

FMLA return to work guidelines for employers



If you're welcoming an employee back from FMLA leave, there are a few key considerations to keep in mind to ensure a smooth return to work process. The Family Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of unpaid leave for family and medical reasons within a 12-month period. Qualifying reasons include the birth of a child, receiving treatment for or becoming incapacitated by a serious health condition, and caring for an immediate family member with a serious health condition. Once an employee has taken the necessary and approved amount of leave, it's time for them to return to work.

Navigating the return to work process can be just as challenging as handling the initial FMLA leave process. Employers have a number of responsibilities in terms of pay, job position placement, and benefits during the reinstatement process. There may also be additional paperwork to request and process. Find out how to properly facilitate the FMLA return to work process to ensure that FMLA leave laws are followed.

Employee reinstatement to an equivalent position

Employees returning from FMLA leave are entitled to reinstatement in either the same position that they previously held or an equivalent position. An equivalent job position should offer equivalent pay, benefits, and conditions of employment. It should also include substantially similar job duties. It should involve equivalent skill, effort, responsibilities, and authority. From a risk mitigation standpoint, reinstating the employee to the same position that they held before going on leave is generally best. If that is not practical, aim for a role as close as possible to the employee's previous role.

In addition to an entitlement to equivalent pay, the returning employee is entitled to any cost-of-living increase granted to other employees during their leave period. Raises based on seniority, length of service, or work

completed do not need to be provided while an employee is on leave.

Employers should also reinstate employees to the same worksite or a “geographically proximate” one. Employees can’t move employees returning from FMLA leave to a distant work location, unless a worksite was closed during the employee’s leave period and other employees were offered transfers under the same conditions. The working conditions and location should be as close as possible to the employee’s original employment situation. If an employee previously worked from home, they should be allowed to resume doing so unless a uniformly applied policy was created requiring all employees to go into the office for all or part of their workweek.

Fitness for duty certification

If an employee took FMLA leave in relation to their own serious health condition, employers may request a fitness for duty certification to confirm that they are able to resume their job duties. This is typically completed by the health care provider that provided the medical certification as part of the initial FMLA leave request, but it can be completed by another qualified medical provider.

The fitness-for-duty certification should only cover the health condition that was the basis for the initial FMLA leave request. Unrelated health information should not be included. The certification must state that the employee is able to resume work. The employer may provide a list of the essential functions of the employee's job for the certification to address. This list must be provided by the time the designation notice is provided.

Employers may not pick and choose which employees they request a return to work certification from. The employer must have a uniformly-applied policy or practice in place that requires all similarly-situated employees to provide a fitness-for-duty certification upon returning to work from FMLA leave. The fitness-for-duty requirement must also be listed on the FMLA designation notice provided to the employee during the initial eligibility review.

One thing to keep in mind is that an employee’s start date cannot be delayed pending a fitness for duty certification. If an employee states that they are ready to return, you’ll need to take their word for it pending the certification documentation, unless an employee was able to get the paperwork done before their scheduled return-to-work date.

Be sure to check your state and local laws for any additional provisions or limitations. In addition, employers will need to abide by the Americans with Disabilities Act (ADA) provision that any return-to-work physical examination is job-related and consistent with business necessity.

An employer is not entitled to a fitness-for-duty certification for each absence taken on FMLA intermittent leave. However, if reasonable safety concerns exist, an employer may request a fitness-for-duty certification for FMLA absences up to once every 30 days. Reasonable safety concerns include a reasonable belief of significant risk of harm to the employee or others.

Resumption of employee benefits and premium repayments

When employees return to work, employers may need to resume the employee’s benefits or recover premium costs incurred during the leave (if benefits were provided throughout the employee’s FMLA leave period). Employees are entitled to continue receiving their benefits while on leave. As an employer, you must make the same health benefits available to all active employees available to those on FMLA leave. This includes allowing employees on leave to enroll in new benefits or plans that you begin offering while they’re on leave, if otherwise eligible.

For employees to maintain health insurance coverage while out on FMLA leave, an employee will typically need

to pay their portion of the health insurance premium, if applicable. The employee's share of the insurance premium is usually taken out of their paychecks automatically, but when employees are on unpaid leave, other arrangements may need to be made. Some employers bill employees each month throughout leave to recover their portion of the insurance premium. Others pay the full premium and ask the employee to repay that amount upon return to work. Employers will want to work with the employee on a repayment plan upon their return to work if this option was chosen (and agreed upon by the employee).

In some circumstances, the employer may also recover their own share of the premium. This is typically pursued when an employer continues to provide benefits during FMLA and an employee fails to return to work after their leave eligibility ends.

Employers may not recover employer-paid health care premiums if the employee doesn't resume work because of:

- Circumstances beyond the employee's control.
- The continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember, that would otherwise entitle the employee to leave under FMLA.

Employees have the option to forgo health insurance during their leave. If an employee chooses to pause their benefits during leave, the employer and carrier must reinstate them on the same terms as they were previously enrolled without any qualifying period or physical exam when they return to work. This includes providing the same coverage level and covering previously enrolled dependents.

Employees that need leave beyond FMLA



The Family and Medical Leave Act provides up to twelve weeks of leave to be taken within a 12-month period. Sometimes employees exhaust those twelve weeks and are still not ready to return to work. When this happens, additional leave under the Americans with Disabilities Act (ADA) may be available.

Additional leave or other reasonable accommodations under the ADA are available for employees who possess a disability. The ADA classifies a medical condition as a disability if it substantially limits one or more major life activities. Many conditions that meet the criteria for a “serious health condition” under the FMLA also meet the definition of a disability under the ADA.

Additional unpaid leave is often classified as a reasonable accommodation under the ADA. If an employee asks for more time off or to work from home, handle the request just like you would another disabled employee’s reasonable accommodation request. Employees may also qualify for flexible work schedules or adjustments to job duties as accommodations.

Managing performance expectations during FMLA return to work

Employers should set reasonable expectations for employees returning from FMLA leave in terms of performance and productivity. If an employee needs time to catch up on training, refresh their skills, or work up to their prior levels of productivity, an employer should give them a reasonable amount of time to do so. It’s fairly normal for employees to be a bit rusty after coming back from extended periods of leave, so employers should provide the necessary support and refrain from counting this against employees in performance reviews or disciplinary matters.

Courts have ruled that employers may still take action based on performance issues discovered while the employee is on leave. For example, sometimes errors are discovered when an employee’s workload is transferred to another staff member or supervisor during the leave period. Having a fresh set of eyes pouring over the employee’s work output may uncover frequent mistakes, policy or process violations, or an overall low work quality.

That is a performance matter that may be addressed when the employee returns to work. A slight increase in errors or decrease in work quality immediately before the leave is not unusual as the employee may have been dealing with heightened stress or health symptoms, but if an ongoing problem it should be addressed and corrected with the employee upon their return.

Read more about FMLA return to work guidelines

Want to learn more about FMLA leave and other employment laws? Please visit dol.gov to read documents like [The Employee's Guide To the Family And Medical Leave Act](#).

See the Americans With Disabilities Act to learn about reasonable accommodation for employees with disabilities.