



Family and Medical Leave – U.S Handbook Guide

As part of our commitment to ensuring that our clients are compliant with state and federal family and medical leave laws, The Larkin Company has produced the following guidance on best practices regarding FMLA leave policies.

We recommend following this guidance when creating/updating your FMLA leave policy, with the support of your legal counsel. The Larkin Company will then also be happy to review your leave policy.

➤ **Separate your leave and leave pay policies.**

Have a separate section of your policy addressing time away from work, i.e., what employees may qualify for and what do they need to do for their *time off* to be considered authorized. This will enable you to hold employees accountable to your time off reporting requirements and help ensure that you provide the *minimum* and *recommended* FMLA information (see below).

Then, include a separate section in your policy discussing the pay an employee may be eligible for while on leave (e.g., salary continuation/leave pay and/or STD).

➤ **Include the minimum FMLA information.**

The minimum FMLA information that should be included in your handbook can be found within the FMLA [poster](#). Including the FMLA poster in your handbook should be sufficient. However, we recommend typing this information into your handbook (and providing a link to the FMLA poster), so that you can customize the wording, as permitted by law, in the handbook to your organization.

State Laws— Be aware that certain state laws may offer employees additional rights. We recommend including a statement in your policy that explains the rights and obligations under state law may differ to FMLA and that your “company will comply with all applicable state and local leave laws.” We also recommend seeing the last page of this guide for the state family and medical leave laws that are required to be in your handbook.

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➤ **Other FMLA handbook recommendations**

We highly recommend adding the following, if not already within your policy:

1. Note if FMLA will only apply to eligible employees at a location with at least 50 employees within a 75-mile radius.
2. Define the 12-month period that your company uses to measure FMLA ([rolling back](#), [measured forward](#), [calendar year](#)).
3. Provide clear employee absence reporting/notice procedures.
 - a. Unforeseeable Leaves – consider having a specific time an employee needs to call into the company e.g., 3 hours before a shift begins, unless there are mitigating factors.
 - b. Foreseeable Leaves – 30 days advance notice required, or if not possible, as soon as is practicable.
4. Discuss how accrued paid leave interacts with FMLA e.g., is an employee allowed to use PTO/sick to [substitute](#) other forms of paid leave, if they wish; Will they be required to use PTO during unpaid leave, etc.

Note: use of unlimited/non-accrued PTO (if applicable) on a leave of absence is typically defined by the employer's own specific policy. We see that some employers allow a defined number of weeks of usage of non-accrued PTO on leave, whereas others prohibit the use of non-accrued PTO. Please consult your counsel on this topic.

5. We recommend stating the exceptions where an employer may be unable to reinstate the employee to the same or an equivalent role e.g., fraudulently obtaining leave, shift eliminations, layoffs. See [§ 825.216](#) of the FMLA regulations.
6. If you don't want employees to work a second job while on leave, you need to have a general no-moonlighting policy, and similarly, if you want to prohibit an employee from working a second job, it is critical that you maintain a uniformly applied no-moonlighting policy that prohibits work while on FMLA leave and any other form of leave. See [§ 825.216\(e\)](#).
7. Discuss what happens if insurance premiums aren't paid while on leave or if premiums are late (see the first paragraph [here](#) for general guidance).
8. State if you require a medical release or a Fitness for Duty (FFD) certificate (read more about FFD certificates [here](#)) at the conclusion of an employee's medical or pregnancy disability leave, when this document must be submitted (e.g., prior to return to work, upon return etc.), and the consequences of not returning the form (e.g., an employer may delay restoration to employment). Note: FFDs can generally not be required for intermittent leave unless there are reasonable safety concerns regarding the employee's ability to perform his or her duties.

9. If you believe at any point you may wish to invoke the [key employee provision](#), then refer to the provision within your policy. Notify Larkin if you do add this provision to your FMLA policy.
10. Be sure to include a statement in your policy that FMLA fraud is prohibited. We recommend incorporating language from [§ 825.216\(d\)](#).
11. If the company may require second and third opinions, we recommend stating that the company reserves the right to request a second opinion. See [§ 825.307](#) of the FMLA regulations for more information about second opinions.

➤ **Legally Required State FMLA Addendums**

Some state FMLA laws are legally required to be included within your handbook. We recommend writing these laws into your policy for cohesiveness with your other leave policies. We advise including the same information within the state’s poster/notice (and providing a link to the poster). However, also simply including the notice/poster directly in your handbook should be acceptable to meet the handbook requirements. Note: Handbook addendums are not required if you are not a covered employer (see “Covered Employer” column below). We have included the legally required handbook items below.

Legally Required Handbook Addendums			
State	FMLA Leave Law(s)	Covered Employer	Resource Link
Federal	Family and Medical Leave Act (FMLA)	50 or more employees (US) in a 75-mile radius.	FMLA
California	California Family Rights Act (CFRA)	5 employees (US) – 1 CA employee.	CFRA (see “Required” tab)
	Pregnancy Disability Leave (PDL)	5 employees (US) - 1 CA employee.	PDL (see “Required” tab)
	San Francisco Paid Parental Leave Ordinance (SF PPLO)	20 employees (Global) – 1 SF employee.	SF PPLO
	San Francisco Military Leave Pay Protection Act (SF MLPPA)	100 employees (Global) – 1 SF employee.	SF MLPPA
District of Columbia	D.C Family & Medical Leave Act (DC FMLA)	20 employees (DC)	DC FMLA
	D.C Paid Family Leave (PFL) - Recommended (but not required in your handbook)	1 employee (DC)	DC PFL

Legally Required Handbook Addendums (continued)

State	FMLA Leave Law(s)	Covered Employer	Poster/Resource Link
New Jersey	NJ Family Leave Act (NJ FLA)	30 employees (Global) - 1 NJ employee.	NJ FLA
	NJ Family Leave Insurance (NJ FLI) & NJ Temporary Disability Insurance (TDI) - Recommended (but not required in your handbook)	1 employee (NJ)	NJ TDI NJ FLI
New York	NY Paid Family Leave (NY PFL)	1 employee (NY)	NY PFL
	NY Disability Benefits Law (NY DBL) - Recommended (but not required in your handbook)	1 employee (NY)	NY DBL
Tennessee	TN Maternity Leave Act (TNMLA) – applies to non-birthing parents also.	100 fulltime employees (TN – at one worksite).	TN MLA*

* **TN Maternity Leave Act (TNMLA)** – there is no poster. We recommend simply including the law or providing a link to the law in your handbook.

The above table includes only the state family and medical leave laws that are legally required to be in your handbook (if you are a covered employer in that state). If you have employees in other states, we recommend including information about each leave law within your handbook even if not legally required, so employees know their rights/responsibilities under those laws. To learn which family and medical leave laws apply within your state(s) see the [Larkin Compliance Center](#) for more information. Note: Employers may also have legal obligations to post workplace posters, provide notices to new hires, etc., in certain states (see the applicable state page on the Larkin Compliance Center).

For information on other state/local leave laws, which are not covered under the family and medical leave law in each state (e.g., domestic violence, jury duty, organ donation, safe and sick leave, etc.), please consult your legal team for more information.