

FMLA IN A
NUTSHELL

THE "TAKEAWAY"
FOR MANAGERS™

**FMLA in a Nutshell —
the "TAKEAWAY" for Managers™
Leader's Guide**

Overview:

The four areas covered in *FMLA in a Nutshell — the "TAKEAWAY" for Managers™*—The Basics; FMLA Ins and Outs; Military Families and the FMLA; and Retaliation—It's Illegal—are reinforced by four corresponding “takeaways,” information that's especially important to come away with, summed up in an easy-to-remember sentence.

These four areas and their takeaways comprise the basic information that all managers and supervisors should have regarding the Family and Medical Leave Act, and FMLA compliance. *FMLA in a Nutshell — the "TAKEAWAY" for Managers™* conveys the spirit of FMLA legislation, as well as focusing on how to comply with the law, so that managers can feel confident when dealing with requests for FMLA leave.

Prepare for the Session:

- Preview the *FMLA in a Nutshell — the "TAKEAWAY" for Managers™* program, and consider the manager's role in implementing the FMLA in the workplace.
- Read through the Leader's Guide.
- Make sure you have a Discussion Question handout for each participant.
- When discussing complex issues such as FMLA compliance, remember to reassure participants that they don't need to be legal experts to grasp the material.
- Greet participants in a friendly manner.

Open the Session:

- Introduce yourself and welcome the participants to the training session.
- Introduce the *FMLA in a Nutshell — the "TAKEAWAY" for Managers™* program, explaining that it covers *four key areas*: The Basics; FMLA Ins and Outs; Military Families and the FMLA; and Retaliation—It's Illegal.
- Ask participants as they watch the program to think about why these areas are important for managers to understand.
- Let participants know that there will be a short discussion portion of the program, with an opportunity to comment and/or ask questions.
- Show the *FMLA in a Nutshell — the "TAKEAWAY" for Managers™* program (running time: 9 minutes).
- Review the four topics and their corresponding takeaways as follows:

The Basics (*The FMLA is gender-neutral.*); FMLA Ins and Outs (*When in doubt, ask.*); Military Families and the FMLA (*The FMLA supports our military families.*); Retaliation—It's Illegal (*It is strictly illegal to retaliate against someone who takes FMLA leave.*)

Present the Material:

Topic 1: The Basics

Learning Points:

- ❖ Legally, employees can take up to 12 weeks of *unpaid, job-protected* FMLA leave if they have a serious health condition, have to care for their child, parent, or spouse who has one, are caring for a new child during the first year, or have a qualifying military exigency.
- ❖ FMLA leave doesn't have to be taken all at once.
- ❖ The FMLA doesn't discriminate on the basis of gender; it applies equally to male and female employees who are new parents or have other caregiving responsibilities.

The “TAKEAWAY”: *The FMLA is gender-neutral.*

Topic 2: FMLA Ins and Outs

Learning Points:

- ❖ To be FMLA eligible, employees must have worked for their employer for at least twelve months (though not necessarily consecutively), for at least 1,250 hours over the past twelve months, and at a location where the company employs 50 or more workers within 75 miles.
- ❖ Employees who telecommute may be FMLA eligible if their workplace could be considered the larger office that they report to rather than their home office.
- ❖ Some states have enacted their own family and medical leave laws, and in these cases, employers have to follow the laws that are most advantageous to the employees, whether state or federal.

The “TAKEAWAY”: *When in doubt, ask.*

Topic 3: Military Families and the FMLA

Learning Points:

- ❖ FMLA time off is allowed to deal with qualifying military exigencies resulting from a deployment, such as attending a military-family support group, spending time with a family member on short-term rest-and-recuperation leave, attendance at a military ceremony, or responding to a short-notice deployment.
- ❖ “Military caregiver leave” allows an employee who needs to care for a spouse, child, or next of kin who’s a covered active-duty service member with a serious injury or illness to take up to 26 weeks of leave under the FMLA, which is inclusive of the 12 weeks of leave already provided under regular FMLA.
- ❖ “Military caregiver leave” can only be used once and must be used within one 12-month period.

The “TAKEAWAY”: *The FMLA supports our military families.*

Topic 4: Retaliation—It's Illegal

Learning Points:

- ❖ Never discourage someone from taking FMLA leave or imply that it is wrong to do so. This could lead to a lawsuit.
- ❖ Firing or retaliating against someone for requesting or taking FMLA leave is strictly illegal.
- ❖ You may move someone to a new position because of the toll that their intermittent leave takes on the job—if the new position has at least equivalent salary and benefits.

The “TAKEAWAY”: *It is strictly illegal to retaliate against someone who takes FMLA leave.*

Start Discussion:

- Distribute the Discussion Questions handout.
- Read the 4 questions on the Discussion Questions handout to participants, and explain that they will have 5–8 minutes for discussion based on the questions.
- Ask participants to take the handout Quiz.
- Have participants form small groups of 3–5 people for the discussion portion of the training.

Discussion Questions:

Why might an employee need to take FMLA leave?

Sample answers:

1. *"To take a sick parent to his or her doctor's appointments."*
2. *"Because the employee just added a new child to the family and needs time to adjust and bond."*
3. *"To care for a child or spouse who is a sick or injured active-duty service member."*

Why is it helpful to check with HR and/or federal and state regulations when dealing with FMLA leave?

Sample answers:

1. *"It's not always clear who's eligible to take FMLA time off."*
2. *"The amount of time off allowed can be different for military caregiving."*
3. *"Sometimes federal and state law is contradictory."*

In what way might giving someone FMLA leave benefit the employer?

Sample answers:

1. *"The employee will be better able to focus on the job when he or she comes back to work."*
2. *"An employer could retain a good employee who otherwise might have been forced to quit in order to deal with a family crisis."*
3. *"Employees who have better work-family balance are ultimately more productive."*

Why shouldn't an employer dissuade or retaliate against someone taking FMLA leave?

Sample answers:

1. *"FMLA leave is a civil right and protected under the law."*
2. *"They might get sued."*
3. *"It's illegal."*

Quiz Answer Key

1. FMLA leave covers the new addition of a biological child, but not an adopted, foster-, or stepchild.
TRUE/FALSE
2. Common-law spouses are covered under the FMLA.
TRUE/FALSE
3. FMLA leave must be taken for a full 12 weeks, and all at once.
TRUE/FALSE
4. Only a new mother, not a new father, is eligible for leave under the FMLA.
TRUE/FALSE
5. "Military caregiver leave" allows up to 26 weeks of leave for qualified employees.
TRUE/FALSE
6. Retaliating against an employee for taking FMLA leave is strictly illegal.
TRUE/FALSE
7. FMLA leave is unpaid time off.
TRUE/FALSE
8. Employers can require employees to use paid vacation or personal leave time to cover some or all of their FMLA leave.
TRUE/FALSE
9. Employees cannot lose their group health insurance during FMLA leave if they continue to pay their share of the cost.
TRUE/FALSE
10. Organizations with less than 50 employees must provide FMLA leave for their employees.
TRUE/FALSE

Conclude the Session:

1. Reassemble the group.
2. Recap the following key concepts from *FMLA in a Nutshell — the "TAKEAWAY" for Managers™*:
 - **The FMLA is gender-neutral.**
 - **When in doubt, ask.**
 - **The FMLA supports our military families.**
 - **It is strictly illegal to retaliate against someone who takes FMLA leave.**
3. Remind participants that FMLA leave is a civil right and protected by law.
4. Take questions.
5. Thank everyone for participating, and express your hope that participants will take what they've learned at the session and use it to administer FMLA leave in a compassionate and legally compliant manner.

FMLA in a Nutshell — the "TAKEAWAY" for Managers™
Handout

Discussion Questions

Why might an employee need to take FMLA leave?

Why is it helpful to check with HR and/or federal and state regulations when dealing with FMLA leave?

In what way might giving someone FMLA leave benefit the employer?

Why shouldn't an employer dissuade or retaliate against someone taking FMLA leave?

Quiz

1. FMLA leave covers the new addition of a biological child, but not an adopted, foster-, or stepchild.
TRUE/FALSE
2. Common-law spouses are covered under the FMLA.
TRUE/FALSE
3. FMLA leave must be taken for a full 12 weeks, and all at once.
TRUE/FALSE
4. Only a new mother, not a new father, is eligible for leave under the FMLA.
TRUE/FALSE
5. "Military caregiver leave" allows up to 26 weeks of leave for qualified employees.
TRUE/FALSE
6. Retaliating against an employee for taking FMLA leave is strictly illegal.
TRUE/FALSE
7. FMLA leave is unpaid time off.
TRUE/FALSE
8. Employers can require employees to use paid vacation or personal leave time to cover some or all of their FMLA leave.
TRUE/FALSE
9. Employees cannot lose their group health insurance during FMLA leave if they continue to pay their share of the cost.
TRUE/FALSE
10. Organizations with less than 50 employees must provide FMLA leave for their employees.
TRUE/FALSE

FMLA in a Nutshell — the "TAKEAWAY" for Managers™ Transcript

The Family and Medical Leave Act, or FMLA, is important legislation that can be confusing for managers.

The FMLA helps families cope with certain stressful situations, like an illness, a new child in the family, or military deployment, by providing up to twelve weeks of *unpaid, job-protected* leave a year, should an employee need it.

As a manager, you have to be prepared to deal with requests for FMLA leave. To help you do that, we're going to focus on four areas:

- ***The Basics***
- ***FMLA Ins and Outs***
- ***Military Families and the FMLA***
- ***Retaliation—It's Illegal***

What situations are covered by the FMLA and who's eligible to use it—in other words, what are *the basics*?

The Basics

Employees can take FMLA leave if they have a serious health condition, or have to care for their child, parent, or spouse who has one. This includes a common-law or same-sex spouse. FMLA leave can also be taken because of pregnancy complications, or to care for a new child (whether a biological, adopted, foster-, or stepchild). The FMLA also makes unpaid time off available to employees with qualifying military exigencies.

The leave doesn't have to be taken all at once. Instead, an employee can take intermittent time off, for instance, to receive chemotherapy treatments or take a spouse for treatments.

Significantly, the FMLA doesn't discriminate on the basis of gender; it applies equally to male and female employees who are new parents.

And disparate treatment of male and female employees with other caregiving responsibilities isn't allowed either.

“CONGRATULATIONS TO YOU AND ALISON ON YOUR NEW ADDITION. WE’LL SEE YOU WHEN YOU GET BACK.”

“THANKS SUE. I’LL BE BACK BEFORE YOU KNOW IT.”

“BE SURE TO SEND US SOME BABY PICTURES.”

“YOU CAN COUNT ON IT.”

“IT’S NICE THAT ISAAC IS TAKING SOME FAMILY TIME. HE’S SO EXCITED TO BE A FIRST-TIME DAD. WE ALL PITCHED IN AND GOT THEM A STROLLER.”

Speaking of new parents, although covered under the Affordable Care Act rather than the FMLA, it’s important for managers to know that employers are required by law to provide reasonable break time for an employee to express breast milk for her child for one year after the child’s birth, each time she needs to. Employers also have to provide a private place, other than a bathroom, where she can do this.

Employees may choose to use—or employers may *require* the employee to use—*paid* vacation or personal leave time to cover some or all of the FMLA leave taken.

It’s important to let employees know that by law, their group health benefits will be maintained during FMLA leave, provided they continue to pay their share of their health insurance costs.

The Basics

THE TAKEAWAY

The FMLA is gender-neutral.

The FMLA has somewhat complicated eligibility restrictions. Let’s talk about the *FMLA ins and outs*.

FMLA Ins and Outs

Employees must have worked for their employer for at least twelve months (though not necessarily consecutively), for at least 1,250 hours over the past twelve months, and at a location where the company employs 50 or more workers within 75 miles.

These requirements can be tricky to navigate. Even if employees at a company's large headquarters are eligible for FMLA leave, those at a smaller, remote location might not be eligible if the smaller location doesn't include at least 50 employees within the 75-mile radius.

On the other hand, people who work from home may be FMLA eligible, as their workplace could be considered to be the larger office that they report to rather than their home office.

"THANKS FOR GETTING THE REPORT IN EARLY JOHN."

"NO PROBLEM."

"BY THE WAY, HOW'S YOUR MOM DOING?"

"HANGING IN THERE. SHE'S GOT A GREAT ATTITUDE. THANKS FOR ASKING."

I'VE WORKED FROM HOME FOR A COUPLE OF YEARS NOW, BUT EVEN THOUGH I TELECOMMUTE, I'M STILL GOING TO NEED SOME TIME OFF TO CARE FOR MY MOM."

Some states have enacted their own family and medical leave laws, and in these cases, employers have to follow the laws that are most advantageous to the employees, whether state or federal.

Employees must give 30 days advance notice before taking FMLA leave, unless it's the result of an unforeseen accident or illness. When requesting time off, an employee doesn't have to mention the Family and Medical Leave Act by name. The employer must grant FMLA time off, if the employee qualifies, whether he or she asks for it by name or not.

FMLA leave is meant for serious health conditions, not minor ones like the common cold. On the other hand, even a case of the flu that warrants three consecutive days off and two in-person treatments by a

health-care professional can be covered by the FMLA. When in doubt, be sure to check the regulations.

FMLA Ins and Outs

THE TAKEAWAY ***When in doubt, ask.***

The FMLA was expanded in order to help to military families under stress. Let's discuss *Military Families and the FMLA*.

Military Families and the FMLA

The FMLA supports military families by allowing unpaid, job-protected time off to deal with qualifying military exigencies resulting from a deployment, such as attending a military-family support group, spending time with a family member on short-term rest-and-recuperation leave, attendance at a military ceremony, or responding to a short-notice deployment.

"THEY DIDN'T GIVE HIM MUCH NOTICE, DID THEY?"

"NO, HE'S SHIPPING OUT SOONER THAN WE EXPECTED.
THERE'S NOT MUCH TIME TO GET READY."

"I UNDERSTAND."

"THANK YOU."

"MY SON HAS SO MUCH TO TAKE CARE OF BEFORE HE GOES
OVERSEAS. HE'S UNDER A LOT OF STRESS. I'M GLAD I CAN BE
THERE FOR HIM."

"Military caregiver leave" allows an employee who needs to care for a spouse, child, or next of kin who's a covered active-duty service member with a serious injury or illness to take up to 26 weeks of leave under the FMLA. The 26 weeks is inclusive of the 12 weeks of leave already provided under regular FMLA. This

leave can only be used once and must be used within one 12-month period.

Military Families and the FMLA

THE TAKEAWAY

The FMLA supports our military families.

Managers shouldn't try to discourage employees from taking advantage of FMLA leave, or imply that it's somehow wrong to do so. That could lead to a lawsuit. And they can't retaliate if someone does take FMLA time off. An important area is *Retaliation—It's Illegal*.

Retaliation—It's Illegal

"WE NEED YOU HERE, TOM. CAN'T YOUR WIFE TAKE CARE OF THINGS?"

"NO, SHE CAN'T."

"YOU DON'T WANT TO JEOPARDIZE YOUR JOB."

"EXCUSE ME?"

"OUR DAUGHTER NEEDS A LOT OF CARE SINCE THE ACCIDENT. SHE HAS TO BE MY PRIORITY RIGHT NOW. I DON'T WANT TO LOSE MY JOB, I'VE WORKED HERE FOR 12 YEARS. MAYBE I SHOULD SEE A LAWYER."

Employers are strictly prohibited by law from firing or retaliating against employees who request or take FMLA leave, and they must provide the same position or an equivalent one, with the same pay and benefits, if the original one no longer exists when the employee returns to work.

You *are* allowed to move someone to a new position because of the toll that their intermittent leave takes on the job, but *only* if the new position has at least equivalent salary and benefits.

Retaliation—It's Illegal

THE TAKEAWAY

It is strictly illegal to retaliate against someone who takes FMLA leave.

Remember—the basics; FMLA ins and outs; military families and the FMLA; retaliation—it's illegal.

The Family and Medical Leave Act is an important advance in the civil rights of American workers. Implementing it with care and goodwill is crucial to achieving a respectful, and legally compliant, workplace.

PREVIEW