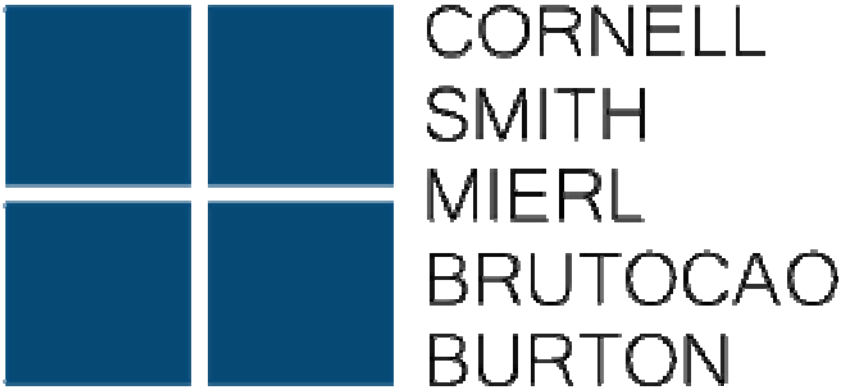
FAMILY & MEDICAL LEAVE ACT OVERVIEW

By Connie Cornell
Cornell Smith Mierl Brutocao Burton, L.L.P.
1607 West Avenue
Austin, Texas 78701
Ph: (512) 328-1540
Fax: (512) 328-1541
www.cornellsmith.com



THE UNIVERSITY OF TEXAS SCHOOL OF LAW

ESSENTIAL EMPLOYMENT LAW
June 28, 2018

FAMILY & MEDICAL LEAVE ACT OVERVIEW

By Connie Cornell, Cornell Smith Mierl Brutocao Burton, LLP

The federal, state, and even some county and municipal governments may require you, as an employer, to provide your employees with family and medical leave. Texas, however, is not one of the states that has its own law governing mandatory employee family or medical leave. The federal government has adopted the Family and Medical Leave Act (FMLA), which is enforced by the U.S. Department of Labor. The FMLA allows eligible employees to take up to 12 work-weeks of unpaid leave each year for family or medical reasons. FMLA requires covered employers to grant such leave and to return the employee to his or her position, or an equivalent position, upon timely return from leave. An employer may not interfere with, restrain, or deny any employee's right to request FMLA leave, nor may it discriminate or retaliate against any employee for requesting or taking FMLA leave.

Coverage and Eligibility

The Act covers public and private employers and educational agencies. Private employers are covered if they employed 50 or more employees for 20 or more weeks in the current or preceding calendar year.

Employees must meet eligibility requirements before they are entitled to leave. To be eligible, an employee must:

- work for a covered employer;
- have worked for the employer for at least 12 months. (When there has been a break in service of 7 years or more, the time preceding the break is not counted unless it was for military leave.)
- have worked at least 1,250 hours over the past 12 months; and
- work at a location where at least 50 employees are located within 75 miles.

Calculating the 12 Month Period

Employees are entitled to 12 weeks of FMLA leave during any 12-month period. The 12-month period may be calculated by any of the following methods:

- a calendar year;
- a fixed 12-month period, such as a fiscal year or year that renews on the employee's anniversary date (the date the employee was hired or deemed a permanent employee);

- a 12-month period counted forward from the first day the employee takes leave; or

- a "rolling" 12-month period measured backward from the date the employee uses any FMLA leave.

However, for employees taking **military caregiver leave** (who are therefore entitled to 26 workweeks of leave in a single 12-month period), the single 12-month period begins on the first day of leave, regardless of how the employer calculates the 12-month period for other FMLA leave.

Most employers prefer the "rolling" method or the "counting forward" method because such methods prevent an employee from joining multiple leave periods together by taking 12 weeks of leave at the end of a calendar year and then 12 weeks of leave at the beginning of the next calendar year for a total of 24 consecutive weeks.

The employer must designate which method it wishes to use to calculate the 12-month leave periods and apply the method uniformly and consistently. If the employer fails to select a method and notify the employees of which method applies, the method most beneficial to the employee will apply. If an employer changes methods, it must notify employees at least 60 days in advance of implementing and enforcing such change.

Intermittent leave and reduced leave schedule

Under certain limited circumstances, an employee may be entitled to take FMLA leave on an intermittent or reduced schedule basis, when medically necessary under Basic FMLA or when leave is due to qualifying exigencies under Military FMLA. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave taken after the birth or placement for adoption or foster care of a healthy child may not be taken on an intermittent basis unless both the employer and the employee agree to such intermittent leave. The employer may reserve the right to temporarily transfer an employee requesting intermittent or reduced schedule leave that is foreseeable based on planned medical treatment. The temporary transfer would be to an alternative position which better accommodates the recurring periods of leave, with no decrease in pay or benefits.

The employer **cannot** require an employee to take an alternate position instead of taking FMLA leave.

Basic FMLA Leave

Assuming you are a covered employer, you must allow an eligible employee to take up to 12 weeks of unpaid leave for one or more of the following reasons:

UT LAW CLE THE UNIVERSITY OF TEXAS TEXASLAW

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the UT Law CLE eLibrary (utcle.org/elibrary)

Title search: Family & Medical Leave Act Overview

First appeared as part of the conference materials for the
2018 Essential Employment Law session
"Family Medical Leave Act (FMLA): The Other Major Entitlement Act"