

Family and Medical Leave Act

Back to Basics

Presenters



Melissa McDuffey

HR / Benefit Consultant, American Fidelity Assurance Company



Joel McKenzie

Special Projects Manager, American Fidelity Assurance Company

Disclaimer

American Fidelity Assurance Company does not provide tax or legal advice. While we're happy to provide you with this general information, we encourage you to contact your tax or legal counsel about how the requirements apply to your specific plans or situation.

Agenda

- Overview of Family and Medical Leave Act (FMLA)
- Employer Responsibilities
- Employee Responsibilities
- Certification for Leave
- Employer Resources

FMLA Overview

What is the Family and Medical Leave Act (FMLA)?

A federal law passed in 1993 which entitles eligible employees of covered employers to take **unpaid**, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

Covered Employers



- Private-sector employers with 50 or more employees
- Public agencies regardless of the number of employees
- Public or private elementary or secondary schools regardless of the number of employees

Eligible Employees



- Works for a covered employer
- Has worked for the employer for at least 12 months prior to starting leave
- Has worked at least 1,250 hours during the 12-month period immediately preceding leave
- Works at a location where the employer has at least 50 employees within 75 miles

Reasons for Leave

1. “Serious health condition” of self, spouse, parent, or child
2. Birth of a child or placement of a child in the family for adoption or foster care
3. Qualifying exigency leave for a covered reason arising out of the covered active-duty status of a military member who is the employee's spouse, child, or parent
4. Military caregiver leave

How Much Leave?

- An eligible employee who works for a covered employer can take up to 12 weeks per applicable 12-month period
- Leave can be extended for up to 26 weeks for military caregiver leave; begins on the first day the employee uses military caregiver leave and ends 12 months later, regardless of the employer's standard FMLA 12-month period

Defining a “12-month period”

- Calendar year
- Fixed 12-month period (e.g., fiscal year, 12-month period required by state law, etc.)
- 12-month period measured forward from the date of leave
- "Rolling" 12-month period measured backward from date employee begins leave

Types of Leave

- Continuous
 - Available for employee or family member's serious health condition, qualifying military exigency, or for qualifying care of a covered service member
 - Is a consecutive period of time off work, rather than broken up by periods of work
- Intermittent or Reduced Schedule
 - Available for employee or family member's serious health condition or for a qualifying exigency or qualifying care of a covered service member
 - Not available for birth or care of a new child or for adoption or foster placement unless employer agrees
 - Taken in separate blocks of time for a single qualifying reason

Calculating FMLA Leave

- Only actual leave days taken can count against an employee's leave entitlement
- Time that an employee is not scheduled to report for work may not be counted as FMLA leave
- Holidays count against an employee's leave entitlement if the holiday falls during a week where the employee is taking the full week for FMLA leave

Increments of Leave

- Employee may take leave in periods of weeks, days, hours, and in some cases, even less than an hour
 - Time must be allowed in the smallest increment the employer allows for other leave types but cannot be greater than 1 hour
- The total number of hours in an employee's workweek for intermittent or reduced schedule depends on the specific hours the employee would have worked had the employee not taken FMLA leave

Spouses Working for Same Employer

Leave is shared or combined for certain purposes but not others.

Shared/combined	12 weeks for each employee
Birth of a child (12 weeks)	Employee's own serious health condition
Placement of a child with the employee for adoption or foster (12 weeks)	Care for a spouse or child with a serious health condition
Care for a parent with a serious health condition (12 weeks)	Qualifying exigency
Care for covered servicemember with qualifying injury or illness (26 weeks)	

Use of Paid Leave During FMLA

- An eligible employee may choose, or an employer may require the employee, to use accrued paid leave concurrently with FMLA leave
 - Employer must inform the employee (in Rights and Responsibilities Notice) of any procedural requirements the employee must satisfy
- Leave taken under disability benefit plan or workers' compensation plan may also run concurrently with FMLA leave
 - Employer and employee can agree to supplement accrued paid leave to coordinate with these plans (where state law allows or does not prohibit)

Employer Responsibilities

General Notice to Employees

- All employers covered by FMLA must display or post a general notice poster about FMLA
 - In plain view where all employees and applicants can readily see it
 - Must be displayed even if no employees are eligible
 - Poster can be printed from dol.gov/whd/fmla
- Employers with eligible employees must also provide each employee with general notice
 - Can duplicate the general notice poster
 - Can distribute electronically

Eligibility Notice

- One notice for each FMLA-qualifying reason in a 12-month leave year
- Within five business days of awareness or notice
- Can be given orally or in writing
- If ineligible, note at least one reason why
- Can use Wage and Hour Division prototype form WH-381

Rights & Responsibilities Notice

- Provided each time Eligibility Notice is given
- Details expectations and obligations for employee relating to FMLA leave
- Must be in writing
- Specific contents required
- Can use Wage and Hour Division prototype form WH-381

Designation Notice

- Within 5 business days of awareness or notice
- One notice for each FMLA-qualifying reason in a 12-month leave year
- Details the amount of leave that will count against the employee's FMLA entitlement
- Can use Wage and Hour Division prototype form WH-382

Maintenance of Benefits

- During FMLA leave, employers must maintain the employee's coverage under any group health plan on the same basis as if the employee were at work
- Employers may require employees to continue paying their share of group health plan premiums paid prior to FMLA leave
 - Other insurance policies outside of a group health plan are employee's sole responsibility

Job Restoration

- Employee must be returned to the same or equivalent position held when leave began
- Job restoration can only be denied in limited circumstances and can be risky
 - Key employee exception
 - Employee's job would have been eliminated or changed if the employee was not on FMLA leave

Special Rules for Schools

- Special rules allow a school to require an “instructional employee” to remain on leave after expiration of FMLA leave in certain circumstances:
 - Intermittent or reduced schedule leave
 - Leave near the end of an academic term



Fact sheet for Rules for Certain School Employees

<https://www.dol.gov/agencies/whd/fact-sheets/28s-rules-for-certain-school-employees-fmla>

Recordkeeping

- Recordkeeping is required for at least 3 years
 - Basic payroll and identifying employee data
 - Dates FMLA leave is taken
 - Hours of FMLA used (if taken in increments of less than a day)
 - Copies of FMLA notices between employee and employer
 - Records regarding benefits and employer policies for leave
 - Premium payments for employee benefits
 - Records of disputes
- As applicable, FMLA records should be held as confidential medical records as required under the Americans with Disabilities Act (ADA)

Prohibitions

- Employers cannot
 - Interfere with, restrain, or deny (or attempt to deny) the exercise of any FMLA right
 - Discriminate or retaliate against an employee or prospective employee for exercising or attempting to exercise FMLA rights
 - Discharge or discriminate against any person for opposing or complaining about unlawful FMLA practices

Employee Responsibilities

Employee Notice for Leave

- Must be given orally or in writing
- Must follow employer's usual and customary policies for requesting leave (exceptions apply)
- Not required to mention FMLA if first time requesting leave for a qualifying reason
- Foreseeable leave requires at least 30 days' notice when possible and practicable to do so
- Unforeseeable leave requires notice as soon as possible and practicable

Communicate Return to Work

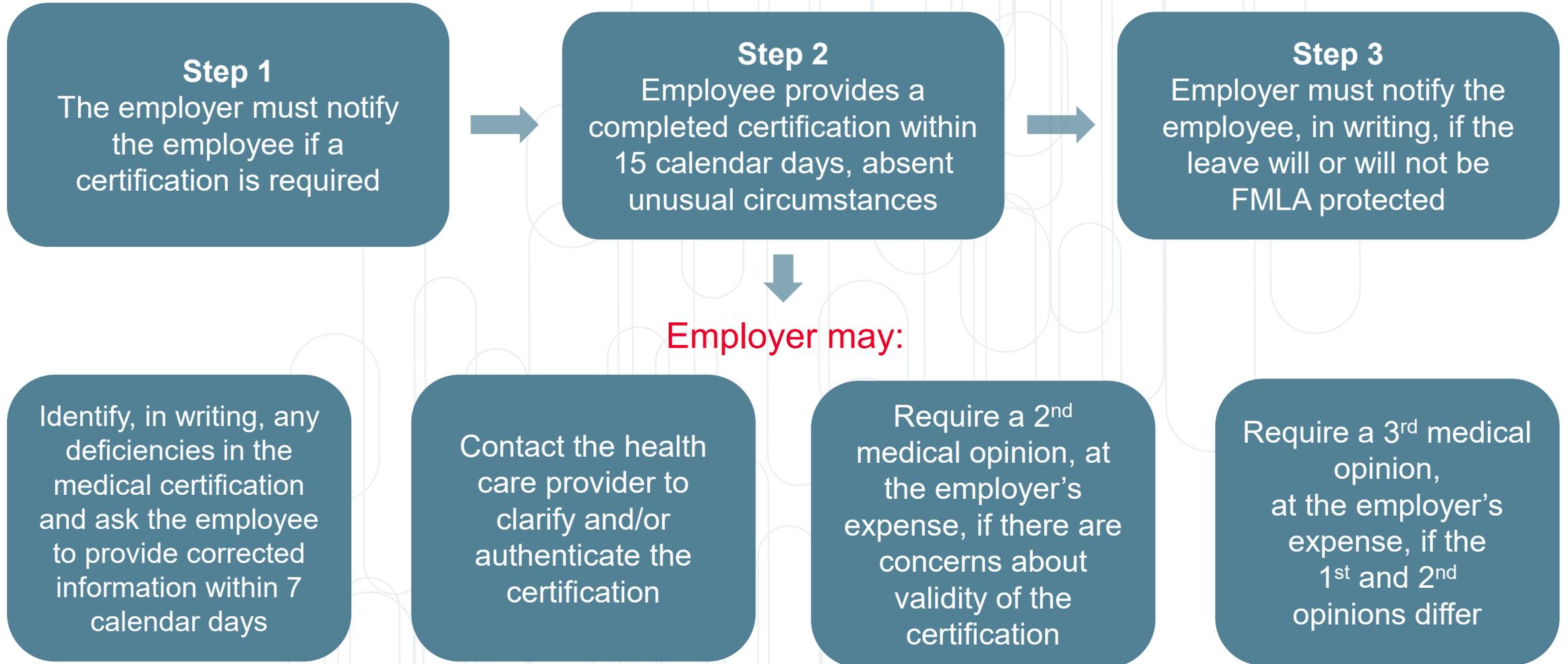
- If need for leave changes while on FMLA, employer may require employee to provide reasonable notice
- Employer may require periodic updates on the employee's status and intent to return to the job, but only as allowed by FMLA regulations

Failure to Return to Work

- Employee may be required to pay the employer's share of health plan premiums paid on the employee's behalf, unless the employee's failure to return is due to:
 - Continuation, recurrence, or onset of employee or family member's serious health condition, or
 - Circumstances beyond the employee's control
- Employer may require supporting medical or other documentation for failure to return

Certification for FMLA

Certification at a Glance



<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employerguide.pdf>, page 28, accessed February 8, 2025

When Certification is Allowed

- Employee's own serious health condition
- Family member's serious health condition
- Military family leave

Notice and Timing

- Employer must notify employees each time medical certification is required (Rights and Responsibilities Notice)
- Employee must provide the certification within 15 calendar days, absent unusual circumstances
- Employee gets additional time if good-faith effort is made for a timely return
- Employer can deny leave if employee fails to timely return certification (exceptions apply)

Content of Certification

- Contact information for health care provider
- When serious health condition began and expected duration
- Whether the employee is unable to work and for how long
- Whether the family member needs care and an estimate of the frequency and duration of leave required for the care
- Whether need for leave is continuous or intermittent
- Limited necessary medical facts about the condition
- Additional information may be required for intermittent or reduced schedule leave

Authentication and Clarification

- **After** the employer has given the employee the opportunity to cure any deficiencies in a medical certification:
 - Employer can contact the health care provider to confirm that the information on the medical certification was completed and/or authorized by the provider who signed the document
 - Employer can contact the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response
- Employer cannot ask health care provider for additional information beyond the certification form

Second and Third Opinions

- Allowed in limited circumstances
 - Employer received a complete and sufficient certification but has reason to doubt the validity
 - Employer can choose the health care provider for the second opinion
 - Cannot be a provider used by employer on regular or routine basis
- Employer and employee must both agree on provider for third opinion
 - Opinion of third provider is final

Recertification, Generally

- Employer may request periodic recertification in certain circumstances **in connection with an absence**
 - No more often than every 30 days, or following the expiration of a medical certification, whichever is later; or
 - Every 6 months, regardless of the duration of the current medical certification; or
 - Annually, when a serious health condition lasts beyond a single leave year

Employer Resources

United States Department of Labor, Wage and Hour Division

Online resources for posters, fact sheets, employer guides, and frequently asked questions



Employer Guide
<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employerguide.pdf>



FMLA Frequently Asked Questions
<https://www.dol.gov/agencies/whd/fmla/faq>



FMLA Forms
<https://www.dol.gov/agencies/whd/fmla/forms>



FMLA Poster
<https://www.dol.gov/agencies/whd/fmla/forms>

Questions?

Joel McKenzie
Special Projects Manager
(405) 212-2542

Joel.McKenzie@americanfidelity.com

americanfidelity.com