# **Leave And FMLA FAQs**

1. **What is FMLA?**

* FMLA is federally mandated leave for eligible employees of covered employers.
* In general, the employer must offer 12 weeks of leave per a 12-month time period for employees who have certain types of need for leave.  (Up to 26 weeks for certain events.)
* FMLA may be taken intermittently or continuously.  It may also be taken on a ‘reduced schedule’.

1. **What are the protections offered by FMLA?**

* FMLA requires restoring the employee to their original job, or to an equivalent alternative (one that is almost virtually identical to their previous position).  To demonstrate commitment for this requirement, most employers maintain the position that the individual left, filling it only temporarily until they return.
* FMLA requires continuation of group health coverage, and even if coverage lapses, employee must be able to pick up the coverage again upon their return.
* FMLA requires return to equivalent benefits.
* You must treat employees on FMLA as you do other employees who may be on leave for other reasons, and employees on FMLA leave must not be penalized for taking leave; for example, standard bonuses should be paid to the employee for the most part, and annual increases should be given.

1. **Which companies are covered under FMLA?**

* Private-sector employer, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer;
* Public agency, including a local, state, or Federal government agency, regardless of the number of employees it employs; or
* Public or private elementary or secondary school, regardless of the number of employees it employs.

1. **Who are ‘employees’ under the FMLA and who qualifies for FMLA?**

* In general, anyone who meets the FLSA/IRS definition of an employee will qualify.
* The joint-employer definition also requires that temporary agency employment at your organization counts towards the hours for FMLA.  This does not mean that you have to offer temporary employees FMLA coverage; however, if you were to hire them on with your company, their past hours would be counted towards eligibility.
* An employee must meet the following requirements to be eligible for FMLA (special rules apply to airline flight crew):
  + Has worked for your company for at least 12 months (not necessarily consecutive; however, a break in service of 7 or more years will only count if due to USERRA leave)
  + Has at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave; and
  + Works at a location where the employer has at least 50 employees within 75 miles.
  + Certain key employees may not be covered by FMLA.

1. **What can FMLA be used for?**

* The birth of a son or daughter or placement of a child with the employee for adoption or foster care;
* To care for a spouse, son, daughter, or parent who has a serious health condition (this can include guardians, or parents with adult children who are disabled);
* For a serious health condition that makes the employee unable to perform the essential functions of his or her job; 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.
* Care of a covered servicemember with a serious injury or illness – This permits 26 workweeks of leave during a single 12-month period.

1. **Is FMLA paid?**

FMLA by itself is not paid; however, time off can be covered by other company leave policies (such as PTO, Vacation, Sick, etc.) and/or through short-term/long-term disability if running concurrently with FMLA.  Make sure that all your payment options are similar across all types of leave.  While exempt employees normally are not permitted to have partial day deductions from their paycheck, there is an exception for intermittent FMLA leave.

1. **What are my responsibilities under FMLA?**

* Train your managers on FMLA.  FMLA does not have to be ‘requested’ by an employee.  If they indicate a qualifying need for leave, FMLA rights apply.
* Post the FMLA Rights and Responsibilities notice (see poster compliance tool in the tools and templates section of the HR Essentials Toolkit) and include it in your employee handbook.
* Once alerted to an FMLA need, let the employee know if they are eligible and, if not, at least one reason why within 5 business days.  This may be verbally or in writing (you may use DOL form WH-381 – see tools and templates section of the HR Essentials Toolkit).  Also, provide a copy of the FMLA Rights and Responsibilities (poster compliance under tools and templates in the HR Essentials Toolkit).
* If you require certification to support the leave, provide a certification form and ask that it be returned within 15 days.  If the employee does not return the form, let them know they have 7 days to provide the information or their leave will be considered non-FMLA.
* A designation notice (you may use DOL form WH-382 – see tools and templates section of the HR Essentials Toolkit) must be sent within 5 days of receiving enough information to decide on whether the leave will be designated as FMLA, including this information:
  + Designation information.
  + Any substitution of paid leave and/or fitness for duty requirements; and
  + The amount of leave that is designated and counted against the employee’s FMLA entitlement, if known. If the amount of leave is not known at the time of the designation, the employer must provide this information to the employee upon request, but no more often than once in a 30-day period and only if leave was taken in that period.

1. **How do I track FMLA time for intermittent, exempt employees?**

* FMLA rules permit time tracking by the smallest unit normally used for leave purposes, but no less than one hour.
* An employer is not required to pay an exempt employee the full salary for weeks in which FMLA is used.  They may pay a proportionate salary for time worked.
* You can substitute paid time off for FMLA time on an intermittent basis for exempt employees, just as you would for non-exempt, if you are consistent with your policies.

1. **What happens when my employee’s FMLA is exhausted?**

* If the employee is out for personal medical leave, you should consider extending leave under the ADA (see ADA section of this guide under Legal Basics).
* If the employee needs ongoing, unplanned intermittent leave and is unable to return to work on a continuous basis for a personal medical reason, you should review ADA section of this toolkit; however, in many cases leave that is intermittent, ongoing and unplanned may be an undue business hardship.
* If an employee needs ongoing, unplanned intermittent leave for reasons other than personal medical issues, you should treat the absences as you normally would under your absence plan, unless you have additional leave under a separate company policy.
* If the employee is not out for personal medical leave, and cannot return to work, you may terminate due to the employee being unable to return to work following approved leave if you do not offer leave under another company policy.

1. **Do I have to pay bonuses to employees on FMLA?**

* If a bonus or other payment is based on achievement (sales goals), and the employee has not met the goal, the bonus can be withheld if withheld for all other employees on other types of leave in the same situation.
* For other bonuses, which just require being employed at the time of the bonus (group bonuses for safety, holiday bonuses, etc.), the employee should be treated as any other active employee.

1. **How do I coordinate benefits for employees on FMLA?**

* FMLA only requires continuation of group health insurance coverage (medical, dental, vision and FSA) during leave; however, you should review all your benefit documents with your broker/vendor to determine how to treat other benefits during leave.
* All benefits must be restored to pre-FMLA leave state upon employee’s return from FMLA leave (even if employee chose to drop coverage at the beginning of FMLA leave.)
* Employees have the option to drop medical coverage at the beginning of FMLA leave (and other plans may be treated similarly based on plan document/policy); however, their original benefits will be restored upon their return.
* There are multiple options for collecting benefit premiums, including pre-payment (if employee elects and employer allows), deductions from any ongoing pay (PTO/short term disability), direct payments (check, etc.) to the company by the employee, and catch-up payments upon return.  Employers may also choose to pay the employee portion of the premiums.  It is important that whatever method is chosen, that it be consistent across all employees.
* Make sure your employee is clearly informed of their options, and the default option for benefits should they make no election.

1. **What if my employee fails to pay their benefit premiums while on FMLA?**

* If an employee fails to make benefit payments, the employee’s coverage may be dropped; however, it is important to remember that this benefit must be restored at the time of their return from FMLA.
* To deny coverage due to non-payment, the employer must provide a 30-day grace period for payment **and** issue a 15-day notice of insurance termination.

***Written by a Catapult Advisor***