Other Laws and Benefits and How to Avoid Them	199
Review Questions.....	203
Review Answers	204
Chapter 13 – Record-Keeping Requirements.....	205
Learning Objectives	205
Introduction.....	205
Why You Should Keep Records	205
Keeping Track of Company Workforce FMLA Data	206
Individual Employee Records.....	206
Medical Records.....	207
Review by the Department of Labor (DOL).....	209
Now You're Ready!	209
Common Mistakes Regarding Record Keeping and How to Avoid Them	210
Review Questions.....	211
Review Answers	212
Appendix A – State Laws and Departments of Labor	213
Appendix B – Company Policies Regarding FMLA Leave.....	245
Appendix C – How to Use the Downloadable Forms on the Nolo Website.....	255
Glossary.....	257
Index	261