

MetLife



Making the Decision to
Outsource FML Administration

The Employer's Guide to First-time Outsourcing

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What Is the FMLA?

The Family and Medical Leave Act (FMLA) is a federal law that provides employees who meet certain eligibility requirements with 12 workweeks (26 workweeks under certain circumstances) of unpaid, job-protected leave. In addition, a number of states have passed laws that provide eligible employees with similar leave rights. If an employee is eligible and entitled to Family and Medical Leave (FML) under the FMLA and/or similar state laws, FML cannot be denied by the employer, nor may an employer discriminate against an employee who asserts rights under the FMLA or similar state leave laws.

What Circumstances Qualify an Employee for Leave Under the FMLA?

Employees may be granted FMLA leave for:

- The birth and care of a newborn child of the employee.
- The placement of a child in the employee's family for adoption or foster care.
- The need to care for the employee's immediate family member (child, parent or spouse) with a serious health condition.
- The employee's own serious health condition.
- The need to take leave for any qualifying exigency arising out of the fact that the employee's spouse, child or parent is on (or has been notified of an impending call to) covered duty in the Armed Forces.
- The need to take leave because the employee's spouse, child, parent or next-of-kin is a covered service member with a serious illness or injury.

Sounds Pretty Simple, Right?

At first glance, FML requirements may seem relatively straightforward: one of your employees has a personal or family health situation, and you grant him or her the required time off. Unfortunately, managing the administration of FML and keeping current with the regulatory provisions applicable to FML is not an easy task. Did you know that not all your employees necessarily qualify for FML?

Employee eligibility for FML is based on several factors, including service, hours and job location.¹ FML administration includes the administration of requirements under the FMLA and state FML laws that often have different eligibility requirements than the FMLA. In light of all the many state and federal laws relating to FML, it can be a burdensome task to ensure that FML is administered accurately for all qualifying employees.

¹ See supplemental document Family Medical Leave Regulations on page 16 for list of federal FMLA provisions. Please note that requirements under individual state leave laws may differ.

Failure to comply with FMLA rules may lead to costly litigation or administrative proceedings. The FMLA provides employees who feel their FMLA rights have been violated with a complaint procedure through the Department of Labor (DOL). An employee can also file a private action.

Employers who are found to have violated FMLA provisions may be forced to pay fines, and employees who pursue private action may be awarded damages in the form of lost wages, employment benefits and other monetary losses directly caused by a violation, together with attorney's fees and court costs. Employers may also be ordered to reinstate employees whose employment has been terminated. Employers who willfully violate FMLA provisions face a longer statute of limitations for claims under the FMLA.

According to the U.S. Department of Labor, during the fiscal year 2010, **employers were found to owe \$1,643,761 in back wages** to 1,012 employees who filed FMLA enforcement actions.²

² Department of Labor, *Wage/Hour Fiscal Year 2009 & 2010 Enforcement Statistics*, <http://www.printing.org/page/6490>

The Difficulties of Self-Administering FML

Handling FML administration in-house is a daunting task. In addition to dealing with the complexities of complying with federal and state laws, Human Resources (HR) professionals are encountering numerous other issues that affect how confident they feel dealing with these requests.

HR Workload

Record keeping and maintaining current paperwork for all employees on leave can place a significant burden on Human Resources. According to the EMPAQ Annual Report, a study by the National Business Group on Health, employers reported that 14.9% of employees took FMLA leave in 2009, an increase of 19.2% compared to 2008.³ Maintaining accurate and complete records for this considerable volume of FMLA-related absences can overwhelm an already busy HR department.

Tracking Time Away From Work

Tracking intermittent leave creates considerable problems for many organizations. With intermittent leaves accounting for 45% of approved FML claims,⁴ HR professionals may find monitoring and administering FML leave difficult if they do not utilize the services of a leave management administrator. Under the current FMLA regulation, employers must notify employees of eligibility for leave under the FMLA within five days of a leave request. Meeting this tight time requirement is a struggle for those who have not maintained a comprehensive tracking system.

Keeping Current On, and Complying With, FML Rules

Federal FMLA requirements can be difficult to interpret, and when combined with requirements resulting from court decisions and state leave laws, following the rules can present many challenges for employers. The trend among states and jurisdictions to mandate paid leave may further complicate FMLA administration.

³ EMPAQ Annual Summary Research Report, 2010

⁴ MetLife Internal Data, 2010

Being Consistent in Administration

In an effort to minimize the potential for violations of FML laws, employers may be more likely to grant leave for requests they feel may not be legitimate. This cautious strategy can backfire, though, as inconsistent application of FML and suspicion of abuse of leave rules can lead to resentment and decreased morale among those who are asked to cover for absent employees. In addition, employers who inconsistently administer FML may find it difficult to take disciplinary action in situations when employee misuse of leave is suspected.

Making the Decision to Outsource FML Administration

Given the complexity of administering FML, employers are turning in large numbers to outside vendors to help manage this type of leave. Outsourcing FML administration can relieve organizations of many of the administrative, legal and regulatory burdens of complying with the complicated, and sometimes costly, FML rules and regulations.

Regulatory Aspects

The FMLA is a constantly-evolving area of federal law. In addition, when you factor in the individual state laws that may also apply to your organization, staying up to date on applicable FML laws can be a considerable undertaking. Unless your organization has the resources to monitor and understand applicable FML laws, outsourcing to a vendor that specializes in FML administration can alleviate the burden, helping you stay within the law and minimizing the potential for leave disputes.

Administrative Aspects

The burden of managing the administrative aspects of FML, in addition to the time necessary to monitor and implement requirements under applicable FML laws, can make in-house administration impractical for some organizations. Outsourcing FML administration can help to relieve your organization from the burden of:

- Determining employee eligibility based on both attendance records and reason for requesting FML.
- Reviewing health care provider certifications or medical documentation (if required by your organization).
- Approving or denying FML requests.
- Managing paperwork and communicating with employees about their FML.
- Monitoring changes to and new requirements under applicable FML laws.
- Tracking leave usage and monitoring time taken/time remaining.
- Administering FML consistently for all qualifying employees.

It is important to note, however, that there are some potential adjustments that may be necessary when an employee decides on such outsourcing. For example, your employees will need to adjust to speaking with someone from outside the organization rather than a human resources representative.

Employers must also understand that outsourcing FML administration may result in FML decisions that may not be consistent with decisions made in the past under informal leave programs.

Additionally, it is necessary to note that while outsourcing to a vendor relieves the employer of some administrative functions, employers will still be required to provide certain information to the vendor and are still responsible for all costs associated with benefits and work coverage during an employee's absences. In addition, the employer maintains responsibility for the consequences of all leave decisions.

Is Outsourcing the Right Decision for Your Organization?

No single approach to administering family leave works best for every organization—while many can handle FML requests and documentation using their own resources, others are finding that FML administration is simply too cumbersome without the help of a vendor to accurately track leaves and stay up-to-date on the ever-changing federal and state leave laws.

How can you determine if outsourcing FML is the right decision for your organization? There are a number of factors to weigh in making the best choice for your organization right now and in the long run.

Factors to Consider

How are you currently administering FML? Do you have the resources you need to stay on top of FML law changes?

Smaller organizations often don't have the resources to handle FML administration in addition to other HR matters, and larger organizations can feel overwhelmed by the sheer volume of paperwork and recordkeeping associated with tracking FML for their employees. Take an unbiased look at how your organization is administering FML—do you have a solid understanding of the applicable FML laws, and are you keeping up-to-date on changes? Is time spent administering FML making it difficult to work on other projects?

Are you keeping accurate time records? Are you able to smoothly coordinate recordkeeping and decision-making among all involved parties?

FML self-administration requires collaboration among the employee, his or her manager, HR and Payroll to determine if the employee qualifies based on time worked and reason for request, and then to correctly track the leave time taken. Does your organization have a process in place to cover all bases and fluidly administer leave? Outsourcing your FML administration can make it easier to track absences and reduce the number of people who have to get involved.

Do you offer a self-service tool for supervisors and employees?

Providing supervisors and employees with a simple vehicle for submitting and tracking leave can greatly reduce the strain on HR. Are your employees dependent on HR to provide information on time taken and time remaining?

What is your organizational culture? How receptive are your employees to change?

Making the switch from self-administration to outsourced FML administration can be a big adjustment both for the organization as a whole and the individuals who wish to take FML. Self-administration gives employees the ‘human touch’ — they typically speak directly with an HR representative, and a decision regarding their leave request is often made immediately. Will your employees adjust well to working with an outside vendor which may have a slightly longer decisional timeline?

Ultimately, the decision to outsource FML administration should be based on what is best for your organization, both now and in the future. Take an unbiased look at your current processes to determine the ultimate benefits and drawbacks of transferring your FML administration to an outside vendor.

What to Expect During Implementation

It is important to understand that outsourcing FML administration does not relieve you of all FML obligations. A significant amount of employee information is needed to properly implement FML, and your continued involvement is crucial to ensure successful FML administration.

Your Responsibilities to the Vendor

Accurate FML administration can help you meet your obligation to adhere to FML laws and minimize its cost of lost time. You and your vendor must partner with each other and understand each other's roles to successfully outsource FML administration. As the employer, some of the things you might be responsible for are:

- Providing the vendor with information on all of your work site population.
- Identifying a contact person to whom the vendor can go if information is needed to complete eligibility decisions.
- Documenting, at a minimum, the following components of your FML policy:
 - Your selected leave tracking method
 - FML concurrent with Group Disability and Workers' Compensation
 - Use of accrued paid leave
 - Spousal time limits, if applicable
 - Any fitness-for-duty requirements
 - Any company leave policies that are more generous than those required under federal and state regulations
- Assigning roles and responsibilities for various aspects of your FML program to the appropriate company associates/departments.
- Educating your supervisors about identifying possible FML-qualifying leaves and the importance of timely notice.
- Educating your employees about FML-qualifying leaves, timely notice of leave requests and documents that might be required to make a determination.

After providing your vendor with the necessary background details, you should expect an implementation time period of three to six months for them to upload and validate the information and help ensure a smooth transition.

What to Expect From Your Employees

If until now you have been self-administering FML, your employees will have many questions and concerns about the new process.

- Be prepared with a thorough communication strategy to address their concerns. Highlight the positive reasons for the change, and emphasize the ultimate benefit to the individual employee.

As the new process is communicated to your employees and FML rules are followed more closely, anticipate an increase in claims.

- To help the process move smoothly, provide your employees with a detailed road map to using the new process. Be very clear about how to phone in their requests and record their absences.
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Supplemental Documents

The MetLife Experience

The benefits of outsourcing your FML administration to MetLife, including information about our tracking and reporting capabilities.

Family Medical Leave Regulations

Details to help you determine if your organization must provide leave under the FMLA, which employees are eligible and what leave they may be entitled to.

The MetLife Experience

When evaluating a vendor to administer your FML, understanding what each can offer regarding ease of use and reporting capabilities can help you weigh your options.

The MetLife Advantage

MetLife's in-house development of processes and administrative services, and our use of technology, has helped us to amass a considerable amount of talent in the realm of FML administration. MetLife has used its experience as one of the largest and most experienced disability claim carriers to develop the resources necessary to efficiently manage employee absences and communicate with employers and employees throughout the FML administration process. We are able to:

- **Integrate FML and Group Disability functions**, including the ability to work with a single contact for FML claims associated with a disability claim.
- **Administer your organization's own leave policies** from bereavement to military leave, personal to sabbatical leave. MetLife will set up automated business rules on our Total Absence Management system to provide consistent, quality administration of your leave policies.
- **Coordinate your employees' usage of FML and other leaves** using our Total Absence Management solution. We can track and administer any form of leave your organization offers (including jury duty, paid time off and personal leave) and ensure that federal and state laws applicable to these other leave laws are met.
- **Track intermittent leave** for employees who take leave multiple times within one 12-month period.
- **Employ clinical resources** during instances in which clarification of a physician's certification is sought.

Our comprehensive leave tracking system can track leave time to 6-minute increments, and is capable of producing numerous reports, including:

- **FML leave request status summary and graphs**—includes totals for reopened, approved and suspended claims.

- **FML leave request status detail**—includes claim status, closure/denial date if applicable, program type and hours/weeks used.
 - **FML duration by absence type and description**—provides summary of hours/weeks used for the duration of FML claims that closed during the reporting period and remained closed as of the end of the reporting period by absence type and description.
 - **FML total hours and weeks used**—provides summary count of hours/weeks for active claims (opened, reopened and suspended) as of the end of the reporting period, and for claims that closed during the reporting period and remained closed as of the end of the reporting period.
 - **FML leave request submission by location summary**—provides summary count of claims received during the reporting period.
 - **FML leave request submission by location**—reflects the detail activity supporting the leave request submission by location report.
 - **Intermittent FML usage**—tracks time taken by employees who use leave multiple times during a 12-month period through our MetLink system.
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Family Medical Leave Act (FMLA) Regulations

Here are a few of the important requirements of federal FMLA administration. While the following touches on some of the basics, it only scratches the surface of the complex and numerous requirements of FMLA administration.

How to Determine If Your Company Must Provide FMLA Leave

FMLA applies to all public agencies, all public and private elementary and secondary schools and companies with 50 or more employees. These employers must provide an eligible employee with unpaid leave each year. State family leave laws may differ.

How to Determine If Your Employee Qualifies

Employees are eligible for leave if they have worked for their employer at least 12 months, at least 1,250 hours over the 12-month period immediately preceding the commencement of the leave, and at a location where the company employs 50 or more employees within 75 miles.

12-Month Period for Tracking FMLA

The employer may choose one of the following methods for determining the 12-month period within which the unpaid leave may be used:

- Calendar year.
- Any fixed 12-month year (e.g., fiscal year, year required by state law, year starting on employee's anniversary date).
- Rolling forward (measured from date employee's first FML begins).
- Rolling backward (measured backward from date employee uses any FML).

How to Determine What Conditions Qualify for FMLA

To qualify under the FMLA, an employee must request leave for one of the following reasons:

- Birth and care of the employee's newborn child.
 - Placement with the employee of a child for adoption or foster care.
 - To care for an immediate family member (spouse, child or parent) with a serious health condition.
 - When the employee is unable to work because of his or her own serious health condition.
 - For any qualifying exigency arising out of the fact that the employee's spouse, child or parent is on (or has been notified of an impending call to) covered duty in the Armed Forces.
 - To care for the employee's spouse, child, parent or next-of-kin who is a covered service member with a serious illness or injury.
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What Must be Provided to Qualifying Employees

- 12 workweeks of FMLA-qualifying leave during a 12-month period or up to 26 workweeks of leave if the need for leave includes leave to care for a covered service member with a serious illness or injury.
- Specific notification regarding the procedures applicable to the particular leave request, the employee's obligations and the consequences to the employee of failing to meet the obligations in question that must be given within 5 business days of the employee indicating a need for leave.
- Provide a notice that the employee has or has not met the FMLA eligibility requirements within 5 business days of the employee's request for leave.
- Leave may be taken on an intermittent or reduced schedule basis.
- A notice of leave being counted as FML and whether or not applicable paid leave will be taken concurrently with the FMLA leave.
- Reinstatement to the same or an equivalent position with equivalent benefits, pay and conditions of employment to the employee following FMLA leave.
- Maintenance of the employee's coverage under any group health plan.

The information in this White Paper is not intended to constitute legal advice and should not be relied upon in lieu of consultation with appropriate legal advisors in your own jurisdiction.

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