

ve for which you are applying

NO. OF DAYS DUE TO YOU

NO. OF DAYS REQUIRED 1\*

INCLUSIVE DATE FROM

**LORMAN**®

Published on [www.lorman.com](http://www.lorman.com) - December 2017

The Importance of Preventing FMLA Abuse. ©2017 Lorman Education Services. All Rights Reserved.

Published on [www.lorman.com](http://www.lorman.com) - December 2017  
The Importance of Preventing FMLA Abuse. ©2017 Lorman Education Services. All Rights Reserved.

## INTRODUCING

Lorman's New Approach to Continuing Education

# ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ☑ Unlimited Live Webinars - 120 live webinars added every month
- ☑ Unlimited OnDemand and MP3 Downloads - Over 1,500 courses available
- ☑ Videos - More than 1300 available
- ☑ Slide Decks - More than 2300 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



**Get Your All-Access Pass Today!**

# SAVE 20%

Learn more: [www.lorman.com/pass/?s=special20](http://www.lorman.com/pass/?s=special20)

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

\*Discount cannot be combined with any other discounts.

The Family and Medical Leave Act of 1993 was originally passed as a way to protect workers from abusive employers who curtailed days off due to sickness, family issues, and a whole host of other common problems that kept workers out of the office frequently throughout the year. This legislation was well-intended, and it actually served to give workers a leg to stand on as they decided whether or not to take the day off in order to recover from a cold, a major surgery, or to help a dependent spouse or child recover from something similar. As with all legislation designed to protect workers and enhance the workplace, however, the Family and Medical Leave Act has fallen victim to abuse by workers at virtually every level. The result for many employers has been a workforce that is actually less healthy on the job, somewhat less productive overall, and determined to use sick days for things that have nothing to do with personal or family medical matters.

The good news is that there are several key ways to prevent or at least discourage abuse of this key piece of legislation. Human resources professionals stand to gain in several significant ways by restructuring the way the office works, enhancing productivity and boosting overall employee attendance as a result. For those who are new to the legislation itself, or those human resources professionals who have long suffered at the hands of this law, preventing abuse is both a proactive way to improve office life and a great way to protect employees from their own potential for bad decision-making.

## **Effects of FMLA Abuse: A Look at the Downfalls of Taking Suspect Sick Days**

The signature achievement of the Family and Medical Leave Act legislation was to prevent workers from sacrificing career advancement and consistency if they need to take either a single day off for medical purposes or an extended period of time away from the office after a serious surgery or other incident took place. This remains the case, and it does protect workers from potential negative consequences that might otherwise be enacted by their employer due to either a brief or extended absence. The problem, however, is that many employees have gotten in the habit of taking sick days away from the office even when they're perfectly healthy. On the surface, this might not seem like such a bad thing. After all, employees are technically entitled to that time away from the job and it's not really the responsibility of human resources to verify whether or not the employee is truly sick. The problem, however, becomes evident with a bit of further consideration.

If employees are consistently using their sick days to take vacations or enjoy a long weekend after a particularly stressful week, that means they effectively have fewer sick days to use in the event that they do become seriously ill or require a major surgery that will limit their ability to perform on the job. As a result, they'll be more likely to show up to the office while sick instead of taking much-deserved time away while recovering. This problem might seem merely theoretically, but a number of studies actually bear out the fact that many employees show up to work sick as a result of FMLA abuse.

In fact, in an anonymous survey of workers conducted in 2009, a full 67 percent of respondents admitted to arriving at work with a cold or other ailment simply because they had used all of their allotted sick time during a given year for other pursuits. Only a small minority of cases showed that workers came to work while ill because they had used up all of their sick days for legitimate medical and recovery purposes. This poses several key problems to the typical human resources professional:

1. Sick workers tend to be contagious, and that means more people throughout the office are likely to come down with symptoms that might force them to stay home. Further, if those workers also abused their FMLA-guaranteed sick days, they're likely to come to work while sick and put the health of even more workers at risk.
2. Sick employees are not productive employees. In fact, even a common cold can cut production rates in half and make the office miss deadlines, targets, sales goals, and other key objectives. In this way, the employee is costing the office a significant amount of money in an exponential way: They're abusing paid time away from work, and underperforming on the job as a result if they come down with even the slightest cold.
3. Employees who feel they can simply call off from work at any time, simply by pretending they're sick, will be less likely to show up at critical times. Employment reviews, major deadlines, office meetings, and other key events might be routinely missed by employees who mysteriously fall ill on a routine basis just to get out of tough conversations, harder days on the job, or increased employer scrutiny.

## **Costs and Losses Aren't Theoretical: Studies Back FMLA-Induced Losses for Employers**

The concept of an employee routinely abusing their FMLA-guaranteed days or weeks away from the office might sound merely theoretical, but that's just not the case. Roughly a third of employees admit to taking multiple days off from the office without suffering from an ailment or having to tend to a loved one who has fallen ill. As a result, a major business industry publication estimates that employers nationwide lose more than \$20.1 billion each year solely because of this type of abuse.

Issue Background, a go-to source of statistical data for those in the business industry and elsewhere, reported the information after working with Employment Policy Foundation to conduct a study into potential FMLA abuses, yearly costs, and long-term expenditures that might otherwise be prevented if abuse were handled proactively by those in the human resources industry. The study isn't alone in analyzing and predicting such losses, either. A separate study found that, depending on the size of the organization and the frequency of FMLA abuse by each employee, the legislation can cost between \$50 and \$200 per employee, per year, due to heavy abuse of paid time away from the office.

In light of these serious costs, and the potential for businesses to experience real economic hardship at the hands of fraudulent or sick workers, prevention of such abuses has become tantamount in human resources departments nationwide. In the 20 years since the ratification of the Family and Medical Leave Act, there have been several effective methods of reducing policy abuse and encouraging employees to use their sick days only for their designated, federally-mandated purpose. For those in human resources who are looking for such solutions, a primer on FMLA abuse prevention follows.

## **Prevention of FMLA Abuse: Tactics and Strategies for the Human Resources Profession**

### **1. Require Physician Certification of FMLA Leave**

One of the most effective ways to prevent the abuse of sick days guaranteed by the Family and Medical Leave Act of 1993 is to simply add an extra requirement when employees call in to report that they won't be able to make it to the office that day. Instead of just requiring the employee to deduct time from their sick leave, human resources professionals can insist that they provide certification by a physician within 15 days of the FMLA request. This certification would include information about the employee's time off, including the physician's signature attesting to their status as legitimately ill or legitimately present for a medical procedure.

This requirement might seem controversial, but it's actually quite common among today's largest human resources departments. As long as the certification from the physician complies with HIPAA regulations, it's perfectly admissible and able to be used by HR professionals. In fact, a full 64 percent of businesses currently require such certification when an employee requests time away from the office for an illness or medical procedure.

## 2. Prevent On-Again, Off-Again FMLA Leave with "Ready for Duty" Papers

One of the more common FMLA abuses comes in the form of on-again, off-again workplace attendance after an accident, medical procedure, or serious illness. In order to get a few extra days off, or a few scattered days away from the office, employees who have recently suffered from a major illness or medical procedure will frequently call into their employer and request sick leave because their body just isn't responding well to their having returned to the office. In some cases, these concerns are legitimate and employees are right for taking a few days off. As everyone has likely experienced, sometimes coming back to work after a major medical absence is easier said than done.

It's often true, however, that employees merely use this as an excuse to get a few relaxing days away from the office as they ease back into their position. This might be an acceptable use of paid time off, but it's not an acceptable use of time off provided by the FMLA. Instead, this counts as abuse and should be avoided. The best way to avoid such abuses is to simply require a signed and certified "ready for duty" notice by each employee who is returning after an extended absence. The paper simply notes that the employee has suffered, has recovered, and is now ready to resume their duties effective immediately. This will call into question any requested time off afterward, and it will make employees accountable for their preparedness and their potential abuse of FMLA allowances for recovery.



### 3. Require Advance Notice of Extended Absences

One of the initial problems with the Family and Medical Leave Act during the mid-to-late 1990s is that many employees were taking extended absences from the workplace with little to no notification at all. This left human resources professionals and company managers in a pretty tough spot: Because of the law's wording, they were often prohibited from replacing the employee in any way. They were also bound to the law's allowance for an extended medical leave. More sophisticated human resources policies have prevented surprising leaves of extended absence, however.

Chief among the prevention methods enforced by today's employers is the 30-day notice for an extended medical leave. Within reason, employees should be able to notify their employer if they'll be out of the office for multiple days due to surgery, studies, pregnancy, or other concerns. Employers who are serious about such notifications can pair them with disclaimers and consequences, which further encourage the employee's cooperation with this advance notification tactic.

#### 4. Establish a New Hierarchy of Paid Time Away from the Office

Many employers still place the Family and Medical Leave Act atop their list of paid times away from the office. The thinking is actually designed to better accommodate employees: Employers assume that workers will only request time off if they're legitimately sick, while other paid time away from the office would be scheduled in advance to accommodate vacations. This is an ideal assumption, and one that actually promotes an employee's abuse of the provisions contained within the FMLA.

Instead of placing the FMLA at the top of the hierarchy, insist that employees burn through their paid time off and non-FMLA medical leave before they tap this resource of extra time away from the office. This can easily discourage daily abuse of sick time, and it can make it even more imperative that employees notify management of extended medical absences that require using FMLA time first.

## 5. Request Information and Be Prepared to Deny an FMLA Request

Another common mistake made by those new to the human resources profession is simply assuming that all FMLA requests must be granted with relatively few questions asked. This is actually not true: In fact, the Family and Medical Leave Act allows employers to ask questions about the employee's time away from the office and why they're invoking the FMLA in order to take a day off. Employers can ask several key questions to determine whether or not the employee's request is permissible under the FMLA:

- What job duties does the illness prevent you from performing?
- How long have you known that you could not show up to work today?
- Do you intend to see a doctor? When?
- What is the specific reason for the absence?
- Has this happened before?

These questions will make it clearly whether the employee is legitimately missing a day of work to combat an illness or treat an injury, or whether they're taking advantage of the FMLA to enjoy a sunny, healthy day away from the daily grind. Employers who don't get the answers they're looking for are actually well within their rights to deny sick time via the Family and Medical Leave Act. They cannot force the employee to attend work that day, but they can certainly require them to deduct their time from non-FMLA leave allowances. Further, if they suspect the employee is deliberately shirking their professional responsibilities, they can even pursue adverse employment actions against that individual in many cases.

## 6. Trade in a Static PTO Calendar for a Rolling Tally of Paid Time Away

One of the mistakes that employers have made for generations is to calculate paid time off using a fixed, static calendar that only changes every 12 months. Ideally, this would not be a problem for employees. After all, most people will smartly budget their time away from the office so as not be caught off-guard by illness or unprepared for a family vacation. For those who abuse the system, however, a fixed calendar of paid time off only encourages extended absences close to the rollover date.

To prevent such abuses, including those that invoke the Family and Medical Leave Act, employers should create a rolling calendar of paid time off. Hours that aren't used in January can roll over to February, but employee will not get access to the entire year's paid time off in January alone. That makes abuses of the system far less likely overall. Employers can always implement exceptions to this rule for those employees who provide a physician's certification of surgeries or other justifications for a long-term absence, however.

## **With Abuses on the Rise, Prevention is Absolutely Crucial in Human Resources**

In addition to studies that looked at the overall cost of FMLA abuses in the workplace, several groups have gone to great lengths to understand whether or not abusing the Family and Medical Leave Act has become more or less common over time. It should probably not be surprising to those in human resources that the frequency of such abuses has escalated virtually every year since the legislation passed Congress and was signed into law by President Bill Clinton. In fact, abuses in some cases have skyrocketed by more than 200 percent over the past 15 years alone. That's a significant problem for employers, and it represents a major cost of doing business that could otherwise be avoided.

Those offices and human resources departments that don't engage in proactive techniques to curb Family and Medical Leave Act abuse stand to lose even more money in the future. It's estimated that businesses without strict leave of absence policies in place could actually end up paying up to 300 percent more per employee, per year, for abuses that go unnoticed, undetected, and occur frequently. In an economy where every single penny can mean the difference between a sound bottom line and an organization that teeters on the edge of bankruptcy, such prevention is absolutely the most important task facing today's human resources managers and employees.

The good news is that there have never been more ways to prevent this key kind of abuse. In addition to the policies discussed above, many of which are concerned with certifying the employee's time off and giving them new ways to think about their overall amount of paid time away from the office, there are several new technologies that make it apparent when employees are abusing the system. These new technologies include:

- Social Media Networks

Facebook, Twitter, LinkedIn, and a whole host of other networks are a key way to see where employees are, what they're doing, and whether or not they're as sick as they say they are. All too often, employees forget that their social media activities are broadly visible online. They'll post perfectly healthy pictures, "check in" to the mall or a great restaurant, and not show a single sign of illness. Thanks to provisions within the Family and Medical Leave Act, such activities give employers the evidence they need to reassign time off and reclaim FMLA days for legitimate uses.

- Smartphone Tracking

Employers that provide their own smartphone can actually see exactly where employees are at any given time, at least within rough coordinates. If employees call in sick, or claim to have a major surgery scheduled, employers are within their rights to verify this using publicly accessible tracking data. If an employee instead seems to be out to lunch or on vacation, this allows for recourse that can prevent a significant amount of FMLA abuse.

## **Prevention Will Become Easier Over Time for Many Employers**

Luckily, prevention of FMLA abuse has gotten quite a bit easier in recent years thanks to technology. Computerized accounting systems for paid employee leave now make it easier to account for time away from the office. Employers can even set up alerts for any days away from the office that show patterns of abuse or other nefarious intentions. With a more proactive method of determining whether an employee made their way to a doctor, received his certification that their illness was legitimate, and come back to work only when fully ready to resume their responsibilities, the nearly \$200 per employee annual losses described earlier in this article can be completely avoided. Remember to ask questions, actively deny fraudulent requests, and check up on employee claims and days away from the job. By doing so, employers will easily minimize their annual losses.

The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.