WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #28D: Employer Notification Requirements under the Family and Medical Leave Act

January 2024

The Family and Medical Leave Act (FMLA) provides job-protected leave from work for family and medical reasons. This fact sheet explains employers' obligations to provide employees information about their FMLA rights and responsibilities.

ABOUT THE FMLA

The FMLA provides eligible employees of covered employers with job-protected leave for qualifying family and medical reasons and requires continuation of their group health benefits under the same conditions as if they had not taken leave. FMLA leave may be unpaid or used at the same time as employer-provided paid leave. Employees must be restored to the same or virtually identical position when they return to work after FMLA leave.

Eligible employees: Employees are eligible if they:

- Work for a covered employer for at least 12 months,
- Have at least 1,250 hours of service with the employer during the 12 months before their FMLA leave starts, and
- Work at a location where the employer has at least 50 employees within 75 miles.

Covered employers: Covered employers under the FMLA include:

- Private-sector employers who employ 50 or more employees in 20 or more workweeks in either the current calendar year or previous calendar year,
- Public agencies, including Federal, State, and local government employers, regardless of the number of employees, and
- Local educational agencies, including public school boards, public elementary and secondary schools, and private elementary and secondary schools, regardless of the number of employees.

The FMLA protects leave for:

- The birth of a child or placement of a child with the employee for adoption or foster care,
- The care for a child, spouse, or parent who has a serious health condition,
- A serious health condition that makes the employee unable to work, and
- Reasons related to a family member's service in the military, including:
    - Qualifying exigency leave – leave for certain reasons related to a family member's foreign deployment, and
    - Military caregiver leave – leave when a family member is a current servicemember or recent veteran with a serious injury or illness.

For more information about the FMLA generally, see Fact Sheet #28.

REQUIRED NOTICES

Covered employers must provide employees with certain critical notices about the FMLA:

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- **General Notice.** All covered employers must display a general notice about the FMLA, the FMLA poster. If a covered employer has any eligible employees, the employer must also provide each employee individually with a general notice containing the same information about the FMLA as contained in the FMLA poster.
- **Eligibility Notice.** When an employee first requests leave for a reason that may qualify for FMLA leave, the employer must notify the employee whether they are eligible for FMLA leave.
- Rights and Responsibilities Notice. If the employee is eligible, the employer must notify the employee in writing about employee rights and responsibilities under the FMLA.
- **Designation Notice.** Once the employer has enough information to know whether a leave request qualifies as FMLA leave, the employer must notify the employee in writing whether the employee's time off from work will be designated FMLA leave, and the amount of time that will count against the employee's FMLA entitlement.

Where a significant portion of the employer's workforce is not literate in English, employers are required to provide certain notices in languages other than English.

Employers are also required to comply with all applicable requirements under Federal or State law for notices provided to sensory-impaired individuals.

CONSEQUENCES OF NOT PROVIDING REQUIRED NOTICES

Failure to provide required FMLA notices may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, for liquidated damages, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered.

REQUIRED GENERAL NOTICES

FMLA poster. Every employer covered by the FMLA must display or post an informative general notice about the FMLA. A covered employer must display this poster even if it has no eligible employees.

- The poster must be displayed in plain view where all employees and applicants can readily see it and must have text large enough so it can be easily read.
- The information displayed on the poster must explain the FMLA provisions and provide information on how to file a complaint with the Wage and Hour Division.
- If a significant portion of employees do not read and write English, the employer must provide the general notice in a language in which they can read and write.

English and Spanish language FMLA posters are available free of charge from the U.S. Department of Labor's Wage and Hour Division (WHD). Employers may distribute the information electronically, create their own poster or notice, or use another format. However, the material provided to employees must include all the information contained in the WHD FMLA poster, be accessible to applicants for employment and current employees, and fulfill all other requirements.

An employer who willfully violates this posting requirement may be subject to an FMLA civil money penalty, which is adjusted for inflation each year.

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General notice upon hire. In addition to displaying a poster, if a covered employer has any FMLA eligible employees, it must also provide each employee with a general notice about the FMLA in the employer's employee handbook or other written materials about leave and benefits. If no handbook or written leave materials exist, the employer must distribute this general notice to each new employee upon hire.

This general notice requirement can be met by duplicating the general notice language found on the WHD FMLA poster. Employers may distribute this information electronically, create their own poster or notice, or use another format. The material provided must include all the information contained in the WHD FMLA poster and fulfill all other requirements. If a significant portion of employees do not read and write English, the employer must provide this general notice in a language in which they can read and write.

REQUIRED SPECIFIC NOTICES

Eligibility notice. The employer must provide employees with an eligibility notice the first time the employee requests leave for an FMLA-qualifying reason in the employer's designated 12-month leave year.

The eligibility notice may be either oral or in writing and must:

- Be provided within five business days of the initial request for leave or when the employer acquires knowledge that an employee leave may be for an FMLA-qualifying reason,
- Be provided in a language in which the employee is literate, if a significant portion of the employer's workforce is not literate in English,
- Inform the employee of their eligibility status, and
- If the employee is not eligible for FMLA leave, state at least one reason why.

Once an employee is notified they are eligible, employers are not required to provide a new eligibility notice for FMLA absences for the same qualifying reason during the same leave year. Employers are also not required to provide a new eligibility notice for FMLA absences for a different qualifying reason where the employee's eligibility status has not changed. When an employee needs leave for a different qualifying reason in the same leave year and the employee's eligibility status has changed, however, the employer must notify the employee of the change in eligibility status within five business days.

Rights and responsibilities notice. Each time employers are required to provide the eligibility notice, they must also provide employees with a rights and responsibilities notice, notifying employees of their rights under the FMLA, their obligations concerning the use of FMLA leave, and the consequences of failing to meet those obligations.

The rights and responsibilities notice must be in writing and must explicitly state all the following information, as applicable:

- Notice the leave may be counted as FMLA leave – A statement that leave may be designated and counted against the employee's FMLA leave entitlement;
- FMLA leave year – The 12-month period or leave year the employer uses to track FMLA leave usage;
- Certification requirements – Whether the employee will be required to provide certification of the need for leave, and the consequences of failing to do so;Substitution of leave – The employee's right to use paid leave, whether the employer will require the substitution of paid leave, any conditions related to the substitution, and the employee's right to take unpaid FMLA leave if the employee does not meet the conditions for paid leave;
- Key employee notice – The employee's status as a "key employee," i.e., a salaried FMLA-eligible employee who is among the highest paid 10% of all employees, both eligible and ineligible, within 75 miles of the worksite, and potential restoration consequences, if any;
- Job restoration and maintenance of benefits – The employee's right to job restoration and maintenance of benefits; and
- Group health insurance premium payment requirements – Whether the employee will be required to make premium payments to maintain health benefits and any arrangements for doing so, the consequences of failing to make payments on a timely basis, and the employee's potential liability for premium payments made by the employer if the employee fails to return to work.

The rights and responsibilities notice may be distributed electronically provided all other requirements are met, and it may be combined with and provided to the employee at the same time as the eligibility notice. Employers can use WHD Form WH-381, Notice of Eligibility and Rights and Responsibilities, which is available at no cost, or create their own version as long as it meets all legal requirements. If a significant portion of an employer's workforce is not literate in English, the rights and responsibilities notice must be provided in a language in which employees are literate.

Employers must be responsive in answering questions from employees concerning rights and responsibilities under the FMLA.

If information provided in the rights and responsibilities notice changes, the employer must notify the employee of the changes in writing within five business days of the first time, after the changes, that the employee requests leave. For example, if the initial leave period was paid leave and the subsequent leave period would be unpaid leave, notice of new arrangements for making health insurance premium payments may be required.

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Designation notice. Once the employer has enough information to determine that the employee's requested leave qualifies as FMLA leave, the employer must provide the employee with a written designation notice within five business days, absent extenuating circumstances. The designation notice informs the employee that the requested leave will be designated as FMLA leave and sets out the requirements applicable while the employee is on leave.

The designation notice must include:

- Whether the employee is required to substitute paid leave for unpaid FMLA leave,
- Whether the employee will be required to submit a fitness-for-duty certification to return to work, andThe amount of leave that will count against the employee's FMLA leave entitlement, if known. If the exact amount of leave is not known at the time of the designation, the employer must provide this information in writing upon the employee's request, but no more often than once in a 30-day period and only if leave is taken in that period.

If the leave does not qualify as FMLA leave, the employer must notify the employee in writing that the leave is not FMLA-protected and will not be counted as FMLA leave. This notice can be a simple written statement.

The employer is required to provide the employee with one designation notice for each FMLA-qualifying reason for leave in the 12-month leave year, regardless of whether the leave is taken in a continuous block or intermittently or on a reduced schedule. If the employee requests leave and the information provided in the designation notice changes, the employer must provide the employee written notice of the change. This notice must occur within five business days of the first leave request from the employee that follows any changes.

Employers may use WHD Form WH-382, Designation Notice, or create their own version of this notice, provided it meets all legal requirements.

If an employer is unable to determine whether a leave request should be designated as FMLA-protected because a submitted certification is incomplete or insufficient, the employer is required to state in writing what additional information is needed. The employer may use the designation notice to inform the employee that a certification is incomplete or insufficient and identify what information is needed to make the certification complete and sufficient. For more information about medical certification, see Fact Sheet #28G.

ADDITIONAL PROTECTIONS

State Laws

Some States have their own family and medical leave laws. Nothing in the FMLA prevents employees from receiving protections under other laws. Workers have the right to benefit from all the laws that apply.

Protection from Retaliation

The FMLA is a federal worker protection law. Employers are prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right. Any violations of the FMLA or the FMLA regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA. For more information about prohibited employer retaliation under the FMLA, see Fact Sheet #77B and Field Assistance Bulletin 2022-2.

Enforcement

The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court. State employees may be subject to certain limitations in pursuit of direct lawsuits regarding leave for their own serious health conditions. Most Federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress.

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Where to Obtain Additional Information

For additional information scan the QR Code, visit the Wage and Hour Division FMLA website https://www.dol.gov/agencies/whd/fmla, and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243)

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