



Curbing FMLA Abuse

Do your employees treat FMLA like Friday-Monday Leave Act?

Summary

According to the Family and Medical Leave Act (FMLA), intermittent leave allows eligible employees to take job-protected leave in small increments instead of half- or whole-day blocks. While intermittent leave gives employees greater flexibility in how they manage FMLA time, it also opens the door to more “creative” misuse and abuse of leave policies, challenging any organization’s scheduling and administrative practices and negatively impacting company morale in wide-reaching ways. When it comes to curbing FMLA abuse, your timekeeping system can act as a secret weapon to discourage wrongful FMLA leave by uncovering leave-taking patterns, easing scheduling shortfalls and simplifying leave administration to promote a positive organizational outcome.

FMLA and Types of Leave

Enacted in 1993, the Family and Medical Leave Act grants eligible employees up to 12 weeks of job-protected leave during a 12-month period for personal or family medical reasons¹ or for “qualifying exigencies” due to a family servicemember’s active duty. Up to 26 weeks of leave can be taken to care for an ill or injured family servicemember.²

FMLA covers three types of leave: scheduled, unscheduled and intermittent.

- **Scheduled leave** is typically a solid block of time requested in advance, for instance in the case of scheduled surgery and recovery time.
- **Unscheduled leave** is time taken with no prior warning, such as sudden physical impairment due to a sudden illness or injury that makes it impossible for the employee to work. Generally, notice of unscheduled leave is requested after-the-fact and approved retroactively.
- **Intermittent leave** is taken in separate or sporadic chunks of time in increments as small as one minute (or the smallest time increment an employer’s timekeeping system will accommodate). Intermittent leave can be taken with advance notice (such as regularly occurring medical appointments) or be approved retroactively in the event no notice is given.

Intermittent Leave—An Employer’s Burden

Of all types of FMLA leave, intermittent leave can be the most difficult to manage due to its varying factors—small time increments, flexible leave-taking, no advance notice required—making it easy for employees to exploit for unqualified use.

Typically, four issues plague employers who deal with misuse of intermittent leave:³

1. **Dishonest Leave-Taking.** Employees who misuse or abuse intermittent leave may claim FMLA time to cover up chronic tardiness, use for other unqualified reasons (e.g., shopping or vacation), or take long weekends where a pattern of leave-taking falls near holidays or on Mondays or Fridays (earning FMLA the nickname “Friday-Monday Leave Act”).
2. **Scheduling Setbacks.** Intermittent leave taken wrongfully often occurs with little or no advance notice, limiting an employer’s ability to manage absentee workload with temporary workers. This forces managers and coworkers to compensate with increased overtime.
3. **Administrative Challenges.** Because FMLA leave is unpaid, it can be difficult to ensure a leave-taking employee’s paycheck reflects accurate work pay, especially if multiple instances of intermittent leave occurred during the pay period. More significantly, retroactive leave that affects more than one pay period can be a larger challenge since pay rules must be adjusted for the current pay period as well as retroactively adjusted for the previous one. Although these difficulties face any employer dealing with intermittent leave, wrongful leave increases these occurrences unnecessarily.



4. **Negative Organizational Impact.** FMLA abuse generally leads to increased employer costs in terms of overtime pay, temporary help, administrative overhead and lost productivity. Worker morale decreases as workload and overtime rises, and coworker resentment toward absent employees causes unnecessary friction and a reduction in teamwork.

Clearly, FMLA abuse cannot be trivialized as a minor infraction. Because it negatively impacts scheduling, administration and the organization overall, steps must be taken to curb wrongful leave. But what can employers do to discourage dishonest leave-taking without infringing on an employee's FMLA rights?

Timekeeping: Your Secret Weapon Against FMLA Abuse

Many employers remain unaware that their timekeeping system is a useful tool to combat wrongful leave. A successful timekeeping system will alleviate each of the four issues created by FMLA abuse while helping employees with a genuine need for FMLA leave manage their time responsibly.

How exactly can your timekeeping system combat FMLA abuse?

1. **Uncover Leave-Taking Patterns.** Your timekeeping system can establish revealing patterns of leave-taking. If an employee has a chronic attendance issue, the ability to track and report this activity gives employers a foundation to begin investigating the suspected abuse. Additionally, a timekeeping system that allows employees to note their reasons when submitting a leave request gives them a confidential way to correspond with supervisors and HR and provides the employer with an additional level of leave-tracking.
2. **Ease Scheduling Outages.** A timekeeping system that integrates department scheduling will help supervisors quickly identify workload challenges in the event of FMLA absence. Supervisors can better manage (or mitigate) department overtime and make informed decisions about hiring temporary workers.
3. **Simplify Leave Administration.** Successful timekeeping systems will manage complicated leave-taking—especially in small, specific increments—and integrate with payroll to apply appropriate pay rules accurately and automatically. The system will accommodate retroactive leave by offering some type of “pending FMLA leave” designation and be able to alter attendance history. It will also manage pending leave requests and track employee documentation requirements (such as periodic medical recertification) to ensure they are met within the 15-day timeframe. Absence time, leave reasons and remaining leave balances must also be accurately tabulated and accessible to the employee and supervisor.
4. **Impact Organization Positively.** With advanced tracking capabilities, a timekeeping system will lower the cost of leave administration, help supervisors balance temporary help and department overtime costs, encourage fairness and consideration to all employees impacted by a coworker's absence, and support employee with legitimate FMLA needs by helping them manage their leave time responsibly.

A successful timekeeping system can be critical to curbing FMLA abuse and turning its negative impact into positive organizational outcomes.



Stopping the “Friday-Monday Leave Act”

No responsible employer wants to stand in the way of an employee whose personal circumstances warrant FMLA leave. Of the three types of FMLA leave—scheduled, unscheduled and intermittent—intermittent leave offers FMLA-eligible employees the greatest flexibility; however, its many variables make it difficult for employers to manage. Consequently, intermittent leave often opens the employer to dishonest leave-taking, scheduling setbacks and administrative challenges which negatively impact the organization. A timekeeping system can be an organization’s greatest asset when it comes to curbing FMLA abuse by uncovering suspicious leave patterns, easing scheduling outages and simplifying leave administration so that FMLA can have the most positive impact on an organization and its employees.

Legal disclaimer: This document simplifies a complex Act as it is understood by Attendance on Demand, Inc. It is not to be taken as legal advice. For further information about FMLA compliance, please contact the U.S. Department of Labor at www.dol.gov or 1-866-4-USWAGE.

About Attendance on Demand, Inc.

Attendance on Demand supports the labor management needs of thousands of companies and more than a half million employees across North America. Launched in 2006, Attendance on Demand is a rapidly deployed, cloud-based solution that minimizes a company’s risk and technology investment while providing advanced features for securely managing labor data—calculating pay rules, scheduling employees, budgeting labor, and automating recordkeeping for labor law compliance. With standard uptime over the industry average of 99.995% and above average customer retention rates, Attendance on Demand removes the worry of maintaining expensive infrastructure. An extensive North American distribution network helps organizations use Attendance on Demand to reduce labor expenses and improve decision-making.

References

- 1 U.S. Department of Labor. “Fact Sheet 28: The Family and Medical Leave Act.” Feb 2010. Web. 4 April 2011. <<http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>>
- 2 U.S. Department of Labor. “Fact Sheet 28A: The Family and Medical Leave Act Military Family Leave Entitlements.” Feb 2010. Web. 4 April 2011. <<http://www.dol.gov/whd/regs/compliance/whdfs28a.pdf>>
- 3 Focus on Workplace Flexibility. “Different Types of FMLA Leave: DOL Topic: F.” Summer 2007. Web PDF. 23 Apr 2011. <<http://www.workplaceflexibility2010.org>>



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