

## **FMLA Moving Forward**

**ABSTRACT:** The purpose of this paper is to provide an overview of the FMLA and provide updated data explaining how this Federal Law is being applied in the workforce and is currently being both utilized and underutilized in protecting the rights and entitlements of employees under Employment Law.

**By**

**Albert D. Clark, Juris Doctor**

**Southern University**

albert\_clark@subr.edu

### **Introduction**

The FMLA is a Federal Law that applies to all states. It creates legal entitlements which protect employees if they are wrongfully denied leave of absences, reinstatement, or eventual termination from their jobs. The Family Medical Leave Act (29 U.S.C sec 2601) allows a qualified employee to take a 12-week leave of absence from work in any 12-month period. At the end of the leave of absence the employer is required to allow the employee to return to their old job or a comparable job without a reduction in benefits, seniority, or responsibility. You are covered by FMLA if you work in the public sector, or work for a company or organization that employs at least 50 people within a 75-mile radius of your workplace. You must have worked for that employer at least 1,250 hours in the last 12 months. It does not cover leaves taken to for the care of in-laws. An employee can take the 12 weeks leave consecutively or intermittently. The leave time can start or stop depending on the actual time needed to care for their own health or the health of their families.

Research by the National Partnership for Women & Families estimate that since its inception, the FMLA has been used nearly 463 million times by working people who needed to care for their own health or the health of their families. The National Partnership estimates that in 2022 alone nearly 15 million

workers were supported by the FMLA. Even so, some proponents feel that it is still underutilized. According to a 2018 survey by the U.S. Department of Labor, nearly half of U.S. workers are not eligible for FMLA leave because of too few hours or months worked, an ineligible small employer, or too few hours worked and a smaller employer. Women, Women of Color, and Solo Parents are more likely to be unable to take a needed FMLA leave and are inappropriately affected.

### **Who is Eligible?**

The FMLA was passed in 1993 and qualifying circumstances for an employee leave would include 1) the birth of a child, 2) childcare within the first year of the birth of the child, 3) spousal care, childcare or parental care for a relative with serious health (including a mental health) conditions, 4) or a serious health condition that prevents the employee from performing essential functions of the job. The employee must be able to certify through his doctor or medical professional that the medical condition is real or that the condition of the immediate family member is real. This includes pregnancy, the birth and care of a newborn, and the placement or subsequent care of an adopted or foster care child. The law includes care for an injured armed service member. The Law also includes care for LGBTQIA+ spouses.

### **Penalties and Coverage**

Penalties for Violating FMLA have had courts awarding twice the number of financial damages that employees sustained in terms of salary and reinstatement as well as their legal fees. This most often happens when an employee takes an unapproved but warranted leave or is retaliated against for simply asking for leave or is asked or forced to do work while on leave. The employ usually ends up getting fired for refusing to do the requested work, which leads to a cause of action. As of February 03,2014, Louisiana's Family and Medical Leave Act Policy passed the Louisiana legislature and became effective state law. It details how the Louisiana Department of Health (LDH) applies the FMLA in Louisiana and details and adopts the special Military Caregiver Leave benefit package, which can last up to 26 weeks in a single 12-month period. It should be noted that unless there is a special benefit package, employers ordinarily Do Not Pay employees' salaries during their leave of absence under the FMLA. However, employees may use employer provided paid leave under benefit plans that had been previously negotiated in their contracts under the terms of employment. An Employer may also require an

employee to use their insurance for leave time, but if the insurance was acquired through the company and the employee decides not to return to their former job, the employer has a right to demand reimbursement for the premium amount paid.

Employees are allowed to work while on leave under FMLA, if the employee desires to do some essential or necessary work required by the job. The work must be voluntary and not forced upon the employee by the employer. You cannot lie about your health or Leave situation for that is considered Fraud. You should also update your employer regarding your leave situation. Employees also cannot violate a company policy on Moonlighting or doing outside work that would undermine their work at the regular job.

### **How to get started?**

In getting started The U.S. Department of Labor (Wage and Hour Division) has developed optional use forms which can be used by employers to provide required notices to employees and by employees to provide certifications of their need to take a leave for an FMLA qualifying reason. Employees are urged to start the process and contact their HR departments to help with the process when possible. Forms can also be directly downloaded from the internet on the Department of Labor website. It is always best to seek advice before the process or requesting a FMLA leave is started.

### **Louisiana Update and Paid Leave**

Understand that Leave and Paid Leave on the job are two different animals. Although calls for change have been made, Louisiana still does not have a universal Paid family leave program. There are 5 states (WA, CA, NY, NJ, MA) and DC that have adopted and fully implemented leaves for a minimum of 6 weeks following the birth, adoption, or the placement of a child in foster care. These states are focused on childcare, not family care. In 2021 a Regular Session House Resolution (NO.118) by Representative Carpenter was made and passed in the Louisiana Legislature. It created a Task Force to make recommendations for implementing a state mandated paid family and medical leave program for the benefit of all Louisiana workers. A partisan paid leave Bill was also introduced by Senator Regina Barrow but died in committee, March 3, 2022. The Elephant in the room still begs the question, of who would pay the bill for a statewide paid family leave program? Despite new ideas, plans, and scheduled meetings, this is the point where the discussion generally comes to an end. Most business would people

argue that the expansion of paid family benefits would simply be cost prohibitive in today's current business climate.

### Key Words

Employee, Employer, Eligibility, Leave, Paid Leave, Employment Law, Military Caregiver Leave

### References:

1. Branigan Robinson E – FMLA Explained by an Employment Lawyer, [https://www.youtube.com/watch?v=hoCjHCM-a-Q&t=251s&ab\\_channel=BraniganRobertson](https://www.youtube.com/watch?v=hoCjHCM-a-Q&t=251s&ab_channel=BraniganRobertson)
2. FMLA (The Family Medical Leave Act (29 U.S.C sec 2601)
3. David Frank, The Family and Medical Leave Act Remains Vital for older Works, (AARP) Feb. 5 , 2018 [Family, Medical Leave Act Vital for Older Workers \(aarp.org\)](#)
4. Louisiana's Family and Medical Leave Act [Microsoft PowerPoint - FMLA Workshop Presentation \(louisiana.gov\)](#)
5. Caileen Kehayas What is FMLA? Demystifying Maternity Leave and Family Leave Laws
6. Career Contessa, [What is FMLA? Everything an Employee Needs to Know | Career Contessa](#)
7. Robert Ottinger Family Medical Leave Act : Top Five Violations - Employment Lawyer, [\(36\) Family Medical Leave Act: Top 5 Violations - YouTube](#)
8. Family Medical and Leave Act, The U.S. Department of Labor (Wage and Hour Division), [Family and Medical Leave Act | U.S. Department of Labor \(dol.gov\)](#)
9. Jeff Novack FMLA Insights -2022 Midwinter Report (ABA)... [FLSL-ABA-2021-midwinter-FMLA-report.pdf \(fmlainsights.com\)](#), ) <https://www.fmlainsights.com/wp-content/uploads/sites/813/2021/02/FLSL-ABA-2021-midwinter-FML>
10. Employee Assistance Group, Julie Ferguson, Regulatory, Tools, Workforce Management, April28,2022 [2022 FMLA Update: News, tips, and key tools - ESI Group \(theeap.com\)](#)
11. Goldie Davidoff, Associate, Jeff Nowalk, shareholder, What's New in Paid Family and Medical Leave act in 2023? [What's New in Paid Family and Medical Leave in 2023? | Littler Mendelson P.C.](#)
12. Key Facts : The Family and Medical Leave Act [Key Facts: The Family and Medical Leave Act - National Partnership for Women & Families](#)

-