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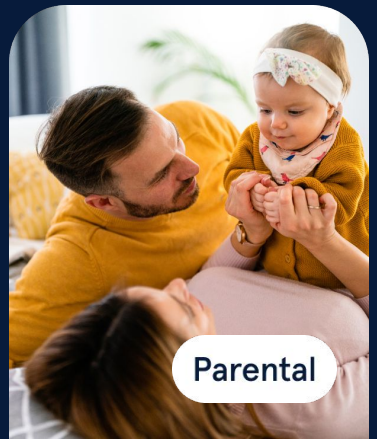
Risky or right? Reading between FMLA's lines



Presenters

Cyrena McDonough
Manager, Training and Development

Deana Ramos
Compliance Services Specialist

Larkin is recognized by SHRM to offer Professional Development Credits (PDCs) for SHRM-CP or SHRM-SCP recertification activities. This program has been approved for 1.0 recertification credit by the HR Certification Institute.

Introducing The Larkin Company

We deliver a personalized, employee-centric experience across leave of absence administration, accommodation, and self-funded claims services in the U.S. and Canada.

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Agenda

- The Basics
- Comparing FMLA to Other Entitlements
- Case Studies
- Keeping Compliant
- Leave Policy Best Practices
- Keys to a TPA Partnership

01

The Basics

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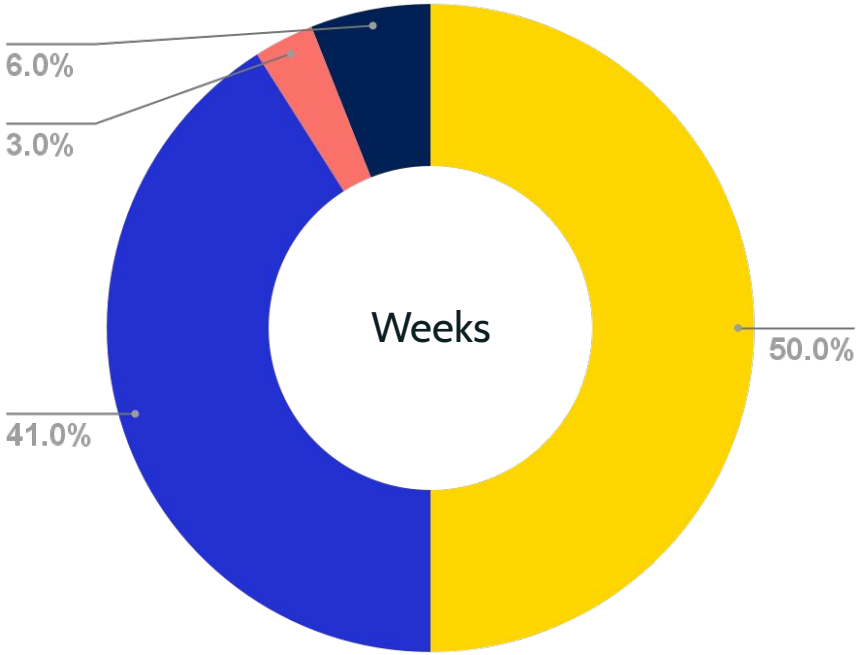
Leave Benchmarking (2024)

Pregnancy

Leave Durations granted for employees eligible under state and/or federal laws

- 1-12
- 13-26
- 27-52
- No Maximum



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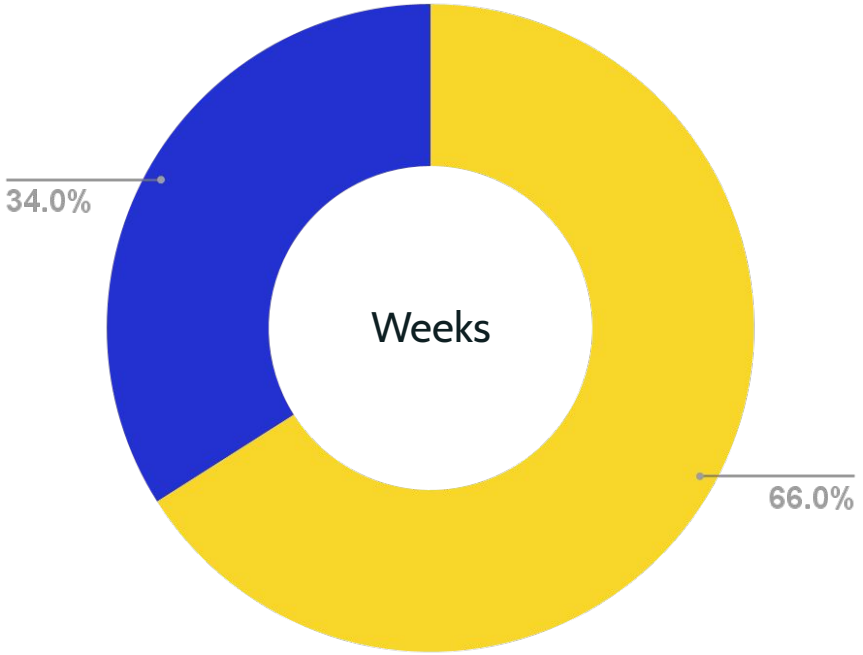
Leave Benchmarking (2024)

Parental

Leave Durations granted for employees eligible under state and/or federal laws

- 1-12
- 13-26



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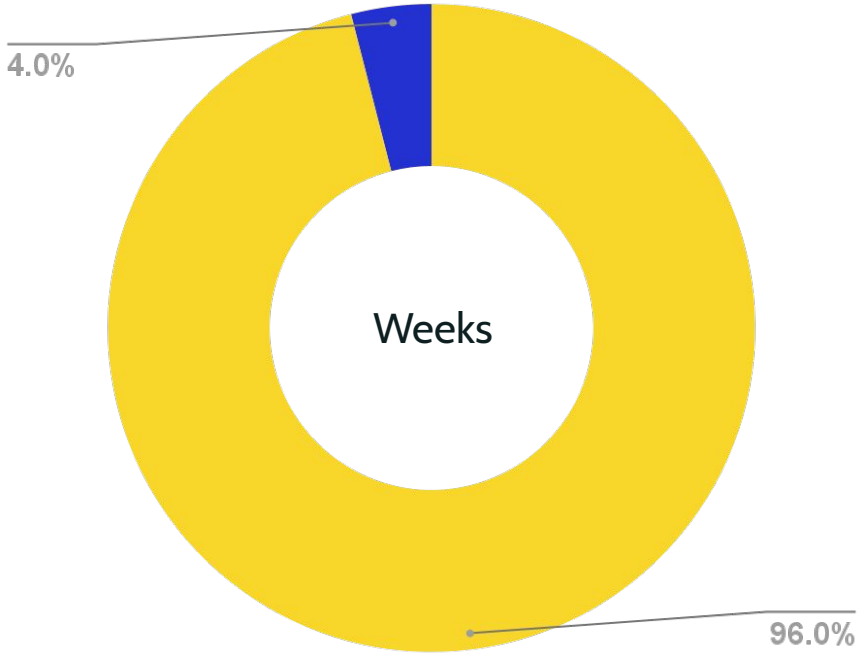
Leave Benchmarking (2024)

Family Care

Leave Durations granted for employees eligible under state and/or federal laws

- 1-12
- 13-26



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Why FMLA Leave?

Recovery

Time off to recover from an employee's own illness or injury, or to help care for a family member with one.

Protection

Provides an employee with job-protected leave and group health continuation for the duration of their leave.

Return to Work

Employee can return from leave to the same or equivalent position.

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About the FMLA

Employee Eligibility

- 12 months of service
- 1,250 hours worked in prior 12 months
- 50+ employees within a 75-mile radius

Protection

- Job reinstatement
- Benefit continuation
- No interference or retaliation

Covered Employers

- 50 or more employees in 20 or more workweeks in either the current calendar year, or previous calendar year
- Public agencies and local educational agencies (regardless of number of employees)

Entitlement

- 12 weeks of unpaid leave in 12-month period (26 weeks in some instances)

"A direct correlation exists between stability in the family and productivity in the workplace... When workers can count on durable links to their workplace they are able to make their own full commitments to their jobs."

29 CFR 825.101(c)

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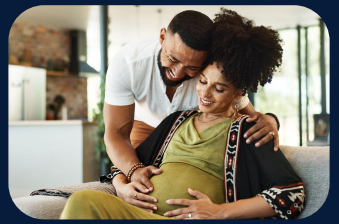
FMLA Qualifying Reasons

MEDICAL

An employee's own serious health condition



PREGNANCY

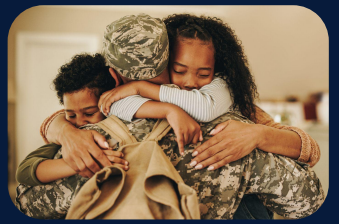
Pregnancy prepartum and postpartum

PARENTAL BONDING

Bonding with a child, through birth, adoption, or foster

FAMILY CARE

Care for a family member with a serious health condition



MILITARY CAREGIVER

Care for a covered service member with a serious injury or illness, or for a qualifying exigency

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What is a Serious Health Condition?

Incapacity

Continuous absence of more than three consecutive calendar days with continuing treatment

Permanent or Long-Term Condition

A permanent or long-term incapacity due to a condition for which treatment may not be effective

Hospitalization

Admitted overnight in hospital, hospice, or residential medical care facility

Chronic Condition

A chronic condition that will continue over an extended period and may cause episodic incapacity

Condition Requiring Multiple Treatments

A condition that would result in an incapacity of more than three consecutive calendar days, or surgery, if medical intervention or treatment does not occur

Pregnancy or Prenatal Care

Incapacity due to pregnancy, or prenatal care

Who is a Qualified Healthcare Provider?

- Doctor of Medicine or Osteopathy
- Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (with limitations)
- Nurse practitioners, nurse-midwives, clinical social workers, and physician assistants
- Christian Science Practitioners
- 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
- A health care provider previously listed who practices in a country other than the United States

02

Comparing FMLA to Other Entitlements

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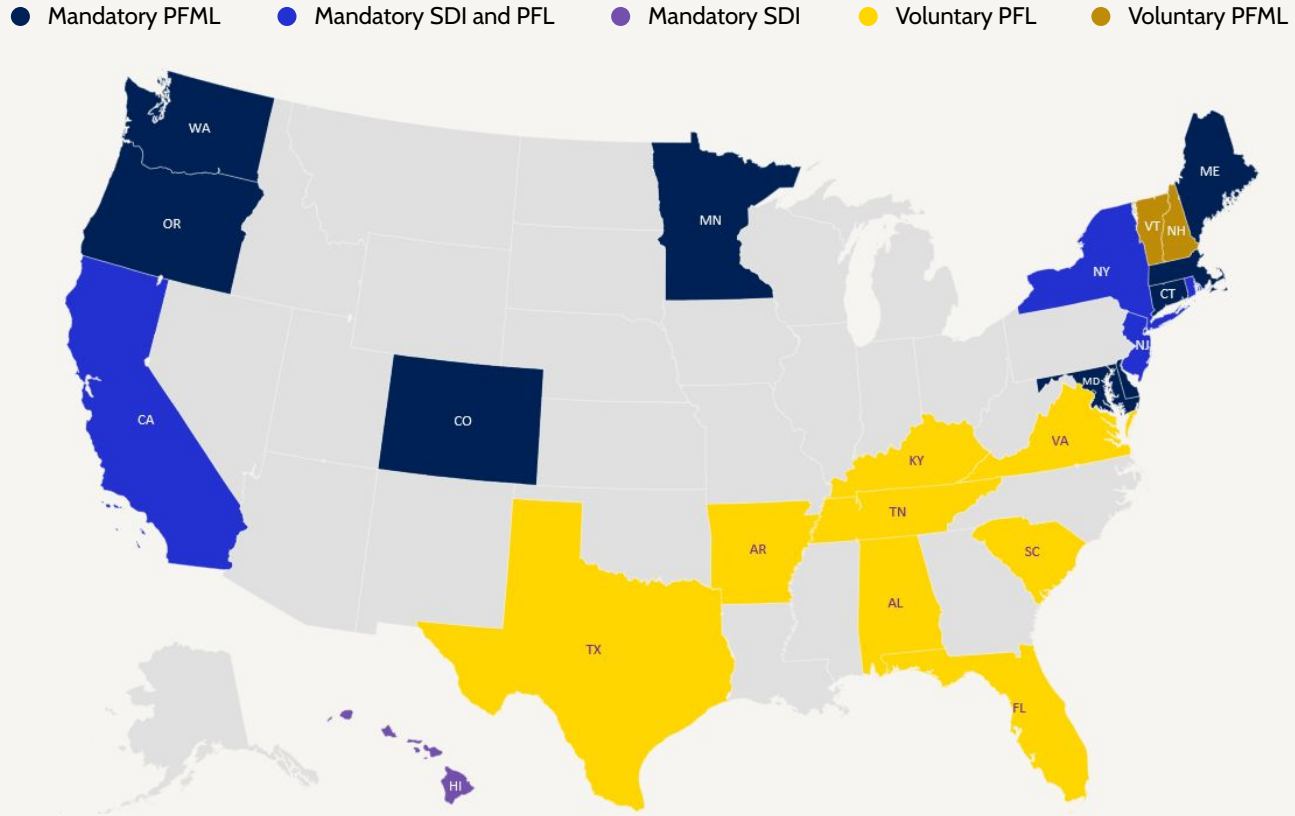
States With Current PFML Laws



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Differences between FMLA and State Leave Laws

Type	Eligibility Requirements	Qualifying Reasons	Duration	Family Members
FMLA	1 year of employment 1250 hours worked 50-75 rule	Specific leave types: medical, parental, family care, etc.	12 weeks in 12-month period	Parent, spouse, son or daughter (+next of kin of covered service member)
State	Varies by state **CFRA:** 1 year of employment, 1250 hours worked **OFLA:** 180 days of employment, 25 hours worked	May cover more leave types: safe leave, bereavement, emergency leave, organ donation, etc.	Varies by state **MA PFML:** 20 weeks for medical, and up to 26 weeks for combined pregnancy and parental leave.	Many states offer additional family members: grandparent, grandchild, step/half/adopted sibling, domestic partner, designated person, related by blood or affinity, equivalent of a family relationship

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Differences between FMLA and State Leave Laws

Type	Serious Health Condition	Health Care Providers	Reduced Schedule for Parental Leave	Income Replacement
FMLA	Incapacity & Treatment. First (or only) in-person treatment visit must be within 7 days of the 1st day of incapacity	Certain individuals can certify leave (as discussed on slide 11)	Allowed only with employer agreement	Unpaid leave, unless employee chooses to utilize PTO
State	Varies by state **California:** Employees do not need to be seen within first 7 days of incapacity	Varies by state States may allow additional providers beyond FMLA	Varies by state **CT PL:** Permitted **NJ FLI:** Permitted, but max duration reduces to 8 weeks from 12 weeks. **RI TCI:** Not permitted.	Many state leave laws are unpaid. Newer PFML laws include leave and income replacement.

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Differences between FMLA, STD, and State Income Replacement

Type	Pay	Qualifying Reasons	Job Protection	Eligibility/ Entitlement	Application	Duration
FMLA	Unpaid leave	Medical, parental, family care, etc.	Job protection and benefit continuation	Lower threshold compared to STD	Certification within 15 days of eligibility notice	12 weeks in 12-month period
STD	Income replacement	Pay when employee is disabled	No job protection or benefit continuation	**Varies by plan** Usually requires OME	**Varies by plan** Usually 45 days from disability start	**Varies by plan** More than one claim can be filed in a 12-month period
State	**Varies by state** May provide pay only or leave and pay	**Varies by state** Common reasons are medical, parental, family care, etc.	**Varies by state** CA SDI does not provide job protection or benefit continuation, NY PFL does	**Varies by state** Can be based on number of hours worked and/or amount of wages earned	**Varies by state** Most common is 30 days from leave start	**Varies by state** More than one claim can be filed in a 12-month period

03

Case Examples

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Overlapping Leave Laws and Benefits

Questions to untangle the complexities

- Which PFML and unpaid leave laws is the employee eligible for?
- What reasons would PFML and unpaid leave laws not run together?
- What's the maximum number of weeks an employee can be on leave?
- Does the state leave law allow optional stacking?
- How will benefits coordinate?

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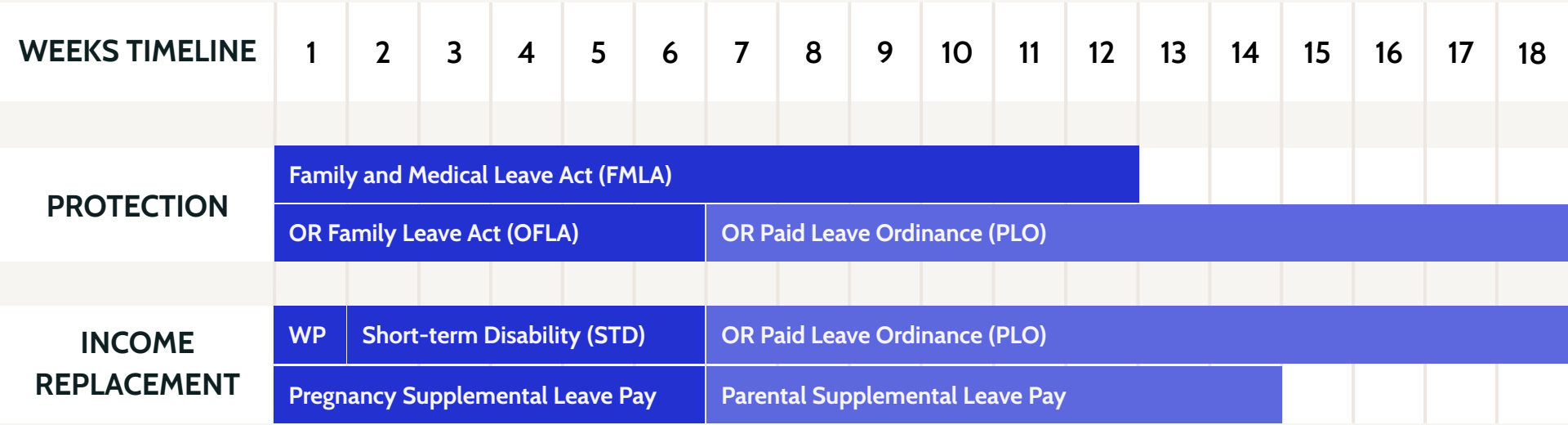
Example

Pregnancy and Parental Leave (FMLA + OR)



*This example assumes the employee has met the eligibility requirements for job protected leave under FMLA, OFLA, and OR PLO, the employee has not taken qualifying leave in the prior 12-month period, the employee's leave begins on the date of baby's birth via vaginal delivery, the STD plan has a waiting period, and the employer provides supplemental leave pay.

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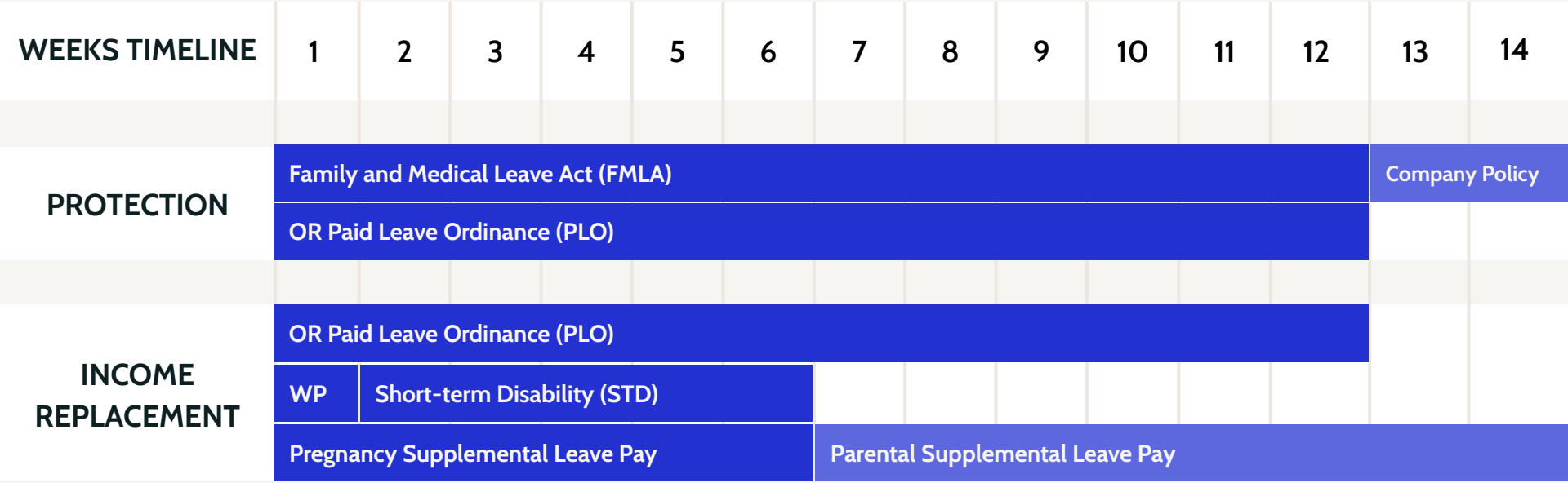
Example

Pregnancy and Parental Leave (FMLA + OR)



*This example assumes the employee has met the eligibility requirements for job protected leave under FMLA and PLO, the employee has not taken qualifying leave in the prior 12-month period, the employee's leave begins on the date of baby's birth via vaginal delivery, the STD plan has a waiting period, and the employer provides supplemental leave pay.

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Example

Medical Leave (FMLA + WA)

DAYS TIMELINE	Su	M	T	W	Th	F	Sa	Su	M	T	W	Th	F	Sa	Su
PROTECTION				Family and Medical Leave Act (FMLA)											
				WP (WA PFML)				WA Paid Family and Medical Leave (WA PFML)							
INCOME REPLACEMENT				WP (WA PFML)				WA Paid Family and Medical Leave (WA PFML)							
				WP (STD)							Short-term Disability (STD)				
				Medical Supplemental Leave Pay											

*This example assumes the employee has met the eligibility requirements for job protected leave under FMLA and WA PFML, the employee has not taken qualifying leave in the prior 12-month period, the STD plan has a waiting period, and the employer provides supplemental leave pay during the waiting period.

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Example

Parental Leave (FMLA + PTO)

NEED

An employee who is eligible only for FMLA wants to take parental leave for up to 20 weeks. They are not receiving pay from a state or local family and medical leave program.

Can they use PTO or use sick leave to extend beyond FMLA?

PROCESS

- What are the terms and conditions of the employer's normal leave policy?
- Does the employer require paid leave to be substituted for unpaid leave?
- Does the notice of designation confirm whether paid leave can be substituted or counted as FMLA leave?

RESULT

An employee's ability to substitute accrued paid leave is determined by the terms and conditions of their normal leave policy.

The employer is responsible for designating leave as FMLA qualifying and giving notice of the designation to the employee, including whether the employer requires paid leave to be substituted for unpaid leave or that paid leave taken under an existing leave plan be counted as FMLA leave.

Sources: DOL Opinion Letter FMLA2004-3-A & DOL Opinion Letter FMLA2025-01-A

04

Keeping Compliant

Notification Requirements

Failure to provide required FMLA notices may constitute interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employer may be liable for compensation and benefits lost by reason of the violation, etc.

Required Notices

- **In the workplace:** On premises, within handbooks, and/or via intranet. Distribute to new employees upon hire (may be accomplished electronically)
- **Eligibility:** Confirms if employee is eligible, and if not eligible, why, within 5 days
- **Rights and responsibilities:** Informs the employee in writing of their rights and responsibilities under the FMLA – (Larkin intro letter)
- **Designation:** Informs the employee in writing of whether their time off will be designated as FMLA leave

Training Managers

- Employees don't have to specifically request FMLA by name

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Additional Protections

State Leave Laws

Workers have the right to benefit from all laws that apply.

Prohibited Conduct

Discouraging FMLA leave, discriminating or retaliating against an employee, etc.

Enforcement

Audits, inspections, investigations, oh my!

05

Leave Policy Best Practices

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Best Practices for Developing an FMLA Leave Policy

Separate your leave and pay policies

One section of your policy should address time away from work. This will enable you to hold employees accountable and help ensure you provide the minimum FMLA information. Another section can discuss the pay an employee may be eligible for while on leave.

Include the minimum FMLA information

Minimum information that should be included in your handbook can be found within the FMLA required poster. We recommend typing the information into your handbook so you can customize wording, as permitted by law, to your organization.

Include legally required state addendums

If you are considered a covered employer in the state, some state FMLA laws are legally required to be included within your handbook. We recommend writing these laws into your policy, and including the same information within the state's poster/notice (and providing a link to the poster).

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Policy Recommendations

01 Confirm if FMLA only applies to eligible employees at a location with at least 50 employees within a 75-mile radius

02 Define the 12-month period your company uses to measure FMLA

03 Provide clear employee absence reporting/notice procedures

04 Discuss how accrued paid leave interacts with FMLA (e.g., PTO, sick time)

05 Define exceptions where an employer may be unable to reinstate the employee to the same or equivalent role (e.g., FMLA fraud, shift eliminations, layoffs)

06 Discuss your moonlighting or no-moonlighting policy

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Policy Recommendations

07 Discuss insurance premiums if employees are unpaid while on leave, or if premiums are late

08 State if you require a medical release at the conclusion of a medical or pregnancy leave, confirm when it should be submitted, and consequences of not doing so

09 Refer to the FMLA key employee provision if you believe you may wish to invoke it at any point

10 Include a statement that FMLA fraud is prohibited

11 If you may require 2nd or 3rd opinions, state your right to request so under FMLA

FMLA Speed Bumps

- Cannot require employees to use more FMLA than certified
- Employees working abroad prior to leave request
- Non-qualified health care providers
- Retroactive leave approval
- Using PTO *instead of* FMLA
- Insufficient childcare/eldercare benefits
- Intermittent leaves, smallest increment of leave
- Per medical necessity, planned medical treatment
- Reduced schedule leave and work restrictions
- Intermittent parental leave under FMLA not allowed unless employer agrees; state laws vary
- Remote employees

06

Partnering with a TPA: Keys to a Successful Partnership

Why partner with a TPA?

- Leaves are complex and are changing all the time
- Improve efficiency and free up your team to focus on other initiatives
- Interaction of leave laws with income replacement is complex
- Improve the employee experience
- Reduce risk and reduce costs
- Reduced schedule leave / work restriction
- Add a buffer between employer and employee (increase privacy)
- Improve return to work

Keys to success

Accurate employee data ensures accurate leave administration and compliance

Clear and up-to-date policies (review annually at a minimum)

Communicate with your TPA - red flags, PIPs, social media

Apply your policy uniformly and consistently, avoid exceptions if possible

Respond timely to TPA questions regarding eligibility, group health plan accepting HCPs not under FMLA

Viewing your TPA as a true partner and extension of your team

Stay involved

Train managers - employees don't have to specifically ask for FMLA or ADA

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Any questions?

Prospective Clients: sales@thelarkincompany.com

Current Clients: Reach out to your Client Success Manager

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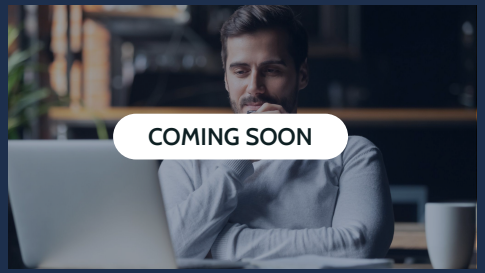
Thank you

ADA Untangled: Your Guide to Confident Compliance

From return-to-work challenges to unclear accommodation requests, our latest on-demand webinar, we'll show you how to navigate ADA's grey areas with confidence.



SEPT 2025

SDI Too High? Your Playbook for Voluntary Plans

While SDI remains high, let's see if a Voluntary Plan would be a better fit for you.