



WHITEPAPER

# THE ULTIMATE CHEAT SHEET ON FMLA COMPLIANCE

The Family Medical Leave Act (FMLA) has been rightly hailed as breakthrough legislation for helping employees to manage their lives, without having to worry about job security.

We're all for that. Happy employees are productive employees. Yet, it is also one of the most complicated and bewildering sets of employment laws for Human Resource professionals to administer. Or, to put it another way, employee leave legislation is a well-intended nightmare.

How did a progressive policy become a minefield of potential lawsuits and fines? In addition to FMLA, related federal regulations, such as ADA, only add to the confusion. This being an era of state and local assertion of power, many states and large cities have enacted their own family and medical leave laws. Don't look for relief anytime soon. Legislation designed to improve the lives of workers never comes with an employers' user guide. While this is true for most government mandates for employers, FMLA is in a class of its own, as we'll see below.

But first, let's applaud HR professionals. They have one of the most challenging and complex jobs in the corporate world. One reason is that people are, well, challenging and complex by nature. Another reason is the maze of laws, regulations, and guidelines designed to protect the interests of employees, potential employees, and even former employees. Most HR professionals on the front line are not attorneys specializing in employment law. For those who are, congratulations. For everyone else: know what you're up against and plan for the worst-case scenario.

## NEW SHERIFF IN TOWN

In 2014, the Department of Labor (DOL) appointed a new FMLA enforcement leader. Upon the retirement of Diane Dawson, who led the DOL's FMLA enforcement for several years, the agency named longtime DOL FMLA policy guru Helen Applewhaite to direct FMLA investigations.

Like any new sheriff, Ms. Applewhaite wants to make her mark. Why should you care? Consider the following Applewhaite-era innovations:

- On-site, ad hoc investigations are the new normal – We should be prepared for DOL enforcers to come on site far more often in the future, and not just in response to FMLA violations. Everyone is fair game. Even those with sterling records should be prepared for on-site visits by DOL agents to conduct employee interviews and to review FMLA records.
- The DOL is focusing its attention on systemic FMLA issues – The EEOC has become known for broad requests for information that cover multiple years and locations, and a wide range of personnel actions. EEOC investigations require employees to provide huge amounts of information, as the agency searches for violations far beyond any complained of in a single charge. Expect the DOL to follow suit for FMLA investigations. According to Ms. Applewhaite, DOL's standard request will seek information for a two-year period.
- Employee interviews will become standard practice in an on-site visit – Why? DOL enforcers want to know that all supervisors and individuals involved in the leave process are familiar with your FMLA policy. They will also double-check your leave procedures by requiring multiple employees to attest to them. Front-line supervisors should be prepared to walk a DOL investigator through an employee's leave request, where various FMLA touch points will be tested.

Given DOL's increased enforcement activity in this area, you should be prepared for an FMLA investigation – even if you believe you are in complete compliance. That day may never arrive, but why play the odds?

## STAYING ON TRACK

Accurate FMLA tracking is one of the best ways to ensure that you are in compliance, and that you can easily prove it. Another benefit of focusing on tracking is that tracking acts as a centrifugal force – in other words, a great tracking system can only exist if you and your organization are doing everything else right.

According to a recent FMLA practices survey by ERC, "tracking" is the number one challenge for the majority of survey participants. Given the difficulties employers face with tracking FMLA, the fact that their methods for doing so continue to vary from organization to organization is largely unsurprising. The reported methods used for tracking, e.g. timesheets, Excel, payroll, and outsourcing to a third party, were all over the map. To further complicate matters, organizations also differed on whether paid leave and PTO/vacation time are "required" or simply "allowed" to be taken concurrently while on FMLA.

So, get on track, and stay on track. Use a best-in-class system that can integrate leave management tracking with time sheet tracking. Most importantly, get a solution that is designed to work in the real world. It should not only accommodate your rules, as well as federal and state rules; it should also have the flexibility to accommodate the kind of one-off situations that inevitably arise. And as we've pointed out, one-off investigations can lead to something a lot bigger.

## FMLA COMPLIANCE AND MANAGING LEAVE – BEST PRACTICES

We know that managing employee leave is not easy. Even if you have a well-designed leave policy, that's good, but not good enough. Over time, supervisors and employees alike stretch, patch, circumvent, and otherwise compromise the rules to the point that control breaks down. So how do we ensure that helping employees can co-exist with compliance? Here is a list of best practices to help you. As you consider these suggestions, please keep in mind that robust tracking is the glue that holds everything else together. Our "top ten" list is:

### 1. Get Air Support

Involving the executive suite serves two purposes: executive backing can get everyone's attention and it will give you shelter from the storm – and there will be rough weather ahead.

### 2. Flexibility Good, Exceptions Bad

Make sure the policy is flexible, to accommodate the one-off situations that inevitably arise. Once you force people to go outside of policy, it's hard to rein them back in. After all, many employees have been raised to believe that they are special and unique individuals, deserving of special and unique treatment.

### 3. Communicate

Employees value transparency and this is no exception. There should be no surprises. Above all, do your best to ensure that the policy is seen as being fair, reasonable and necessary.

### 4. Educate Front-line Supervisors

You know what can happen when things go sideways. Make sure that your front-line supervisors feel your pain. Let's be honest – pain avoidance is a powerful motivator.

### 5. Provide a Help Desk

Borrow a best practice pioneered by that other beleaguered group, IT. This service will promote consistency in the application of policy and demonstrate commitment to supporting compliance.

### 6. Automate

Make the automated leave management system the system of record. Make sure that employees can easily see balances, authorizations, denials and other leave related information. We've said it before. Transparency!

### 7. Manage Intermittent Leaves

While FMLA is employee-friendly, employers do have some rights when it comes to scheduling intermittent leave. For instance, employees are required to consult with their employers about setting up medical treatments on a schedule that minimizes impact on their work.

### 8. Require Timesheets

This is an "eat your vegetables" practice; not everyone likes it, but without timesheets, there is no good way to record – let alone categorize – time away from work with any reliability.

### 9. Evaluate Regularly

Make the commitment to review and refine policies and processes on a regular basis. Quarterly reviews are a good idea. Review and refine things like tracking, compliance, transparency, accuracy and morale.

### 10. Get Outside Help

This will keep you up-to-date on legal and regulatory developments. As we've seen, this is a moving target, and the stakes are high. Stay in touch with peers, take advantage of resources offered by organizations like SHRM, and consider using an employment attorney to review your policy and process.

## THE WAY FORWARD

The phrase "May you live in interesting times" is said to be a translation of a Chinese curse. This is not true. Most sources trace this to an error in translation by Joseph Chamberlain, a 19th century British statesman. However, the phrase enjoys wide currency because it resonates.

These are truly interesting times to be an HR professional. We've seen the HR role evolve from the era of the "personnel manager," who usually worked in accounting, to today, where the HR role is critical to an enterprise's most valuable resource; and many HR professionals have a "seat at the table."

This growth in impact and influence brings a huge increase in legal and fiduciary responsibilities. We should celebrate this. The HR function has arrived. FMLA impacts both sides of the HR equation – big impact, big risk. We should also do everything we can to mitigate risk; developing and implementing a robust and flexible leave policy will go a long way to achieve this.

## CONCLUSIONS

The core to a robust leave policy is an integrated leave tracking system. DATABASICS Employee Leave Management system is designed to meet the needs of today's workplace where exceptions are the rule. Key features include flexible accrual methods and rules management, request-for-leave with approval workflow, administrator overrides with full audit trail, comprehensive reporting, and easy transition from existing processes. If we're going to live in interesting times, it's good to have a reliable partner.



DATABASICS is driven to meet the most demanding time and expense management challenges for organizations throughout the world with a combination of deep expertise, next-gen technology and a focus on the unique needs of each customer. Powered by decades of experience, DATABASICS is in the business of solving time and expense problems with solutions that are the right choice for today and easily adapt to the uncertainties of tomorrow. Time and expense are better together, which is why DATABASICS addresses these two critical business processes with absolute ease in one solution.

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