



FAQs About The FMLA

Insights

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Understanding and complying with the requirements of the federal Family and Medical Leave Act (FMLA) is a challenge for even the most experienced management and human resources personnel. The challenge is even greater in states that have their own separate leave laws. The following are frequently asked questions about the FMLA that may assist in determining your level of understanding.

Is My Dealership Covered?

Coverage is the logical starting place. To be a covered employer under the FMLA, your dealership must have at least 50 employees (even if your employees are at different locations) for 20 weeks during the calendar year in which a qualified employee needs or requests leave, or for 20 weeks in the previous calendar year. Part-time employees and employees who are on leave but expected to return are included in the count. If you are part of a dealership group with “sister” dealerships, all employees are likely included in the count.

Who Is Eligible Among My Employees?

Not all employees are eligible for leave under the FMLA. To be considered eligible, an employee must have been employed by the covered employer for at least 12 months on the date the leave is to begin. The 12-months-of-employment requirement is met when an employee’s total length of employment with the dealership over the previous seven years combined is at least 12 months, which is particularly significant to dealerships where rehires are common.

The second eligibility requirement is that the employee needing leave must have actually worked a minimum of 1,250 hours in the 12-month period prior to the proposed leave start date. Having the means to determine the actual number of hours worked during this 12-month period is yet another reason to maintain accurate records of hours worked.

Finally, the employee must work at a location at which there are 50 or more employees within 75 miles. Similarly, when determining whether an employer meets the 50-employee threshold, the count includes all employees at the employer’s locations within 75 miles. For example, if a dealership group has two locations within 75 miles of each other, each with 25 employees, the 50-employee threshold is met and the employees at each location meet this particular eligibility requirement. If those locations are more than 75 miles apart, however, none of the employees at either dealership will be eligible for FMLA leave because none will meet the third eligibility

requirement.

What Protections Does The FMLA Provide Employees?

The FMLA provides eligible employees the right to as much as 12 or 26 (depending on the qualifying reason for the leave) workweeks of unpaid leave, reinstatement if the employee returns to work after the FMLA leave ends, and continuation of health insurance benefits.

What Circumstances Trigger FMLA Leave Obligations?

An eligible employee may be entitled to FMLA leave for their own serious health condition, the serious health condition of an immediate family member (parents, spouse, or children), and for the birth or adoption of a child. Generally speaking, a serious health condition may be a period of incapacity of more than three consecutive days while under the care of a doctor, an overnight stay in the hospital, or a chronic health condition that causes episodic incapacity. Further, the FMLA allows for leave to provide care for a covered military service-member with a serious injury or illness, as well as qualifying exigency leave for eligible employees while a spouse, son, daughter, or parent is on covered active duty or if they have been notified of an impending call to covered active duty.

Is An Employee Required To Specifically Request FMLA To Be Eligible For The Leave?

No, the law does not require employees to specifically request FMLA or even to be aware of their FMLA rights. The law does, however, require employers to recognize such situations and take appropriate steps where FMLA leave is warranted. Because many legal challenges arise from a manager's failure to recognize some absences as FMLA-protected, we encourage dealerships to train their managers and supervisors on the FMLA (and other related issues).

When I Learn My Employee Needs FMLA Leave, What Should I Do?

When you become aware of an employee's need for FMLA, an appropriate dealership representative should communicate with the employee about their leave needs. Use the proper forms to notify the employee of their rights and to request certification from a healthcare provider where leave is needed for a serious health condition. If the healthcare provider confirms the need for leave, you should grant leave consistent with their certification. An employee who fails to provide a complete certification, or to timely cure an incomplete certification, may not be entitled to FMLA protection for that leave.

How Much Time Is An Eligible Employee Allowed For FMLA Leave?

The law grants eligible employees a maximum of 12 workweeks of protected leave during a 12-month period in qualifying situations, excepting leave to care for a covered service member – in which case the maximum is 26 workweeks. You can designate in your FMLA policy whether the 12 months is determined by calendar year, measured forward, or rolling backward.

Under the rolling backward method, each time an eligible employee requests leave for a covered event, you look backward over the previous 12 months to determine if the employee has taken any FMLA leave during that time frame. If no FMLA-protected leave was used during that time, the employee has the full 12 weeks available. If the employee did take FMLA leave, however, that amount is deducted from the employee's 12-week leave bank to determine how many available days remain, consistent with the certified need for leave.

Keep in mind that under state law or the Americans with Disabilities Act (ADA), the employee may be eligible for additional leave after exhausting the 12 weeks of FMLA leave.

In What Forms Can An Employee Use FMLA Leave?

Leave occasioned by a serious health condition or for military exigency may be granted in increments of hours, days, or weeks. Employees may be entitled to intermittent leave or reduced schedule leave depending on the determination set forth by the employee's healthcare provider.

By way of example, if a service advisor qualifies for FMLA leave and her doctor says she can only work four hours of her regular 10-hour day, her leave would be of the reduced schedule variety. The six scheduled hours she does not work each day is deducted from her leave allotment, converted from days to hours.

Can The Employer Deny FMLA-Protected Leave If It Would Be Disruptive To Operations?

Practically speaking, no. Although the law has a narrow exception for "key" employees, this exception rarely comes into play and is seldom used. By way of contrast, the concept of business disruption or "undue hardship" comes into play when leave is considered as an accommodation under the ADA.

Is Leave Protected If The Employer Does Not Designate It As FMLA?

Yes. If the leave otherwise qualifies for FMLA protection, it is protected even if you fail to properly designate it as such.

Can An Employer Designate Time Missed For A Workers' Comp Injury As FMLA Leave?

Yes, if the leave otherwise meets all the requirements for FMLA leave.

When An Employee Returns From FMLA Leave, Are They Entitled To Their Former Position?

The law requires you to reinstate employees who return at the end of FMLA leave to the same or a "substantially equivalent" position. A substantially equivalent position is one that provides equivalent benefits, pay, and other terms and conditions of employment, has the same or substantially similar job duties, and requires the use of substantially equivalent skill, effort, responsibility, and authority.

Conclusion

These questions and answers address many of the basic (but important) issues related to the FMLA. This information is presented for educational and information purposes, but can't be considered legal advice. Leave issues can become complicated, especially with ADA and state laws to consider as well. We encourage you to train managers and supervisors on the basics, but more importantly, seek assistance from experienced and knowledgeable counsel when issues arise.

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