

# FMLA eligibility checklist — is your employee eligible for FMLA leave?



Employees are entitled to take time off for medical reasons through the FMLA. However, there are also employees who may attempt to abuse this right and take time when they shouldn't. While the FMLA can be a valuable tool for both employees and employers, it can also be a hassle for HR departments - especially when trying to determine if an employee is actually eligible for FMLA leave in the first place. Save yourself time and energy by using an FMLA eligibility checklist to determine if an employee is truly eligible to take leave before starting on the next steps.

In this article, we'll cover:

- FMLA basics that you need to know.
- 5 steps for determining employee eligibility.
- Tips for a smooth FMLA process

Our FMLA eligibility checklist will help you understand the basic requirements for eligibility and the procedure to follow once you receive an FMLA request.

## What is FMLA?

The Family & Medical Leave Act is a law that provides employees 12 workweeks of unpaid leave in cases of

serious injury, the birth of a child, active duty/military service, the adoption of a child or the placement of a child in foster care, or to care for a spouse or child with a serious medical condition/incapacity.

After the employee returns from these weeks of leave, you as an employer are obligated (by law) to give your employee the same job (or an equivalent position). An employee's leave entitlement will reset every single 12-month period (see more on setting [FMLA calendars](#) here). In some cases, employees may take intermittent leave over an extended period of time and could have to recertify documentation periodically.

## **Family And Medical Leave Act Poster**

Covered employers are required to keep [a poster with information on the Family And Medical Leave Act](#) in the workplace to educate employees on their rights.

## **FMLA eligibility checklist**

### **Step 1: Determine if you're a covered employer**

The first criteria for determining if an employee is eligible is to ensure that the employer is a covered employer. Otherwise, the FMLA does not apply to your business.

#### **A covered employer:**

- Is a private employer with at least 50 employees.
- Is a government agency (regardless of the number of employees).
- Is a Public or private elementary or secondary school (regardless of the number of employees).

However, there are some circumstances where businesses may still be held accountable for FMLA leave even if they're not normally considered cover. For example, say your business has fewer than 50 employees, but your employee handbook states that you will offer leave in alignment with the FMLA. If you deny an FMLA leave request, the court is likely to rule in an employee's favor, as you have a.

Additionally, multi-armed businesses beware. If a smaller division of your company only employs 20 employees but is owned by a larger parent company, courts have generally ruled that those employees are still eligible for FMLA leave.

Once you've determined if you're a covered employer, you'll then need to determine if the employee is eligible.

### **Step 2: Determine if the employee in question is an eligible employee**

**If an employee checks all the following criteria, then they are likely eligible for FMLA leave.**

- Has your employee been working for you for 12 months or longer? These 12 months do not have to be consecutive as long as they have been within the last 7 years. ✓
- Has the employee logged at least 1,250 hours of work in the last 12 months? If an employee has only worked 6 months in the last year but meets the above criteria, they will still be eligible if they have worked at least 1,250 hours in those 6 months. ✓
- Does the employee work at a location with 50 employees or more, or within a 75-mile radius of a worksite with 50 or more employees? ✓
- Did your employee give you at least 30 days notice or notice "as soon as practicable?" ✓ If not, you may still provide leave to an employee, but you may also choose to delay the approval of this leave until 30 days from notice.
- Did your employee provide you with a doctor's note of eligibility? ✓ An employee is not required by default to provide medical certification, however, you may wish to do so to ensure a consistently applied policy.

If you choose to request medical certification, then the employee is obligated to provide you with information from a health care provider before taking medical leave. Give them a copy of [this medical certification form](#) (either a WH-380-f or WH-380-e) for their doctor to fill out and send back.

If you answered no to any of the previous questions, you may not be obligated to provide FMLA leave for an employee, as they may be intelligible.

### **Step 3: Have the employee fill out a Notice Of Eligibility (Form WH-381)**

[Form WH-381](#) is the employee's request for leave, and it will help employees determine if they are eligible for FMLA. Employers must provide this form for the employee wanting to file for requested leave. employees must be given up to 15 calendar days to complete and return the form.

#### **Form WH-381 requires/provides the following:**

- Certification of health care provider.
- Given dates of the requested leave.
- Employee's rights and responsibilities when filing for FMLA.
- Additional information that may be necessary (proof of relation to said family member with ailment).

### **Step 4: Establish if the employee has a qualifying reason**

Once you've received a completed Notice of Eligibility, you'll then determine if the employee's reason for requesting FMLA leave is valid.

#### **A qualifying exigency or qualifying reason is one of the following circumstances that may qualify you for FMLA leave, including:**

- Adoption.
- Preparation for the birth of a child/newborn child.
- Taking care of a personal serious health condition (physical or mental).
- The placement of a child in foster care.
- Inpatient care.
- Taking care of a family member with a serious health condition (employees will get up to 26 weeks of military caregiver leave/military family leave to care for a covered servicemember next of kin suffering from serious injury or illness).

Note: As of 2014, FMLA rights have been extended to all same-sex marriages.

### **Step 5: Provide a Designation Notice (Form WH-382)**

You must now determine if the employee is truly eligible for FMLA leave by filling out Form [WH-382](#). Technically, this form is optional - however when FMLA is involved, it's best to keep as much documentation as possible. The designation notice tracks your response to the employee's request and is an important document for tracking the process and protecting your organization from potential lawsuits.

This document will notify employees of important information, including:

- FMLA leave approval.
- FMLA leave denial.
- A request for more information, if necessary, before a decision can be made.

Here you'll decide if you wish to approve the leave, deny it, or if more information is needed for you to make a

determination. Employers should be adamant about getting the right documents before permitting the leave. In some cases, you may wish for a second or third opinion before determining if an employee may take FMLA leave. You may do so here, however it must be done so at the expense of the employer.

## Avoiding problems with FMLA leave



Human resources

### and employee training for FMLA

If you're a covered employer, then your employees have a right to FMLA leave, so educating them about the subject matter is an important part of hiring them. Be sure to have employee training before the employee starts work that explains to them the FMLA and the eligibility criteria.

HR employees and managers should also be trained on the FMLA. This helps avoid legal issues down the road and ensures leave requests are handled properly. After all, even well-intentioned missteps on the part of the employer could result in expensive lawsuits.

### Communication is key

Employees should give you at least 30 days' notice if possible when planning on taking FMLA leave. Proper notice ensures you can make arrangements to cover the employee's work while they're out. It will also give you the opportunity to verify their FMLA eligibility, especially if additional documentation is needed.

Typically, if the employee fails to give 30 days notice, you are not obligated to let them take leave until at least 30 days after notice. However, if the need for FMLA was unforeseeable like a sudden illness or accident, then such requirements are generally waived.

You should try to work with employees as much as possible and keep an open line of communication. Failing to do so and failing to make good faith efforts will reflect poorly on your organization should you ever find yourself in court.

## **Record everything**

One way to help make sure you are going about FMLA leave correctly is by documenting and recording all interactions made while going through the process. Nobody likes to talk lawsuits, but be sure you document all parts of the FMLA process. This may even include recording important conversations with a voice recorder.

To learn more about FMLA, read [The Employer's Guide To The Family And Medical Leave Act](#)

## **Recertification**

Does your employee need to continue utilizing FMLA leave as new complications arise or as part of an intermittent FMLA agreement? It may be necessary for you to request new documentation for recertification. When doing so, however, it's important to follow the law carefully. Requesting recertification when you are not permitted to do so could be seen as employee retaliation and harassment.

## **Avoiding discrimination in the workplace**

Even well-meaning managers could ask questions or make comments that trigger a discrimination case, especially when it comes to FMLA. Ensure that managers do not ask unnecessarily probing questions of employees requesting FMLA. Additionally, ensure to keep an employee's information confidential. Doing these things can prevent future lawsuits.

**Additional resource:** Read more about [FMLA requirements](#) and what they mean for your business.