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## The Family Medical Leave Act: The Current Regulations and Future Recommended Changes

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**The Family Medical Leave Act: The Current Regulations and Future Recommended Changes**

**by**

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**An Honors Thesis in partial fulfillment of the requirements for the degree Bachelor of Science in Business Administration in Management.**

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## **Introduction**

Over the summer of 2022, I had an internship where I worked in the FMLA department of a transportation company. This was my first introduction to the Family Medical Leave Act, how it worked, and the finer details of the process. During this time, I would look over the submitted medical documentation as well as form and send out approvals or denials based on the information. After this internship, I decided this would be the perfect topic for my thesis research. FMLA is a major part of some employees' lives, yet the general working population is largely unaware of it or what it can do for them. I find the lack of education on FMLA going into the workforce concerning when it is a major benefit that employees are entitled to. Additionally, after having first-hand experience with the FMLA process, I noticed some of the issues that are prevalent with the current state of FMLA, and the way employees can utilize it.

Throughout this paper, FMLA will be analyzed through multiple avenues. First, it's important to understand the history behind the legislation, why it was created, and its intended impact. Then the positive aspects of FMLA can be analyzed followed by the issues that come up for both employers and employees. Next, there will be an explanation of the new changes being made in different states and how these are effective. Finally, there is an analysis of the effects of FMLA in different industries and gives an example of a special case where there are FMLA adjustments.

Whether an employee has an unplanned medical occurrence, requires time to give birth and bond with their new baby, or must care for an ill family member, the Family Medical Leave Act will influence their careers. The Family Medical Leave Act allows for employees of qualifying companies to take medical leave to care for themselves, their family members, or to give birth and bond with the newborn (or adopted child). Qualifying family members under federal regulation include a spouse, child, or parent. Below is a guide on the basics of FMLA, the eligibility requirements, and the entitlements of employees.

### Eligibility requirements include:

- Working 1,250 hours in the past 12 months
- Work at a location where 50+ are employed within 75 miles
- Have worked for the employer for 12 months

### FMLA Entitlements include:

- 12 workweeks of unpaid leave to care for self or a qualifying family member
- 26 workweeks of unpaid leave to care for a sick or injured military family member
- Maintaining group health benefits
- Maintaining the same position at the company from before leave

## **History of FMLA**

On January 5<sup>th</sup>, 1993, the Family Medical Leave Act (FMLA) was signed into law. The act was meant "to grant family and temporary medical leave under certain circumstances" (*The Family and Medical Leave Act of 1993, as amended*). This includes taking time off from work to care for your personal medical issues, your parent's, your child's, and includes the birth or adoption of your child. FMLA was created because it was a frequent occurrence for employees to lose their jobs when taking time off due to serious illnesses where they would need more than one week off from work.

This was especially prevalent for women starting families in the workforce. It would be commonplace for women to lose their jobs when they would take more than four weeks off to have their child. It was a lose-lose situation, where the woman would have to either return to work too quickly—thus risking her health—in order to protect her job, or she would stay home to care for herself and her child, subsequently losing her job. According to New York Civil Liberties Union Senior Legislative Attorney Lisa Zucker, “Women continue to disproportionately bear the burden of family caregiving” (*Governor Hochul signs legislation expanding New York State's paid Family Leave*). This has made it difficult for people who have dealt with these health issues to advance successfully in the workforce in comparison to those who wouldn't need to take this leave (*History of FMLA explained*).

Due to these concerns, FMLA was created and signed into law. Under federal FMLA, an employee is entitled to 12 weeks of leave within a 12-month period for the previously listed reasons. This can be taken consecutively, broken into chunks, or applied via a part-time work schedule. While utilizing their leave, an employee has multiple legal protections when it comes to their current position at the company. For instance, the employee will maintain their benefits plan under their employment contract. Aside from their benefits, the employee will keep the position they held before they took their leave and will maintain this same position when they return to the workforce.

Another important aspect of FMLA is the requirement of workplaces to post FMLA information posters for employees to have access to. In 2002 the Supreme Court heard the case *Ragsdale v. Wolverine World Wide* in which an employee was never officially informed that she qualified for FMLA sick leave when she took seven months of leave. According to the Department of Labor, an employee's leave does not utilize FMLA time unless the company expressly informs said employee that they are utilizing their FMLA leave time. The employee requested more time off, thinking she had FMLA available, but the company denied her. When she did not return from her original leave request, she was subsequently fired. There was a disagreement, leading Ragsdale to sue the company, over whether she should get an additional 12 weeks of official FMLA leave because the company did not disclose her use of her FMLA hours to her. In the final ruling, the Supreme Court ruled that Ragsdale did not qualify for this penalty provision (Bland, T. S.). However, this case is relevant as it highlighted the importance of displaying proper FMLA rights posters in the workplace as well as written policies that inform employees of their legal FMLA rights. At a minimum, employers must notify employees of their federal rights when an employee makes an FMLA request.

### **What Works**

The foundation for the Family Medical Leave Act is as follows, allowing employees to take leave for up to 12 weeks to care for themselves or a family member. One of the major safeguards that FMLA provides is job security. Jobs are legally protected while an employee takes a necessary leave for any qualifying leave, as well as protected seniority and benefits. Employees are also eligible to use their benefits while taking an FMLA leave, so they do not have to worry about finding a new way to cover insurance and similar benefits. There is also schedule flexibility with FMLA. Employees can elect for intermittent leave or block leave depending on the condition and needs they must meet. Intermittent leave allows employees to have a certain number of days or hours off per week or month, allowing them to take time off during possible flare-ups, doctor's appointments, and other qualifying reasons. Block leave would allow for an employee to take a larger consecutive period off work if, for instance, they were recovering from

surgery or caring for a family member full time. As medical conditions can be unpredictable, intermittent leave allows employees more peace of mind in that if a flare-up or an emergency occurs with their condition, they can take the time off that they require while knowing that their job and benefits are entirely secured.

FMLA has been shown to increase labor participation in the workforce. This is because employees who are more likely to take leave are more inclined to join the workforce due to these set protections (Boushey, H., O'Leary, A., & Mitukiewicz, A.). FMLA has also been proven to increase the amount of time women spend in the workforce. Before FMLA, women were more likely to quit their jobs to take time to care for a newborn child. FMLA guarantees their jobs and benefits for when they want to return to the workforce, thus incentivizing women to return to their previous jobs more quickly. FMLA also increases retention within companies. This can be seen, again, through mothers who return to their jobs after taking FMLA time to care for a newborn. FMLA policies increase the likelihood, from 10 to 17%, of mothers returning to their previous jobs after their leave. Due to employee retention from FMLA, employees also see an increase in their lifetime earnings as well as their retirement savings (Boushey, H., O'Leary, A., & Mitukiewicz, A.).

## **Challenges**

### Employer Side

While employers will do their best to stay compliant with FMLA, there are many factors that can create challenges for them. The Society of Human Resources delivered a letter to the U.S. Department of Labor in September 2020 that listed the difficulties HR professionals face when dealing with federal FMLA. One factor is the definition of a serious health condition. Employers tend to struggle with identifying what calls under “continuing treatment by a health care provider” as the federal regulation states. There can be gray area when it comes to what continuous treatment looks like, or “If there is not 'continuing treatment,' then it does not constitute a 'serious health condition' under the regulations. However, if the employee does receive additional treatment, it's not clear whether these initial three absences are related to a serious health condition" (Stephen, S.). Along with this, HR professionals are less likely to challenge an employee's certification due to possible disputes regarding their decision due to the unclear directives. There are also frustrations among employers due to unclear paperwork received by healthcare providers. They find that the filled-out paperwork is not specific enough and it is difficult to identify why the employee requires this leave. Employers have also found trouble when it comes to intermittent leave, as this type of leave is most likely to be abused. This could be seen as employees who use their FMLA time to pad possible tardiness or employees who routinely take off every Monday or Friday. According to Marc Freedman, the day after the Super Bowl is when FMLA leave is most used (Ludden, J.). Another issue that has arisen is employees who are not providing notice of foreseeable leaves until after it has begun. Finally, the letter identified that “timely responses from employees and their physicians” (Stephen, S.) was another major issue. Employers are able to ask for clarifying documentation for an employee's FMLA request, however, there is no set timeline on when an employee must return such paperwork. This then creates an unnecessarily delayed process for employers.

### Employee Side

Employees face a multitude of issues when applying for FMLA. According to The Department of Labor, “only 56 percent of U.S. employees are eligible for FMLA” (Brown, S., Roy, R., &

Kierman, J. A.). 21 percent are ineligible due to hours worked, 15 percent due to size of their workplace, and 7 percent is due to a combination of the above. Additionally, low-wage workers are disproportionately affected by FMLA eligibility, with only 38% of workers earning under \$15 per hour being eligible. Part-time workers find it very difficult to meet the 1,250 hours required. Another issue employees face is the fact they cannot care for certain people in their lives that may need their assistance. In the majority of states, employees cannot care for their siblings, grandparents, grandchildren, and parents-in-law as it is not covered. Additionally, employees are not always well educated on FMLA. Many do not know their eligibility, how to apply, or that it is even offered.

## **Coast to Coast: California and New York**

### **California**

The California Family Rights Act (CFRA) has provided some of the most progress when it comes to family rights across the country. The CFRA follows the federal Family Rights Act and has created additions to include many more people and possible emergency situations that employees may encounter. California has made great changes in widening their inclusions to allow employees more peace of mind when these emergencies do occur. These provisions include caring for an adult child, the child of a domestic partner, a grandparent, a grandchild, and siblings. California has also addressed parents who must share FMLA time. Under federal FMLA regulations, spouses who work at the same company and have a child or adopt a child together must split 12 weeks between the two of them. California has eliminated this and allows both parents to have their full 12 weeks off individually (*Medical, and Pregnancy Disability Leave for Employees in California*). On top of employee provisions, CFRA has adjusted the qualifications for employers to provide FMLA for their employees, including worksite mileage. Rather than providing coverage for private businesses that employ 50 or more employees within 75 miles of the worksite, CFRA has adjusted this to 5 or more employees. Included in this change are part-time employees. This has led to many more workers becoming eligible for CFRA.

### **New York**

New York is also considered to have one of the most comprehensive FMLA programs in the country. Additionally, to federal FMLA regulations, New Yorkers can assist loved ones when a spouse, domestic partner, child, or parent is deployed abroad on active military service. New York has also created changes that have gone into effect on January 1, 2023. These include expanding care to siblings. This considers biological siblings, stepsiblings, half-siblings, as well as adopted siblings. On top of this, siblings can be located out of state or even out of the country (*New York State*). Employees can also request leave for Covid 19 quarantine or their minor/dependent child's quarantine. Another benefit of New York Family Leave is that it is paid. Employees will "receive 67% of their average weekly wage, up to a cap of 67%". The maximum weekly benefit that employees can receive is \$1,131.08. Employees can also take payroll deductions of (a now lowered percentage) .455% of their wage per pay period to contribute towards New York State Paid Family Leave insurance (*New York State*). Governor Kathy Hochul pushed for and signed the bill that created the additional coverage of siblings under the New York FMLA. This is following the lead of California which has covered siblings since January 1, 2021. This bill had support and comments from numerous figures including State Senator Joseph P. Addabbo, Jr., New York State Workers' Compensation Board

Chair Clarissa M. Rodriguez, and New York State Department of Labor Commissioner Roberta Reardon, among several others. States, such as California, were making headway in the expansion of their FMLA regulations and New York wanted to continue this trend as well as maintain having the most comprehensive FMLA regulations in the country—thus the push for bigger changes that have since gone into effect.

### Comparison

Both states have set important precedents when it comes to FMLA laws and regulations. Lawmakers have investigated the chronic weak spots of federal FMLA and sought to fill them for their state's employees. The inclusion of siblings, grandchildren, and allowing parents to have their own full 12 weeks of leave are all major improvements when it comes to employee leave. These states have also created countless more eligible employees who can now utilize their state's more advanced leave policies.

### **Different Industries**

#### Union vs. Non-union Employees

While FMLA applies to all employees equally, there are some benefits that union employees may see that non-union employees won't. In the workforce, there is a lack of FMLA knowledge among employees. Many employees may be uninformed about FMLA, unaware that they are eligible, or unsure of the requirements and coverage. Employers are required to post FMLA information in employee common rooms, but outside of this, there is not a lot of information outrightly provided. Employees either must seek out the information from their Human Resources department or do their own research. However, Union employees have an advantage which comes in the form of their labor unions and labor union representatives. Through these representatives, union employees can be provided with workshops, information brochures, and knowledgeable representatives who can provide details on FMLA and help analyze individual eligibility. These representatives can also advocate the validity of certain FMLA denials for union members, as they have a more in-depth understanding of the processes. Another benefit of labor unions and representatives is collective bargaining. "To facilitate FMLA leave-taking, unions can also negotiate contract provisions for the maintenance of benefits (in addition to health benefits, which must be continued under the FMLA), accrual of seniority, and expansion of leave time beyond the FMLA-prescribed twelve weeks" (Budd, J. W., & Brey, A. M.). When comparing hourly union and non-union workers, "those covered by union contracts were significantly more likely to have fully paid leaves: 46% versus 29%." (Budd, J. W., & Brey, A. M.). This indicates the benefits and effectiveness of the bargaining agreements for union workers. With the increased FMLA education and improved FMLA contracts through their bargaining agreements, union employees are more likely to take their leave. "Unionized workers were more likely to take a leave of any kind, and that unionization increased the likelihood that a leave was paid" (Park, T.-Y., Lee, E.-S., & Budd, J. W.).

It has also been found that union employees feel more secure in their position when utilizing their FMLA than their non-union counterparts. "Among hourly nonunion employees, 32.6% worried about losing their jobs and 18.5% about losing seniority compared to 18.5% and 8.7%, respectively, of union employees." (Budd, J. W., & Brey, A. M.).

#### Special Case: Airline Industry



While FMLA works with most industries, there are some career paths that prove to be special cases and require certain adjustments for FMLA eligibility. Flight crews are one major example of how FMLA has been adjusted to accommodate their industry. Those that fall under these adjustments are airline flight crews, which includes flight crew members and flight attendants. Because of their special work schedules and travel, their hours worked for eligibility are different than the standard 1,250 hours worked in the last twelve months. Instead, the crew member must have worked or been paid for 60% or more of their monthly schedule or have worked for more than 504 hours. These 504 hours, however, do not include personal commute time, time on vacation, medical, or sick leave. Every flight crew member is entitled to 72 days of FMLA leave. This was calculated based on a six-day workweek and multiplied by the 12 workweek FMLA entitlement. For military caregiver leave, this calculates to 156 days of leave (Department of Labor).

While block leaves are the same for flight crew members, intermittent or reduced schedules can be handled differently. For example, if a flight crew member needs to take two hours off via intermittent leave for an appointment or flare-up, the employer can request that the employee take off the entire workday and use a full day of FMLA leave. However, employers cannot request the employee take off any more than one full day. Most employers are unable to make this request, but due to the nature of flight crew schedules, this change has been made for the airline industry.

### **The Current Field & Recommendations for Change**

FMLA was a long-awaited, and necessary, change that employees needed to see when it came to medical leave legislation. One of the intentions behind creating and passing FMLA was to create more opportunities for women to continue and build their careers in the workforce, as they are disproportionately affected by leave due to giving birth and heavier expectations, than their male counterparts, of taking time off to care for sick children and family. It also was intended to allow people with more health issues to still develop their careers without being set back more frequently. While FMLA has made improvements for many individuals, there is still progress that can be made.

A major issue is when it comes to general FMLA knowledge among employees. In general, many employees are unaware of their FMLA rights, that they are eligible, or what eligibility requires. Because employees are uninformed, they don't know what their options are when FMLA eligible leave comes up in their lives. There are also many employees who assume they are eligible when they aren't, leading to the same issue. Employers are required to provide merely a poster in an employee common space that briefly describes FMLA. This is not nearly enough information for employees to truly know about FMLA and their eligibility. It is important for companies to prioritize educating their employees on their benefits, but more specifically FMLA, so that they can use their designated time when needed. When given formal education on FMLA, and the ability to use it properly, employers can see an overall positive effect on their employees and their business.

Another change that needs to be made is the "family" members who are included under family caregiver leave. There are more and more people across the country who fall under a non-traditional/non-nuclear family structure who are unable to care for their loved ones under FMLA. States that were discussed previously, such as California and New York, have been making strides when it comes to the inclusion of extended family members. Employees need time off in order to care for people other than spouses, children, and parents. Inclusions could look like

grandparents and grandchildren, siblings, in-laws, etc. It is important that legislation stays up to date with the current needs of employees and society, rather than staying stagnant with the needs of when it was first passed.

While FMLA made a major change in the way both employees and employers look at medical leaves, it has-in recent years-become outdated and requires important revisions in order to better help the current workforce.

## Citations

- The Family and Medical Leave Act of 1993, as amended*. DOL. (2009, December 21). Retrieved March 16, 2023, from [https://www.dol.gov/agencies/whd/fmla/law#SEC\\_104\\_EBP](https://www.dol.gov/agencies/whd/fmla/law#SEC_104_EBP)
- Governor Hochul signs legislation expanding New York State's paid Family Leave*. Governor Kathy Hochul. (2021, November 1). Retrieved March 16, 2023, from <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-expanding-new-york-states-paid-family-leave>
- History of FMLA explained*. Labor Law Education Center: Learn About Labor Laws in Your State. (2016, October 11). Retrieved March 16, 2023, from <https://www.laborlawcenter.com/education-center/history-of-fmla/#:~:text=Before%20FMLA%2C%20women%20routinely%20lost,effort%20to%20protect%20their%20jobs.>
- Bland, T. S. (2018, April 11). *Employment law: The Supreme Court reins in the FMLA (slightly)*. SHRM. Retrieved March 16, 2023, from <https://www.shrm.org/hr-today/news/hr-magazine/pages/0702bland.aspx>
- Boushey, H., O'Leary, A., & Mitukiewicz, A. (2013, December 12). *The Economic Benefits of Family and Medical Leave Insurance*. Center for American Progress. Retrieved March 16, 2023, from <https://www.americanprogress.org/article/the-economic-benefits-of-family-and-medical-leave-insurance/>
- Stephen, S. (2020, September 21). *HR Professionals Struggle over FMLA Compliance, SHRM Tells the DOL*. SHRM. Retrieved March 16, 2023, from <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/hr-professionals-struggle-over-fmla-compliance-shrm-tells-the-dol.aspx>
- Ludden, J. (2013, February 5). *FMLA Not Really Working for Many Employees*. NPR. Retrieved March 16, 2023, from <https://www.npr.org/2013/02/05/171078451/fmla-not-really-working-for-many-employees>
- Brown, S., Roy, R., & Kierman, J. A. (2020, July). *Employee and Worksite Perspectives of the FMLA*. dol.gov. Retrieved March 16, 2023, from [https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHd\\_FMLA2018PB1WhoIsEligible\\_StudyBrief\\_Aug2020.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHd_FMLA2018PB1WhoIsEligible_StudyBrief_Aug2020.pdf)
- California, S. of. (n.d.). *Family, medical, and pregnancy disability leave for employees in California*. CRD. Retrieved March 16, 2023, from <https://calcivilrights.ca.gov/family-medical-pregnancy-leave/>
- New York State. Paid Family Leave*. (n.d.). Retrieved March 16, 2023, from <https://paidfamilyleave.ny.gov/>

- Budd, J. W., & Brey, A. M. (2003). *Unions And Family Leave: Early Experience Under The Family And Medical Leave Act*. *Labor Studies Journal*, 28(3), 85–105.  
<https://doi.org/10.1177/0160449X0302800304>
- Park, T.-Y., Lee, E.-S., & Budd, J. W. (2019). *What Do Unions Do for Mothers? Paid Maternity Leave Use and the Multifaceted Roles of Labor Unions*. *ILR Review*, 72(3), 662–692.  
<https://doi.org/10.1177/0019793918820032>
- Department of Labor. (2013, February). *Fact sheet #28J: Special rules for airline flight crew employees under the family and medical leave act*. DOL. Retrieved March 16, 2023, from <https://www.dol.gov/agencies/whd/fact-sheets/28j-fmla-airline-crew>