

Common Employer Questions on FMLA Administration

The following represent some of the common administration questions and answers:

Q: What happens if the FMLA administrator misses a timeline or fails to provide a form?

A: The FMLA works on a no-harm no-foul principal. So if the employee doesn't suffer any negative consequence from the employers delay or mistake, it's probably going to be ok. That said, there may be risk associated with the non-compliance if the employee can show that it was harmed by the lack of notice or the skipped step in process. The adage "early is best, but better late than never" applies here.

Q: What happens if the employee refuses to complete the medical certification?

A: If an employee fails to provide a medical certification, the employer can delay or deny the FMLA leave. In other words, treat the employee per your normal policy when someone doesn't show up to work.

Q: Do I have to continue to offer benefits?

A: FMLA regulations 825.209(a) state: "During the leave, the employer must maintain coverage under any "group health plan" for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave."

Q: How are insurance premiums collected?

A: If the employee is using paid leave, the employee's premium must be paid by a method normally used during any paid leave. If the employee is using unpaid leave, options include: payment due at same time as if made by payroll deduction, payment due on same schedule as COBRA participants, prepaid pursuant to a cafeteria plan at employee's option, or another system voluntarily agreed to between employer and employee. Employer must provide employee with advance written notice of terms and conditions.



Administering FMLA can be complicated so many questions arise related to how to handle requests and benefits during this type of leave. MRA's HR Hotline Advisors handle thousands of FMLA calls every year from members.

Q: Does the employee need to pay their premium share?

A: Yes, and the employer can require the employee to pay his or her share of the health plan premium in several ways, but must provide the employee with advance written notice of the terms and conditions under which these payments must be made.

Q: What if the employee fails to make timely premium payments?

A: You can give a 15 day notice via a letter to the employee. Allow a 30 day grace period before you cut off benefits. For example, let's say payment is due March 1. If the employee does not pay, he/she has until March 31 to pay. So we recommend on March 15 that you give notice to the employee. This way, if they do not pay, you can cancel them from coverage on the plan effective March 31.

Q: Can the employer recover costs incurred for maintaining coverage during FMLA leave?

A: An employer may recover its share of health plan premiums during a period of unpaid FMLA from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to:

- The continuation, recurrence, or onset of either a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember, which would otherwise entitle the employee to leave under FMLA, or
- Other circumstances beyond the employee's control (i.e. parent chooses to stay home with newborn child who has a serious health condition). Other circumstances beyond the employee's control would not include a situation such as a parent who chooses not to return to work to stay home with a well, newborn child.

Q: Do I need to treat someone on FMLA the same as someone on workers compensation related to recovering health insurance premiums?

A: If the employee does not return to work, an employer may not recover health insurance premiums from an employee taking FMLA and workers' compensation concurrently. Also, an employer may not recover any non-health benefit premiums paid during a FMLA-designated temporary disability leave or workers' compensation absence.

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Q: How do I handle bonuses and perfect attendance plans when someone is on FMLA?

A: FMLA regulations 825.215(c) (2) state: "If a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave."

Q: Where can I get sample FMLA forms?

A: MRA offers sample FMLA forms which can be customized and includes GINA disclaimers, where appropriate. The U.S. Department of Labor also offers [sample forms](#) that employers can use.

MRA's HR Hotline can help you!

 **866-HR-Hotline | 866.474.6854**

 **InfoNow@mrnet.org**

 **mrnet.org/24-7/hr-hotline**

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