

Leave and Disability: FMLA, LOA, and everything in between

Katie Fischer SPHR, SHRM–SCP
HR Generalist

FMLA

- ▶ Family Medical Leave Act of 1993
 - Entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

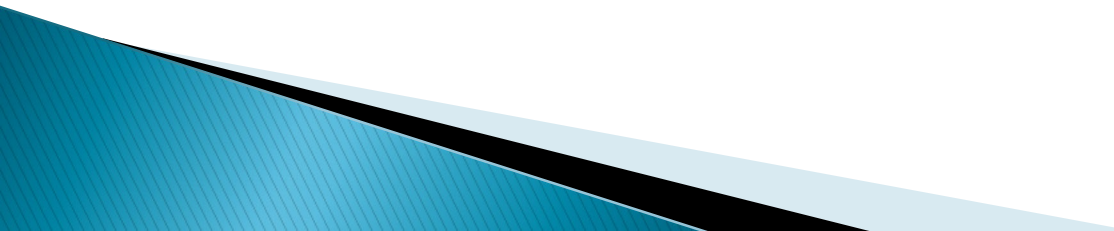
Who is a covered employer?

- ▶ Private-sector Employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year
 - When calculating employees, include locations within 75 miles
 - Includes joint employers
- ▶ Covered employers must display a general notice, FMLA Poster, in plain view for all workers and applicants to see.
- ▶ Must provide a general notice containing same information on poster in its employee handbook (or other written material about leave and benefits). If no handbook, must distribute the general notice upon hire.

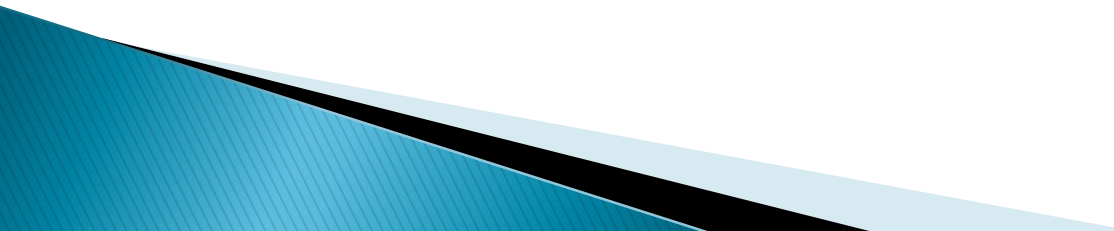
**Both poster and general notice may be distributed electronically.



FMLA Overview

- ▶ Provides up to 12 workweeks of unpaid leave a year
 - ▶ Required Group Health Benefits to be maintained during leave. Other benefits are governed by company policy.
 - ▶ Employees are entitled to return to their same or equivalent job at the end of the leave.
- 

FMLA 12-month period

- ▶ An employer is permitted to choose one of the following methods for determining the “12-month period” in which the 12 weeks of leave entitlement occurs:
 - ▶ The calendar year.
 - ▶ Any fixed 12-month leave year, such as a fiscal year.
 - ▶ The 12-month period measured forward from the date any employee's first FMLA leave begins.
 - ▶ A rolling 12-month period measured backward from the date an employee uses any FMLA leave.
- 

Who is eligible to take FMLA?

- ▶ The employee must:
 - Work for a covered employer
 - Have worked for the employer for 12 months (not required to be consecutive)
 - Have worked 1,250 hours during the 12 months prior to the start of leave
 - Only includes “worked” hours
 - Paid, Unpaid, FMLA leave not included

Qualifying Conditions

Up to 12 workweeks in a 12 month period for the following:

1. Birth of a son or daughter, and to bond with newborn child
 - Applies to both mother and father
 - Expectant mother may take FMLA leave for prenatal care or if the pregnancy makes her unable to work prior to the actual birth.
2. Placement with the employee of a child for adoption or foster care, and to bond with that child

Qualifying Conditions (cont'd)

3. Care of immediate family member (spouse, child, or parent– but not parent “in-law”) with a serious health condition
 - Child must be under 18 unless child is incapable of self care because of mental or physical disability at the time FMLA leave starts
 - Spouse means a husband or wife as defined or recognized in that state where the individual was married and includes common law or same-sex marriage
4. Employee unable to work due to own serious health condition

What is a serious health condition?

▶ Serious health condition

- conditions requiring an overnight stay in a hospital or other medical care facility;
- conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than three consecutive days and have ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
- chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and
- pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).

▶ Chronic serious health condition

- requires “periodic visits” for treatment by a health care provider or nurse under the supervision of the health care provider
- continues over an extended period of time
- may cause episodic rather than continuing periods of incapacity.
- The regulations clarify this definition by defining “periodic visits” as at least twice a year.

****This information should be provided by health care provider. ****

Qualifying Conditions (cont'd)

5. A qualifying exigency for families of members of the **regular Armed Forces, National Guard and Reserves** when the covered military member is on active duty or called to active duty in support of a contingency operation **in a foreign country**. This leave may commence as soon as the individual receives the call-up notice. A qualifying exigency must be one of the following:
- Short-notice deployment.
 - Military events and activities.
 - Child care and school activities.
 - Financial and legal arrangements.
 - Counseling.
 - Rest and recuperation (up to 15 days)
 - Post-deployment activities.
 - Additional activities that arise out of active duty, provided that the company and the employee agree, including agreement on timing and duration of the leave.
 - Parental care—employee may take leave to care for the parent of the military member who is incapable of self-care. The parent must be the military member's biological, adoptive, step, or foster father or mother. As with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

Qualifying Conditions (cont'd)

FMLA provides for up to 26 weeks of leave in a single 12-month period for the following circumstance:

6. To care for a spouse, son, daughter, parent or next-of-kin covered servicemember with a serious illness or injury incurred in the line of duty on active duty. Next-of-kin is defined as the closest blood relative of the injured or recovering servicemember. This type of FMLA leave is also known as military caregiver leave or covered servicemember leave.

Covered Service Members is:

- current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list, for a serious injury or illness
- veteran of the Armed Forces (including the National Guard or Reserves) discharged within the five year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered servicemember.



Qualifying condition..now what?

Employee Responsibility

- ▶ When leave is foreseeable employee must provide at least a 30 day notice. When unforeseeable notice must be provided as soon as possible and practical.
 - Employer may require employee comply with the employer's normal policies for requesting leave.
- ▶ Employee has at least 15 calendar days to obtain medical certification.

Employer Responsibility

- ▶ Once receive notice or employee is out 3 consecutive days provide the employee with notice of eligibility and rights (WH-381) and certification (WH-380 E/F, WH-384, 385, 385-V) within 5 business days or when the employer requires knowledge that an employee leave maybe for FMLA qualifying reasons.
- ▶ Once receive certification, within 5 business days must provide a notice of designation (WH-382).
 - If certification is incomplete: employer must state in writing what additional information is necessary and allow at least 7 calendar days for completion.
 - **If leave is to bond with a newborn child or a child placed for adoption or foster care you may not request a certification.

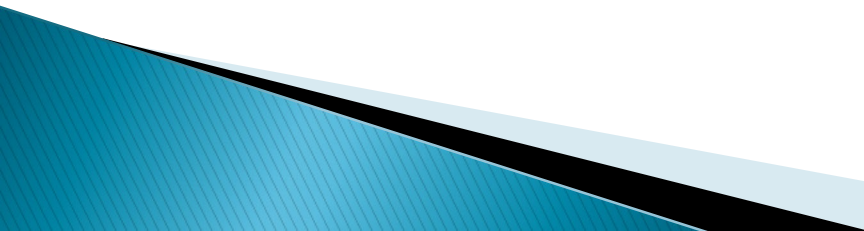
Certifications

- ▶ Once you get a certification, the employer may:
 - ask the health care provider if the information contained on the form was completed or authorized by him or her, or ask questions to clarify the handwriting on the form or the meaning of a response. Under no circumstances may the employee's direct supervisor contact the employee's health care provider
 - Require the employee to obtain a second medical certification if there is reason to doubt that it is valid
 - Employer can choose health care provider as long as it is not someone employed on a regular routine basis.
 - If differs from original certification, can require third opinion from health care provider selected by the employee and employer. Third opinion is final and must be used by the employer.
 - Employer is responsible for paying for the second and third opinions, including any reasonable travel expenses.
 - While waiting for second (or third) opinion, the employee is provisionally entitled to FMLA leave.

Recertification

- ▶ Employer may request the employee to provide recertification no more often than every 30 days and only in connection with an absence by the employee.
 - Can request under 30 days but only if:
 - the employee requests an extension of leave,
 - the circumstances described by the previous certification have changed significantly, or
 - the employer receives information that causes it to doubt the employee's stated reason for the absence or the continuing validity of the existing medical certification.
- ▶ If certification indicates minimum duration of the serious health condition is more than 30 days, employer must generally wait until minimum duration expires before requesting recertification.
- ▶ If duration is indefinite, can request recertification every 6 months.


Return to Work–Fitness for Duty

- ▶ Employer may request a fitness–for–duty certification only with regard to the particular health condition that caused FMLA.
 - Must provide notice of requirement with designation notice.
 - Can require once every 30 days if feel return to work presents significant risk
 - Can delay return to work until fitness–for–duty is provided
 - Can ask questions to health care provider to clarify or authenticate (this can't delay return to work)
 - Can **not** require second or third opinion
- 

Situations..

- ▶ **When a husband and wife both work for the company** and each wishes to take leave for the birth of a child, adoption or placement of a child for foster care, or to care for a parent (but not parent-in-law) with a serious health condition, the husband and wife may only take a combined total of 12 weeks of leave.
- ▶ **When a husband and wife both work for the company** and each wishes to take leave to care for a covered ill or injured service member, the husband and wife may only take a combined total of 26 weeks of leave.
- ▶ **FMLA leave may be taken intermittently or on a reduced leave schedule with the following exception:**
 - When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees.

How does FMLA Impact Pay?

- ▶ FMLA does NOT require paid leave.
 - ▶ The law allows employers to require employees to use any paid leave that they may have as part of their FMLA leave.
 - ▶ FMLA leave can run concurrently with sick and vacation leave, workers' compensation, and disability insurance.
 - ▶ The law also allows employees to use their PTO during their FMLA leave if the use of the PTO would meet the normal requirements for use (i.e., if PTO policy allows PTO leave to be used by employee for children who are sick, the employee may also use this during FMLA to care for a sick child).
- 

How does FMLA Impact Benefits?

- ▶ Required Group Health Benefits to be maintained during leave.
 - Must provide notice during leave of any opportunity to change plans/benefits
 - Can't require the employee on FMLA to pay more for benefits
 - Unpaid Leave:
 - Pre-pay
 - Pay as you go
 - Catch-up upon return
 - Would have written policy and stay consistent with other leaves

How does FMLA Impact Benefits? (cont'd)

▶ Flex

- Employees on unpaid FMLA must receive same amount of flex credits as before start of leave
 - Applies to medical, dental, and Flex Spending Account (FSA)
- Must be allowed to revoke FSA coverage or required to continue but stop contributions
 - Revoke coverage– may not be reimbursed for expenses incurred when coverage not in force.
 - Uniform Coverage rule applies if employee continues coverage
 - Must reinstate when employee returns

▶ Non-Health Benefits

- Employer not required to maintain but may do so
- Should have written policy

Calculating Leave

- ▶ Leave can be taken in periods of whole weeks, single days, hours, in some cases less than 1 hour.
- ▶ Employer must allow employees to use FMLA leave in the smallest increment of time the employer allows for the use of other forms of leave (ex: sick time in 15 minute increments)
 - Can allow FMLA leave in shorter increments than used for other forms of leave but no work can be performed during any time counted as FMLA.
- ▶ FMLA is based on employees normal work week
 - If employee's schedule varies so much that you can't determine how many hours employee would have worked, use weekly average (hours scheduled over 12 months prior to beginning of FMLA and includes any hours taken for leave)
- ▶ Holidays:
 - Holiday falls during week and employee taking week of FMLA– entire week is FMLA
 - Holiday falls during week and employee works part of week, FMLA not counted for holiday, unless employee was scheduled and used FMLA for that day.

FMLA Forms

- ▶ General Notice of Rights: handbook policy and poster
- ▶ Notice of Eligibility and Rights & Responsibilities within 5 business days of request
- ▶ Certifications– with notice of eligibility. Employee has 15 days to return
 - Certification of Health Care Provider for Employee's Serious Health Condition
 - Certification of Health Care Provider for Family Member's Serious Health Condition
 - Certification of Qualifying Exigency For Military Family Leave
 - Certification for Serious Injury or Illness of Covered Service Member—for Military Family Leave
 - Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave
- ▶ Designation Notice– within 5 business days of determining that the leave qualifies
- ▶ Fitness For Duty– if require for employee to return to work

Required Leaves

▶ **Iowa Code: Maternity Leave**

- When leave is not available, an employer shall not refuse to grant a pregnant employee an unpaid leave of absence for up to eight weeks, as required by doctor's orders. The employer may require that there be a medical certification for such leave.

▶ **Jury Duty:** Iowa law prohibits an employer from threatening or coercing an employee or terminating the employment of a person due to serving or being called to serve as a juror.

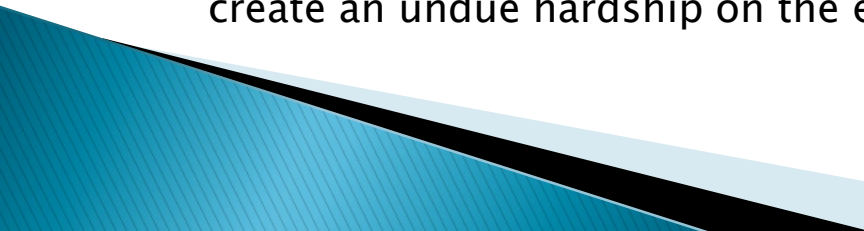
▶ **Veterans Day:** Iowa law allows veterans who served on active federal service, other than training, in the armed forces of the United States and was discharged under honorable conditions to request leave for Veteran's Day.

- not required to pay employees for the leave
- may deny time off to the minimum number of employees needed by the employer to:
 - protect public health and safety or maintain minimum operational capacity, as applicable.
 - Must notify within 10 days of Veterans Day

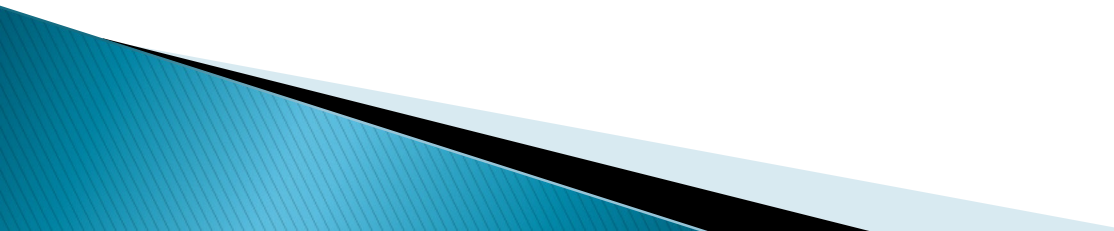
Other Laws Impacting LOA

- ▶ **ADA: Employers with 15+ employees**
 - May require a LOA as a “reasonable accommodation” to a qualified person with a disability.
- ▶ **USERRA: All employers, regardless of size**
 - Regulates LOA’s taken by members of the uniformed services, including Reservists, and by National Guard members for training, periods of active military service, funeral service honors duty and time spent being examined to determine fitness to perform such service.
- ▶ **Workers’ Compensation: All employers**
 - Provide payment of compensation and rehabilitation for workplace injuries and minimize employer liability

Americans with Disabilities Act (ADA)

- ▶ **Length of Leave:** No specific limit for the amount of leave that would be provided as a reasonable accommodation that does not create an undue hardship on the employer
 - ▶ **Medical Documentation:** Only medical examinations or inquiries regarding an employee's disability that are job-related and limited to determining ability to perform the job and whether an accommodation is needed and would be effective.
 - ▶ **Restricted or Light Duty:** Required to be offered if it is a reasonable accommodation that does not create an undue hardship on the employer.
 - ▶ **Fitness-to-Return-to-Work Certification:** Permitted as long as the medical examination and inquiry is job-related and necessary to determine whether the employee can perform the essential functions of the job.
 - ▶ **Benefits While on Leave:** No specific requirements but cannot discriminate and must provide same benefits as those provided to employees on non-ADA leave of absence.
 - ▶ **Reinstatement:** Required reinstatement to previous job unless doing so would create an undue hardship on the employer.
- 

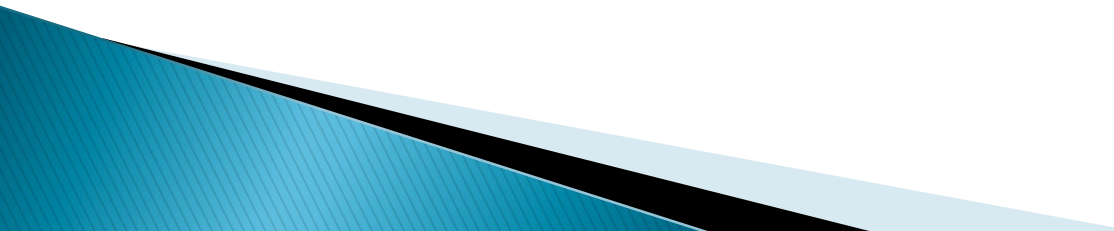
Workers' Compensation

- ▶ **Length of Leave:** No specific limit for the amount of leave an injured worker may have
 - ▶ **Medical Documentation:** Medical information that pertains to the employee's on-the-job injury.
 - ▶ **Restricted or Light Duty:** Ought to be offered if available as it may eliminate the employee's entitlement to the wage replacement benefit and reduce impact of claim.
 - ▶ **Fitness-to-Return-to-Work Certification:** May be and is typically required
 - ▶ **Benefits While on Leave:** Not required to be continued unless run concurrently with FMLA leave.
 - ▶ **Reinstatement:** No reinstatement rights under most state laws, except for retaliatory discharges.
- 

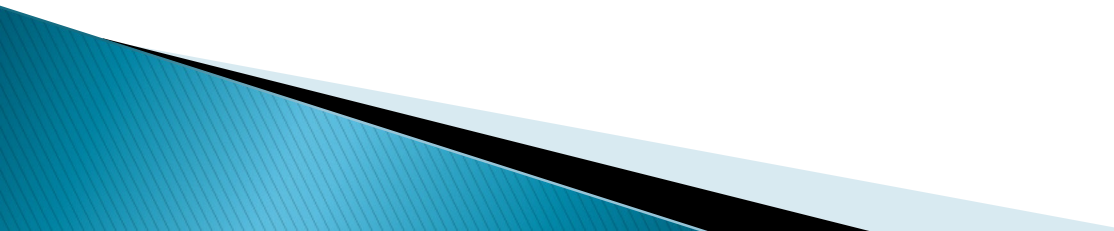
Uniformed Services Employment and Reemployment Rights Act (USERRA)

- ▶ **Length of Leave: up to 5 years (with some exceptions)**
 - Disabled veteran received additional 2 years from the date of completion of service to return to job.
- ▶ **Documentation:** Requires that service members provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity.
- ▶ **Restricted or Light Duty:** Required to be offered
- ▶ **Fitness-to-Return-to-Work Certification:** Not required.
- ▶ **Benefits While on Leave:** Health and pension plan coverage for service members is provided for by USERRA. Individuals performing military duty of more than 30 days may elect to continue employer sponsored health care for up to 24 months; however, they may be required to pay *up to* 102 percent of the full premium. For military service of less than 31 days, health care coverage is provided as if the service member had remained employed.
 - Service members are able (but are not required) to use accrued vacation or annual leave while performing military duty.
- ▶ **Reinstatement:**
 - **Escalator Principle:** Reemployed in same position that they would have attained had they not been absent for military service, with the same seniority, status, pay, as well as other rights and benefits determined by seniority.
 - If can't qualify for "escalator" position reemployed in any other position that is nearest approximation to the escalator position and then to the pre-service position.

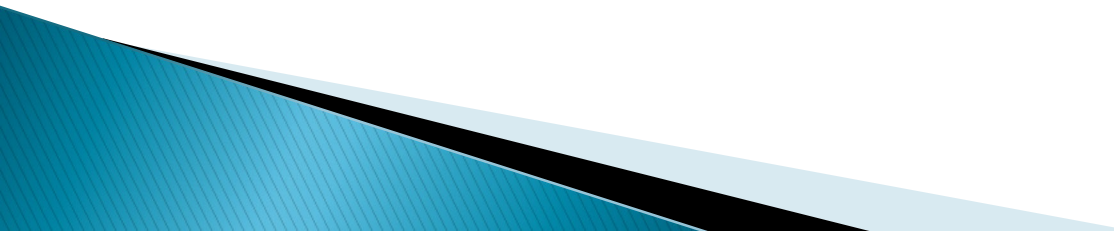
Short Term Disability

- ▶ Waiting period (1 – 8 or 31 days typically)
 - ▶ Pay percent of gross weekly income
 - Employee can receive benefits even if working part-time due to disability
 - Non work related disabilities only.
 - Pay up to 90–180 days
- 

Long Term Disability

- ▶ Waiting period: 180 days typically
 - ▶ Pay percentage of gross monthly income
 - Coordinated with income from other sources (Workers Comp, Social Security)
 - May continue through Social Security normal retirement age or longer depending on age at time disability occurs
- 

Leave of Absence

- ▶ Determined by bank policy
 - Can be paid or unpaid
 - Benefits determined by company policy
 - As long as employee is considered an active employee they can maintain benefits.
 - ▶ Policy should include
 - Who is eligible
 - How it effects benefits/how employee can pay premiums
 - How to report
 - Amount of time given
- 

Sample Leave Policy

A full-time employee who has completed at least one year of service with the Company may request an unpaid personal leave of absence for a period of up to 30 days. A personal leave must be requested in writing at least two weeks in advance, unless necessitated by an emergency, in which case oral notification should be followed by written application for the leave.

Personal leave may be granted for any justifiable reason at the Company's discretion, provided the leave does not seriously disrupt the Company's operations. All unused, accrued vacation and personal days must be used before a personal leave will be granted.

While an employee is on leave, the Company will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work as long as the employee pays a portion of the health care premium.

While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. Any deductions missed while on leave that are not paid through direct bill will be deducted from the employee's check when he or she returns from leave.

The company cannot guarantee reinstatement to employees returning from personal leave, unless such leave is covered by Family and Medical Leave Act.



Questions?

- ▶ HR Hotline
 - 844-306-2365
 - hr@iowabankers.com