

FMLA & HIPAA GUIDELINES

What Managers and Supervisors Need to Know

ORU

ORAL ROBERTS UNIVERSITY

WHAT IS FMLA?

Family and Medical Leave Act of 1993 (FMLA)

The Family and Medical Leave Act of 1993 is a United States labor law requiring covered employers to provide employees with job-protected and unpaid leave for qualified medical and family reasons.



Promotes the stability and economic security of families



Balances employees' workplace and family needs while accommodating legitimate interests of employers



Minimizes discrimination while promoting equal employment opportunities for men & women



Allows employees to take reasonable leave for important health and medical reasons



FIVE



FAST FACTS
ABOUT FMLA



FMLA APPLIES TO CERTAIN EMPLOYERS

Private-sector employers with 50 or more employees for 20 or more weeks in a year

Public agencies including state and local government employees

Private and public education agencies (schools)

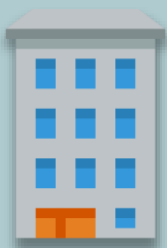


NOT ALL EMPLOYEES ARE ELIGIBLE FOR FMLA COVERAGE



Have worked at least
1,250 hours
over the previous 12 months before leave is to begin

Have worked for the employer for at least
12 months
(need not be consecutive)



Work at a location with at
least **50** **company**
employee
Within 75
miles



FMLA COVERAGE HAS CERTAIN GUARANTEES



Up to 12 weeks of **unpaid job-protected** leave in a 12-month period for certain family and medical reasons



Special family military leave entitlements for eligible employees



Maintenance of group health benefits while on leave



Employee can return to same or equivalent position at end of leave (with some exceptions)



FMLA HAS CERTAIN QUALIFYING REASONS

Employees **do not** need to specifically mention “FMLA” when seeking leave for an FMLA-qualifying reason. An employee is eligible for FMLA if they have a qualifying reason.

FMLA QUALIFYING REASONS

Birth or placement of a child

Parents are entitled to FMLA leave for the birth or placement of the child and/or to be with the healthy child after the birth or placement (bonding time)

Employees may take FMLA leave before the actual birth, placement or adoption

Leave must be completed by the end of the 12-month period beginning on the date of the birth or placement

40 CONTINUED

FMLA QUALIFYING REASONS

Serious health condition that makes the employee unable to perform the functions of his or her job

An employee is “unable to perform the functions of the position” where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position.

Caring for spouse, son, daughter or parent with a serious health condition

An employee must be needed to provide care for his or her spouse, son, daughter, or parent because of the family member's serious health condition in order for the employee to take FMLA leave.

40 CONTINUED

FMLA QUALIFYING REASONS

Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty

Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty. Including:

- Child care arrangements
- Taking leave to spend time with a military member on Rest and Recuperation
- Making financial or legal arrangements to address a covered military member's absence
- Etc.

To care for a covered service member with a serious injury/illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member

Eligible family members of both current service members and certain veterans are entitled to military caregiver leave



EMPLOYERS AND EMPLOYEES HAVE FMLA RESPONSIBILITIES



Covered employers must adhere to specific guidelines to remain compliant.



Employees must follow FMLA and employer guidelines when utilizing FMLA.

EMPLOYER RESPONSIBILITIES

DO'S



Post required FMLA notices



Inform employees of their FMLA rights



Properly record FMLA leaves



Inform employee of qualifying leave status

DON'TS



Hinder employees' FMLA rights



Retaliate or discriminate for use of FMLA rights



Contact the employees' healthcare provider



Force the employee to work while on leave

SUPERVISOR RESPONSIBILITIES



RECOGNIZE

Be able to identify when a circumstance may qualify for FMLA.



RESPOND

Inform the employee that their circumstance could qualify for FMLA.



COMMUNICATE

Alert HR that your employee's circumstance may qualify for FMLA.



Inform HR when an employee is absent for more than 4 days.

EMPLOYEE RESPONSIBILITIES



- **Provide sufficient and timely notice of the need for leave**
- **Consult with employer regarding scheduling of planned medical treatment**
- **Provide certification to support the need for leave**
- **Provide periodic status reports – typically every 2 weeks**
- **When requested, provide fitness-for-duty certification prior to returning to work**

HIPAA

Health Insurance Portability & Accountability Act of 1996

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that required the creation of national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge.

The US Department of Health and Human Services (HHS) issued the HIPAA Privacy Rule to implement the requirements of HIPAA. The HIPAA Security Rule protects a subset of information covered by the Privacy Rule.

What is HIPAA Compliance?

HIPAA compliance is adherence to the physical, administrative, and technical safeguards outlined in HIPAA, which covered entities and business associates must uphold to protect the integrity of Protected Health Information (PHI).



HIPAA KEY TAKEAWAYS



Employers may ask for a doctor's note or other health information if they need the information for sick leave, workers' compensation, wellness programs or health insurance



Employer **may not** contact your health care provider directly



Generally the Privacy Rule applies to the disclosures made by your health care provider, not the questions your employer may ask.



Privacy Rule **does not** apply to your employment records.

Direct all Inquiries for FMLA to HR

Help us manage FMLA for our employees. This includes all positions, both faculty and staff.

QUESTIONS?

- Tracy Gillean, Benefits Specialist tgillean@oru.edu
- Briana Clarke, HR Manager & Talent Specialist
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- Danny Sexton, Risk Management & Title IX Coordinator
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Presentation available online at [Employee HUB /HR / Employee Resources](#) [Employee Information](#)

FAQ

- **Can employees be on ADA and FMLA at same time?**
 - In most circumstances FMLA and ADA are separate. ADA might be a follow up to a FMLA leave. ADA is designated for a working employee needing modifications to their role based on a mental or physical disability. FMLA is a leave of absence for a specific period of time.
- **Can you work part-time on FMLA?**
 - Yes, this is called intermittent leave. It may require some paperwork in order to set up, but it is a viable option for a quicker return to work. Your doctor must release you to do so.
- **If you don't pay the medical premiums while on leave, can you get back on plan at your return?**
 - It is a requirement that premium payments are made so there is no lapse in coverage. Upon your return, any due premiums will be deducted from payroll. It's best to retain coverage so you can use the plan as needed while on leave.
- **Can we hire a temporary worker while the employee is on unpaid leave?**
 - This would be a conversation with budget, but it may be an option.
- **Why would someone file for FMLA instead of just using their sick time?**
 - First response would be because it is part of our policies at ORU. Secondly, it is a federal requirement that HR must adhere to. Thirdly, we never know what our recovery looks like. Sometimes we think we will be back with no complications, but that is not always the reality. FMLA protects your position and allows you to concentrate on your full recovery so you can return to work - ready to address the job requirements.