

# TAKING TIME OFF WORK

## **INTRODUCTION:**

Employees with cancer may face difficulty when they need to take time off for treatment or recuperation. For example, employees may be denied time off from work or may be worried about losing their job if they do take time off from work. Caregivers may also face similar difficulties with taking time off work. Both federal and state laws allow eligible employees to take paid or unpaid leaves of absence from their work. This section provides an overview of these laws.

## **I. THE FAMILY AND MEDICAL LEAVE ACT OF 1993**

A. **Statute:** The Family and Medical Leave Act (FMLA) was designed to balance the demands of the workplace with the needs of families, to promote the stability and economic security of the family, and to promote national interests in preserving family integrity by allowing time off from work, while keeping a job and benefits.<sup>35</sup>

### **1) Employers Covered by the FMLA:**

- (i) Private employers with 50 or more employees, within a 75 mile radius of the employer's worksite; and
  - Number of employees is calculated for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.<sup>36</sup>
  - The 75 mile radius is determined by the distance it would take to drive 75 miles "using surface transportation over public streets, roads, highways and waterways, by the shortest route from the facility where the employee requesting leave is employed."<sup>37</sup>
  - Note: While companies with less than 50 employees do not qualify for FMLA leave, many have policies allowing employees similar time off from work, while allowing employees to keep their jobs and benefits. Employees should check with their human resources representative or review their employee manual for additional information about their company policies.
- (ii) Public employers, regardless of size, including federal, state and local governments.

2) **Employees Covered by the FMLA:** Employees must meet the following eligibility criteria to use the FMLA's protections:

- (i) **Work for the employer for at least 12 months:** The 12 months are calculated based on the date the leave begins. Additionally, the 12 months do not have to be continuous or consecutive, just cumulative. Under the FMLA, employees may reach a cumulative 12-month period by going back 7 years in their work history.<sup>38</sup> A break in work history that exceeds 7 years, does not count towards the 12-month time period required by FMLA, unless the time off is a result of the employee's service in the National Guard, reserve military training, or there is a

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<sup>35</sup> The Family and Medical Leave Act of 1993, 29 U.S.C. § 2601

<sup>36</sup> The Family and Medical Leave Act of 1993, 29 U.S.C. § 2611 (4)(A)(i)

<sup>37</sup> 29 CFR § 825.111(b)

<sup>38</sup> Note: Some states have similar laws to the FMLA that do not use a "7 year" limit, but allow employees to use their entire work history.

written agreement where the employer intends to rehire the employee after a break in service.<sup>39</sup>

- Example: An employee could work for employer “A” for 4 months, then leave for 2 years, then return and get a job with employer “A” for another 8 months, and this would equal a total of 12 months, qualifying the employee for FMLA leave.
- Note: Employees maintained on payroll for any part of a week, including sick or vacation weeks taken while on unpaid leave constitutes a week of employment and therefore count towards an employee’s 12-month work period.<sup>40</sup>

(ii) **Work at least 1250 hours in the 12 months immediately before taking leave:** To determine if any employee has satisfied the 1250-hour requirement, an employer will look at the total hours worked during the 12 months preceding the FMLA leave. Employees meet the 1250 hour requirement if they have worked:

- 24 hours in each of the 52 weeks of the year; or
- Over 104 hours in each of the 12 months of the year; or
- 40 hours per week for more than 31 weeks (over seven months) of the year.
- Note: If adequate records documenting the employee’s total work time are not kept, the employer has the burden of showing that the employee has not met the requisite hours applicable for FMLA leave.<sup>41</sup>

## B. Protection Under the FMLA:

1) **Covered Leave:** A covered employer must grant an eligible employee up to 12 weeks of unpaid, job and health insurance benefit-protected leave, in a 12-month period to:

- (i) Care for a spouse, son, daughter, or parent with a “serious health condition;”
- (ii) To take medical leave when the employee is unable to work because of a “serious health condition;”
- (iii) To care for a newborn child following birth; or
- (iv) For the placement of a son or daughter in adoption or foster care with the employee.

2) **How is the 12-Month Period Determined?:** An employee may take 12 weeks of unpaid leave every 12 months. An employer must elect, and apply consistently and uniformly to all employees, one of four options to determine the 12-month period:

- (i) A calendar year;
- (ii) Any fixed 12-month period, such as a fiscal year, a year required by state law, or a year starting on the anniversary of the employee’s hiring date;
- (iii) A 12-month period measured forward from the date when an employee’s first FMLA leave begins; or
- (iv) A “rolling” 12-month period measured backward from the date an employee uses FMLA leave.<sup>42</sup>

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<sup>39</sup> 29 CFR § 825.110(b)

<sup>40</sup> 29 CFR § 825.110(b)

<sup>41</sup> 29 CFR § 825.110(c)(3)

<sup>42</sup> 29 CFR § 825.200(b)

- (v) Note: If an employer does not select one of the four options above to determine the 12-month period, then the method most beneficial to the employee is utilized.<sup>43</sup>
- (vi) Note: If employers wish to change the method utilized to calculate the 12-month period, they must provide written notice to all employees (within 60 days) of making such change.<sup>44</sup>

### 3) How to Use 12 Weeks of Leave:

- (i) Employees may take their 12-weeks of leave in many ways, including:
- By blocks of time (e.g., taking 12-weeks at once);
  - By reducing their normal weekly or daily work schedule (e.g., taking every Friday off for doctor's appointments); or
  - By taking short periods of leave up to 12-weeks (e.g. taking one week per month for chemotherapy).
- (ii) **Part-time employees:** Qualifying part-time employees may take FMLA leave based on a pro-rata basis by comparing their normal schedule with their new schedule. For example, if an employee works 30-hours/week but takes off 10-hours/week for FMLA time, the employee would be using one-third a week of FMLA leave each time they take the hours off.<sup>45</sup>
- (iii) **Overtime:** If an employee is required to work overtime, but cannot do so because of qualifying FMLA leave, the overtime hours the employee would have worked are counted against the employee's FMLA entitlement.<sup>46</sup>
- (iv) **Intermittent Leave:** An employee may use intermittent leave only when it is medically necessary. If the employer requests it, the employee must provide a certification by a health care provider, which states that working on this different schedule, or being able to take leave on an intermittent basis, is medically necessary for the employee or needed to provide care or psychological comfort to a family member with a serious health condition.
- Intermittent leave may also be taken based on foreseeable medical treatment. However, the employee must make a reasonable effort to schedule the treatment to not unduly disrupt the employer's operations.<sup>47</sup>
  - Employers may deduct from an exempt employee's salary any hours that are taken for intermittent leave.<sup>48</sup>
  - The employer may temporarily transfer the employee to an alternative position with the same pay and same benefits, if the position better accommodates recurring or intermittent leave.<sup>49</sup>
- (v) The time in which an employee spends performing light duty work may also be counted against the 12 week FMLA leave.

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<sup>43</sup> 29 CFR § 825.200(e)

<sup>44</sup> 29 CFR § 825.200(d)(1)

<sup>45</sup> 29 CFR § 825.205 (b)(1)

<sup>46</sup> 29 CFR § 825.205(c)

<sup>47</sup> 29 CFR § 825.203

<sup>48</sup> 29 CFR § 825.206(a)

<sup>49</sup> 29 CFR § 825.204

- An employer cannot force an employee to accept a light duty assignment nor can an employer deny FMLA leave simply because light duty assignments are available to the eligible employee.
- (vi) Each extension or new block of FMLA leave time is subject to the same notification and certification requirements as the initial leave period.
- (vii) Eligibility is determined at leave commencement. FMLA leave begins with the first absence from work due to the same underlying condition each leave year. Thus, where leave is taken in a single uninterrupted block of time, eligibility is determined by the first day of missed work.
- 4) **What is a “Serious Health Condition?”:** A “serious health condition” is any physical or mental “illness, injury, medical condition or impairment” that requires:
- (i) Inpatient care and treatment in a hospital, hospice or residential care facility; or
  - (ii) Continuing outpatient treatment by a health care provider, which includes:
    - A period of incapacity of more than three consecutive calendar days, and
    - Any subsequent treatment or period of incapacity relating to the same condition that involves:
      - ⇒ Two or more treatments by a health care provider (e.g., physical therapy) under the orders of, or on referral by, a health care provider; or
      - ⇒ At least one treatment by a health care provider, which results in a regimen of continuing treatment under the supervision of a health care provider.
      - ⇒ Note: The fact that an employee still works at a second job does not automatically indicate that the employee is not incapacitated from working at the job they are seeking time off from.<sup>50</sup> However, an employer may prohibit an employee from working at a second job while on FMLA leave, if that policy is applied to all employees uniformly.<sup>51</sup>
      - ⇒ Note: Colds and flu are ordinarily not a serious health condition resulting in incapacity; however, if such illness results in more than three days of consecutive treatment, it may be treated as an incapacity requiring time off.<sup>52</sup>
    - Any period of incapacity due to pregnancy or prenatal care.
    - Any period of incapacity or treatment for such incapacity, which is due to a chronic, serious health condition that:
      - ⇒ Requires periodic visits for treatment to a health care provider at least two times a year;
      - ⇒ Continues over a period of time; or
      - ⇒ May cause episodic rather than a continuing period of incapacity (e.g., asthma, epilepsy, diabetes, etc.).
    - A period of incapacity, which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer’s, stroke, terminal conditions).

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<sup>50</sup> *Stekloff v. St. John’s Mercy Health System*. 218 F. 3d 858 (8th Cir. 2000).

<sup>51</sup> 29 C.F.R. § 825.216(e)

<sup>52</sup> American Bar Association, Family Medical Leave Act: Wage and Hour Advisory Opinions, No. 87 (December 12, 1996).

- Any period of absence for the purpose of receiving multiple treatments for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment (e.g., cancer treatments such as chemotherapy and radiation).

5) **Who is a “Health Care Provider?”**: Under the FMLA, a health care provider includes:

- (i) Doctors of medicine or osteopathy licensed in the state in which they practice;
- (ii) Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to correction of subluxations of the spine as demonstrated by x-rays), practicing within the scope of their practice and under state license;
- (iii) Nurse practitioners, nurse-midwives and clinical social workers, practicing within the scope of their practice and under state license;
- (iv) Christian Scientist practitioners listed with First Church of Christ Scientist in Boston;
- (v) Any health care provider recognized by the employer or employer’s benefits manager

6) **Medical Certification of a Serious Health Condition:**

(i) **What an employer can do:**

- An employer may require that the employee provide certification of the need to take FMLA leave from the employee’s health care provider;
- The employer must allow the employee at least 15 calendar days to obtain the medical certification;
- Certification from a health care provider should include the date on which the serious medical condition began, the probable duration of the condition, and a statement that the employee is unable to perform one or more of the essential functions of the position because of a serious health condition;
  - ⇒ **Note:** The identity of the condition or diagnosis is not required, even if the requested time off is to care for an employee’s family member
  - ⇒ **Potential Issue:** Department of Labor template forms include a place to list a patient’s diagnosis, although it is not required to submit the form
- If the certification is for a family member, it must include a statement that the serious health condition requires the employee to provide care during a period of treatment or supervision, and an estimate of the amount of time that the health care provider believes the employee will need to provide the care;
- An employer may request a second medical opinion, at the employer’s expense, if the employer doubts the medical certification is valid. If the first and second medical opinions differ, a third medical opinion is binding; and
  - ⇒ **Note:** The third opinion provider must be approved by both the employer and the employee; however, the employer is required to pay any expenses related to obtaining the third opinion.<sup>53</sup>
- An employer may ask the employee for recertification of FMLA leave only if:
  - ⇒ Circumstances have changed significantly,
  - ⇒ The employee is seeking a longer period of leave, or

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<sup>53</sup> 29 CFR § 825.307(a),(b)

- ⇒ Information comes to the employer that casts doubt on the continuing validity of the initial certification, such as observing the employee performing activities that are inconsistent with what was previously conveyed by the health care provider.<sup>54</sup>
  - An employer may contact the health care provider without the employee's consent to clarify (understand the handwriting or meaning) or authenticate medical certification; however, no additional information may be requested.<sup>55</sup>
    - ⇒ Note: The employee's direct supervisor may not contact the health care provider, only a HR or a management official, leave administrator, or health care provider.<sup>56</sup>
  - An employer may ask for medical certification even if it was not initially requested.<sup>57</sup> If certification is insufficient, an employer must specify in writing what information will suffice to make the certification complete and give the employee seven calendar days to comply.<sup>58</sup>
- 7) **Confidentiality of Medical Documents:** Any FMLA-related inquiries and all related documentation are confidential and must be kept in a separate file from an employee's personnel file. If employees have questions or concerns about the confidentiality of their medical information, they may contact the Office of Civil Rights.
- 8) **Taking Care of Family Members:** An employee can take leave under the FMLA to care for family members including:
- (i) **Care of children:** The care of children includes the employee's offspring, adopted or foster child, stepchild, legal ward, or other child for whom the employee is acting as "in loco parentis"
    - "In loco parentis" includes, but is not limited to, an individual who provides daily care or financial support to the child.
    - The child must be a minor or over the age of 18 but unable to care for oneself because of a physical or mental impairment that substantially limits a major life activity.<sup>59</sup>
    - Note: Leave for birth and care, or placement for adoption or foster care of a child must conclude within 12 months of the birth or placement.
    - Note: Spouses who work for the same employer are jointly entitled to a combined total of 12 weeks of family leave for the birth and care of newborn child, for placement of a child for adoption or foster care.
  - (ii) **Care of parents:** The care of parents includes individuals who are biologically related to the employee, adopted, step or foster parent, as well as an individual who acted as "in loco parentis" to the employee.
    - Note: Taking care of a parent in-law does not qualify the employee for FMLA leave.<sup>60</sup>

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<sup>54</sup> 29 CFR § 825.308(b)

<sup>55</sup> 29 CFR § 825.307(a),(b)

<sup>56</sup> 29 C.F.R. § 825.307(a)

<sup>57</sup> *Townsend-Taylor v. Ameritech Services, Inc.*, 523 F. 3d 815, 818-819 (7<sup>th</sup> Cir. 2008).

<sup>58</sup> 29 C.F.R. § 825.305(d)

<sup>59</sup> 29 C.F.R. § 825.122 (c)

(iii) **Care of spouses:** The care of spouses does not extend to domestic partners under the FMLA. However, care of domestic partners or common law spouses may be covered under state law.<sup>61</sup>

(iv) **Care taking activities:** These activities may include, but are not limited to:

- Providing hygienic care, meeting nutritional needs, ensuring safety, making nursing home arrangements, transportation or accompaniment to doctor visits and providing psychological comfort to the family member
- When the employee is needed to substitute for an individual who normally cares for their family member

#### C. **Employee Responsibilities:**

1) **Notice Requirement:** An employee must give the employer “reasonable advance notice” that the employee wishes to take FMLA leave.

(i) **If leave is foreseeable:** Reasonable advance notice is 30 days in advance.

(ii) **If leave is unforeseeable:** Reasonable advance notice is “as soon as practicable.”

(iii) **“As soon as practicable:”** typically means that the employee must give the employer at least a verbal notification within the same business day or one day after the employee learns of the need to take leave.

2) **Medical Documentation:** See §6(i) above to explain what a health care provider’s certification should include.

(i) Note: Upon completion of leave, a health care provider may provide notification to the employer that the employee is able to return to work.

3) **Asking for Leave:** An employee’s request for FMLA leave may be in plain language and does not have to specifically mention the FMLA. However, the request must include sufficient information for the employer to understand that the reasons for the leave fall under the FMLA’s definition of a serious health condition. To ensure adequate protection, it is a good idea to give notice in writing and to refer to the FMLA, although it is not required. Employees must provide at least verbal notice that makes the employer aware of the need for FMLA leave, including the time and length of leave. Additionally, it is a good idea to include reasons for the requested leave, as well as the anticipated duration of leave.

(i) Employees should consult with their employer before scheduling treatment that would require leave, in order to best accommodate the needs of both the employer and the employee.<sup>62</sup>

(ii) Note: Recently, courts have stated that employers are put on notice of a need for leave given an employee’s noticeable behavior changes or deterioration in job performance.<sup>63</sup>

#### D. **Employer Responsibilities:**

1) **Notice Requirement:** An employer must notify the employee, in writing, that the requested leave is designated as FMLA leave. If an employer was not aware that the employee’s leave should have been designated as FMLA, the leave can be

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<sup>60</sup> 29 C.F.R. § 825.122 (b)

<sup>61</sup> 29 C.F.R. § 825.122 (a)

<sup>62</sup> 29 CFR § 825.302 (e)

<sup>63</sup> *Byrne v. Avon Prods., Inc.*, 328 F. 3d 379 (2003).

retroactively defined as FMLA leave, but only if the leave is still in progress or within two business days of the employee's return to work.

(i) **Notice to the employee should include:**<sup>64</sup>

- The qualifying leave constitutes FMLA leave;
- Certification requirements;
- Paid leave substitution rights;
- Health insurance premium payment requirements and consequences if payments are missed;
- Whether the employee is a "key employee;"
- Right to maintain benefits;
- Eligibility to return to same or equivalent job upon conclusion of leave;
- Potential liability to employer for paid health insurance premiums if the employee does not return to work after the conclusion of leave;
- Other information (e.g., fitness-for-duty certification for employment to be restored, requirement of periodic status reports, etc.)

(ii) If an employer acquires knowledge that an employee requires time off, the employer has five business days to notify the employee of their FMLA eligibility.

(iii) If a "fitness for duty" certification is required by the employer, the employee must be given notice of this requirement within the designation notice.<sup>65</sup>

2) **Unpaid Leave:** The FMLA only requires employers to provide unpaid leave; however, an employee may choose to use accrued sick or vacation leave for some or all of the FMLA period.

(i) **Availability of Paid Leave:** The employer can require employees to take paid time off with unpaid FMLA leave; however, the employer must impose the same terms and conditions on the use of paid leave during the FMLA period as they would impose when an employee takes off for non-FMLA reasons.<sup>66</sup> If an employee does not wish to comply with this rule, they can still take leave, but it will be unpaid.

- Example: If an employee wants to take 2 hours of FMLA leave and use substituted paid leave for the time off, but the employer's policy requires paid leave to be taken in 8 hour increments, the employer may choose to deny the 2 hours of paid leave, while granting the unpaid FMLA time off. The employer is not required to provide paid leave in smaller increments than is the normal paid leave policy. However, the employer may choose to waive their paid leave policies to allow for the shorter period of paid leave.

- Note: When paid leave, such as sick or vacation leave, is substituted for unpaid leave, it may be counted as FMLA leave only if the employee is properly notified of the FMLA designation when the leave begins.

(ii) **Bonuses:** Employers may count an employee's absence under the FMLA against attendance bonuses.<sup>67</sup>

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<sup>64</sup> 29 CFR § 825.300 (c)(1)(2)

<sup>65</sup> 29 CFR § 825.300(d)(3)

<sup>66</sup> 29 CFR § 825.207(a)

<sup>67</sup> 29 CFR § 825.215(c)(2)

- 3) **Job-Protected Leave:** Upon return from FMLA leave, an employee must be restored to his or her original position or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment.
- (i) **Exceptions:** There are several circumstances in which an employer does not need to reinstate an employee:
- If an employee gives unequivocal notice that he or she does not intend to return to work;
  - If an employee's position was eliminated (e.g., in a general lay-off);
  - If the employee was terminated for a legitimate reason unrelated to the leave (e.g., for theft or misconduct);
  - If the individual is a highly paid "key employee" (e.g., in the top 10% of the pay scale whose absence would cause substantial grievous economic injury to the operations of the business). Employers must notify employees that are considered "key" and are likely to be denied reinstatement when they apply for leave, but the employer may not deny the employee the leave; or
  - If an employee is unable to return to work when he or she has exhausted all 12 weeks of FMLA leave in the designated 12-month period.
- (ii) **Additional Leave May Be Available Under Americans with Disabilities Act:** Under the ADA, an employee may be entitled to leave beyond the 12-weeks provided by the FMLA, as a reasonable accommodation, but only if:
- The employee's serious health condition also qualifies as a disability under the ADA;
  - The extension is requested as a reasonable accommodation;
  - The requested extension has a definite ending date and is reasonable in length; and
  - The additional leave does not pose an undue hardship on the employer.
- Example: If an employee requests leave as a reasonable accommodation under the ADA, the employer may grant the requested leave, so long as it is not an undue hardship, while also advising the employee that the time-off will count towards their FMLA leave. Accordingly, the employer must maintain the employee's health coverage during the leave as required by FMLA. However, upon returning from leave, the employee's original job may be reinstated under the ADA, rather than the employee returning to an equivalent position as required under the FMLA.<sup>68</sup>
  - Example: If an employee takes leave under FMLA, the employer is required to reinstate the employee to an equivalent position upon returning to work. If however, the employee cannot perform the essential job functions of the equivalent position, even with reasonable accommodations, the employer may allow the employee to work part-time or to be reassigned to a vacant position as a reasonable accommodation for a disability under the ADA.<sup>69</sup>

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<sup>68</sup> 29 CFR § 825.702(c)(2)

<sup>69</sup> 29 CFR § 825.702(c)(4)

(iii) **How do FMLA Protections Differ From the ADA?:** Leave time under the FMLA may be used to care for the employee or a seriously ill family member. Under the ADA, only the employee can use leave time to accommodate his or her own limitations. Additionally, under the FMLA, an employee is entitled to return to his or her original or an equivalent position. If the employee is unable to return to work when the 12-week FMLA leave is over, the employer is not required to hold the employee's position. Under the ADA, an employee is entitled to return to the same position, unless it would be an undue hardship on the employer to hold the position open. FMLA also allows an employer to transfer a qualified employee with reduced hours to a temporary position to accommodate a treatment plan, whereas under the ADA the employer can only reassign an employee to an equivalent and vacant position when there are no reasonable accommodations available in the employee's current position or such accommodations would cause the employer undue hardship.

4) **Benefit-Protected Leave:** While on FMLA leave, an employee is entitled to receive full continued health insurance benefits from the employer, but the employer is not required to maintain any other benefit plans unless it is the employer's established policy to do so for all employees. If other benefits are discontinued during the leave, coverage must be restored when the employee returns to work and may not be subjected to any eligibility requirements or pre-existing condition exclusions.

(i) Example: If an employer normally pays for an employee's health insurance, then the employer has to keep paying for those benefits for up to 12 weeks, even if the employee is not working. The employer also has to reinstate the employee's other benefits when the employee returns to work.

(ii) Example: When an employee is on FMLA leave, the employer will maintain an individual's existing health coverage under any group health plan. This includes dependent or family member health coverage, dental coverage, or mental health coverage. For example, if an employer normally pays 80% of an employee's health insurance premiums, the employer must continue to pay 80% of these premiums while the individual is on medical leave. The employee would continue to be responsible for their 20% of the premiums.

5) **Discrimination or Retaliation Under the FMLA:** An employer may not take any adverse action against an employee who is asserting his or her FMLA rights, and an employer may not discharge or otherwise discriminate or retaliate against an employee for alleging a violation of the FMLA.

E. **FMLA and Short Term Disability Benefits:** Employers can impose reasonable terms and conditions on an employee's use of an employer's short term disability insurance policy. Employees need to understand that these policies may be different than FMLA policies! Employees should check their employee manual or company policy to see how the employer may treat these situations.

1) When an employee applies for short term disability benefits in conjunction with FMLA leave, the employer may:

(i) Require a medical examination by a physician selected and regularly used by the company or a third-party administrator (in contrast to the rule under the FMLA that the physician giving a second opinion not be regularly employed by the company);

(ii) Require more detailed information than that permitted under the FMLA;

- (iii) Require medical recertification on a regular basis or upon request without regard to FMLA limitations;
- (iv) Require the prompt return of medical certification/re-certifications as a condition of receipt of benefits (to provide incentive for employees to provide certifications earlier than required under the FMLA);
- (v) Require a signed consent by the employee permitting a physician selected by the company or third-party administrator to talk with the employee's physician and obtain medical records;
- (vi) Restrict other employment during leave (even if second jobs are permitted for active employees); and
- (vii) Restrict activities during leave that a physician selected by the company or third-party administrator concludes are inconsistent with the employee's recovery and/or plan of treatment.<sup>70</sup>

F. **Complaint Process for FMLA Violations:** The federal administrative agency responsible for handling FMLA-related complaints is the Employee Standards Administration (Wage and Hour Division of the U.S. Department of Labor (DOL)). The DOL will investigate claims, but filing an administrative complaint is not a pre-requisite to filing a lawsuit in federal court. The complaint must be in writing and should include a full statement of the acts and/or omissions believed to be a violation of the FMLA, including all pertinent dates.

- 1) **Deadline for Filing:** Administrative complaints or court actions for violations under the FMLA must be filed within two years of the date of the last alleged violation. However, complaints about willful violations may be made within three years.

## II. STATE MEDICAL LEAVE LAWS

A. **Introduction:** In addition to federal protections, several states have enacted state medical leave laws. While most states laws are similar to the FMLA, some offer additional protections. Additionally, if a state law offers more protection than the FMLA, state law will prevail when there is an issue involving medical leave.

- 1) Example: State A allows employees to take up to 26 weeks of leave for their own serious medical condition every two years. Although the FMLA provides for only 12 weeks of leave per 12-month period, an employer must allow the employee 26 weeks off the first year (under State A law) and 12 weeks off the second year (under the FMLA).<sup>71</sup>

B. **States Medical Leave Laws:** The following states have enacted state medical leave laws:

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|---------------|--------------------------|
| 1) California | 2) Connecticut           |
| 3) Hawaii     | 4) Maine                 |
| 5) Minnesota  | 6) New Jersey            |
| 7) Oregon     | 8) Rhode Island          |
| 9) Vermont    | 10) Washington           |
| 11) Wisconsin | 12) District of Columbia |

<sup>70</sup> 29 CFR § 825.207(f)

<sup>71</sup> 29 CFR § 825.701

### III. RESOURCES

<p><b>For questions about the Family &amp; Medical Leave Act (FMLA):</b> U.S. Department of Labor Employment Standards Administration Wage and Hour Division 200 Constitution Ave, NW Washington, D.C. 20210 (866) 487-9243 or (887) 889-5827 (TTY) <a href="http://www.dol.gov/esa/whd/fmla">www.dol.gov/esa/whd/fmla</a></p>	<p><b>For questions or concerns about the confidentiality of medical information:</b> Office for Civil Rights U.S. Dept. of Health and Human Services 200 Independence Avenue, S.W. Room 509F, HHH Building Washington, D.C. 20201 (866) 368-1019 <a href="http://www.hhs.gov/ocr">www.hhs.gov/ocr</a></p>
<p><b>For questions about state leave laws:</b> Contact your state's fair employment agency (See the <b>STATE APPENDICES</b>) or contact the CLRC.</p>	