



Legal Compliance

Courtesy of Meridian Benefits Consulting

Q

How much job-protected leave is an employer required to provide? Can an employer replace an employee if he or she has been out of the office, sick, for a month?

A

The amount of job-protected leave an employer must provide to an employee depends on a number of factors under the Family and Medical Leave Act (FMLA). The first is whether or not the employer is covered by the FMLA; then details about the employee and the reason for the leave must be considered.

The FMLA applies to private employers that have 50 or more employees, public agencies and local education agencies. It allows covered employees to take certain extended or intermittent periods of leave for the reasons noted below. In order for an employee to be covered by the FMLA, he or she must have:

- Been employed by a company for at least one year; and
- Worked at least 1,250 hours over the previous 12 months.

Covered employees may take up to **12 weeks** of FMLA leave in a 12-month period (26 weeks for leaves involving the injury or illness of a family member in the military). FMLA leave is job-protected, so the employee must be returned to his or her original position, or an equivalent position with equal pay and benefits, after his or her leave has ended.

If there is no explanation for the employee’s absence, or the absence has not been approved, an employer may be able to terminate or discipline the employee according to the company’s employment policies.

If an employee is absent from work due to the birth, adoption or foster care placement of a child, or because of a family member’s serious health condition, the employee may be protected from termination under the FMLA. The FMLA also provides leave in some instances where a family member is called to active military duty or has an injury or illness related to military service.

Check to see if your state has more generous laws regarding job-protected leave, which may also apply to employers not covered by the FMLA.

When the employee has used all of his or her FMLA leave and does not return to work, the leave is no longer job-protected. However, employers should be aware of other applicable laws, including the Americans with Disabilities Act (ADA), and consult with an attorney prior to terminating an employee who was out on leave.

