

# The Family and Medical Leave Act (FMLA)

An overview and resource handbook for employers and HR professionals





## How to use this handbook

**Consult this guide, and your attorney**

This handbook will help you understand and comply with Family and Medical Leave Act (FMLA) leave requirements. It identifies compliance issues, explains how leaves interact with other benefits and points you toward resources for more information. But it's not a definitive resource, especially because it does not discuss all the law's special rules and exceptions. For example, regulations specific to school employees and flight crew members are not included. This means you should seek the advice of your own professional advisors — such as your company's benefits or human resource attorney — for assistance with specific questions about the FMLA and any changes you may need to make to your company's leave policies and procedures.



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# Table of contents



## **PART 1: FMLA OVERVIEW ..... 4**

- Major provisions
- Communicating the law to your employees
- Health conditions that qualify

## **PART 2: EMPLOYEE RIGHTS AND OBLIGATIONS..... 11**

- Employee rights
- Employee obligations

## **PART 3: MANAGING LEAVES ..... 12**

- Certification
- Tips for intermittent leaves
- Paid vs. unpaid leave

## **PART 4: BENEFITS AND RETURN TO WORK..... 13**

- Maintaining benefits during a leave
- Health benefit premium responsibility
- Job restoration upon return from leave
- When employees don't return to work

## **PART 5: AVOIDING PITFALLS..... 15**

- State and federal leave laws
- Employers' most common challenges
- The cost of noncompliance

## **PART 6: UNUM FMLA SERVICES AND OTHER ONLINE RESOURCES..... 18**

- FMLA-friendly Unum Group Disability and Life Insurance policy amendments
- FMLA and state leave law administration
- Online resources
- More leave and absence resources from Unum

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# Part 1: FMLA overview



The Family and Medical Leave Act (FMLA) of 1993 improved employees' ability to care for themselves or family members during serious illnesses, or at times of birth, adoption or foster-care placement. In 2008, the FMLA was expanded to provide leave for family members of military service members.

As an introduction to the law, this overview covers:

- Major provisions
- Communicating the law to your employees
- Health conditions that qualify for FMLA

## UNUM: YOUR BENEFITS PARTNER

As a leading provider of group disability benefits in the U.S. for 45 years,<sup>1</sup> we understand the connection between effective leave management and your bottom line. It's key to controlling the cost of absence and increasing productivity. Yet for many employers, the complexities of the FMLA can make this a difficult task.

That's why we created this helpful reference tool. It's part of our commitment to help you get the most from your benefits programs, so we can help you build a stronger workforce and, ultimately, a stronger business.



As an employer, you must comply with the FMLA **if you have 50 or more employees.**

But it's not as simple as looking around the office and counting how many people work for your business today. Under the law, a covered employer is one who employs 50 employees **for each working day during each of 20 or more calendar workweeks** in the current or preceding calendar year.

"When it comes to FMLA, a lot of employers stop reading when they get to 50 employees," says Ellen McCann, Assistant Vice President and Legal Counsel in Unum's Employment Law Group. "And what they don't realize is that if you're covered for one year you are covered for two years."

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# Major provisions

## LEAVE REASONS

The FMLA grants an eligible employee up to 12 work weeks of **unpaid, job-protected** leave during a 12-month period for:

- Medical leave due to an employee's own serious health condition
- The birth, adoption or foster-care placement of a child
- The care of that employee's parent, spouse or child with a serious health condition
- Any qualifying exigency for a spouse, child or parent of a service member who is on covered active duty — or notified of an impending call or order to covered active duty — as a member of the reserve or regular components of the Armed Forces

## CALCULATING THE 12-MONTH PERIOD

Employers must choose from four methods to measure the 12-month period:

- The calendar year
- Any fixed 12-month period, such as a fiscal year
- The 12-month period "measured forward" from the date an employee's first FMLA leave begins
- A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave

## BONDING

Leave to care for a healthy child after the birth or placement of a child for adoption or foster care must be taken within 12 months of the child's birth or placement. Even though employers must allow intermittent or reduced leave schedules if there is a medical need for such schedules, or based on the qualifying exigency, employers have the option of whether to allow intermittent or reduced leave schedules for bonding leaves.



## MILITARY CAREGIVER LEAVE

In addition to the above “regular” FMLA entitlement, an eligible employee may take up to 26 weeks of unpaid military caregiver leave during a single 12-month period to care for a spouse, child, parent or next of kin who is a covered service member. A covered service member is a member or veteran 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. If the military member is a veteran, they must have been discharged or released under conditions other than dishonorable any time during the five-year period prior to the first date of FMLA leave taken by the eligible employee.

The single 12-month period is measured forward from the first day of leave to care for the service member on a per-member, per-injury basis. During this single 12-month period, eligible employees may take only a combined maximum of 26 weeks of leave under both their regular FMLA entitlement and their military caregiver leave entitlement.

## SPOUSES

Spouses who are both FMLA-eligible and employed by the same covered employer may be limited to a combined total of 12 weeks of leave if the leave is taken for one of these reasons:

- Birth of the employee’s child or to care for the healthy child after birth
- Placement of a child for adoption or foster care, or to care for the child after placement
- Need to care for that employee’s parent with a serious health condition

Each spouse is entitled to a full 12 weeks of leave; however, he or she must take only a combined limit of 12 weeks for any of the reasons listed above if the employer has chosen to enforce this provision through their policies. For example, if each spouse took six weeks of leave to bond with a healthy newborn child, each could take an additional six weeks of leave due to his or her own serious health condition.

Spouses may also be limited to a combined 26-week leave total during the single 12-month period if leave is taken to care for a covered service member with a serious injury or illness.



## The difference between FMLA employer coverage and employee eligibility

“If we’re covered under FMLA, then all of our employees are covered, right?”

Not necessarily.

A lot of employers are confused about the difference between FMLA employer coverage and employee eligibility. Your company might be large enough that it has to provide eligible employees with FMLA leave, but that doesn’t mean that every employee is eligible.

Under the FMLA, an employee is eligible to take job-protected leave only if:

- Their reason for wanting leave is covered under the FMLA.
- They have worked for the company for at least 12 nonconsecutive months, and for at least 1,250 hours in the 12 months preceding the leave request.
- The employer has at least 50 employees working within a 75-mile radius of the requesting employee’s worksite.

So, if you have 50 employees working anywhere in the U.S., according to the regulations, you’re a covered employer. But you only have to grant leave if the particular employee is one of at least 50 employees working with a 75-mile radius, and meets the other eligibility requirements.

The regulations are clear that employers should not grant FMLA leave if employees don’t meet these requirements. While it may seem like the generous thing to do, it may cause trouble if the employee later becomes eligible for FMLA, but has exhausted their 12 weeks according to the employer’s records.



## Understanding FMLA leave periods

“Employees can take FMLA leave once, and that’s it. Right?”

Wrong.

Eligible employees can take FMLA leave for covered reasons for up to 12 weeks in a 12-month period. This means that an employee with a chronic medical condition could be away from work for 12 weeks every 12 months, and their job would have to be protected.

Employers also need to understand that the FMLA may require them to provide leave that is intermittent as well as continuous.

The rules around intermittent absences are also complicated, presenting another level of challenge for employers to manage.

## QUALIFYING EXIGENCY LEAVE

An employee’s 12-week FMLA entitlement includes qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter or parent is on covered active duty or has been notified of an impending call or order to covered active duty.

Under the terms of the statute, qualifying exigency leave is available to a family member of a military member in the regular or reserve components of the Armed Forces during deployment to a foreign country. All qualifying exigencies must be necessitated by the covered active duty or call to covered active duty status of the covered military member.

### What does exigency mean?

Basically, exigency means “an urgent need.” In the FMLA it generally refers to a military family’s need to support or care for a service member.

## QUALIFYING EXIGENCIES INCLUDE:

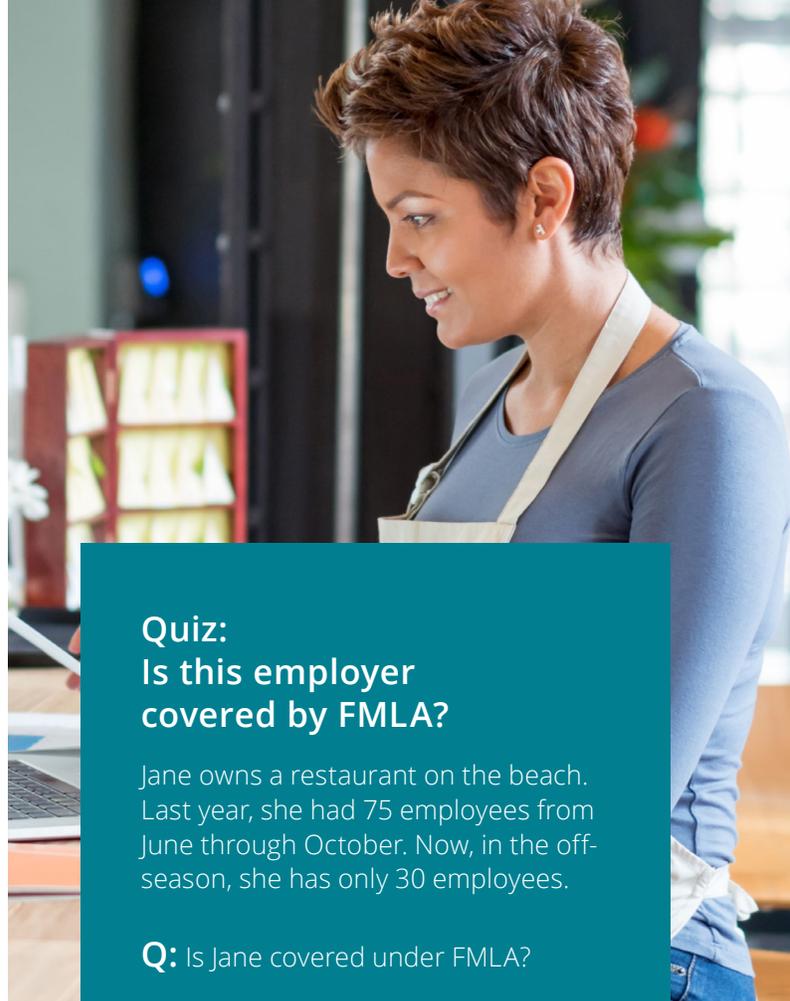
- Issues arising from a covered military member’s short-notice deployment (that is less than seven days of notice) for a period of seven days from the date of notification
- Military events and related activities, such as official ceremonies, programs or events sponsored by the military, or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations or the American Red Cross
- Certain childcare and related activities such as arranging for alternative childcare; providing childcare on a nonroutine, urgent, immediate-need basis; enrolling or transferring a child in a new school or day care facility; and attending certain meetings at a school or a day care facility
- Making or updating financial and legal arrangements to address a covered military member’s absence

- Attending counseling provided by someone other than a health care provider for oneself, the covered military member or the child of the covered military member
- Taking up to 15 days of leave to spend time with a covered military member who is on short-term, temporary rest and recuperation leave during deployment
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's covered active duty status, and addressing issues arising from the death of a covered military member
- Caring for the parent of a covered military member (parent must be incapable of self-care), such as arranging for alternative care; providing care on a nonroutine, urgent, immediate-need basis; admitting or transferring to a new care facility; and attending certain meetings with staff of a care facility
- Any other event that the employee and employer agree is a qualifying exigency

## RECORD KEEPING

Even if you don't have eligible employees, as an FMLA-covered employer you must still document your FMLA compliance. This includes the mandatory postings discussed later in this handbook. In addition, your records must comply with section 11(c) of the Fair Labor Standards Act (though no specific forms are required). This means that you should keep your records for three years, being sure to include:

- Basic payroll and employee data
- Dates of FMLA leave (and hours if taken in increments less than a full day)
- Copies of leave notices submitted by employees
- Your employee benefit policies and practices for paid and unpaid leaves
- Premium payments for employees' benefits
- Records of FMLA leave disputes



### Quiz: Is this employer covered by FMLA?

Jane owns a restaurant on the beach. Last year, she had 75 employees from June through October. Now, in the off-season, she has only 30 employees.

**Q:** Is Jane covered under FMLA?

**A:** Yes. Jane is covered under FMLA for all of this year, because she had at least 50 employees for more than 20 weeks last year.

## RESTRICTIONS ON WHAT YOU CAN DO

According to the law, your company can't:

- Interfere with your employees' FMLA rights
- Discharge or discriminate against your employees for opposing or disputing unlawful practices
- Deny employees the opportunity to exercise any of their rights under the law
- Retaliate against any of your employees who exercise their FMLA rights

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# Communicating the law to your employees

## PROMINENT NOTICE TO ALL EMPLOYEES AND APPLICANTS

Even if you don't currently have FMLA-eligible employees, as an FMLA-covered employer you must prominently post a notice explaining the FMLA provisions, including how to file complaints. If your workforce includes a significant number of non-English speakers, the notice must also be given in the language they speak. The [workplace poster](#) can be found on the U.S. Department of Labor's (DOL's) FMLA website.

## WRITTEN GUIDANCE TO ELIGIBLE EMPLOYEES

If you have any FMLA-eligible employees and have any written guidance to employees concerning leave rights (such as in an employee handbook), you're also required to include information concerning FMLA entitlements and employee obligations. If you do not provide written guidance to employees concerning leave rights, you must provide this written guidance when an employee provides notice of the need for leave. You can meet this requirement by giving employees the FMLA Fact Sheet available through your local Wage and Hour Division office of the Department of Labor or [online](#) at the DOL's FMLA website.

## ELIGIBILITY AND RIGHTS AND RESPONSIBILITIES NOTICE TO EMPLOYEES REQUESTING LEAVE

In response to an employee's notice of the need for leave, you must also provide a written response to the employee within five business days of the employee's notice. The written response must detail the employee's eligibility for leave under the FMLA, specific expectations and obligations of the employee, and explain any consequences of failing to meet the obligations, including but not limited to the following:



## FMLA regulations

Full employer notice requirements are outlined in CFR Sec. 825.300.

Visit the DOL's FMLA website for copies of [optional forms](#) you may use to respond to an employee's request for leave.

- That the leave will be counted against the employee's FMLA entitlement
- Any medical certification or documentation requirements and consequences for not meeting the requirements
- The employee's right to substitute paid leave, and whether you will require substitution, and the conditions related to any substitution
- Any requirement for the employee to make premium payments to maintain health benefits, the arrangements for making such payments, and possible consequences for failure to make payments on a timely basis
- Any requirement for the employee to provide a fitness for duty certification to be restored to employment
- The employee's status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions for such denial
- The employee's right to restoration to the same or equivalent job upon return from leave
- The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave

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# Health conditions that qualify for FMLA

The FMLA requires you to grant leave if your FMLA-eligible employee (or his or her covered family member) has a serious health condition. You may require the employee to provide certification issued by a health care provider.

Under the FMLA, a serious health condition is an illness, injury, impairment or physical or mental condition that meets the FMLA criteria of one of the following categories:

- Overnight/inpatient hospital care
- Incapacity and treatment (incapacity of more than three full consecutive calendar days with treatment plus either: (a) a second treatment by the health care provider or, (b) a regimen of continuing treatment — for example, a course of prescription medication. The first, or only, treatment must take place within seven days of the first day of incapacity, and the second treatment, if applicable, must take place within 30 days of the first day of incapacity)
- Pregnancy incapacity or prenatal care
- Chronic conditions requiring treatments at least twice a year
- Permanent or long-term conditions
- Conditions requiring multiple treatments

**Here's a list of some of the conditions that can qualify an employee for leave provided the specific criteria of one of the above serious health condition categories are met:**

- Allergies
- Alzheimer's disease
- Asthma
- Diabetes
- Epilepsy
- Restorative dental or plastic surgery after an injury
- Removal of cancerous growths
- Stroke
- Substance abuse (treatment only)
- Mental illness

However, since the same illness can have different effects on different people and will not always meet the criteria of an FMLA "serious" health condition, you will need to evaluate the medical certification of the condition for each patient on a case-by-case basis.

Generally, unless complications arise, illnesses like cold, flu, routine dental problems and headaches other than migraines do not usually meet the definition and criteria of an FMLA serious health condition.

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Note: The specific criteria necessary to meet each of these categories are outlined in the FMLA regulations (29 CFR 825.115).

## Employee eligibility

**To be eligible for FMLA leave, your employees must:**

Have worked for you for at least 12 nonconsecutive months

- Have worked at least 1,250 hours during the 12-month period immediately before the leave begins
- Work at a location where you employ at least 50 employees within a 75-mile radius of the location at the time of the employee's notice of the need for leave



**LEARN MORE**

Visit [unum.com/FMLA](https://unum.com/FMLA) or contact your Unum representative.

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## Part 2: Employee rights and obligations



### EMPLOYEE RIGHTS

During FMLA leave, employees have the right to maintain their health coverage under any group health plan. Additionally, employees must not lose any employment benefit that accrued prior to the start of their FMLA leave.

Upon return from FMLA leave, most employees must be returned to their original or equivalent positions with equivalent pay, benefits and other employment terms.

Employees cannot waive, nor may employers induce employees to waive, their prospective rights under the FMLA. They can file a complaint with the Department of Labor or file a lawsuit for FMLA violations. However, this does not prevent the settlement or release of FMLA claims based on past employer conduct.

### EMPLOYEE OBLIGATIONS

The following employee obligations or responsibilities under the FMLA can help you manage workflow and productivity. Employees must:

- Pay their share of insurance premiums within a 30-day grace period during an FMLA leave
- Schedule treatment of a serious health condition, with the approval of the health care provider, to avoid undue disruption of your business

- Notify you verbally or in writing at least 30 days before a foreseeable leave for the planned medical treatment for a serious health condition (including military caregiver leave) or the birth or placement of a child (if you uniformly enforce this notice and it isn't provided, you may delay or deny the FMLA leave until 30 days after the date you were notified)
- Provide notice as soon as practicable under the facts and circumstances when the need for leave is unforeseeable, or foreseeable and due to a qualifying exigency
- Alert you as soon as possible to updates, changes or extensions of the dates of a scheduled leave
- Provide timely and complete medical certification of a serious health condition, either the employee's own or a family member's
- Supply periodic reports, if you request them, about the employee's status and return-to-work intent
- Provide certification of the employee's fitness for duty upon return to work, if you require it

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# Part 3: Managing leaves



## CERTIFICATION

If you require certification, you must request it in writing and allow at least 15 calendar days for the employee to comply, or longer in the case of extenuating circumstances.

With the exception of military caregiver leave certified by a military-affiliated health care provider, you can also require employees to get second and third medical opinions at your expense, if you doubt the validity of a medical certification. The second- or third-opinion health care provider can't be one you regularly contract with or otherwise use. Third opinions are final and binding and must be from a provider that you and the employee jointly agree on.

The Department of Labor provides [several forms](#) you may require from employees as certification to support the need for leave. FMLA regulations also outline specific criteria concerning when and how recertification may be requested.

## PAID VS. UNPAID LEAVE

FMLA leaves are unpaid unless an eligible employee requests or an employer requires substitution of certain kinds of paid leave.

Substituting means that accrued paid leave will run concurrently with the unpaid FMLA leave. For this to happen, the employee must have both earned the leave and be able to use it during the FMLA leave period. You may not require an employee to substitute leave that is not yet available to them to use under the terms of your company's leave plan. However, an employer may voluntarily advance paid leave to an employee and an employee may voluntarily accept such leave during an FMLA absence.

You aren't required to provide paid sick/medical or family leaves when you wouldn't ordinarily do so under your company's policy. You also can't count paid leaves that weren't for an FMLA purpose against an employee's FMLA entitlement.

## TIPS FOR INTERMITTENT LEAVE

To help you better manage intermittent FMLA leave, keep the following tips in mind:

- Always require medical certification. The certification form should state if intermittent or reduced leave is required.
- Have employees consult you before scheduling treatment. This will help you work out a schedule that meets both your needs, provided the schedule is approved by the patient's health care provider.
- Discuss accommodations that may reduce an employee's need for leave. Be careful not to interfere with the employee's right to FMLA, as the employee has the right to refuse this option.
- Track time carefully and consistently. Deduct time in increments no greater than the shortest period of time used to account for the use of other forms of leave, provided it is no greater than one hour. Keep in mind that an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken. Doing so won't impact an employee's exempt status under Fair Labor Standards Act (FLSA).
- Carefully enforce your attendance policies.
- If you allow intermittent leave to care for a healthy child after birth, adoption or foster-care placement, establish, communicate and consistently enforce parameters for how and when intermittent leave may be taken (e.g., minimum increments, approved in advance).

Listen to three national leave experts discuss strategies for intermittent leave in this [webinar](#).

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# Part 4: Benefits and return to work



## MAINTAINING BENEFITS DURING A LEAVE

If you provide group health plan coverage for employees, you are required to maintain this coverage for an employee on FMLA leave under the same conditions as if the employee were continuously employed during the leave. An employee's ability to maintain other benefits (e.g., life or disability benefits) depends on your established policy for providing these benefits when employees are on other forms of paid or unpaid leave.

A provision in Unum group insurance contracts can simplify benefits continuation. See Part 6 of this handbook for more information.

## HEALTH BENEFIT PREMIUM RESPONSIBILITY

For employer-paid health premiums, you must continue the same payment of premiums during FMLA leave. For shared or employee-paid health premiums, this arrangement must continue during FMLA leave.

If you maintain other benefits during an FMLA leave, you may recover the costs of paying the employee's share of any premiums, even if he or she doesn't return to work.

When employees request FMLA leave, provide written advance notice of the terms and conditions of their premium payments in the required specific notice to employees described in Part 1 of this handbook.

You do not have to continue coverage if employees don't pay their premiums. If a premium payment is more than 30 days late (and you don't have an HR policy with a longer grace period), you may end coverage. However, before you do, verify whether the benefit plan allows you to reinstate the employee's current coverage with no penalty immediately upon the employee's return from FMLA leave. If it does, give written notice

at least 15 days before the end of coverage stating that payment wasn't received and specifying the date coverage will end. After that, you can end coverage retroactively to the date the premium was due, provided you have a policy for doing the same for other unpaid leaves. Otherwise, you can end coverage at the end of the 30-day grace period as long as you've given the 15-day notice.

## JOB RESTORATION UPON RETURN FROM LEAVE

When an employee returns to work immediately after an FMLA leave ends, you must without penalty reinstate all benefits that weren't continued during the leave, and restore the employee to his or her original job or one with equivalent pay, benefits and other employment terms and conditions.

**Benefits upon return:** Benefits — including health, disability, life, and others — must be immediately reinstated at the same level as before the leave, without any qualifying requirements like waiting periods, preexisting condition restrictions or medical underwriting. This is true even if the coverage lapsed because the employee failed to make required premium payments during the FMLA leave.

For pensions or retirement plans, unpaid FMLA leaves can't be counted as a break that might affect vesting or participation.

**Position requirements upon return:** When an employee returns from an FMLA leave, you must restore the individual to an equivalent position. This is a position with the same pay, benefits and working conditions (including privileges, prerequisites and status), involving the same or substantially similar duties and responsibilities and requiring substantially equivalent skill, effort, responsibility and authority.

In the case of a highly-compensated “key” employee, you can deny job restoration if it would cause “substantial and grievous economic injury” to your operations. However, in order to do so, you must comply with certain notice requirements, including a notice at the time the key employee requests leave. For more information about key employees under the FMLA, please see the FMLA regulations (29 CFR Sec. 825).

If the employee can't perform an essential job function because of a physical or mental condition (including the continuation of a serious health condition), he or she isn't entitled to be reinstated to the same or equivalent position under the FMLA. Keep in mind, though, that this situation may be covered by another federal law: the [Americans with Disabilities Act \(ADA\)](#).

See our [ADA Handbook](#) for more information on the ADA, including how it intersects with the FMLA.

### **WHEN EMPLOYEES DON'T RETURN TO WORK**

If an employee gives you “unequivocal notice” of his or her intent not to return to work, your obligations under FMLA end. But as long as an employee expresses an interest in returning to work at the end of FMLA leave, you must continue benefits according to the FMLA. This is true even if the employee also indicates that a return to work might not be possible.

If an employee doesn't return to work after using all available FMLA leave, you can recover health premiums you paid during the leave, except when the employee did not return to work for one of the following reasons:

- The continuance, recurrence or onset of a serious health condition of the employee or a family member that would otherwise entitle the employee to FMLA leave
- Other circumstances beyond the employee's control

You may require supporting medical certification to confirm the continuation, recurrence or onset of the employee's or family member's serious health condition. If the employee does not provide such certification in a timely manner (within 30 days of the employer's request) and the reason for not returning to work does not meet the test of “other circumstances beyond the employee's control,” you may recover all of the health benefit premiums you paid during the period of unpaid FMLA leave.



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## Part 5: Avoiding pitfalls



### STATE AND FEDERAL LEAVE LAWS

Almost every state has additional leave laws that provide for job-protected time away from work. You must comply with each state's requirements if you have employees in that state.

Some state laws mirror the federal FMLA to a degree, but others have different provisions. For example, under the federal FMLA, employers can require that paid leave be substituted, but some state leave laws specify that employees must have this choice. Whenever federal and state leave laws run concurrently during an employee's leave, you must evaluate them separately and comply with each.

Variations in state and federal laws can affect:

- Whether you can restrict the use of intermittent or reduced leave schedules
- Whether you must maintain health benefits
- What job the employee must be reinstated to at the end of leave
- The amount of leave the employee is entitled to
- Medical certification requirements



### When an employee requests leave: Employer FMLA tasks at a glance

- Evaluate eligibility
- Calculate entitlement
- Provide eligibility/rights/responsibilities in writing within five days
- Determine whether reason qualifies
- Confirm decision in writing, within five days of receiving all requested info

## EMPLOYERS' MOST COMMON CHALLENGES

Since Unum offers a consistent, integrated and systematic [FMLA and state leave management service](#), we often have discussions with employers about the challenges of leave administration. Based on those discussions, and our observations while implementing our leave-management service for employers around the country, we've learned that it is important for employers to keep an eye out for these common FMLA administration errors:

- Failing to identify and promptly designate FMLA absences
- Failing to send required notices
- Incorrectly administering state leave laws in conjunction with the FMLA
- Failing to understand that the FMLA may apply even if employees don't request it
- Not tracking FMLA completely because more generous leave benefits are provided
- Not properly determining eligibility
- Failing to grant leave to provide physical or psychological comfort to a family member
- Not granting FMLA leave by misunderstanding what a "serious health condition" is
- Granting FMLA leave for a serious health condition without first evaluating whether the employee or family member is incapacitated by it
- Not keeping complete, detailed and accurate records of when FMLA time is used, resulting in your inability to legally discipline or terminate an employee

## THE COST OF NONCOMPLIANCE

Failing to comply with the FMLA can be costly for employers. Sometimes managers are held personally responsible for violations, and companies can face expensive legal and settlement fees. The following court cases are actual examples of FMLA litigation.

### Intermittent leave sparks battle

In *Schultz v. Advocate Health and Hospitals Corp.*,<sup>2</sup> a long-time employee alleged his former employer terminated him in retaliation for using FMLA leave to care for his two ill parents.





The employee took intermittent leave over several months. During this period, his supervisors established performance standards he was unable to meet. The problem escalated until the employee was terminated.

A federal jury awarded \$11.65 million to the employee. The award consisted of \$10.75 million against the employer and \$900,000 individually against the two supervisors.

### **Employee claims demotion instead of equivalent position**

In *Allen v. A.G. Edwards & Sons, Inc.*,<sup>3</sup> plaintiff Donald Allen brought suit against his employer for violations of the ADA and FMLA as well as state laws on constructive discharge.

In 2001, he was diagnosed with bipolar disorder and briefly hospitalized. When he returned to work, A.G. Edwards refused to reinstate him to his old job. The company had options under FMLA and ADA but was concerned about Allen's ability to perform his job. Allen claimed he was demoted to financial consultant, requiring him to report to the former assistant branch manager. The employer argued that there was no FMLA violation because they had returned him to a manager position.

The arbitration panel ultimately found for the plaintiff and found that the employer violated the FMLA by failing to reinstate Allen to his same or equivalent job as defined by the FMLA regulations. Allen was awarded \$1.25 million.

### **Termination for adoption-related absence nets more than \$1 million in damages**

In *Dotson v. Pfizer*,<sup>4</sup> plaintiff Dotson was seeking to adopt a child from Russia and took intermittent time off to attend to the adoption, taking two trips to Russia. The employee kept his employer informed

and spoke to his HR department. After returning from Russia with the child, the employee was terminated based on an alleged violation of company policy. Dotson sued for FMLA retaliation. The employer argued that the employee was not entitled to FMLA protection because he failed to indicate that he needed FMLA leave. The court rejected this argument, noting that an employee does not have to expressly state that he needs FMLA or use any magic words to trigger the employer's obligation.

A jury found for the employee and awarded him more than \$1 million plus prejudgment interest. The employer appealed but the court affirmed the decision in the employee's favor. The court also held that the lower court erred when it failed to award the employee prejudgment interest, making the judgment even larger than that awarded by the jury.

### **Preventing an employee from taking FMLA leave leads to a significant settlement**

In *Lore v. Chase Manhattan Mortgage Corp.*,<sup>5</sup> plaintiff Nicholas Lore requested leave to address several health issues. He was told an additional manager would be hired to assist with his responsibilities and enable him to take leave. When the additional manager was not hired, Lore inquired of his manager again requesting leave. Less than one month later, Lore was terminated. Lore sued Chase Manhattan for failing to grant him, an eligible employee, leave under the FMLA. In addition, Lore argued Chase Manhattan unlawfully retaliated against him for his attempts to exercise his rights under the FMLA.

A jury found for the employee and awarded him \$2,227,241. With liquidated damages equal to the amount of the verdict and prejudgment interest added in, the recovery equaled between \$6.2 and \$7.6 million.

# Part 6: Unum FMLA services and other online resources



## FMLA-FRIENDLY UNUM GROUP DISABILITY AND LIFE INSURANCE POLICY AMENDMENTS

When Unum benefits plans overlap with your FMLA leave management efforts, we have Group Disability, Life Insurance and Long Term Care policy amendments that can:

- Continue coverage during an FMLA leave, as long as premiums are paid
- Maintain coverage for up to 12 weeks as required by federal law, or for the longer periods required by some state laws
- Reinstate coverage to the same level (if it ended during an FMLA leave) without new eligibility waiting periods, medical underwriting or new pre-existing condition exclusions

Changes in benefit levels for your entire workforce may affect an individual employee's coverage. If you have had FMLA claims or preexisting condition investigations, we'll need a copy of your HR family and medical leave policy and written documentation that an FMLA leave was approved by you.

These group insurance policy amendments are available to any size company that wants to continue coverage during approved leaves consistent with the company's written leave policies and procedures, even if they are not subject to the FMLA.

## FMLA AND STATE LEAVE LAW ADMINISTRATION

Unum's FMLA and State Absence Management Center (AMC) acts as an extension of your human resources staff by responding to employees' requests for leave on your behalf, including providing FMLA-required specific notices, evaluating certification/documentation, requesting recertification and providing daily and weekly leave reports for you.

## OUR SERVICE:

- Consistently administers leave in compliance with FMLA and state leave regulations
- Provides integrated intake, management and reporting of FMLA and state leave
- Systematically tracks and reports leave
- Family (bonding due to birth or adoption)
- FMLA-like leaves
- Pregnancy-related leaves
- Family military (does not include military service member leave such as USERRA or USERRA-like state leave laws)
- Public health emergency
- Drug/alcohol rehabilitation
- School activities
- Victim/witness leaves

This service is available to businesses with 100 or more employees.

## ONLINE RESOURCES

The U.S. Department of Labor maintains an [extensive online website](#) dedicated to FMLA compliance, including:

- The text of the law and its regulations
- Special rules for returning reservists under USERRA
- A fact sheet on the major FMLA requirements
- An FMLA compliance guide



- The elaws® FMLA Advisor
- The FMLA poster required to be displayed by covered employers
- The June 2007 federal report on Family and Medical Leave Act Regulations: A Report on the Department of Labor's Request for Information

## UNUM TOTAL LEAVE SIMPLIFIES LEAVE MANAGEMENT AND COMPLIANCE

- **A superior employee experience.** 24/7 leave portal helps employees confidently plan, take, and return from leave.
- **Simplified leave management for HR.** Leave and absence dashboard helps HR easily track and manage leave for the entire organization
- **Advanced integration.** Integration, automation, and real-time data management across all leave types creates a faster, more streamlined process
- **Automated compliance engine.** Indemnification that includes negligence and no financial cap on damages related to negligent leave administration decisions
- **Total Leave specialists.** Expert, empathetic leave specialists with a proven track record stand ready to tackle the toughest challenges and ensure employees get the help they need

## LEAVE MANAGER FOR HR

Total Leave's dashboard puts everything at HR's fingertips

- **Easily find and view self-serve leave planning** and claims experience, available 24/7.
- **View employee information** and drill down into details all in one place.
- **Quickly take care of tasks** like updating records or uploading documents.
- **Automated compliance engine.** Indemnification that includes negligence and no financial cap on damages related to negligent leave administration decisions.
- **Total Leave specialists.** Expert, empathetic leave specialists with a proven track record stand ready to tackle the toughest challenges and ensure employees get the help they need.

[Explore Unum Total Leave](#)

## EXPLORE THE CRITICAL ISSUES FOR HR TEAMS TODAY

Visit [Unum HR Trends](#) for podcasts, articles, webinars and reports on leave management, benefit planning, and tech innovations. Tap into analysis, commentary and insights from industry experts and national HR thought leaders on FMLA and other leave and HR challenges.

You might be especially interested in these resources:

### Podcast

- [Podcast: Improving the employee leave experience](#)
- [Podcast: Supporting Employees in the New World of Work](#)

### Webinars

- [Webinar: How Behavioral Health Impacts Business](#)
- [Retention, Grief And Resilience At Work | Live Event Recording](#)

### Articles

- [How to be a difference maker in 2023](#)
- [The Value of HRIS Integration | HR Trends](#)

# Have more questions or need more information?

Visit [unum.com/FMLA](https://unum.com/FMLA) or contact your Unum representative



Better  
benefits  
at work.™

[unum.com](https://unum.com)

- 1 LIMRA, "U.S. Workplace Disability In Force Report 4Q 2021" (2022) total group disability.
- 2 Schultz v. Advocate Health and Hospitals Corp., N.D. Ill., No. 01 CV 702 (October 30, 2002).
- 3 Allen v. A.G. Edwards & Sons Inc., NASD #04-06092 (June 26, 2006).
- 4 Dotson v. Pfizer, 4th Cir. No. 07-1920 (March 4, 2009).
- 5 Lore v. Chase Manhattan Mortgage Co., N.D. Ga., 1-04-cv-0204-LTW (2008).

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