



SHIPMAN

Tackling Difficult FMLA Fact Patterns

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Presentation Roadmap

Topics to be discussed



- Brief Overview of ADA and FMLA
- Scenarios involving:
 - Unusual Accommodation Requests
 - Responses to Mental Health Conditions
 - Interplay of Different Leave Entitlements
 - Documentation Issues

Federal Family Medical Leave Act

- Provides job protection to eligible employees who require leave for certain reasons
- 12 weeks in a 12-month period
- Benefits protected while on leave
- Triggered by:
 - Birth of a child and care within the first year after birth;
 - Placement of a child with employee for adoption or foster care;
 - To care for a family member with or an employee's own serious health condition;
 - To address qualifying exigencies from family member's deployment; and
 - Military caregiver leave (26 weeks).



NOTE: Federal FMLA applies to all public agencies, federal, state and local, regardless of number of employees. It also applies to all private employers with 50+ employees.

CTFMLA vs. Federal FMLA

	CTFMLA	Federal FMLA
Covered employers	<ul style="list-style-type: none"> Private employers with 1+ employees The State 	<ul style="list-style-type: none"> Private employers with 50+ employees Public employers Schools (public or private)
Eligibility – time worked	<ul style="list-style-type: none"> 3+ months for the employer No hours requirement 	<ul style="list-style-type: none"> 12+ months for the employer 1,250 hours for the employer in prior 12-month period
Amount of job-protected leave	<ul style="list-style-type: none"> 12 weeks in 12-month period Additional 2 weeks for incapacitation for serious health condition during pregnancy 26 weeks in a 12-month period to care for covered service member 	<ul style="list-style-type: none"> 12 weeks in 12-month period 26 weeks in 12-month period to care for covered service member
Use of PTO	<ul style="list-style-type: none"> Employer can require available PTO to be used But employee can choose to keep up to 2 weeks of accrued PTO 	<ul style="list-style-type: none"> Employer can require all available PTO to be used
Caring for Family Members	<ul style="list-style-type: none"> Same as federal FMLA, plus: <ul style="list-style-type: none"> Sibling Son or daughter (of any age) Grandparent/grandchild Individual related by blood or affinity whose close association to employee is equivalent to covered relationship 	<ul style="list-style-type: none"> Spouse Parent Son or daughter (18 or older if the adult child has a disability)

Things to Keep in Mind When Administering FMLA Leave



FMLA and CTFMLA are very employee-friendly laws.

Proper processes and procedures must be followed and documented to ensure compliance.

Regulations and state/federal DOL guidance are extensive and should be consulted.

Other sources of authority (e.g., ADA and CBAs) may also be relevant.

Things to Keep in Mind When Administering FMLA Leave Cont'd

Documentation regarding FMLA leave should be kept *separate and apart* from the employee's personnel file.

Information about an employee or their family member's medical condition should be *maintained as confidential*.

HR professionals and FMLA administrators, not an employee's direct supervisor, should be responsible for administering FMLA leave.

Follow the same processes and procedures for medical leave, whether the need for leave is related to mental health or physical health.

Scenario 1:

Bill takes a day off to see his doctor after he tells Employer that he has been having challenges with his assignments because of his ADHD and anxiety.

Following his appointment, Bill emails you an FMLA certification form from a Licensed Clinical Professional Counselor he has been seeing, who is located in California.

The certification form indicates that Bill is receiving treatment, and states that he needs intermittent leave two afternoons a week so that he can receive treatment from the LCPC.

Does Employer need to accept this form?

“Healthcare Provider” under FMLA



Under FMLA, health care provider includes:

- A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or
- Any other person determined by the Secretary to be capable of providing health care services.
 - Includes: “Any health care provider from whom an employer or the employer’s group health plan’s benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.”



“Healthcare Provider” under CTFMLA



Under CTFMLA, includes:

- A doctor of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices,
- A podiatrist, dentist, psychologist, or optometrist authorized to practice in the state and performing within the scope of his or her practice;
- A chiropractor authorized to practice in the state and performing within the scope of his or her practice;
- A nurse practitioner, nurse-midwife, clinical social worker, or physician assistant authorized to practice in the state and performing within the scope of his or her practice;
- Any health care provider from whom the employer or the employer’s group health plan’s benefits manager will accept a medical certification to substantiate a claim for benefits;
- A health care provider who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country; or
- Such other health care provider as the Labor Commissioner determines, performing with the scope of the authorized practice



Scenario 2: The Double Dipper

Jody has been working for her Employer for 9 months as of today, when she begins a leave of absence for her own serious health condition. Jody utilizes all of her CTFMLA leave. At the end of the year, she would like to continue her leave, and has now been employed with the Employer full-time for a year.

Is the Employer required to grant Jody an additional 12 weeks of unpaid leave under the FMLA?

Scenario 3: Intermittent FMLA

Kelly has been using intermittent FMLA leave by taking off Fridays to get chemotherapy treatment and Mondays to recover from the treatment. This intermittent schedule has been ongoing for over a year. This is causing disruption for the Employer, as other employees on Kelly's team cannot take PTO days on Mondays or Fridays, and Fridays are a busy day for the Employer.

What can the Employer do?

Scenario 4: Interaction of CTFMLA and FMLA

In February 2023, Sandra, who has been working for her Connecticut Employer for two years, uses 2 weeks of leave to care for her daughter, who is suffering from a qualified serious health condition.

In October 2023, Sandra uses 6 weeks of leave to care for her brother, who is suffering from a qualified serious health condition.

In January 2024, Sandra requests 6 weeks leave for her serious health condition that has resulted in her incapacity during her pregnancy.

Must the employer approve FMLA and/or CTFMLA leave?

Pregnant Workers Fairness Act



- Requires covered employers to provide a reasonable accommodation to a workers' known limitations related to pregnancy, childbirth, or related medical conditions
 - Covered employers: private and public sectors employers with at least 15 employees, Congress, federal agencies, employment agencies, and labor organizations
- Unless doing so would cause an undue hardship
- Does not replace federal, state, or local laws that are more protective
- CT has protections under the Fair Employment Practices Act

Scenario 4: *Continued*

In December 2024, Sandra now requests to use 8 weeks of leave to again care for her brother, who is a service member who was wounded while on active duty. (Sandra is having a really tough few years!)

Must the employer approve FMLA and/or CT FMLA leave?

Scenario 5: Remote Employee

Lauren works for a Connecticut based employer. Lauren works remotely and lives in New York. She recently advised her employer that she will need FMLA leave after giving birth and is seeking information regarding her FMLA leave.

Where is Lauren's worksite?

Is Lauren entitled to FMLA leave in NY or CT?

Scenario 6: No Documentation

Sam has worked for his Connecticut employer full-time for 4 months. He is seeking leave from his job due to his own serious health condition. The Employer provided Sam with the relevant certification papers and leave documents. Sam did not return the finalized documents to the Employer before starting his leave.

Can the Employer deny his leave?

How can the Employer respond?

Scenario 7

Calendar Days

An employer gives Jill 15 calendar days to provide medical certification supporting her requested two-week FMLA leave. Jill does not provide the certification for 30 calendar days or a reason for the delay. Jill also has available PTO days.

Can the Employer deny Jill's FMLA protections?

Can the Employer require her to use her PTO?

Scenario 8: Employee Request to Perform Work While on FMLA Leave

A conscientious administrator suffers a serious injury, but insists on being consulted and kept in the loop during her period of FMLA leave.

You know that you are not supposed to require her to work, but it would be helpful to have her guidance and input during the two months she is scheduled to be out of the office.

What can you do? What should you do?

Best Practices: Recordkeeping



When an employee calls out, **document** the reason the employee gives for calling out



Communicate with the employee in writing

- Document all verbal conversations or discussions
- Be responsive if employee has questions
- Be specific about what the employee is entitled to and what is required of the employee



Comply with applicable record retention laws for maintaining records



Questions?



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