

Checklist: FMLA Compliance

GENERAL

- Is the employer covered by the FMLA?
- Is the FMLA poster displayed in an area frequented by employees and applicants?
- Is there a written FMLA policy included in the employee handbook or otherwise distributed?
- Is the 12-month period used to calculate FMLA leave defined in the written policy?
- Is there a method for tracking employee use of FMLA leave and remaining leave entitlement?
- Have the FMLA forms from the U.S. Department of Labor been downloaded or have similar internal forms been created?
- Is training provided to managers on the FMLA, including information about how to identify a leave request that may be FMLA-qualifying and how to comply with anti-retaliation rules?
- Are procedures in place and communicated to employees regarding requests for FMLA leave and consequences for failing to provide proper notice?

LEAVE REQUESTS

- Is the employee's request for leave due to an FMLA-qualifying reason?
- Is the employee eligible for FMLA leave?
- Is the Notice of Eligibility and Rights & Responsibilities form (WH-381) provided within five days of learning of the need for leave that may be FMLA-qualifying?
- Is a medical certification necessary? If yes:
 - Is the appropriate certification form provided to the employee?
 - Is the employee given at least 15 calendar days to return the certification form?
 - Are the consequences for not returning the certification form communicated?
 - Is the certification form returned complete and sufficient without missing information or sections left blank or vague?
 - Is the employee given at least seven days to submit a corrected certification form, if necessary?
 - Is the Designation Notice (WH-382) provided within five days of receipt of the medical certification?

- If no medical certification is required, is the employee provided with the Designation Notice (WH-382) with the Notice of Eligibility and Rights & Responsibility form (within five days of learning of the need for FMLA leave)?
- Are key employees identified and notified of their status as such with an explanation of their limited reinstatement rights?

DURING LEAVE

- Is coverage under the group health plan maintained at the same level and under the same conditions as would be maintained had the employee not taken leave, including employer contributions?
- Is there a process to collect premium payments for health insurance from employees during periods of unpaid FMLA?
- Do internal policies indicate how other benefits are impacted by an FMLA absence, such as paid-time-off accruals, life insurance, etc.
- Are requirements for the employee to provide periodic updates to the employer during leave communicated?

RETURN TO WORK

- Is a release to work from a health care provider required before returning to work?
- Is the employee reinstated to the same or an equivalent position?
- Is there a process to collect outstanding insurance premiums owed by the employee?
- Are records of the employee's FMLA leave retained for a minimum of three years, separate from the employee's personnel file?