

FMLA: The Top Six Mistakes Employers Make

By Lesley Sifers, Tax Favored Benefits, Inc.

The Family and Medical Leave Act (FMLA) is once again in the news. There is a political move afoot to create paid FMLA which will certainly make this complex and misunderstood law even more burdensome. The current FMLA, passed in 1993, requires covered employers to provide up to 12 weeks of job-protected, unpaid leave in a 12-month period. Employer paid health benefits, including cafeteria plan benefits, must continue during this time. The employee must be reinstated to the same or an equivalent position when they return to work.

Employees have a lot of misconceptions about what the law allows and employers make a lot of mistakes when developing FMLA policies and administering leave. Here are a few common FMLA mistakes that employers make that lead to misunderstandings and, in some cases, litigation.

#1: Believing that you are not required to comply with FMLA because you do not have 50 employees.

Part-time employees are counted on a pro rata basis. For example, if you have 48 full-time employees and four part-time people who work 20 hours per week, you have 50 employees. Counting your employees may be a bit complex if you have multiple locations more than 75 miles apart or remote employees who might be excludable. Beware, however, because even if the federal law doesn't apply to you, state law may.

#2: Failure to develop and disseminate a FMLA policy.

Communicating employee rights and responsibilities under FMLA is one way to prevent abuse and misunderstanding. A good, workable policy not only explains what the law permits but how you intend to administer your FMLA policies. For example, what 12-month period is the benefit year? What will you do if an employee takes other employment while on leave? How do employees arrange to handle paying their share of health insurance premiums or cafeteria plan contributions while on leave?

How will you treat accrued paid time off, worker's compensation disability, and recertification of the need for leave? There are a lot of things to think through when putting a policy together.

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#3: Neglecting to train supervisors and managers about FMLA.

Face it, direct supervisors and managers know more about what's going on in employees' lives than you do. They are the ones who need to understand what FMLA is and when and how to apply company policy. It should be part of their duties to recognize a qualifying situation and to direct the employee to the person in your company who will arrange for and administer the leave.

#4: Thinking that FMLA only applies if the employee requests it.

An employer has the right to invoke FMLA when the situation qualifies for leave under the Act. Recently, an employer called me after an employee used two weeks of vacation for medical treatment that would have been covered under FMLA. Things did not go quite as planned and the employee then requested 12 weeks of FMLA leave. To make matters worse, the employer used a calendar year as the benefit year and this situation occurred in the fall. In January, the employee had another 12 weeks of FMLA eligibility. In the end, the employee did not return to work after more than 26 weeks while the employer continued to pay for health insurance and hold the job open. If the immediate supervisor had understood FMLA and, if the employer's policy had used a rolling year, this leave would have lasted 12 weeks and the employer could have

released the employee, if so desired.

#5: Granting FMLA to ineligible employees.

An employer called to discuss granting FMLA for a part-time employee on maternity leave. She was ready to return to work after eight weeks but insisted that, under FMLA, she had a right to change her work schedule. In the first place, this particular employee was never eligible for FMLA because she didn't work 1,250 hours a year. In the second place, even if eligible, parental leave under FMLA cannot be taken intermittently or as a reduced work schedule. In the absence of state law dictating otherwise, the employer is not required to accommodate her demands. Certainly, there's no bar to working

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Top Six Mistakes Employers Make Regarding the Family Medical Leave Act

1. Believing that you're not required to comply with FMLA because you do not have 50 employees.
2. Failure to develop and disseminate a FMLA policy.
3. Neglecting to train supervisors and managers about FMLA.
4. Thinking that FMLA only applies if the employee requests it.
5. Granting FMLA to ineligible employees.
6. Failing to monitor employees on leave.



Denise Nelsen

Leasing: An Attractive Option for Pre-Owned Combine Financing

Dealerships carrying an abundance of pre-owned combines on their lots have many customer financing options available to help reduce that inventory. With the 2007 planting season all but wrapped up, crop producers are turning their attention to what they expect will be a bountiful harvest – and that means many will be looking to replace their aging equipment.

Strong prices for corn, soybeans and wheat are expected to help push U.S. net cash farm income this year to \$67.2 billion, up half a billion dollars from 2006 and up \$2.6 billion from the 10-year average. The U.S. Department of Agriculture's Economic Research Service forecasts record high net cash receipts from field crops in 2007. That improved income will drive many

farm operators to upgrade their equipment this year.

"Producers typically roll their combines every one to three years," says Denise Nelsen, a relationship officer with AgDirect, a financial service of Farm Credit Services of America. "They've probably held on to their current equipment a little longer than that, so there's some pent-up demand for replacements."

Leases are one option many producers are considering. "Combines are high-dollar assets, and for many producers it makes more sense to lease than buy," says Nelsen. "Leasing allows producers to roll and benefit from a tax, cash flow and working capital position. Also, they still should build significant equity in the lease."

Pre-Owned Machines Eligible

New and pre-owned combines up to seven years old are eligible for leases, she explains. Compared with a loan, a

lease offers the lowest cost per hour of use and a lot of payment flexibility.

"Customers can double-up on lease payments in 2007 with 10 percent down and the first annual payment six months later," Nelsen explains. "They also can toggle payments from one tax year to the next, as best fits their situation."

"Dealerships carrying an abundance of pre-owned combines on their lots have many customer financing options available to help reduce that inventory."

"The lower down payment helps reduce the sticker shock of higher-priced combines and, in some cases, there may be enough trade equity to cover that down payment," she adds. "The use of the asset generates cash for payments. The customer can either use end-of-lease positive equity to reduce payments at the next roll or cash the excess out with the dealer."

Obtaining a loan to finance the outright purchase of a combine offers producers some benefits as well, Nelsen says. "Overall, loans are the least-cost form of ownership and they build the most equity over time. And with AgDirect, loans are patronage-eligible."

Whether to buy, lease – or even rent – is a decision each producer must make based on his or her unique circumstances. "Acquiring a high-dollar asset like a combine is a big decision," concludes Nelsen. "We recommend the producer consult with his or her tax adviser to determine which option is best in their particular case."

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things out to everyone's benefit but this situation was simply not a FMLA event.

#6: Failing to monitor employees on leave. Keep in mind that FMLA is available for the employee's own serious health condition, to care for a close family member and for parental leave. In the majority of situations, it is possible that the need for FMLA is foreseen and the employee can give you the required 30-day notice. In these cases, you have time to meet and explain how the leave will be handled. This should include discussion of certification requirements as well as topics like drawing down accrued paid time off and payment of health insurance premiums. Once leave begins, it's important to keep the communication open. For example, if you

discover the employee is working elsewhere and your policy prohibits this, address it immediately.

I recently came across a nifty little booklet for employees called "FMLA: What You Need to Know." If you already have your policy established and managers trained, I strongly suggest something like this for your employees. I believe that if employees truly understand their rights AND responsibilities, you will benefit by reducing abuse and misunderstanding of this law. I seldom endorse publications but will make an exception in this case. The booklet is available from Business and Legal Reports, 800-727-5257 or www.blr.com.

As always, thanks for reading this column. If you would like to contact me, call the HR Help Line at 800-683-3440 or e-mail lesley@taxfavoredbenefits.com. ■