



The Family Medical Leave Act: A Path Forward

Striking a balance between your business, the rights of your employees, and FMLA

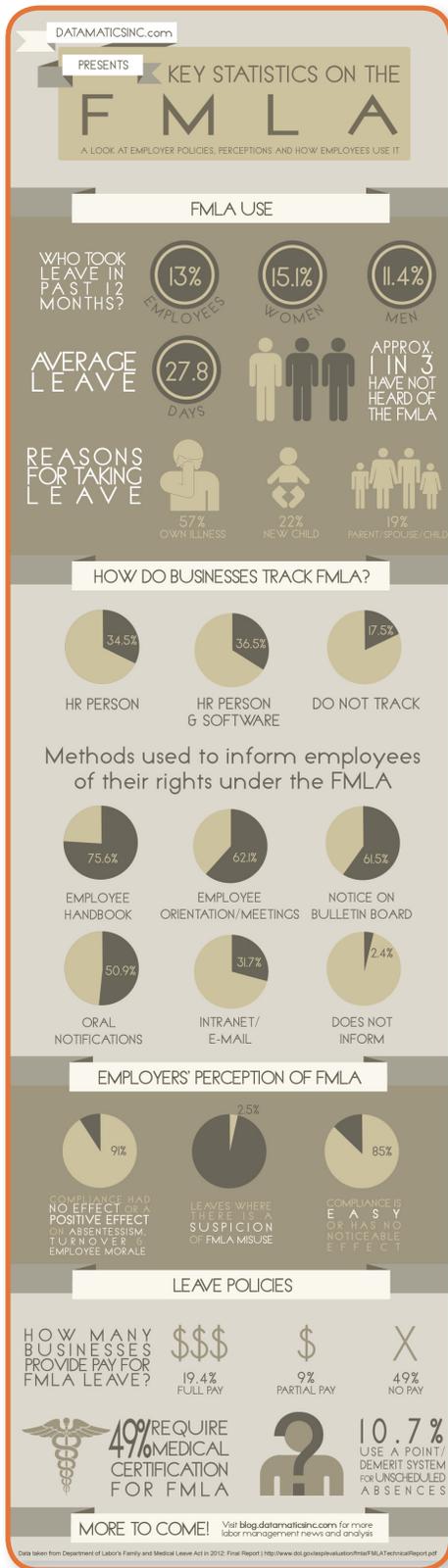
Success in business requires a reliable and dependable workforce. However, even with the most responsible employee, unforeseen circumstances may arise that require time away from work. The Family Medical Leave Act (FMLA) passed in 1993 provides basic rights to job protection for absences related to an employee's own serious health condition, the birth or adoption of a child, and the care of a family member with a serious health condition, or a military member. Employers who have 50 or more employees in a 75-mile radius for at least 20 weeks of the current or preceding year are covered under the FMLA, and therefore must follow the act's provisions. There is a shared responsibility between the employer and the employee – employers must educate employees about their FMLA rights and employees must communicate their need for leave and supply appropriate and timely medical certifications.

AUTHORS

Michael J. Anderson
Founder, President & CEO
PayNorthwest LLC

Michael A. Komola
President & CEO
HRnovations, Inc.

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You might think that FMLA isn't really a big deal or that it doesn't affect you or your business. You may be surprised to hear that a recent U.S. Department of Labor survey, whose findings are illustrated in the infographic to the left, indicated that nearly one in seven of covered employees took leave for a FMLA reason in the previous 12 months. Societal changes, such as an aging workforce, increased participation by men in child-rearing activities, and the increasing desire to balance work and family obligations lead experts to believe that the use of FMLA leave will only continue to rise.

NON-COMPLIANCE IS NOT WORTH THE RISK

The Family Medical Leave Act makes it clear that employers have an affirmative obligation to provide leave to eligible employees. If your business is not in compliance, you have very little defense. Typical FMLA claims made by employees against their employers allege that employees were denied leave or were terminated for absences that should have been covered under the FMLA. The U.S. Department of Labor (DOL) pursues these claims vigorously and employers facing a DOL investigation will likely have to prove FMLA compliance beyond the scope of the initial allegation. You may be asked to show all FMLA policies, postings, standard or template documents, as well as communications to employees, not just the details regarding the specific complaint.

The FMLA also gives employees the right to file private lawsuits against their employers in federal or state court, which can be expensive, with companies incurring \$150,000 just to get to trial. If the employer is found to have violated the employee's FMLA rights, the employee is entitled to the reimbursement of any monetary loss incurred, equitable relief as appropriate, interest, attorney fees, expert witness fees, and court costs. Liquidated damages may also be awarded to the employee, increasing the cost even further. According to the DOL, employers may be liable for "compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate and equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered." To remedy this situation, employers today have the opportunity to invest in systems and technologies that will help them better manage their FMLA obligations, saving them time and money later down the line.

Infographic by Datamatics, Inc. showcasing the findings from a Department of Labor FMLA survey conducted in 2012

TOP FIVE CHALLENGES OF EMPLOYEE LEAVE ADMINISTRATION

1. Employee notice obligations

In order to make leave administration a smoother process, all covered employers are required to display and keep displayed a poster prepared by the U.S. Department of Labor summarizing the major provisions of The Family and Medical Leave Act and telling employees how to file a complaint. The poster must be displayed in a conspicuous place where employees and applicants for employment can see it and in all locations, even if there are no eligible employees. Employers can find a complimentary copy of this [poster](#) available for download online.



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When responding to an employee request for a potential FMLA leave, an employer needs two forms – a Notice of Eligibility and Rights & Responsibilities ([Form WH-381](#)) and a Designation Notice ([Form WH-382](#)). The notice of eligibility must be sent within five business days, so it is important that managers and supervisors communicate efficiently, so the window of opportunity does not close before you can respond.

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2. Automating and centralizing leave procedures

Having an FMLA policy is really only the first step – employers also need to consistently apply that policy through uniform procedures and practices. If employers are tracking employee information using a manual or decentralized process, it can be nearly impossible to ensure that the policy is being applied properly.

3. Keeping track of leave types and balances

Navigating the spider web of employee leave regulations requires employers to track time for all types of leave and maintain accurate balances which can be especially difficult in the case of intermittent FMLA leaves. The FMLA mandates that employees can request their leave status every 30 days and that employers must respond

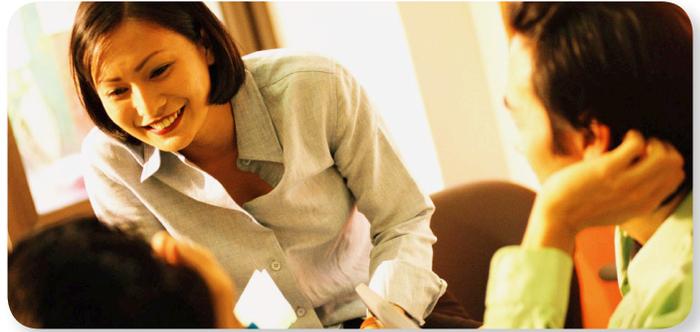
in writing by the next pay period. This can be a burdensome task if the business lacks easy access to employee time and attendance data.

4. Medical certifications

With the latest changes to FMLA, employers must deal with four separate medical certification forms:

- Certification for an employee's serious health condition
- Certification for the serious health condition of a covered family member
- Qualifying exigency for an employee under the military amendment
- Certification for an employee providing care to a family member serving in the military

Each form must be submitted at different intervals, which creates an additional administrative burden for someone to meet the various due-date requirements.



5. Intermittent leave

Intermittent leave can definitely be the most frustrating part of administering FMLA for employers when the nature of the absence can be unpredictable and unscheduled, potentially creating operational problems. To effectively manage intermittent leave, employers are advised to obtain as much information as possible when an employee first makes a request for it and then communicate and follow up with the employee, so there is a clear understanding of the reason for the absence. With a well-designed and clearly communicated leave policy put into practice as well as a consistent method of tracking leaves taken, employers can minimize compliance risks and increase productivity by treating employees fairly and consistently.

MEETING THE FMLA CHALLENGE: WHAT YOU CAN START DOING NOW

1. Write clear and concise leave policies, especially addressing FMLA

These policies will allow your organization to provide fair and consistent application of FMLA to your employees while ensuring that you are in compliance with the law. Key elements to be included in an effective policy include:

- A statement affirming the employer's commitment to protecting employee rights under the FMLA
- Addressing how the FMLA will coordinate with other applicable state leave laws
- The process for administering FMLA
- Who to contact for information or questions

The good news is that employers don't need to navigate these waters on their own. Professional human resources (HR) firms are available to assist with establishing policy and process or even provide these services as an outsource partner.



2. Clearly communicate to employees what their responsibilities (and yours) are, so you can work together more harmoniously with regard to FMLA

Along with a detailed FMLA policy in your employee handbook, employers must ensure that they have the Employee Rights & Responsibilities Under the Family Medical Leave Act poster displayed in their workplace. This will give employees convenient access to information about what types of leave are covered under FMLA, the benefits and protections, their responsibilities when a leave is needed, as well as their legal rights if they feel that their employer is not properly applying the law.

3. Create or use a system to track leave requests, leave taken, and required paperwork, as well as maintaining accurate leave balances for employees utilizing FMLA

Implementing an automated solution for employee absence management can help employers with the tasks associated with managing FMLA and other leaves, such as employee eligibility and entitlement as well as document tracking and notifications. For planned leave, employees can also request leave online and have their request routed to their manager and HR department. Sufficient complexity exists in tracking leave that a purpose-built tracking system is highly recommended. Employers should inquire with providers of payroll, HR, time tracking, or human capital management systems to find a system that works best for their situation. If an outsourced solution is preferred, there are professional HR consulting and outsourcing firms that can provide the systems, processes, experience, and expertise to so these important tasks.

NAVIGATING TO SUCCESS

Today's employers are faced with increasing labor regulations and renewed enforcement efforts from the federal government. The Family Medical Leave Act is an important element of labor regulation. It is critical for employers to have a very clear understanding of its essential elements and a plan in place to manage its requirements, so they achieve ongoing compliance and success. To adhere to all FMLA regulations, employers need to clearly understand their obligations with respect to FMLA, develop and implement clear policies around FMLA practices, commit to the consistent application of those policies, and develop processes to track leave as it is requested and taken. It is recommended to consult with an HR professional to ensure that communication and policies are well thought out and that a system is developed or implemented to track leave taken, leave balances, and required documentation. FMLA is an important part of today's workplace. Employers who successfully navigate it with the right resources will have happier employees and a more successful and productive workforce.

ABOUT THE AUTHORS



Michael J. Anderson
Founder, President & CEO
PayNorthwest LLC

Mike is the President, Founder & CEO of PayNorthwest LLC, a Seattle-based human capital management software and services firm focused on helping businesses and not-for-profits more effectively manage their workforce. Over his 25-year career, Mike has worked both the system and the human side of organizations, as an owner and an employee. He has spent time designing large enterprise systems as a Consultant with Accenture, deploying and configuring human capital management systems in small- and mid-sized organizations, as well as running small healthcare and financial services companies.

Mike sits on the Kronos SaaS^{hr} Partner Advisory Board where he participates in the shaping and future development decisions for Kronos' cloud workforce management platform. In addition, he recently completed nine years of service on the Board of Kindering, a birth-to-three neurodevelopmental center.

Mike is a Palmer Scholar from the Wharton School of Business where he was the recipient of the Fishman-Davidson Award for Study of the Service Sector and holds degrees in both Psychology and Industrial Engineering from Stanford University.

For more information on PayNorthwest, please go to www.paynorthwest.com.



Michael A. Komola
President & CEO
HRNovations, Inc.

Mike is the President & Principal of HRNovations, Inc., a human resources (HR) consulting, outsourcing, and staffing firm based in Bellevue, Wash. The company has been serving small- to mid-sized organizations with efficient and cost-effective solutions for managing HR and related functions for 25 years. Mike is responsible for providing strategic leadership for the firm and enabling the team to take great care of its clients. Prior to becoming Principal, Mike served as HRNovations' Director of HR Outsourcing Operations. Over his 25 years of experience in HR, he has worked internally as a professional and executive and externally as a consultant and business owner for the last eight years.

Prior to joining HRNovations, Mike was Director of HR at the Seattle Times Company and Borden Chemical, Inc. He has also held executive HR positions at Dow Chemical Company and Dupont Dow Elastomers, LLC. Mike is part of the faculty of Seattle Research Partners, teaching HR professionals HR content as they prepare for various professional HR certifications.

Mike holds degrees from Michigan State University School of Human Resources & Labor Relations (MHRLR), Villanova University (MA in U.S. Labor & Economic History), as well as the University of Scranton (BA in Liberal Arts, concentrations in History & Business). He is also a Senior Professional in Human Resources (SPHR), SHRM Senior Certified Professional (SCP), and a licensed life and health insurance producer in Washington.

For more information on HRNovations, please go to www.hrnovations.com.

