



DIVISION OF
ADMINISTRATIVE
SERVICES

FMLA FAMILY MEDICAL LEAVE ACT TRAINING

AGENDA



- Introduction to FMLA
- Family Relationships under FMLA
- FMLA-Protected Leave Reasons
- Taking FMLA Leave
- Administering FMLA Leave
- Recap
- Questions



INTRODUCTION TO FMLA

What is FMLA?

- ✓ The Family and Medical Leave Act (FMLA) is a United States federal law created in 1993 requiring covered employers to provide eligible employees up to 12 workweeks of unpaid, job-protected leave in a 12-month period for qualified medical and family reasons
- ✓ Continuation of group health benefits under the same conditions as if the employee did not use leave. Employee is still responsible to submit payment of premiums
- ✓ Return to work at the same or virtually identical job at the end of the leave period
- ✓ Protection from interference and retaliation

Qualifying Events Under FMLA

- The birth of a child and to bond with the newborn child within one year of birth; the placement with the employee of a child for adoption or foster care and to bond with the newly placed child within one year of placement
- To care for an immediate family member of the employee (spouse, child, or parent) who has a serious health condition
- A serious health condition that makes the employee unable to perform the essential functions of his or her job
- Qualifying urgent leave arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member deployed to a foreign country; or called to active duty of the covered service members. This includes short-notice deployment, military events, childcare-school related activities and parental care
- Eligible employees may also take up to 26 weeks of military caregiver leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin

Employee Eligibility

- At the time the employee's FMLA leave will start, the employee must:
- Have worked for the State for at least 12 months. The 12 months do not have to be consecutive. Up to a 7-year break in service is allowed, unless break is due to service covered by USERRA
- Have physically worked at least 1,250 hours during the previous 12 months prior to the start of FMLA leave. While it is paid, annual leave and sick leave are not considered work time and does not count towards FMLA requirements



FAMILY RELATIONSHIPS UNDER FMLA

Son or Daughter

- An individual who is a biological, adopted, or foster child; a stepchild, a legal ward, or child of a person standing *in loco parentis*, i.e., in the role of a parent.

At the time the employee's FMLA leave is to start:

- Child is under age 18 or
- Adult Child is 18 years or over and all 4 requirements below are met:
 - (1) Has a disability as defined by the ADA
 - (2) Is incapable of self-care due to that disability
 - (3) Has a serious health condition
 - (4) Needs care due to the serious health condition
- For military family leave, an employee's child may be any age

Parent

- A biological, adoptive, step or foster parent, or someone who stood *in loco parentis*, to the employee when the employee was a child
- Does not include a parent-in-law

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In Loco Parentis – In the Role of a Parent to a Child

- Day-to-day responsibilities to care for or financially support the child
- A biological or legal relationship to the child is not required
- Grandparents or other relatives, such as siblings, may stand *in loco parentis*

Spouse

- A “husband or wife” as defined or recognized in the state where the employee was married and includes individuals in a same-sex marriage
- Does not include civil unions or domestic partnerships



FMLA PROTECTED LEAVE REASONS



Serious Health Condition

Eligible employees may use FMLA leave because of their own serious health condition or to care for an immediate family member with a serious health condition.

A serious health condition is an illness, injury, impairment, or a physical or mental condition that involves:

- **Any period of incapacity or treatment connected with inpatient care (overnight stay in a hospital, hospice, or residential medical care facility);**
- **A period of incapacity requiring an absence of more than 3 consecutive full calendar days from work and any subsequent treatment or period of incapacity relating to the same condition that also involves:**
- **Treatment 2 or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist or**
- **Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider**
- **To qualify for leave under this provision, the employee or family member must visit a health care provider within 7 days of the first day of incapacity and visit(s) must be in-person**
- **Any period of incapacity due to pregnancy or prenatal care**
- **Any period of incapacity or treatment due to a chronic serious health condition (Asthma, Diabetes, Epilepsy, etc.). The employee must visit a health care provider at least 2 times per year to qualify under this provision**

Serious Health Condition

- A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (Alzheimer's, stroke, terminal diseases, etc.)
- Any absences to receive multiple treatments (including any period of recovery)
- By, or on referral by, a health care provider for a condition that likely would result in incapacity of more than 3 consecutive days if left untreated (Dialysis, therapy, etc.)

Mental Health and FMLA

- **Mental health conditions are serious health conditions under FMLA if they require inpatient care or continuing treatment by a health care provider**
- **Examples:**
 - **An overnight stay in a treatment center**
 - **A regimen of continuing treatment, such as, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition**

Physical or Psychological Care

Leave to care for a family member includes providing physical care and psychological comfort.



The employee need not be the only individual or family member able to provide care.

Birth, Adoption, or Foster Care Placement

- Parents may use FMLA leave for the birth, adoption, or foster care placement of a child, and to bond with their newborn or newly-placed child
- Leave for bonding is only available for one year following the child's birth or placement
- In some situations, employees may take FMLA leave before the actual adoption or placement (i.e., to attend court proceedings)

A grayscale photograph of a woman with braids kissing a baby on the cheek. The image is overlaid with a semi-transparent green filter. A vertical green dashed line is positioned to the left of the title text.

TAKING FMLA LEAVE

Amount of Leave – 12 Workweeks

Eligible employees may use up to 12 workweeks of FMLA in a 12-month period. An employee's entitlement to FMLA leave is measured in "workweeks".

The workweek is the basis for an employee's leave entitlement and is not phrased in terms of a particular number of days or hours of leave, but rather as 12 workweeks of leave. If an employee normally works a 50-hour workweek, the employee's statutory entitlement is not capped at 480 hours. The focus is always on the workweek, and the employee's "normal scheduled" workweek (hours/days per week) prior to the start of FMLA leave is the controlling factor.

For example, an eligible employee whose actual workweek is always 60 hours per week is entitled to 720 hours (12 workweeks x 60 hours per week) of FMLA leave in a 12-month period. An eligible employee whose actual workweek is always 40 hours per week is entitled to 480 hours (12 workweeks x 40 hours per week) of FMLA leave in a 12-month period.

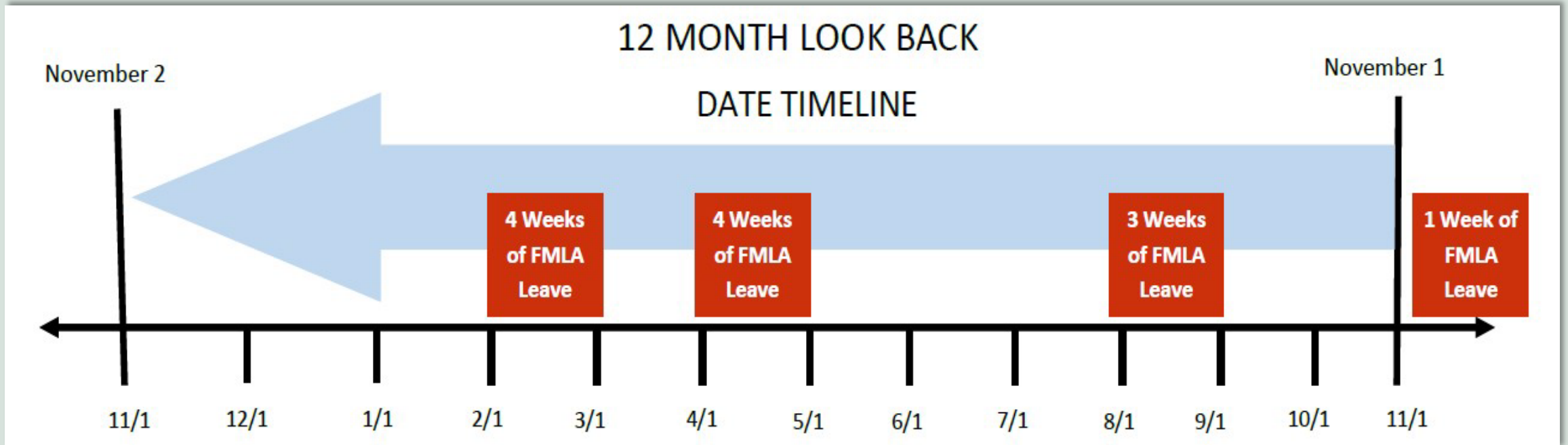
Parents may use FMLA leave for the birth, adoption, or foster care placement of a child, and to bond with their newborn or newly-placed child.

- **Leave for bonding is only available for one year following the child's birth or placement**

In some situations, employees may take FMLA leave before the actual adoption or placement (i.e., to attend court proceedings).

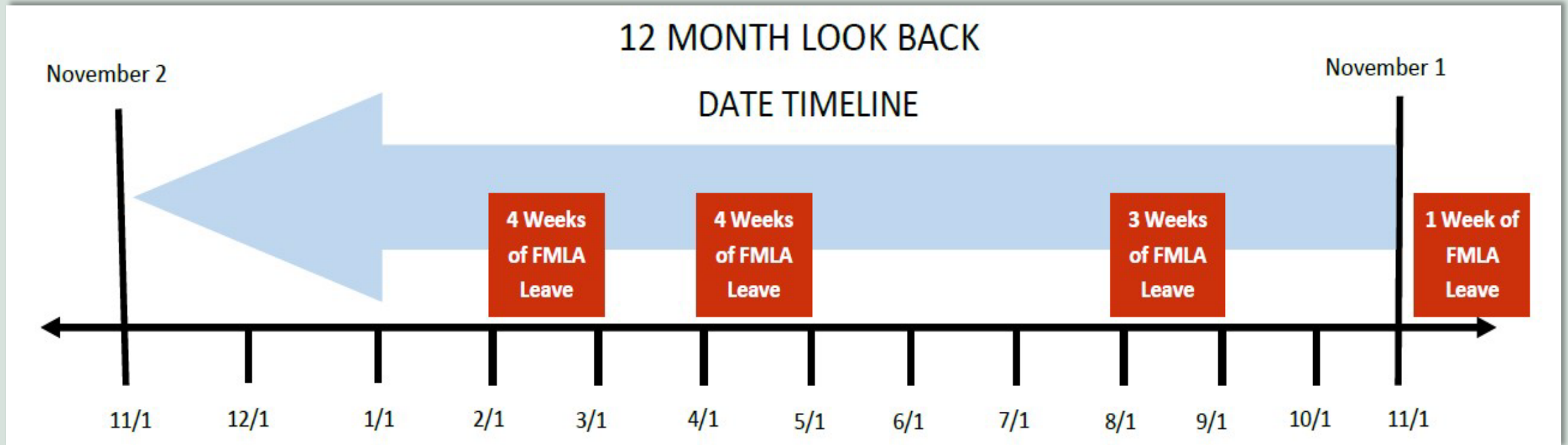
12-Month Period

Leave shall be calculated on a rolling 12-month period measured backward from the date of leave use. The only exception is military caregiver leave which must be measured going forward.



1,250 Hours Worked

Employee must have physically worked (regular and OT hours) at least 1,250 hours during the 12-month period immediately preceding the leave. You will review regular worked hours in UKG to determine eligibility. Regular work hours does not include paid sick, annual, or holiday leave.



Intermittent Leave

Employees are entitled to take FMLA leave in separate blocks of time, or intermittently as medically certified, for:

- **Employee or family member's serious health condition when the leave is medically necessary**
- **Covered servicemember's serious injury or illness when the leave is medically necessary; a qualifying urgency arising out of a military member's covered active-duty status**
- **Leave to bond with a newborn child within one year of birth; the placement with the employee of a child for adoption or foster care and to bond with the newly placed child within one year of placement**

Use of Paid Leave During FMLA Leave

- Requires that available paid sick and annual leave be utilized to cover leave taken for FMLA qualifying events
- Paid leave must run concurrently with FMLA entitlement after notification of eligibility is provided. Therefore, two entries will always be present in UKG for each absence
 - Sick Leave - 8 hours
 - LV- FMLA Self Medical Tracking - 8 hours
- Paid sick leave may only be used for the employees own serious health condition; 80 hours of paid Family Sick leave may be used for a family member if available from accrued sick leave balance



ADMINISTERING FMLA LEAVE

Employee's Responsibilities



Provide notice for the need for leave.
Employee does not need to specifically mention FMLA but must provide sufficient information for employer to recognize leave may be covered by FMLA. Provide 30 days notice or, if 30 days is not possible or practical, as soon as practicable.



Complete leave request forms and submit required medical certification, providing sufficient information for determination of leave eligibility.



Make a reasonable effort to schedule leave so as not to unduly disrupt the agency's operations.



Provide completed medical documentation to include the beginning and ending dates of incapacity.



Comply with procedural requirements for requesting leave established by the Appointing Authority, including call-in procedures.



Submit necessary payment for continuation of benefits.

Employer Requirements

- **Within 5 business days of a leave request or knowledge that leave may be FMLA-qualifying, provide employee the appropriate FMLA leave of absence paperwork and advise them of their FMLA rights and responsibilities**
- **If employee is not eligible for FMLA, you must provide the reason why the employee is not eligible on the Notice of Eligibility Rights and Responsibilities (DOP-L9)**
- **Must allow employee at least 15 calendar days from the date of request to return the medical certification supporting their need for leave**
- **Continue applicable benefits**
- **Restore eligible employees to employment at the conclusion of the period of leave**
- **Not interfere with, restrain, or deny the exercise of any right provided by FMLA and/or PLA**

Notice of Rights and Responsibilities DOP-L9

- Within 5 business days of a leave request or knowledge that leave may be needed and FMLA eligibility is determined, provide the employee the Notice of Rights and Responsibilities (DOP- L9) within 5 business days of leave request or knowledge that leave may be FMLA qualifying. Must allow the employee 15 calendar days from the date of request to return medical documentation
- Even if the employee does not qualify for FMLA you must provide the Notice of Rights and Responsibilities to inform them of their FMLA ineligibility



Medical Certification

The need for a leave of absence for a serious health condition of the employee or the employee's immediate family member must be supported by a medical certification issued by a health care provider. The employee must be permitted at least 15 calendar days from the date of request to obtain the medical certification. Employees are required to provide a complete and sufficient certification.

If the certification is incomplete or insufficient:

- The employer must give the employee the Designation Notice (DOP-L10) stating what additional information is necessary to make the certification complete and sufficient
- The employee must provide the additional information to the employer within 7 calendar days, in most circumstances
- A certification is considered "incomplete" if one or more of the applicable entries on the form have not been completed. Does not have a beginning or ending date for the period of incapacity in which the employee seeks leave
- A certification is considered "insufficient" if the information provided is vague, unclear, or non-responsive
- The employee's direct supervisor should never contact a health care provider to authenticate or clarify information. However, it may be performed by an HR Professional, Leave Administrator or Management Official

Designation Notice DOP-L10



Must include FMLA designation determination, substitution of paid leave information, and fitness for duty information.



Must provide the amount of leave that is being designated and will be counted against the employee's FMLA leave entitlement as supported by the medical documentation provided.



If leave is determined not to be FMLA-qualifying, must include selected reason that leave does not qualify.



An employer may retroactively designate leave as FMLA with the appropriate notice to the employee as required by such notice requirements, provided that the employer's failure to timely designate leave does not cause harm or injury to the employee.

Leave Recertification

- Employers may request recertification no more than once every 30 days for a chronic or permanent/long-term condition, or if an extended period of incapacity was listed on the initial certification until that period initially specified by the health care provider passes. In all cases, an employer may request a recertification of a medical condition every six months in connection with an absence by the employee
- If the medical certification indicates that the employee will need intermittent absences or a reduced schedule leave for a period in excess of six months (e.g., for a lifetime condition), the employer would be permitted to request recertification every six months in connection with an absence. Unless:
 - (1) The employee requests an extension of leave
 - (2) The circumstances described by the previous certification have changed significantly
 - (3) The employer receives information that casts doubt on the continuing validity of the certification (leave abuse, suspected forgery, etc.)

Prohibited Employer Actions

Employers are prohibited from:

- Interfering with, restraining, or denying the exercise of, or attempt to exercise, any FMLA right
- Discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise any FMLA right
- Discharging or in any other way discriminating against any person, whether or not an employee, for opposing or complaining about any unlawful practice under the FMLA
- All persons, whether or not employers, are prohibited from discharging or discriminating against any person because they have:
 - Filed any charge, has instituted, or caused to be instituted, any proceedings; given, or about to give, information in connection with a proceeding; testified, or is about to testify, in any inquiry or proceeding
- Examples of prohibited conduct include:
 - ✓ Refusing to authorize FMLA leave for an eligible employee
 - ✓ Discouraging an employee from using FMLA leave
 - ✓ Manipulating an employee's work hours to avoid responsibilities under FMLA
 - ✓ Using a request for FMLA as a negative factor in employment actions
 - ✓ Counting FMLA leave under "no fault" attendance policies

You Should
Now Have
Knowledge of
the Following:

- What FMLA is
- Qualifying Events for FMLA Leave
- Employee Eligibility for FMLA Leave
- Family Relationships under FMLA
- What Qualifies as a Serious Health Condition
- The Importance of HR's Role in Following FMLA and Properly Designating FMLA

FMLA Resources

- Department of Labor (DOL) Factsheets
- FMLA/PLA Policy
- FMLA/PLA Supervisors Toolbox
- FMLA Frequently Asked Questions
- FMLA/PLA Comparison Chart
- FMLA Leave of Absence Paperwork

QUESTIONS OR COMMENTS?