

THE RESOURCEFULMANAGER'S

# FMLA

## Cheat Sheet

A HANDY AT-A-GLANCE GUIDE

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# The FMLA Cheat Sheet

There are so many twists and turns in the Family & Medical Leave Act (FMLA) rulebook that it helps to keep a good, reliable cheat sheet nearby – like this one.

On the following pages are some of the more common FMLA questions you'll run into – and the answers. You can scroll through the pages, or use the Table of Contents to click and go directly to the questions you need answers for. And, of course, you can print the Cheat Sheet and keep it handy on your desk.

# Who Is Eligible For FMLA?

To be eligible for FMLA leave:

1. The employee must have worked for the employer for a total of 12 months before the leave begins, and
2. The employee must have worked at least 1,250 hours in the 12 consecutive months immediately preceding the leave, and
3. The employee must work at a site at which the employer has 50 or more employees within a 75-mile radius.

## Q: Do the 12 months of service before the leave need to be consecutive?

No. The 12 months do not have to be consecutive or continuous. The 12 months could've occurred over the period of a few years.

## Q: Do the 1,250 hours include paid leave or other absences from work?

No. The 1,250 hours include only hours actually worked for the employer during the prior 12 consecutive months. Paid leave and unpaid leave, including FMLA leave, are not included in that.

## Q: How long can FMLA leave last?

Eligible employees can get up to 12 weeks of leave for qualifying family and medical reasons during a 12-month period.

## Q: How is that 12-month period calculated?

The 12-month period during which workers can take leave could be:

1. The calendar year.
2. Any fixed 12-month period such as a fiscal year, a year required by state law, or a year starting on the employee's anniversary date.
3. A 12-month period starting the first day that FMLA leave begins.
4. A 12-month period measured backward from the date an employee uses FMLA leave.

## Q: What are the reasons people can take FMLA leave?

An eligible employee can take leave:

- To care for a new child, whether for the birth of a son or daughter, or for the adoption or placement of a child in foster care.

- To care for a seriously ill spouse, son, daughter, or parent. The child must be under age 18, or over age 18 with a qualifying mental or physical disability.
- To recover from the worker's own serious illness.
- To care for an injured service member in the family.
- To address issues arising from a family member's military deployment.

### Q: Do people on FMLA get paid?

No. The law only requires unpaid leave. However, an employee can elect, or the employer can require the employee, to use accrued paid leave, such as vacation or sick leave, for some or all of the FMLA leave period. When paid leave is substituted for unpaid FMLA leave, it may be counted against the 12-week FMLA leave.

### Q: Can maternity or pregnancy disability leave count as FMLA leave?

Yes. Pregnancy disability leave or maternity leave for the birth of a child would be considered qualifying FMLA leave for a serious health condition and may be counted in the 12 weeks of leave so long as the employer properly notifies the employee in writing of the designation.

## Q: Can you make employees return to work before FMLA is exhausted?

You can require an employee to return to work if the person fails to fulfill any obligations to provide supporting medical certification in a reasonable time frame.

## Q: Can people work other jobs while on FMLA?

Generally, people on FMLA cannot work elsewhere. But employers should establish clear rules regarding the activities of people on FMLA leave, and those rules should be similar to rules governing employees on other types of paid or unpaid leave. The law, however, does not allow for leave in situations where the reason for leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave.

## Q: Can I check up on people on leave?

Yes, employers can check up on people out on leave, but only with that employee. Don't ask the person's friends, family or physician! Talk directly with the employee. You can ask questions to confirm whether the leave qualifies for FMLA, and you can require periodic updates on the employee's status and intent to return to work.

## Q: Can I fire someone on FMLA?

You may not fire someone simply because that employee exercised his or her right to take FMLA. That is illegal. However, many employers have parted ways with people out on FMLA for other, non-FMLA-related reasons, like poor performance or an overall restructuring or cost-cutting move. Caution: Any adverse action taken against a person on FMLA should only be done under the guidance of legal counsel.

## Q: Do I have to pay bonuses to people on FMLA?

FMLA requires that employees be restored to the same or an equivalent position when they return to work.

However, employees on FMLA leave are not entitled to bonuses or other payments based on the achievement of a specific goal - such as hours worked, product sold or perfect attendance - if they have not met the goal because of FMLA leave. This is **ONLY** true if you treat all employees on non-FMLA leave the same way.

Also, FMLA does not require that employees on FMLA leave be allowed to accrue benefits or seniority.

The employer is not required to make any special accommodation for this employee because of FMLA.

The employer must, of course, treat an employee who has used FMLA leave at least as well as other employees on paid and unpaid leave (as appropriate) are treated.



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