

# HR Insights

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## Curbing FMLA Leave Abuse

The Family Medical Leave Act (FMLA) protects employees who are dealing with a serious health condition or managing care for a loved one. The law applies to companies with 50 or more employees and affords qualified individuals up to 12 weeks of unpaid leave each year for family and medical reasons (26 weeks for military caretakers), without the risk of losing one's job. This leave can come in one lump sum (i.e., taken all at once) or be used intermittently (i.e., used as the need arises). It's the latter situation that increases the prospects for FMLA leave abuse.

### What Is "FMLA Leave Abuse?"

Since FMLA leave may be used intermittently, it can be difficult to accurately track how those 12 weeks are being spent. For instance, an employee may use some FMLA leave for chemotherapy appointments or prenatal doctor visits—stretching their allotted time over several months.

If you're not careful, an employee using intermittent FMLA leave might abuse their allotted time—for example, misleading you about why they're taking time away from work or not providing sufficient FMLA documentation, yet taking time off regardless.

### What Does FMLA Leave Abuse Look Like?

While FMLA leave abuse is inherently tricky to identify, it most commonly happens when used intermittently. While FMLA leave abuse is inherently tricky to identify, here are some examples of what it may look like:

- Taking FMLA leave without actually having a legitimate, qualifying reason
- Falsifying health records to indicate FMLA compliance

Given the sensitive nature of FMLA leave abuse, it's important to have an established system for enforcing FMLA leave policies. This includes methods for curbing potential abuse.

### Strategies for Curbing Abuse

The most effective way to protect against FMLA leave abuse is establishing well-thought-out policies, including specific requirements and clear penalties for violations. Consistent enforcement is also key, as that will help your case if FMLA leave must be denied or disciplinary action is required.

Here are some strategies for curbing FMLA leave abuse:

1. Require employees to submit medical documentation—or a form drafted by your organization—to corroborate their need to take FMLA leave to care for a covered family member with a serious health condition or for the employee's own serious health condition.
2. Scrutinize the internal form or medical documentation to ensure it is fully and accurately completed. If the submitted materials are incomplete or insufficient (as established by the policy above), send the employee a written request for additional information and specify a time period for receiving it.



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3. Train managers to look out for trends, like frequent Monday and Friday absences, that may indicate FMLA leave abuse. Identifying such a pattern could necessitate that the employee resubmit medical certification for those absences.
4. Empower managers to ask reasonable questions when an employee reports an absence. Managers should be trained to identify whether the conditions of an absence would qualify an employee for FMLA leave. Prior to acting, legal counsel should be consulted.
5. Depending on state law, consider prohibiting, in writing, the ability of employees on FMLA leave to work other jobs and still qualify for leave.

## Legal Considerations

FMLA leave abuse is a difficult subject for employers, since many rightfully fear triggering costly settlements or judgments. Employers may be wary of pursuing FMLA leave abuse and disciplining employees when there's a chance of being hit by litigation.

However, such possibilities shouldn't deter you from taking action against employees who abuse FMLA leave and your internal policies.

You should consult with legal counsel regarding your FMLA and other applicable leave policies before acting on a suspected FMLA leave abuser. Above all else, document every interaction with FMLA leave requestees and retain those records indefinitely.

## Summary

Curbing FMLA leave abuse may seem like an uphill battle, but having a clear policy can set you on the right path before any leave is taken. Once you have a policy, ensure managers and employees understand their rights and what is expected of them. Doing so will give you and your employees one less thing to worry about during their leave.