HR that Works℠ FMLA Flowchart

Employee requests FMLA leave, is absent for more than 3 days, or employer "on notice"

→ Employee fails to give timely advanced notice of need for leave. Consider delay of FMLA protections.

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Is the employee qualified for leave?

- 12 mos employment and at least 1250 hours worked
- Works with at least 50 other employees within 75 miles
- Has not exceeded 12 weeks leave over last reporting period.

No → Notify employee of non-eligibility in writing. → Consider ADA, work comp, and company policies.

Yes ↓

Leave is provisionally designated as FMLA. Within 5 business days of Notice, provide:
1. Notice of Eligibility and Rights and Responsibilities Form WH-381, and
2. Provide Medical Certificate Forms WH-380-E or WH-380-F, or
3. Provide WH-384 or WH-385 for military leaves.

→ Employee fails to return Request within 15 days. Send Warning of Failure to Provide Notice. → Employee fails to provide Notice. Termination for failure to provide notice if attendance rules are violated; no excuse. Consider ADA, Work Comp, and company policies.

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Employee provides Medical Certification within 15 calendar days.

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Analyze whether medical certification is complete and if a qualifying medical condition exists.

→ Military Family Leave
If employee is a child, spouse, parent, or next of kin of a covered service member, may take up to 26 weeks of leave to care for ill or injured service member. May take up to 12 weeks to assist with a qualifying exigency related to military duty.

→ Does the employee's requested leave involve:
a) The birth of a son or daughter, or care for a newborn child? OR
b) Placement of a son or daughter for adoption or foster care? OR
c) Care for the employee's spouse, son or daughter, or parent with a serious health condition?
d) The employee's own serious health condition? OR
e) Care for military member? OR
f) Exigency circumstances?

So, does the condition involve:
a) Inpatient care, OR
b) Continuing treatment by a health provider involving either:
i) Period of incapacity of more than three calendar days, and subsequent treatment or incapacity involving the same condition, OR
ii) Periods of incapacity for pregnancy or prenatal care, OR
iii) Chronic serious health conditions, OR
iv) Permanent or long-term incapacity for treatment that may not be effective, OR
v) Periods of absence to receive multiple treatments?

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If the requested leave involves a son or daughter, is that individual under 18, disabled or not, a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis? Parents do not include "in laws."

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Provide Designation Notice WH-382 within 5 business days.Qualified?

No → Leave denied as not a qualified reason or due to lack of proper medical certification. → Demand medical clarification within 7 calendar days or request second opinion. → Leave denied for failure to provide clarification or go for a second opinion at employer expense.

Yes ↓

Leave granted and calendared. Notice provided to employee.

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Leave exhausted. Notify employee.

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Return to work with "fit for duty" medical certification. (Notice required in advance.)

→ If no return, is other leave available? (ADA, pregnancy disability, company policies).

No ↓ Termination of employment and insurance coverage. Issue COBRA notice.

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Employee returns to work in same or similar position.

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Consider exceptions for "key employees" if no return to same or similar position.

Note: All decisions regarding the granting or denial of FMLA should be approved by Human Resources. If you are in California, Connecticut, Hawaii, Maine, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, Washington, Wisconsin, or Washington D.C., please check similar state statutes by going to www.dol.gov/esa/programs/whd/state/fmla/index.htm. If you ever have a question, please contact the HR That Works Hotline. For additional information go to www.dol.gov/esa/whd/fmla.

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