



**2024 COMPLIANCE
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Navigating the Leave of Absence Maze with a Remote Workforce

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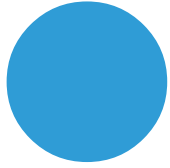


Today's discussion

1. Overview of the FMLA
2. Myriad of state leave laws
3. Time-off policies top-performing employees are embracing
4. Strategies to elevate the time off experience
5. Ways to communicate your leave policies

*“More than **90%** of worksites reported **no** difficulty in complying with the FMLA requirements¹”*

¹ 2018 DOL Family and Medical Leave Act (FMLA) Survey



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FMLA overview



Family and Medical Leave Act (FMLA)

*FMLA designed to allow eligible U.S. workers to balance work and family life by taking unpaid, job-protected time off from work**

- Provides time off for specific reasons
- Provides maintenance of benefits – *as if the employee was actively working*
- Provides reinstatement to same or equivalent position

*FMLA is generally a job-protected leave of absence. However, an employee is not protected from actions that would have affected the employee if the employee was not on FMLA leave. Note, there are special FMLA rules for teachers and airline flight crewmembers.



Eligibility

To be eligible for FMLA leave, employees must meet certain requirements before taking time off

Have worked for a covered employer for least 12 months, and

Have worked at least 1,250 hours over the past 12 months, and

Work at a location with at least 50 employees within a 75-mile radius

Up to 12 workweeks for family and medical leave, or

For a qualifying exigency leave, and

Up to 26 workweeks for military caregiver leave

Employee may take up to 12 workweeks for family, medical, or exigency leave and no more than 26 workweeks of military caregiver leave





Remote workforce

“ Nearly **71%** of employers are finding it difficult to adapt to telework as a way of doing business¹

¹ SHRM

- Home offices may not be considered the work location for FMLA purposes <https://m3ins.com/department-of-labor-addresses-fmla-for-remote-workers/>

FMLA Employee Threshold*

Employee Works from Home

If employee works 75 miles or more from employer's office, the worksite is the office to which the employee reports to (or from which assignments are made)

No Fixed Worksite

Worksite is the site to which employee is assigned as their home base, from which their work is assigned, or to which they report (e.g., construction workers, transportation workers (i.e., truck drivers), etc.)





Remote workers

Things to consider

1. Process to provide notices/posters at time of hire and when leave of absence is requested

2. How to provide leave communications to remote workers (i.e., email, U.S. mail, etc.)

3. Enforce 50/75 rule or eliminate this eligibility requirement for remote worker with no “report to” location” or who reports to another remote worker



Time Off Reasons*	FMLA
Care for child, parent, or spouse who has a serious health condition	✓
Employee's own serious health condition	✓
Disability due to pregnancy or pregnancy-related condition	✓
Bonding with newborn child or child placed in connection with adoption or foster care (within 12-months of event date)	✓
Qualifying exigency (for employee's spouse, child, or parent)	✓
Care for a seriously ill or injured servicemember or covered veteran (for employee's spouse, child, parent, or next of kin)	✓

*Twelve workweeks in a 12-month period with the exception of servicemember/military caregiver leave which provides 26 workweeks in a single 12-month period. Note, an employee is only entitled to a combined 26 workweeks of military caregiver leave and leave for any other FMLA-qualifying reason in a single 12-month period.





“A serious health condition includes an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

Time off needed may encompass both physical and psychological care



Employers to select one 12-month period

Calendar Year

12-month period
that runs
Jan 1 – Dec 31

Fixed 12-Months

12-month period
such as a fiscal
year, a year
starting on
employee's
anniversary date,
or a 12-month
period required by
law

12-Month Forward*

12-month period
measured forward
from the first date an
employee takes FMLA
leave

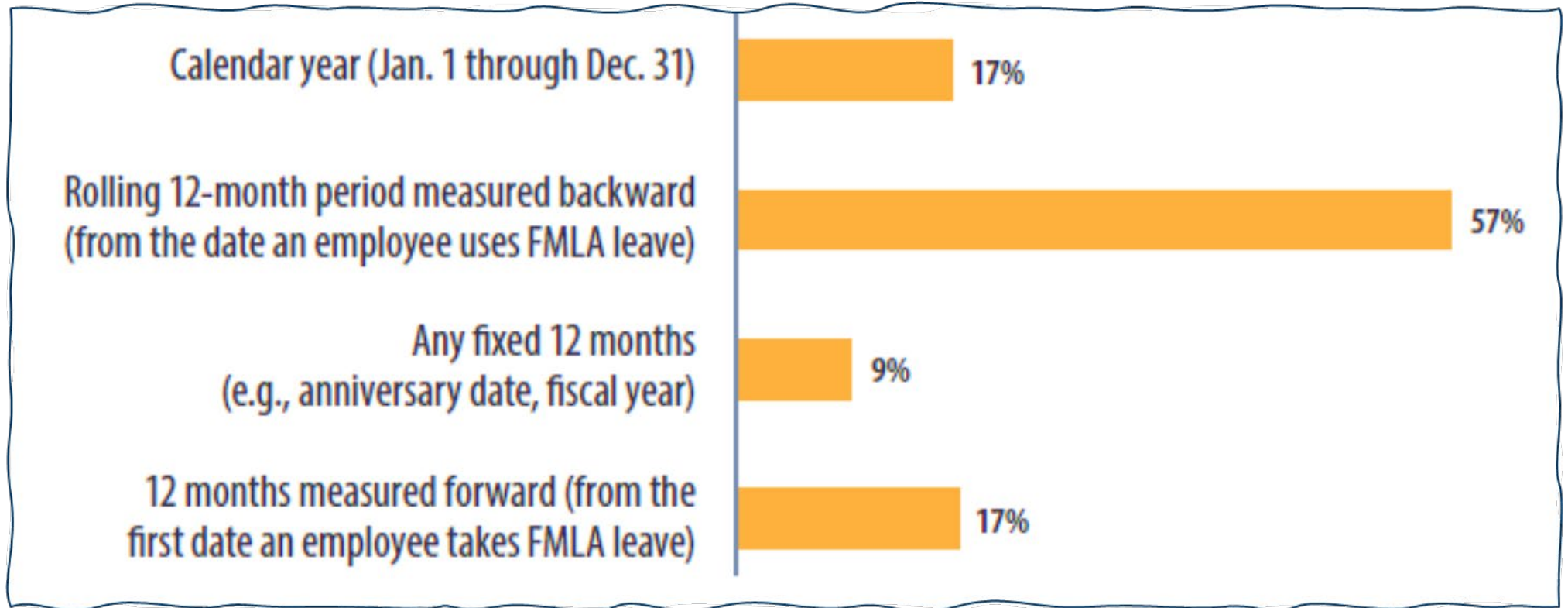
(i.e., leave begins on 5/6/23;
12-month period is
5/6/23 – 5/5/24)

Rolling 12-Month Backward

12-month period
measured backward
from the date an
employee uses any
FMLA leave

(look back 12-months to
see if any FMLA leave had
been used)

*12-month forward must be used for military caregiver leave regardless of the 12-month period established for other FMLA leave reasons





Calculation of leave

Amount of Leave

Only the actual leave taken may be counted against an employee's FMLA leave entitlement

Workweek Defined*

Full Week of Leave

Employee's normal workweek
(i.e., 40 hours or 1.0 week)

Less Than Full Week of Leave

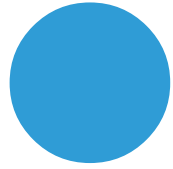
Time taken divided by hours employee would have worked
(8 hr day/40-hr week; 3 days of FMLA leave = 24 hrs or 0.60 weeks)

Substitution of Pay

Employee may request, or employer may require, use of accrued paid vacation leave, sick leave, etc. during unpaid FMLA leave

(if leave is paid, such as with disability/state benefits, employer may not require use of vacation, sick leave, etc.)

*Time that an employee is not scheduled to work may not be counted as FMLA leave (i.e., company closed for Christmas break, repairs, etc.); However, when a holiday falls during a full week of FMLA leave, the holiday may be ignored, and the entire week counted as FMLA leave



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State leave laws



“94% of employers run FMLA, state leave and company policies concurrently

Prevents “stacking” of time off



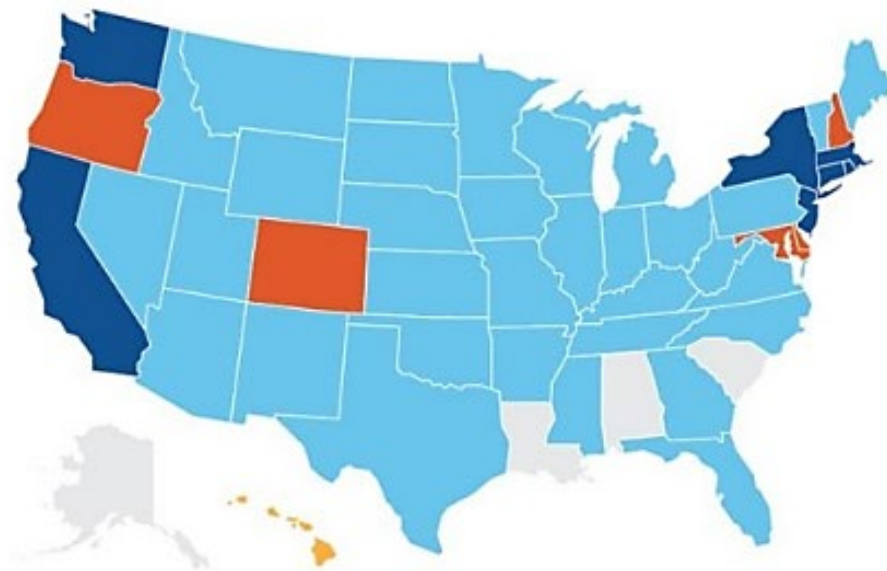
Managing leaves across states

Compliance and consistency are just some of the elements needed to abide by the FMLA, state and municipal leave laws

- Know leave laws applicable to your employees' work locations/worksites
- Consider your leave management workflow and recordkeeping process
- Have auditing and remediation processes in place
- Seek help from qualified consultants, counsel and peers

Coordinating federal and state laws

Nothing in the FMLA supersedes any provision of state or local law that provides greater family or medical leave rights than those provided by the FMLA



Washington
Benefits began 1/1/20

Washington D.C.
Benefits began 7/1/20

Massachusetts
Benefits began 1/1/21

Connecticut
Benefits began 1/1/22

Also, CA, NJ, NY, RI

New Hampshire
Benefits began 1/1/23

Oregon
Benefits began 9/3/23

Colorado
Benefits begin 1/1/24

Maryland
Benefits begin 1/1/23

Delaware
Benefits begin 1/1/26

- States with PFML programs in place
- States with upcoming PFML programs
- States trying to implement PFML programs
- States with no expressed interest in PFML programs
- States with state-mandated disability only (PFL)

Paid time off / external pay

<p>California State Disability Insurance State Paid Family Leave San Francisco Paid Parental Leave</p>	<p>Hawaii Temporary Disability Insurance</p>	<p>New Hampshire (Voluntary Plan) Paid Family & Medical Leave</p>	<p>Rhode Island Temporary Disability/Caregiver Insurance</p>
<p>Colorado (New! 2024) Paid Family & Medical Leave Insurance</p>	<p>Maryland (New! 2025) Paid Family & Medical Leave <i>(website/information not yet available)</i></p>	<p>New Jersey Temporary Disability Family Leave Insurance</p>	<p>Virginia (New! 2026) - Paid Family & Medical Leave <i>(website/information not yet available)</i></p>
<p>Connecticut Paid Family & Medical Leave</p>	<p>Massachusetts Paid Family & Medical Leave</p>	<p>New York Disability Insurance Paid Family Leave</p>	<p>Washington Paid Family & Medical Leave</p>
<p>Delaware (New! 2026) Paid Family & Medical Leave <i>(website/information not yet available)</i></p>	<p>Minnesota (New! 2026) Paid Family & Medical Leave</p>	<p>Oregon Paid Family & Medical Leave Insurance</p>	<p>District of Columbia Paid Family Leave</p>

Note: VT (new in 2025) offering a voluntary program





Leave administration

Administering employee leaves within an organization can be quite complex, particularly if the company is required to comply with multiple state leave regulations.

The decision to utilize a third-party administrator is driven by many factors, such as the number of leaves per month, the expertise of the staff who must manage state leave requirements and the capacity of internal HRIS systems to manage leave tracking and correspondence.

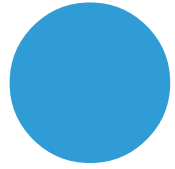
*These employers are only managing leaves of absence in a handful of states, which reduces the complexity of leave administration

28% of employers utilize a third-party leave administrator*

Avg EEs on Leave Monthly	Organization Size (EE count)				
	< 500	500-999	1k-4,999	5k-10k	> 10k
< 20	94%	68%	37%	50%	0%
20-49	6%	29%	37%	0%	0%
50-100	0%	3%	24%	50%	0%
100+	1%	0%	3%	0%	100%

18% of employers utilize a vendor to manage ADA leave

Source: 2023 NFP Leave Benchmarking Report and 2021 DMEC Employer Leave Management Report



3

Policies employees are embracing




“How does your company time off/leave program stack up?”

Are you using your company policies/programs to attract + retain talent? Are policies equitable?

Policy trends

As companies strive to gain an edge in a strong economy and competition for talent, employers are looking for ways to cultivate happy and productive workers

77% 
of employers offer the same amount of **PTO** to exempt and non-exempt employees

While roughly half of employers offer **maternity (45%)** and **parental (49%) leave**, **74%** of employers still **do not** offer family **caregiver** leave

75% *of parental leaves do not differentiate between primary and secondary caregivers*

24% of employers provide **paid bereavement leave** for miscarriage and failed IVF attempts

61% of employers provide more than five paid **sick days** per year

Maternity leave

When formulating a maternity leave policy, ensure the policy is compliant with the EEOC regulations¹ – “pregnancy related medical leave, the birth and recuperation for a birth parent falls under short-term disability”

Coordinate maternity/pregnancy leave offering with state provided medical leave and short-term disability benefits

1. State medical leave benefit is the first payer
2. Company provided/voluntary short-term disability benefits (up to certain benefit %; offset by state benefit)
3. Employer paid salary continuation (“top-up” pay)

¹ <https://www.eeoc.gov/pregnancy-discrimination#>
<https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act>



Parental leave

To provide flexibility to care for and bond with new child, and boost family relationships

Offered to both birthing and non-birthing parents – *gender-neutral leave for bonding purposes**

- Provide leave for all three types of leave: birth, adoption, fostering
- Permit intermittent time off – *eliminates scheduling/coverage restraints*
- Consider aligning policy to meet/exceed state paid leave – *fairness and ease of administration*

*Recommend parental leave begins, for birthing parent, when employee is no longer disabled by pregnancy



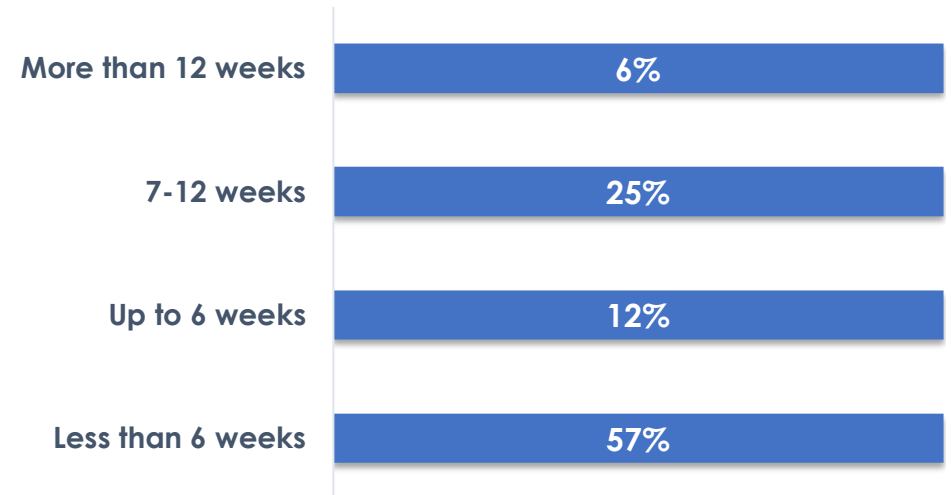
75% of parental leaves do not differentiate between primary and secondary caregivers

Employers should consult with counsel to ensure policies do not intentionally/unintentionally produce disparate treatment of employees

Caregiver leave

“About 48 million people in the U.S., most with full- or part-time jobs, provide unpaid care to older or disabled adults. These individuals devote, on average, nearly 24 hours a week to caregiving.”¹

26% increase over past 2 years of employers offering paid family caregiver leave*



*For seriously ill family member, elder care, military leave of spouse/child

Source: 2023 NFP Leave Benchmarking Report

¹ “2020 Caregiving in the USA”, AARP and the National Alliance for Caregiving



While almost half of employers offer maternity leave + parental leave, **74%** do not offer family caregiver leave



Short-term disability

Plan that provides income replacement when an employee is unable to work

- 1 Replace all or part of income due to a temporary disability – typically 60-70% of base pay
- 2 Plan generally includes a short front-end period before benefits begin – *minimizes abuse of disability insurance benefits*

- 3 STD does not provide job protection – *protection dependent on federal/state laws and/or Company policy*

- 4 STD generally offset by other income (five states have required disability income plans – CA, HI, NJ, NY, RI (and Puerto Rico))

Many employers offer long-term disability plans that work in tandem with the STD plan; Long-term care insurance is generally offered within organizations with an aging workforce



Unlimited paid time off

Unlimited PTO is becoming a common employee perk

Advantages

- Makes financial sense
- Great recruiting tool
- Can be easy to implement

Disadvantages

- Not really unlimited?
- Less time taken off
- Harder to track time off
- Staff may not welcome policy change/not fair
- No “time off benefit” saved

Things to Consider

- Does it work for your organization/culture?
- Strong communications and clear policy
- Coordination with leave/paid sick leave laws
- Approval process



Unlimited PTO

Offered by employers	8%
Employees expressing interest in receiving unlimited PTO	72%
Average days taken per year (15 days w/traditional vacation plan)	13

Studies show employees tend to take less time off when offered an unlimited amount of paid time off ¹

Source: SHRM
¹ 2023 NFP Leave Benchmarking Report

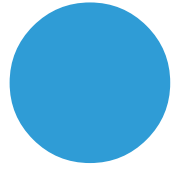


Fertility benefits

“ Nearly 40% of U.S. employers have included fertility benefits in their benefits packages¹

- Helps reduce health care costs by limiting maternity-related expenses
- Promotes an inclusive and supportive work environment
- Should expand beyond IVF – such as nutrition counseling, ovulation tracking, adoption or gestational surrogacy
- Accommodates treatment cycles and visits to clinics; provides emotional support

¹ International Foundation of Employee Benefit Plans



4

Communication strategies



FMLA postings

- Post hard-copy at place of employment
 - Post and keep posted (continuous posting)
- Internal/external site that is accessible to all employees
- Electronic notices may be supplemental
 - Does not replace statutory and regulatory requirements of hard-copy post
 - Unless no physical establishment

Electronic only postings permissible if...

1. All employees exclusively work remotely
2. All employees customarily receive information via electronic means; and
3. All employees have readily available access to electronic posting at all times



Up-to-date policies

- Written policies with effective date
 - Attendance
 - Time off (vacation, PTO, sick leave)
 - Holidays
 - Leave of absence (FMLA, state leaves, personal leave, etc.)
- Policies should state if they run concurrently (when permissible)
 - Avoid “stacking” of time off
- Identify how paid time off integrates with paid disability benefits, paid family leave laws, etc.
- Review policies annually



Ways to send FMLA correspondence

- Deliver/provide to employee in person
- U.S. mail or another method with delivery confirmation/tracking
 - Certified mail, carrier that provides delivery confirmation
- Email delivery
 - If employee customarily receives information from employer via this method
- Another electronic delivery method
 - If employee customarily receives information from employer via this method



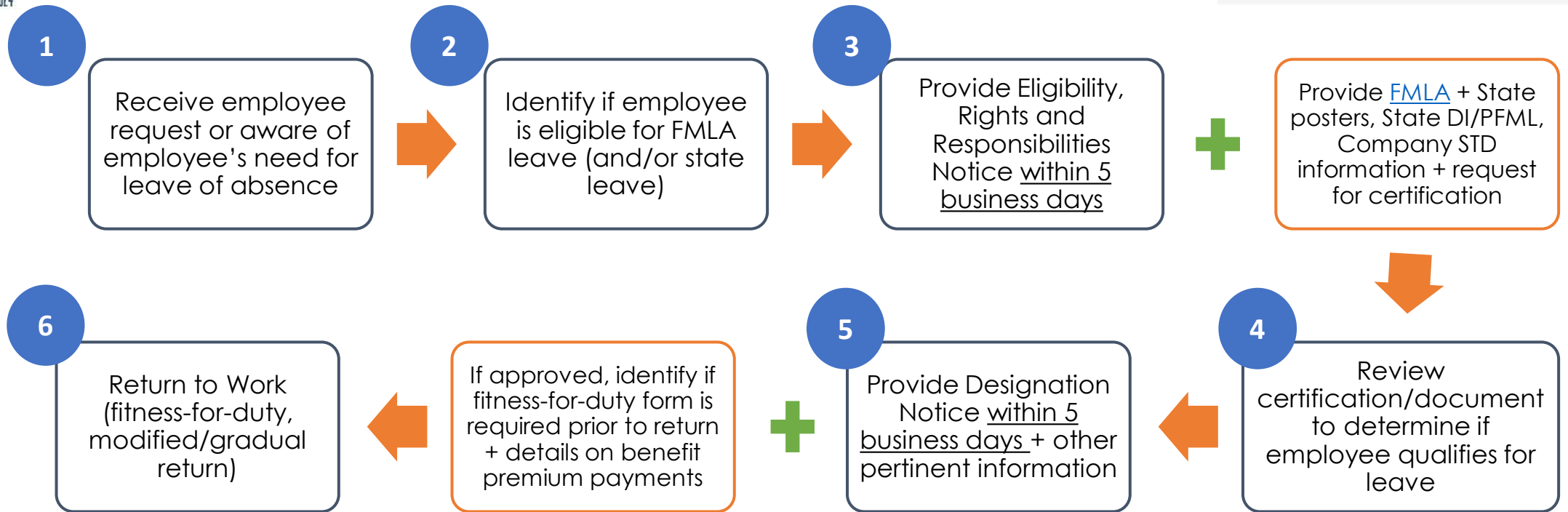
Mailing FMLA notices may be insufficient to prove receipt by employee

Employee may claim never received FMLA paperwork and their FMLA rights were violated

Sample FMLA workflow

During the leave process, communicate to those that need to know, such as:

- Employee's supervisor
- Payroll & Benefits



Know acceptable delivery methods, such as deliver in person at work, send electronically, or mail to employee via certified mail (for tracking purposes)



Thank you!

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