

# FAMILY & MEDICAL LEAVE ACT (FMLA)

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*HR Program Assistance Division*

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# FAMILY & MEDICAL LEAVE ACT (FMLA)

## INTRODUCTION

## PURPOSE

The purpose of this presentation is to provide information on the tools and resources available to help with management of the FMLA in Louisiana state agencies.

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## GOALS

*What we hope to accomplish.....*

- ❖ Inform on some key components of the FMLA as well as tools and resources to use to help manage the FMLA
- ❖ Provide guidance on steps that can be taken in Louisiana state agencies to manage and curb abuse of FMLA

# FAMILY & MEDICAL LEAVE ACT (FMLA)

## Key Components in the Regulations

The Family and Medical Leave Act was established August 5, 1993 for the purpose of helping employees balance their work and family life by taking reasonable leave for certain family and medical reasons.

- ❑ The Act entitles eligible employees to take up to a total of 12 workweeks of unpaid leave during any 12 month period (26 workweeks of military caregiver leave in a single 12-month period) for certain qualifying events.
- ❑ FMLA Regulations contained in Code of Federal Regulations Title 29 CFR Part 825.

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## Key Components in the Regulations

### Who is covered by the FMLA?

- Public agencies are covered employers; includes federal, state and local government (including state schools and colleges & universities)
- The 50-employee threshold does not apply for public agencies
- One state is considered one employer – State of LA is one employer!

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## Key Components in the Regulations

### What are the requirements for FMLA?

- Employees must meet the eligibility requirements
- Must have a qualifying condition
- Employers must provide notifications to employees
- Employees must provide certifications from a health care provider

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## Key Components in the Regulations

### **Eligibility for FMLA:**

- Must have been employed by the state for at least 12 months. The State of LA is considered is one employer.
- Must have physically worked for at least 1,250 hours during the 12-month period before beginning FMLA.
- 12 months need not be consecutive months.

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## Key Components in the Regulations

### Qualifying Reasons for FMLA:

- Birth of and care of newborn or placement for adoption or foster care,
- To care for spouse, child or parent with a “serious health condition”
- One’s own “serious health condition” that makes him unable to perform the functions of the employee’s job



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## Key Components in the Regulations

### Qualifying Reasons for FMLA (continued):

#### Military and military family members [new as of 2009]

- Qualifying exigency arising out of child, spouse or parent who is covered military on active duty
- Up to 26 workweeks in 12 month period to care for a service member with a serious health condition
- There are 8 nonmedical qualifying exigencies
- Military provisions can be found in detail in Title 29 CFR Part 825.112

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## Key Components in the Regulations

### ***KNOW THESE DEFINITIONS....***

- **Serious Health Condition** is an illness, injury, impairment or physical or mental condition that involves **inpatient care** as defined or **continuing treatment by a health care provider** as defined.
  - 2009 amendment provides clarification on what types of ailments qualify as a serious health condition. The amended language can be found in Title 29 CFR Part 825.115, #1 and #3.
  - Article in *HR News Magazine* by the International Public Management Association for Human Resources called “*Understanding and Utilizing the 2009 Amendments to the FMLA*” by Mark Meyerhoff and Lauren Liebes.

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## Key Components in the Regulations

Serious Health Condition changes in 2009 Amendments:

- Old version – Serious health condition was an ailment that required “continuing treatment” for more than 3 consecutive calendar days if employee or family member treated 2+ times by a health care provider. The regulations did not require a time for treatment to occur.
- New version – “Continuing Treatment” requires a period of incapacity of more than 3 consecutive, full days and 2 visits to a health care provider within the first 30 days of incapacity, absent extenuating circumstances. First medical visit must take place within 7 days of the first day of incapacity.
- No timeline in regulations prior to 2009 changes.

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## Key Components in the Regulations

### *Definitions...other terms used to determine entitlement are:*

- **Incapacity** means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment, or recovery.
- **Treatment** includes examinations to determine if a serious health condition exists and evaluations of the condition.

Definitions and specific examples are contained in the FMLA regulations found in Title 29 CFR Part 825.113.

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## Key Components in the Regulations

### 2 major components of Serious Health Condition: Inpatient Care and Continuing Treatment

- **Inpatient care** means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity as defined or any subsequent treatment in connection with inpatient care.

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## Key Components in the Regulations

### Continuing Treatment:

As shown in slides 10, 11 and 12,

- A period of incapacity of more than three (3) consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition;
- Treatment 2 or more times within 30 days of the first day of incapacity and first treatment....

Continuing treatment can also mean,

- Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment....

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## Key Components in the Regulations

### Continuing Treatment...

- Pregnancy or prenatal care;
- Chronic serious health conditions which continues over an extended period of time; requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g. asthma, epilepsy, MS, kidney disease, heart condition, diabetes, etc.)
- Permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal cancer);

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## Key Components in the Regulations

### Continuing Treatment....

- Conditions requiring multiple treatments, e.g. restorative surgery after an accident or injury, or absences for treatment such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy) or kidney disease (dialysis);
- Absences attributable to incapacity even if the absence does not last more than three consecutive, full calendar days, e.g. an employee with asthma may be unable to report for work due to the onset of an asthma attack.



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## **FMLA – Often confused as another type of leave?**

- FMLA is an entitlement period and not a leave type.
- FMLA regulations provide for employees to be granted unpaid leave for absences that are FMLA qualifying events.
- FMLA regulations also provide for employers to allow paid leave to substitute for the unpaid leave period.
- 2010 amendment to the FMLA allows employees to request use of accrued compensatory time (1.5K) concurrently with the FMLA.

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- General Circular #1126 dated October 8, 1993 – resource that provides information and salient points regarding FMLA for Louisiana state employees. These points are still applicable such as the few examples shown below:
  - LA state employees are required to use paid leave during FMLA entitlement periods (sick , annual and comp time).
  - Sick leave can only be used for the employee's illness and may not be used for taking care of a family member.

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The items discussed up to this point are key components in the FMLA regulations and help employers determine eligibility and entitlement to FMLA. Specific details are contained in Title 29 CFR Part 825.

**The following information is relative to managing the FMLA and curbing abuse of FMLA.**

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## Other 2009 amendments to the FMLA:

- Employers are obligated to ensure employees are fully informed of their FMLA rights.
- Employers have additional time to evaluate whether an employee is eligible for FMLA leave. The employer now has 5 business days instead of 2 business days.
- Employees are required to comply with normal “call-in” procedures for reporting absences, absent extenuating circumstances.
- Employees are required to notify employers that requested leave may qualify for FMLA and burden is on the employee.

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## Areas of Most Common Abuse of the FMLA

- FMLA use for stress
- Intermittent (or reduced schedule) Leave

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## –Stress

- Stress in and of itself is not an FMLA qualifying condition unless it meets the definition of serious health condition.
- The same test must be applied to determine if it meets the definition of serious health condition just as any other qualifying condition.

**Example:** *Employees often claim their jobs stress them out. And for some, it's so bad that they feel they need to take off work for a week or so to cope. That doesn't mean that employees are automatically entitled to use FMLA. Even if they get a doctor to write a note "prescribing" rest, they don't qualify for FMLA unless there's some additional treatment ordered, such as medication or counseling.*

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## –Intermittent and Reduced Leave Schedule

- Intermittent leave is leave taken in separate blocks of time due to a single FMLA qualifying reason, e.g. physical therapy sessions, qualifying illnesses of an episodic nature, planned medical treatment, etc.
- Intermittent or a reduced leave schedule must be for a medical necessity.
- Reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek or per workday, and changes the employee from a full-time to a part-time status.

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## –Intermittent leave (continued):

- Intermittent leave can be foreseeable or unforeseeable
- Foreseeable is when the leave can be anticipated such as planned medical treatments.
- Unforeseeable is when the leave is unanticipated and is more episodic.



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## Intermittent Leave – 2009 amendments

- Employees must make a reasonable effort and not just an attempt to schedule planned treatments so as to prevent disruptions to the employer's business.
- Regulations created a new “physical impossibility” exception for employees who work in positions where it is impossible to take intermittent or reduced leave during their shift.  
Example: flight attendant, lab tech working in a sealed lab.

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## Managing FMLA and curbing abuse:

1. Establish agency FMLA policy providing specific instructions and information; enforce.
2. Agency policy should contain procedures that are specific to that agency based on the required business operations and functions.

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## Managing FMLA and curbing abuse:

- Agency policy should contain (also refer to General Circular 1126):
  - ✓ Notification procedures; employee to supervisor and supervisor to HR;
  - ✓ Certification forms, deadlines, additional information, etc. Statement of functions should be included with certification for health care provider to assess the employee's ability to perform job functions;
  - ✓ Call in procedures (who to call, when to call, reason for the absence, duration of the absence, etc.);

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## Managing FMLA and curbing abuse:

- Agency policies should contain (continued):
  - ✓ Time and Attendance Procedures;
  - ✓ Intermittent leave procedures and parameters when using for FMLA absences;
  - ✓ Consequences for non-compliance;

**Note: FMLA is not a “one-size fits all”. Example: The needs of a correctional facility or 24-hour institution are very different than a Monday – Friday, 8 hour office.**

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## Managing FMLA and curbing abuse:

3. Don't be afraid to engage in discussions with employees regarding FMLA. It's okay to ask questions in order to determine continuing business operations;
4. Review certifications for completeness; if incomplete or insufficient, FMLA may be denied;

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## Managing FMLA and curbing abuse:

5. Seek additional information when necessary by requiring employee to obtain additional information;
6. HR can utilize option to contact medical providers directly when applicable;
7. Use options to seek 2<sup>nd</sup> and 3<sup>rd</sup> opinions, when necessary;
8. Get fitness for duty certifications

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## Managing FMLA and curbing abuse:

9. Provide tracking tool for supervisors to monitor absences and patterns;
  
10. Manage foreseeable intermittent leave;
  - ✓ Move employee to alternative position
  - ✓ Move employee to a different shift
  - ✓ Require planned treatments to be scheduled at times so as to not disrupt operations (days off, at the beginning or end of the day, etc.)

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## Responsibilities for managing FMLA:

- Manage FMLA using both FMLA regulations and agency policy;
- Agency administrators – establish roles, delegate authority to designate FMLA, support the policy and enforce;
- Human Resources – know the regulations, know the requirements, establish the process for notifications, communicate to supervisors and employees, work with supervisors and employees to manage FMLA;



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## Responsibilities for managing FMLA:

- Legal – know the FMLA regulations, know the law, advise HR and supervisors, support the agency's policy and defend in court of law;
- Supervisors – communicate with your employees. Engage in discussion in order to make accurate decisions in continuing operations, etc. Inform Human Resources and seek direction from HR and Legal when needed;
- Employees – adhere to policy; communicate and inform supervisors.

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## Tools and Resources Available:

- U.S. DOL website, FMLA regulations and FMLA Fact Sheets, <http://www.dol.gov/whd/fmla/>.
- Use U.S. DOL recommended forms to ensure you don't omit any questions or vital information.
- Consult with agency or contract attorneys for assistance.

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- ❖ **REMEMBER .....FMLA is the law**
- ❖ **COMMUNICATION is key between all parties**
- ❖ **TIMING is vital to ensure eligibilities and entitlements are adhered to**
- ❖ **CONSISTENCY in application is required**

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QUESTIONS?