

WEBINAR SERIES

# Employee Leave of Absences: A Federal and State Overview

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# Today's Presenters



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# Today's Agenda

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- FMLA
  - What is FMLA?
  - Eligibility
  - Qualifying Conditions
  - Types & Amounts of Leave
  - Job Protections
- ADA
  - What is the ADA?
  - Notice
  - The Interactive Process
- PWFA Basics
- The Intersection of ADA & FMLA
- State Leave Laws & their Interaction with Federal Laws - Overview

## Webinar Forum

*All participants are muted.*

*Please type questions in the side navigation panel and we will try to address most questions during today's session.*

*Today's presentation will be posted online at [prestigepeo.com/webinars](https://prestigepeo.com/webinars)*

# What is FMLA?

FMLA is the acronym for:  
**Family and Medical Leave Act**

It is a federal level protection for employees who may need to take leave from work.

# What does FMLA Provide?

## An Introductory Summary

- Unpaid, job-protected leave
- Benefits continuation
- Job reinstatement
- 12 to 26 workweeks of leave in a 12-month period
- Diversity and Inclusion
- No interference, no retaliation
- **Difficulty or inconvenience to the employer are irrelevant**



# Eligible Employees Are Those Who..

1

Experience a qualifying reason for leave;

2

Work for a covered employer (private employer with 50+ employees or a public agency of any size);

3

Work at a jobsite with 50+ employees within a 75-mile radius

4

Have accumulated **12 months** of service; and

- Breaks in service may count
- Time out of a workers' comp injury counts
- Consider temporary work, work as an intern, and more
- Non-FMLA leave can transition to FMLA leave

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Have worked **1,250 hours** in the last 12 months

# Qualifying Reasons for FMLA leave

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- Leave related to pregnancy, birth, adoption, and foster care.
- Care for family members with serious health conditions.
- Personal serious health conditions.
- Military qualifying exigency leave.
- Care for a military family member with an injury or illness.



# Recognizing the Need for a Leave Conversation – the Employer’s Burden, and No Magic Words

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## **Conversations with Employees That May Indicate the Employee Has a Need For Leave:**

- Employers realize that time sheet or hours worked report looks different than usual;
- Poor Employee attendance about to lead to discipline;
- Employee raises an issue about their work schedule as it relates to a medical condition;
- Employee brings up during counseling or disciplinary meeting that they have a medical problem causing performance issues;
- Employee provides information—in person, via telephone, from a family member, etc.—about a medical problem that may require time off work, either on occasion, or for a longer duration
- Significant change in an employee’s behavior, work patterns or conduct and the Employer has reason to believe it may be related to a medical condition
- Employee has an on-the-job injury which renders them unable to work for a period of time.



# Medical Reasons for FMLA Leave: Defining Serious Health Conditions (Part 1)

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

- An **overnight stay** in a hospital, hospice, or residential medical care facility or any subsequent treatment in connection with that inpatient care.
- Any period of **incapacity**, including an inability to perform regular daily activities, for **more than three consecutive** full calendar **days** and any later treatment or incapacity required or caused by the same condition that also involves either:
  - two treatments, with a treatment defined as an in-person visit to a health care provider (the first treatment must occur within seven days of the first day of incapacity); or
  - one treatment by a health care provider who prescribes continuing treatment.
- Periodic incapacity because of a pregnancy, including morning sickness or prenatal care.

# Medical Reasons for FMLA Leave: Defining Serious Health Conditions (Part 2)

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- **Chronic conditions** such as migraines, depression, or diabetes that:
  - require at least two visits per year to a health care provider for treatment;
  - continue over an extended period; and
  - cause episodic incapacity.
- Permanent or long-term incapacity as a result of a condition for which treatment may not be effective, such as Alzheimer's disease.
- Conditions that require absence to receive multiple treatments for:
  - restorative **surgery** after an accident or injury; or
  - a condition that, without medical intervention or treatment, would most likely cause a period of incapacity of more than three consecutive calendar days, such as cancer.

# Amount and Types of Leave

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- Blocks of Leave
- Intermittent/Reduced Schedule Leave
- In hours or partial workweeks based on employee's regular work schedule
  - Employee's own workweek is still the basis (do they work 30 hours a week, or 60?)—make sure enough hours are being put in their FMLA leave bank
- Watch out for requests we may incorrectly consider accommodation issues
  - Employee: “My doctor says I can only work 20 hours a week”
  - Supervisor: “We cannot accommodate that” or “we don't have any part time jobs”
  - **INCORRECT—This is a form of FMLA if someone is eligible**

# Employees out on FMLA and their Return to Work

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## **Employees returning from FMLA are entitled to reinstatement to the “same or equivalent position”**

- “Virtually identical:” same pay, same shift, same benefits, same worksite, same duties, etc.
- If the employee can perform the essential job functions (with or without an accommodation)
- Keep in mind that in FMLA context, no such thing as “undue hardship” to the employer
- There is “no greater right” than if they had been at work
  - BUT: Very high risk of terminating employees while on leave, or immediately after their return



What if they Can't  
Come Back After  
12 Weeks?

# Leave Under the ADA

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Leave is one form of reasonable accommodation under the ADA (i.e., the Company may have leave obligations to its employees under the ADA regardless of FMLA eligibility and/or your policies and practices).



# What is the ADA? The Americans with Disabilities Act

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1. The ADA is another federal level of protection for employees.
2. The ADA prohibits discrimination because of a disability; a history of having a disability; because someone is perceived as having a disability; or because of someone's association with someone with a disability.
3. Employers must also **reasonably accommodate** qualified individuals unless it poses an undue hardship.
4. Requires an interactive process with the employee and possibly their healthcare provider.
5. Accommodations under the ADA are highly individualized and require a fact-specific analysis (the interactive process).
6. **Net Result:** the end of FMLA is not the automatic end of job protection for those on leave – Employers have to go through the interactive process.

# Practical Steps to Implement Leave as an Accommodation

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1. When EE is about to run out of FMLA (or isn't eligible for FMLA) and has expressed a need for leave, ER should reach out to determine their status and RTW plans
2. ER will request new or updated information from an appropriate healthcare provider, which would include job-related limitations, length of the requested leave, and whether, after the leave, the employee will be able to perform all essential job functions, with or without accommodation
3. ER to outline to the employee what ER can/cannot do in writing (i.e., length of the leave), with expectations, and get employee agreement
4. Don't move to leave as the first choice—this should only be when other accommodation options are exhausted or when leave is explicitly requested



# Pregnant Workers Fairness Act (PWFA)

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- The PWFA is another level of Federal protection for employees but does not replace or override other, more protective, federal, state, or local laws.
- The PWFA "requires covered employers to provide reasonable accommodations to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship."\*
- The PWFA is applicable to both public and private employers with at least 15 employees.
- Some Examples of Reasonable Accommodations under the PWFA:
  - Closer parking;
  - Ability to sit;
  - Ability to drink water;
  - Additional break time to use the restroom, rest, and eat;
  - Ability to take leave/time off to recover from childbirth;
  - Being excused from strenuous acts such as lifting heavy things and/or work activities that expose the employee to harmful chemicals or compounds;
  - Ability to work flexible hours;
  - Receiving properly sized safety equipment and/or uniforms;
  - And more!

# Is the PWFA Just Another Version of the ADA?

## SIMILARITIES

- Interactive Process
- Reasonable accommodation
- Undue hardship

## DISTINCTIONS

- No requirement of “impairment” that “substantially limits” a “major life activity” – covers temporary conditions
- May not require an employee to take a paid or unpaid leave if another reasonable accommodation is available

## KEY DIFFERENCE

Must accommodate even if unable to perform essential job functions for a temporary period so long as that function can be performed in the near future and otherwise accommodated

# How do State & Local Laws Interact with Federal Protections?

# How do State Laws Interact with the Federal Laws?

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- Most States (and even some cities) have their own laws for Paid Sick Leave, Paid Family Leave, etc.
- It is important to remember that the Federal protections are only the floor, and that States and Cities can impose laws offering more protections than the Federal laws provide.
- Depending on the State and the State specific law, there are options for:
  - Paid and/or unpaid leave;
  - Leave that runs concurrent with FMLA;
  - Leave that does not run concurrent with FMLA;

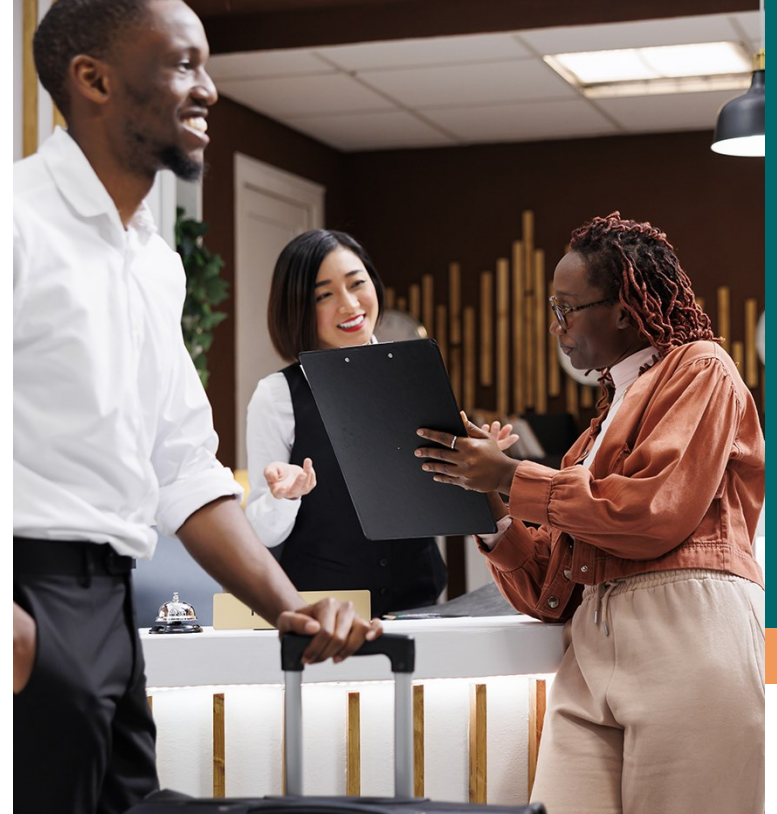
# How do State Laws Interact with the Federal Laws?

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- Sometimes Employers who would not qualify under FMLA, may qualify under state or city laws.
- Most state/local laws have a set duration of time that an individual employee may qualify for, and like the Federal protections, employees may exhaust the time available and need additional time.
  - This is again when a reasonable accommodation analysis/the interactive process under the ADA could be the next step for Employers
- Some examples of States with additional leave laws (that Prestige interacts with more often than others) include, but are not limited to:
  - New York/New York City
  - California
  - Massachusetts
  - Minnesota
  - Oregon

# What to do when a need for leave or accommodation arises for an employee?

- Inform the assigned HRBP so they can engage with your company to provide direction and next steps
- Let the employee know that someone will reach out to them to discuss their issue further



# Takeaways

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- The Federal Laws offering leave and job protection to employees are the minimum and States (and Cities) may enact laws offering additional protections to employees.
- Some employees and employers may qualify under both Federal and State laws.
- Just because someone has exhausted their 12-weeks of FMLA does not mean there are no other options for the employee if they are not able to return to work.
- Federal and State Laws do not provide unlimited protected leave for employees and typically have a set duration of weeks for protected leave.

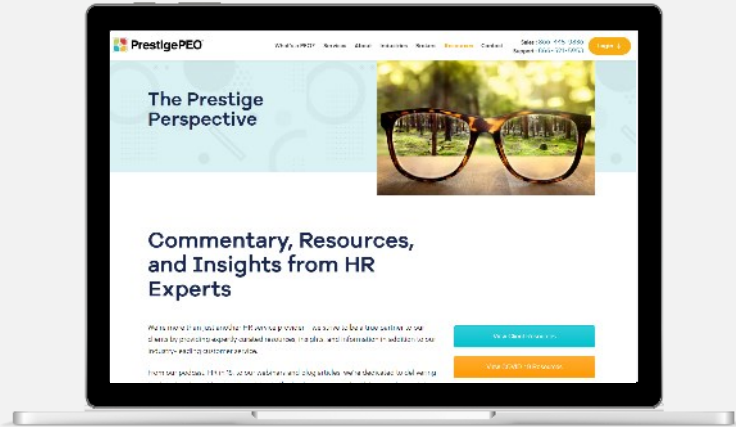
# The Importance of Being Aware of Leave and Accommodation Laws

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- Long-term, remote work has left some employers out of practice in examining disability accommodations.
- EEOC charges alleging violations on the basis of disability have been steadily on the rise since 2018.
- Factfinders are applying a new lens to disability accommodation.
- Leave and accommodation mismanagement is costly for employers.



# Questions / Comments / Discussion?



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