

**FMLASource®**

City of Fond du Lac Date 05/05/2014

# Integrated Solutions for FMLA Administration



## Why Are You Here

FMLASource® administers the Family and Medical Leave Act of 1993 (FMLA) & compliance for City of Fond du Lac.

However, there is still an important role for managers in the FMLA process. This training is designed to:

- › Explain to managers why they need to know about FMLA
- › Provide an overview of what FMLA is
- › Learn how to recognize FMLA leaves
- › Review the new process
- › Discuss your responsibilities as a manager



## FMLA Overview

FMLA is a federal law designed to balance the needs of employers and employees in circumstances when employees must take either extended leave for serious medical conditions, including pregnancy, or to care for family members, but also when the employee needs to miss work sporadically due to a condition that “flares up” or requires regular treatments.

The law provides job and benefit protection to employees on qualified leaves of absence.

Employers can be held liable for failure to properly administer FMLA including failure to:

- › Recognize potential FMLA leaves
- › Notify employees of their rights and responsibilities under FMLA
- › Properly track time off
- › Appropriately grant reinstatement from an FMLA leave

## Compliance

### FMLA Liabilities

Schultz v. Advocate Health and Hospitals Corp.

Jury awards **\$11.65 MM** to employee fired after taking leave for parents; supervisors held individually liable

- › Employer failed to:
  - Recognize leave as protected under the Act
  - Notify the employee of his rights under the Act
  - Track his time appropriately
- › Supervisors held individually liable; compensatory and punitive damages against each of them



## What is FMLA?

FMLA allows eligible and approved employees to miss work for up to 12 weeks of unpaid job protection, in a specified 12-month period, for a qualifying reason

- › One exception—employees are allowed 26 weeks when caring for an injured servicemember



## Eligibility for FMLA

Once an employee request or absences signals a potential FMLA leave, direct the employee to FMLASource. FMLASource will determine eligibility:

- › 1 year of service (may need not be consecutive)
- › 1,250 hours worked in the previous 12 months (actual hours worked)
- › Qualifying event under FMLA
  - › Qualifying event will be determined by a completed Medical Certification Form

FMLA runs concurrently with:

- › Short-term disability
- › Workers' compensation
- › Sick/vacation or PTO



## Data Files

FMLASource collects a data file from your Human Resources Department with information used to verify eligibility:

- › Eligibility file (received on a regular frequency)
  - Employee census information
  - Employee FMLA eligibility information
  - Employee classification (department, location, pay status, etc.)
  - Employee direct manager information



## Frequency of Leave

The FMLA leave can be certified to be taken in three different frequencies:

- › Continuous (missing every day of work)
- › Reduced schedule (pre-arranged schedule for days and hours to be missed)
- › Intermittent (sporadic or episodic absences)

FMLA Source Absence Management  
(*a team effort*):

- › Frequency of incapacity/number of treatments
- › Observing pattern of absences
- › Doubting the validity



## FMLA Reasons for Leave

### Medical reasons under FMLA

- › Birth or care of a child
- › Adoption/foster care
- › Care of an immediate family member with a serious health condition
  - Who is an immediate family member?
- › Employee Unable to Work because of their Own Serious Health Condition
  - What is considered a serious health condition?

### Military reasons under FMLA—2010 NDAA

- › To care for an injured service member
- › For a qualified exigency

## Immediate Family Member—Defined

As a manager, you are not responsible for defining the definition of the family member for your employee's recognized potential leave. FMLASource will define one of the following:

- › Spouse
- › Child
  - Includes: step-child, foster child or any child that employee is responsible for both financially or emotionally
  - Child over 18 is included if child is incapable of self-care
- › Parent
  - Includes: step-parents, foster parents or any person that provided for the employee as a parent while under the age of 18

## Definition of a Serious Health Condition

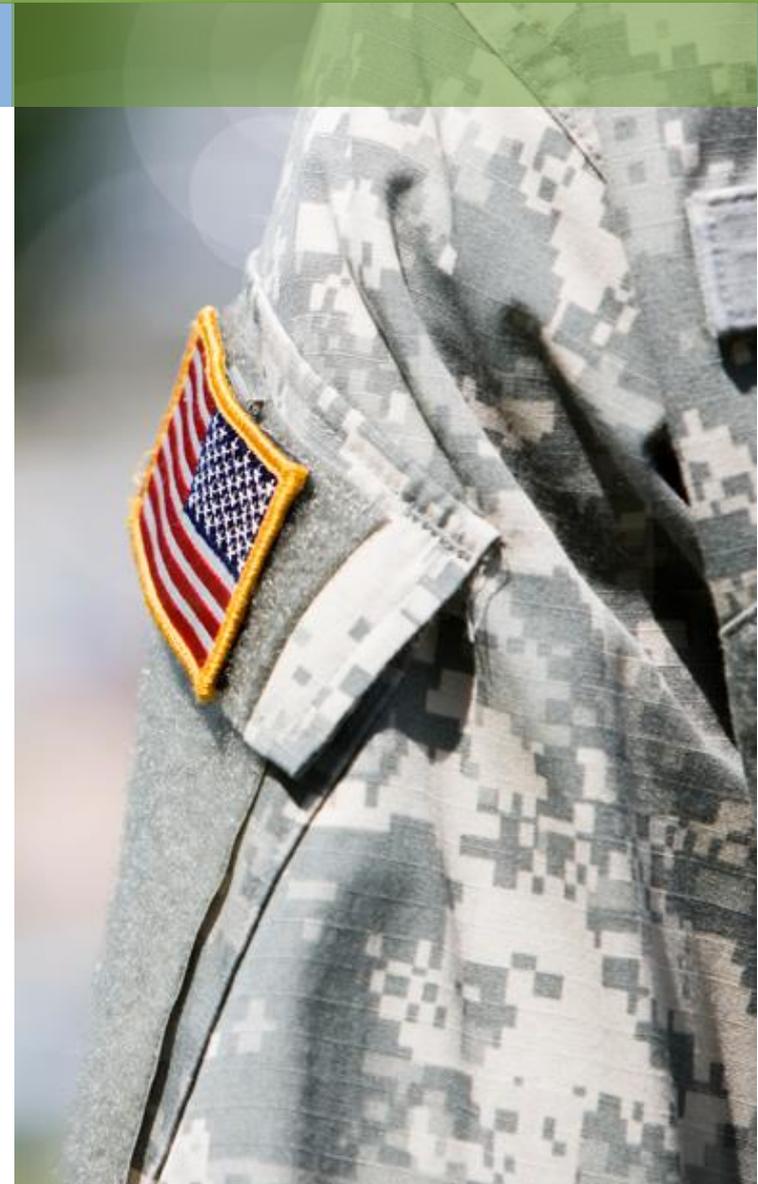
Only one of the following definitions need to apply to become an FMLA leave. Never ask specifics about an employee's condition:

- › Any period of incapacitation connected with inpatient care
  - Hospitalization, rehabilitation, hospice care
  - May include recovery from drug or alcohol addiction
- › Incapacitation for more than three calendar days plus treatment by a health care provider
  - First visit to provider must be within 7 days of the incapacitation
- › Pregnancy or prenatal care
- › Chronic serious health condition
  - Regimen of continuing treatment with mandatory 2 visits to health care provider per year
- › Permanent or long-term condition

## Military Leaves

### Qualified exigency

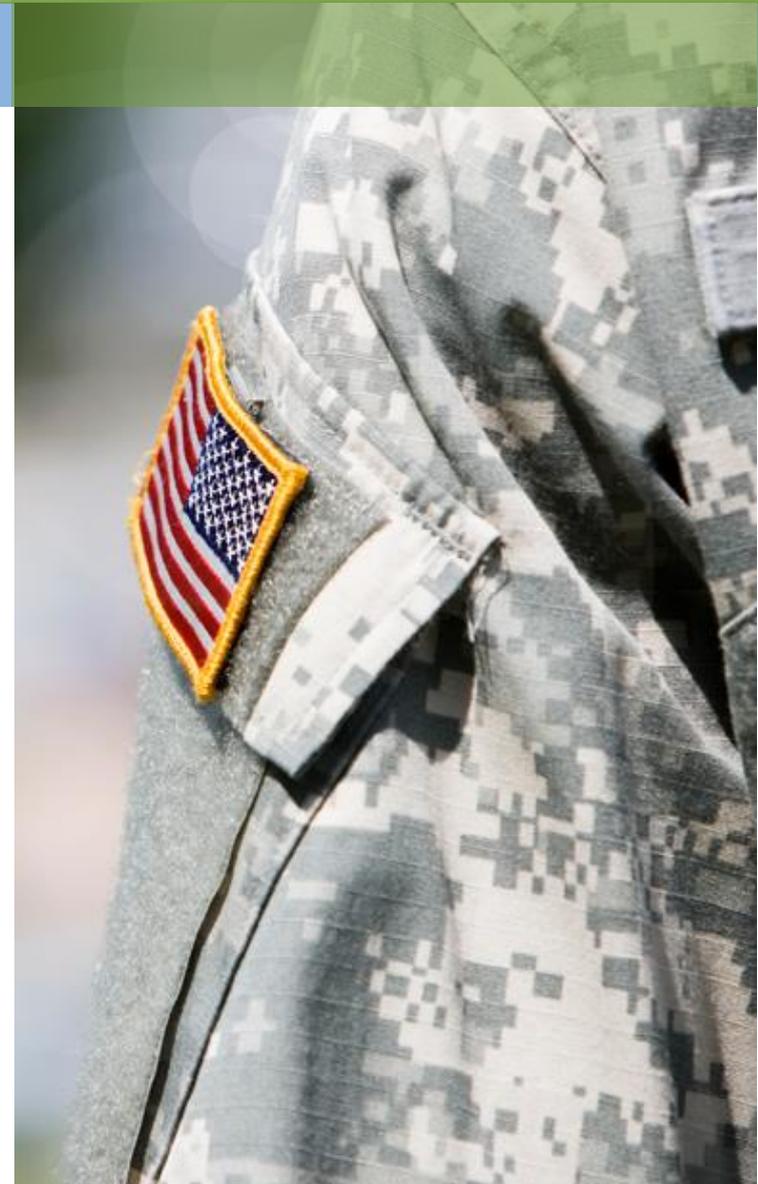
- › Arises when your employee has an emergencies caused by a family member (spouse, child, parent) being called into military service
- › Requires the military service to be related to a “foreign deployment”
  - Short notice deployment (7 calendar days)
  - Military events and related activities
  - Child care and related activities
  - Financial or legal arrangements
  - Counseling
  - Rest and recuperation (15 calendar days)
  - Post-deployment activities
  - Parental leave
- › Counted toward their regular 12-week FMLA entitlement



## Military Leaves

### Injured service-member

- › Arises when a family member who becomes seriously ill or injured related to military service
- › Covers spouse, child, parent and next of kin
- › Designee is chosen by the service member
- › Covers veterans honorably discharged within five years of leave
- › 26 weeks total in single year which commences on first day of leave despite number of injured family members



## FMLA Claim Submission

If your employee has an need for a FMLA leave of absence, direct the employee to FMLASource. FMLASource receives claims via phone, Internet, e-mail or fax

- › 1.877.462.FMLA (1.877.462.3652)
- › [www.FMLASource.com](http://www.FMLASource.com)
  - Employees can open leaves and check on status of leave requests
- › [FMLACenter@FMLASource.com](mailto:FMLACenter@FMLASource.com)
- › 1.877.309.0218 (Fax)

In extreme/unique situations accepted from Manager or HR

- › If manager opens a leave the employee should be told



## Intake and Life of Leave

FMLA Source's job will be to determine that an employee:

- › Is eligible for leave
- › If the leave qualifies for short-term disability
- › Send FMLA packets/letters to employees and primary contacts
- › Notify your employee of their rights and responsibilities under FMLA
  - Mandatory employer responsibility—must complete within 5 calendar days
- › Collect certification documentation back from the employee to determine if the need for a leave is for a qualifying reason under FMLA
- › Keeps track of your employees entitlement so the employee is out for no more than 12 weeks (unless a state leave extends entitlement)
- › Provide \_\_\_\_\_ with weekly report updates of leaves
- › Consult with your Human Resources Department on issues or concerns regarding your employee's leave

## Due Date of the Certification

Certification for FMLA is time-sensitive material:

- › **Day 1**—FMLA claim is opened. A copy of the initial request packet is created and e-mailed to the primary contact
- › **Day 2**—Initial request packet is sent to employee via preferred method
  - From this point, clock starts. The employee has 15 calendar days to have their/family member's health care provider (or other requested material if a military type leave) complete certification and return to FMLASource
  - Employee will be given 7 additional calendar days to correct any deficiencies in their certification
- › **Day 17**—If certification is not received, request is denied and a decision letter regarding the denial is e-mailed to the primary contact
- › **Day 18**—Decision letter regarding the denial is sent to the employee via preferred method

An e-mail copy of the letters is always sent to the primary contact

## Reporting FMLA Absences

Employees are required to report each intermittent absence to both FMLASource and their department's normal call-off procedures.

- › Website: [www.fmlasource.com](http://www.fmlasource.com) or mobile app
- › Use our automated (IVR) phone system
- › E-mail us at [FMLACenter@fmlasource.com](mailto:FMLACenter@fmlasource.com)
- › Call during our normal business hours (7:30 a.m.- 9:00 p.m. CST) and talk to a live representative
- › Leave a voicemail—*date, time and reason for absence*

For continuous leaves, employees only need to contact FMLASource

- › At the beginning of the leave (*if different than what was certified*)
- › If the employee returns back to work earlier than what was certified
- › If the employee needs an extension to their certified FMLA leave

## Manager Actions With Employees

Immediately upon knowing that an employee is requesting FMLA or you recognize a potential FMLA leave:

- › Supply the employee with an FMLA checklist provided to you by your Human Resources Department
- › Maintain confidentiality
- › Remind the employee of call expectations
  - Discuss proper call of procedures with employee
  - Remind the employee to track each intermittent FMLA absence to FMLASource
  - *Employees have 48 hours to report an intermittent absence to FMLASource*
  - Remind the employee that advance notice on an intermittent FMLA absence will be required if applicable (*pre-scheduled treatment*)

## Manager Actions With Human Resources

Immediately upon knowing that an employee is requesting FMLA or you recognize a potential FMLA leave:

- › Notify your Human Resources Department that you advised the employee to contact FMLASource. Consistently notifying Human Resources of your employees' potential FMLA leaves will help ensure that claims get opened properly
- › Any suspicious FMLA absences being used by your employee, please notify either your Human Resources Department or FMLASource
- › Confirm with your Human Resources Department that proper return to work documentation has been received before allowing employee to resume work

## Weekly Reports

**Weekly Leave Report**—designed to show any leave requests that were opened and decisions made in the last 7 days. Also, an ongoing record of who has an active leave.

- › If you do not receive a Weekly Leave Report on Mondays, then you have no activity in your department.

**Usage Reports**—designed to show any time reported as FMLA in the last 7 days. This includes both time actually missed in the last 7 days and time reported in the last 7 days that will be missed in the future.

- › If you do not receive a Usage Report on Mondays, then you have no tracking activity in your department from the last 7 days

**Reports are only sent if there is data to report.**

## Frequently Asked Questions

**Q**—When an employee wants to take FMLA but chooses to make the time up during that week, do they have to report this time as FMLA when they made the time up on a different day of the week?

**A**—FMLA focuses on protecting an employee from disciplinary action because of an absence related to an FMLA reason. If your employee is scheduled to work and misses work then that time is counted against their FMLA entitlement.

If an employee makes up time in order to get paid that absence is still counted against their FMLA entitlement.

## Frequently Asked Questions

**Q**—Can I (manager) ask for my employee’s intermittent leave to be recertified?

**A**—YES! However we do have requirements under FMLA that must be met prior to processing a recertification.

- › If you feel your employee is misusing their FMLA leave, the health condition has changed, or you suspect a pattern of usage that cast doubt on the leave, please contact your Human Resources Department
- › When a recertification is requested, we research the request, ask follow-up questions for clarification, and if we find that the recertification falls under the FMLA guidelines, then we send out the recertification request

Please be aware that the language on a recertification letter is VERY direct and in some cases informs the employee that abuse is suspected.

## Frequently Asked Questions

**Q**—There is confusion among management about how to handle employee absences that exceed the estimated absences specified by the medical provider in the certification. Do we have to count these excess absences as FMLA?

**A**—Yes, when the certification is for intermittent absences, you do have to count them as FMLA. Absences specified by the provider in an intermittent approval are only an estimate. The health condition could change, requiring more time off than anticipated. If this becomes a frequent occurrence, contact FMLASource and discuss the appropriateness of requesting a recertification of the FMLA claim.

## Frequently Asked Questions

**Q**—Can an employee use vacation/PTO for an FMLA-related appointment and not have that time applied to FMLA? This might arise, for example, when an employee wants to save all 12 weeks of FMLA for the birth of a child.

**A**—FMLA does not give an employee the right to pick and choose when to use FMLA. The law dictates that if an employer knows that an absence is due to an FMLA condition, the employer must protect that absence. The employee in this example should be reporting her absences for doctor appointments to FMLASource. Her supervisor should monitor the FMLASource usage reports to ensure that all her absences are appropriately tracked.

## Frequently Asked Questions

If you have additional questions  
or concerns, please call

**1.877.462.FMLA (1.877.462.3652)**

or e-mail us at:

**[FMLACenter@FMLASource.com](mailto:FMLACenter@FMLASource.com)**