



## Family and Medical Leave Act (FMLA)

The federal Family and Medical Leave act is being expanded for the first time since its enactment 15 years ago. Express wants to remind you of your current responsibilities as well as educate you on how the new regulations, passed at the end of January 2008, will effect your business. Contact Express for more information on this and other HR issues.

## Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act of 1993 is a federal law regulated by the U.S. Department of Labor, Wage and Hour Division. The purpose of FMLA is to give employees who have worked for an employer for a minimum of 12 months and 1,250 hours assurance that they will not lose their jobs if they need to take leave for 1) their own serious health condition, 2) an immediate family member's serious health condition, or 3) birth or adoption of a child or foster care. The Act requires employers with 50 or more employees (who have been on payroll for 20 or more weeks in a calendar year, including temporaries) within a 75-mile radius to provide up to 12 weeks of unpaid leave during a pre-determined 12-month period.

Under new regulations that became effective January 2008, employers must also provide up to 12 weeks of leave to employees to respond to any qualifying family demand as a result of service members being called to active duty and up to 26 weeks to care for service members who have become sick or injured in the line of duty.

Some states have leave laws that are stricter and provide additional protections than those offered by the federal law. Make sure you are familiar with your state's laws.

## Intermittent Leave

The FMLA regulations define intermittent leave as leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time. The FMLA regulations also say there is no limit on the length of an increment of leave when an employee takes intermittent or reduced scheduled leave. However, you can reduce blocks of leave to the shortest period of time that your payroll system uses to account for absences or use of leave, provided it is one hour or less. If an employee is taking intermittent or reduced scheduled leave under FMLA, only the amount of leave actually taken may be counted toward the 12 or 26 work weeks of FMLA leave.

## Calculating the FMLA Leave Period

Calculating the leave period under FMLA can sometimes be complex. As an employer you select how the 12-month period is determined by choosing from four methods: 1) calendar year, 2) any 12-month period you choose (e.g., a fiscal year, a year beginning with the employee's start date), 3) the 12-month period from the date an employee's first FMLA leave begins, or 4) a rolling 12-month period measured backward from the date an employee begins using FMLA leave. As an employer, you just need to make sure you consistently apply the method to all employees. When an employer has not identified a particular leave year, the Department of Labor will calculate the leave time on whatever basis is best for the employee.



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### Relationship of the FMLA and ADA

Both the Family and Medical Leave Act and the Americans with Disabilities Act protect an employee who is out sick or injured for an extended period of time. Generally, to be covered by the ADA employers must have 15 or more employees (some states cover employers with fewer than 15 employees). The ADA is not a leave law but does recognize that one way to reasonably accommodate a disabled employee is to permit them to use accrued leave or provide additional unpaid leave for medical treatment and recovery. Because of this, it is important that employers know that in some situations they may have to provide more leave than required by their leave policies or FMLA as a reasonable accommodation under the ADA.