

National Webinar Series

Absence Management Academy

A deep dive on FMLA

June 16, 2021

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Today's session qualifies for one professional development credit with SHRM and HRCI

IMPORTANT: We will provide you with the SHRM & HRCI codes at the end of today's session.



Today's Speakers



Rachel Biederman - Moderator

ReedGroup Vice President of Marketing

Rachel rejoined ReedGroup in 2020 to lead the company's marketing department, where her team covers a broad range of responsibilities including internal and external communications. Her professional background includes B2B marketing leadership roles in a diverse range of industries including biotechnology, international business and aviation.



Carla O'Sullivan

ReedGroup Senior Compliance Manager

Carla has over 20 years of experience in the leave of absence space providing compliance analysis and direction to employers, carriers, and third-party administrators. Her in-depth knowledge of the Family and Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), state leave laws, and disability programs has made her an integral part of the ReedGroup Compliance division and an asset to their clients. Ms. O'Sullivan has specialized in designing and operationalizing all intricacies of the varying leave laws, including writing complete communication suites for employees and employers.



Lidia Cirianni

Guardian Compliance Manager

Lidia is a Compliance Manager at Guardian with a wide range of experience across industries. She has been a successful leader providing compliance expertise, analysis, and consultation with a risk-based approach. Lidia's background has been primarily in the securities and insurance industries, and most recently shifted to absence management. Her focus areas include supporting ReedGroup and Guardian's Absence Management businesses by identifying and assessing key compliance risks associated with various operational processes and policies.

Which best describes your organization's current absence management model?

- a. We manage short-term disability and FMLA completely in-house
- b. We manage short-term disability and FMLA with in-house staff using a third-party system
- c. We outsource short-term disability and FMLA but use two different vendors
- d. We outsource short-term disability and FMLA to an external vendor
- e. Other



Today's Topics:



1 Fundamentals

2 Responsibilities

Fundamentals

Federal Law

The federal law provides:

- Up to 12 or 26 weeks of unpaid leave during a 12-month period
- Return to the same or equivalent position
- Health benefits intact



Fundamentals

Who

- Private employers who have 50 or more employees within a 75-mile radius
- Public employers (schools, cities, government agencies)
- Employees who:
 - have completed 12 months of employment (need not be consecutive)
 - have worked for the employer at least 1,250 hours during the year before the leave is requested
 - 1,250 hours excludes vacation, sick days, holidays, & other leaves



Fundamentals

Break in Service < 7 years (except military)

Example:



An employee works for an employer from 1989 to 2000.



In 2009 the employee is rehired, and six months into their employment, the employee applies for FMLA leave.



In this example, the employee is not eligible since there has been a break of more than seven years, and the employee has not met the 12-month requirement.

Fundamentals

Reinstatement Rights

- Return-to-work
- After FMLA leave: No return to work = No employer obligation under the FMLA
- “Key Employees” can be excluded if their absence would cause grievous economic injury
 - Key employees = the top 10% of wage earners

Upon Return-to-Work Equivalent:



• Job



• Pay



• Benefits

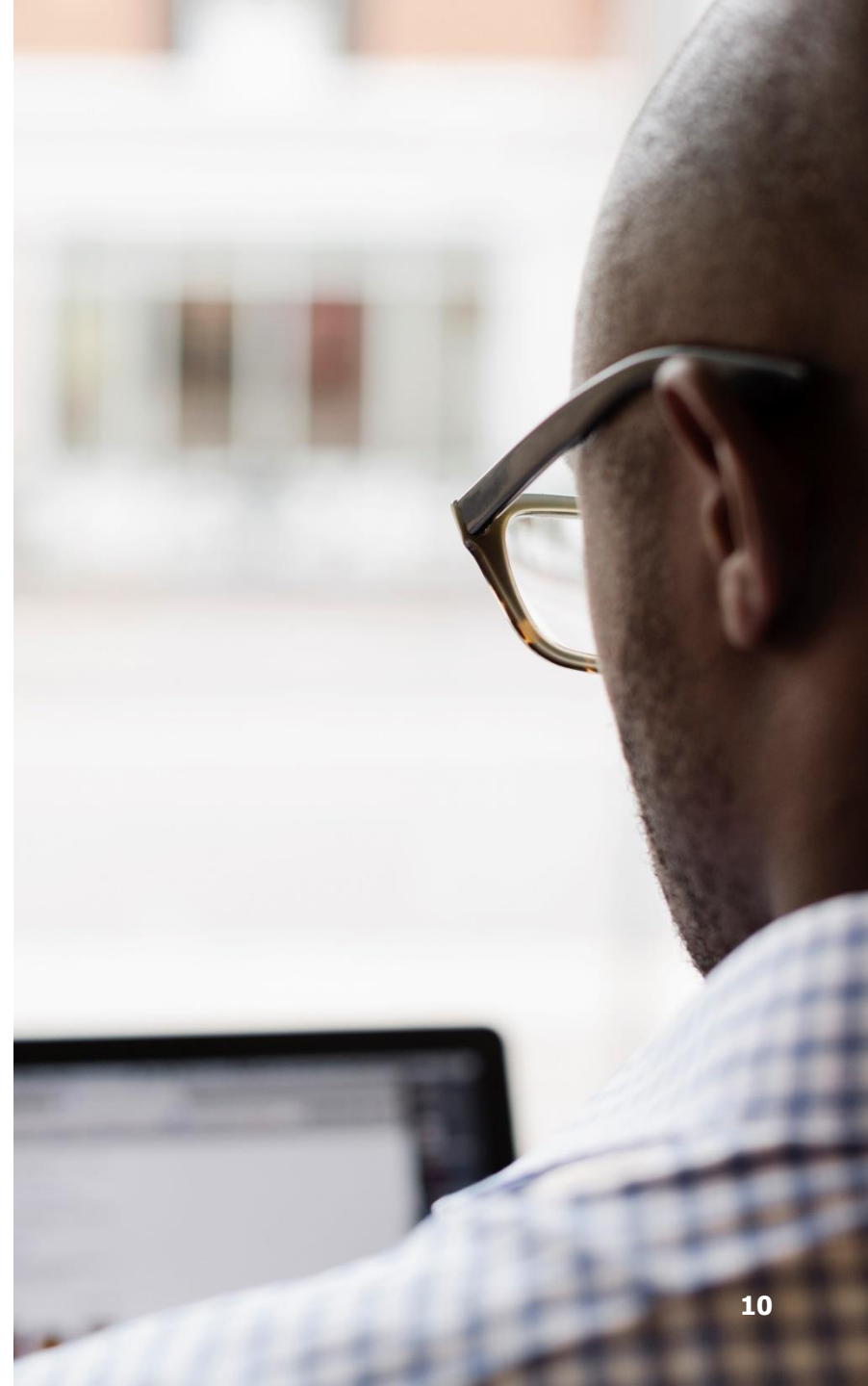


• Terms and Conditions

Fundamentals

Maintaining Benefits

- Employers must maintain group health insurance during FML
- Employers can require employees to pay their share
- Payment options:
 - The same time payroll deduction would have been made
 - Same as COBRA schedule
 - Payment (at employee's option) under a cafeteria plan
 - Any other agreed-upon system
- Up to 30 calendar days to make up a delinquent payment
- No return to work: employer may be able to recover premium



Fundamentals

What is a “qualifying event” for FMLA?

- Birth of a child
- Adoption of a child
- Family member with a serious health condition:
 - Spouse
 - Child
 - Parent
- An employee’s own serious health condition
- Military leave:
 - Caregiver leave
 - Qualified exigency



Fundamentals

What is a serious health condition?



Hospitalization – inpatient care



Absences – absence of more than three days from work & treatment two or more times, or ongoing regime of treatment



Pregnancy – incapacity due to pregnancy or prenatal care



Chronic illness – chronic serious health condition (asthma, diabetes, epilepsy, etc.)



Long-term condition – permanent or long-term condition for which treatment may not be effective (stroke or terminal illness)



Multiple treatments – when failure to have such treatments would likely result in an incapacity of more than three days or surgery



Fundamentals

What is a serious health condition?

- **Two visits to a health care provider** within 30 days of the first day of incapacity (first visit must be within seven days)
- A condition that renders an individual **incapacitated for three consecutive, full calendar days**, plus a regimen of continuous treatment
- **Chronic health conditions:** at least two visits/year to a health care provider

Serious Health Conditions



May Qualify:

- Chronic conditions such as migraine headaches
- Cancer treatments
- Caring for a terminally ill parent
- Complications with pregnancy
- COVID-19



Usually Not Covered (Unless Complications Occur):

- Cosmetic treatments
- Common cold
- Flu
- Earache
- Upset stomach
- Minor ulcer
- Non-migraine headaches
- Routine dental



Fundamentals

Department of Labor Update on Parent

The FMLA defines “parent” as: “the biological parent of an employee or an individual who stood in loco parentis to an employee.”

The Department of Labor recently clarified its interpretation of the definition of “in loco parentis.”

Example:

“Parent” can include grandparents or anyone else who had the day-to-day responsibilities for or provided financial support to the employee when the employee was a child.

Fundamentals

Leave Types & Timing

- Calendar year
- Any fixed 12-months (example: fiscal year or the year starting on the employee's anniversary date)
- 12 months rolling backwards
- 12 months rolling forwards
- Military caregiver leave: 12-month period measured from the first day employee takes leave
- Leave can be taken in one of three ways:
 1. **Continuous** – uninterrupted block of time
 2. **Intermittent** – separate absence intervals used in blocks of time
 3. **Reduced Schedule** – part time basis; reduces normal work schedule





Responsibilities

Responsibilities

Employer Responsibilities



- Post a notice approved by the Secretary of Labor
- Provide rights and obligations in employee handbooks or other written material upon hire
- Provide written notice of rights and obligations within five business days of receiving an employee's notice of the need for FML
- Determine if an absence qualifies



- Notify an employee if their leave is designated as FMLA
- Keep all forms and information about an employee's leave & condition confidential & separate from other employee files
- <http://www.dol.gov/dol/topic/benefits-leave/fmla.htm>



Responsibilities

Employer Responsibilities

Notifications:

- General Notice
- Eligibility Notice
- Rights and Responsibilities Notice
- Designation Notice

General notices can now be posted online if they're:

- In a conspicuous place on the employer's website
- Accessible to all applicants and current employees
- All employees can access the notice via a company computer

Responsibilities

Employer Responsibilities

Determine:

- Is the employee eligible?
- Do they meet the service requirement?
- Have they exhausted the entitlement?
- Is the leave eligible?
- Does it meet the qualifying reason requirements?

Send the Eligibility & Rights & Responsibilities notices **within five business days** of notification





Responsibilities

Employer Responsibilities

- The eligibility notice must include at least one reason why the employee is not eligible (if ineligible for leave)
- If more than one leave has been requested in a 12-month period but for different reasons, an eligibility notice will only be needed if there is a change in status

Medical certification must be completed by a healthcare provider and returned within 15 days



Responsibilities

Employer Responsibilities

Rights and Responsibility notice must include:

- That leave may be counted against the employee's annual entitlement
- Requirements to certify/support the need for leave
- Requirements to substitute paid leave
- The right to take unpaid leave (if paid leave cannot be substituted)

Put it in writing!

Responsibilities

Employee Responsibilities

Unless there is an unusual circumstance:

- Provide 30-day advance notice of the need for FML
- Provide medical certification within 15 calendar days
- Provide (as needed):
 - Medical Certification
 - Second and third opinions
 - Periodic reports regarding status and return to work
- Schedule intermittent leave with as little disruption to the employer as possible
- Follow standard call-in procedures



Responsibilities

Employer Rights

The employer can request:

- Authentication – providing a copy of the certification to the medical provider to verify the information was completed by them
- Clarification – contacting the provider to understand the handwriting or meaning of the response

Employers may say their hands are tied, but they often have more rights than they know.





Responsibilities

Employer Rights

The employer has the right to:

- Medically recertify the leave every 30 days
- Require annual certification if a condition lasts beyond a single year

Medical certification requests should be made within:

- Five business days of the employee's notice
- or
- Five days after leave commences for an unforeseen leave

Test Your Knowledge



Test Your Knowledge

TRUE or FALSE

When an employee is on FMLA leave, the employer must continue the employee's health insurance, but the employee must pay 100% of the premium, even if the employer normally pays some or all of the premium.



Test Your Knowledge

Which of the following situations is NOT a qualifying reason for FMLA leave?

- a. Prenatal checkup that lasts 15 minutes
- b. Cosmetic plastic surgery procedure that requires one night at the hospital
- c. An ear infection that is treated with prescription antibiotics, allowing employee to return to work in 24-48 hours
- d. Chemotherapy for employee's grandfather, who has lung cancer



Test Your Knowledge

In what timeframe is an employer required to respond to an employee to inform them if they are eligible and any requirements to submit an applicable certification form?

- a. 3 days
- b. 7 days
- c. 5 days
- d. 10 days



Test Your Knowledge

Which of the following is not an employer's responsibility under FMLA?

- a. Posting a notice approved by the Secretary of Labor
- b. Provide rights and obligations in employee handbooks or other written materials at time of hire
- c. Notify an employee if their leave is designated as FMLA
- d. Keep all forms and information about an employee's leave condition within the file that all of their employee records are maintained



A close-up photograph of a newborn baby sleeping peacefully in a person's arms. The baby's mouth is slightly open, and their eyes are closed. The baby is wearing a white onesie with a colorful floral pattern. The person holding the baby is wearing a light blue button-down shirt. The background is softly blurred, showing more of the person holding the baby.

Questions?

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Absence Management Academy

A deep dive on FMLA

Value: 1 PDC



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Thank you.