



Mastering FMLA Audits

Key steps and tools for compliance

Agenda

- Understand the purpose and importance of FMLA audits
- Gain insights into DOL investigations
- Identify and address potential issues
- Explore best practices for FMLA compliance
- Formulate a process for conducting FMLA audits
- Understand the benefits of internal and third-party audits



Disclaimer

The information provided in this presentation is for general informational purposes only and does not constitute legal advice. No attorney-client relationship is formed by viewing or using this content. For legal guidance specific to your situation, please consult a qualified legal professional.



FMLA Compliance and Enforcement

The DOL's Role in FMLA Oversight



AUGUST 4-7 • WASHINGTON, DC

Why does FMLA compliance matter?

Mercedes-Benz US International Inc. failed to tell workers about their leave rights

VANCE, AL – The [U.S. Department of Labor](#) has recovered \$438,625 in back wages, unpaid bonuses, equitable remedy and liquidated damages for two former Mercedes-Benz workers in Alabama after the employer violated their rights to protected leave under the [Family and Medical Leave Act](#).

Investigators with the department's [Wage and Hour Division](#) found Mercedes-Benz U.S. International Inc. illegally fired two production workers after they requested to use FMLA-protected leave. One employee requested the leave for a qualifying health condition of a family member, and another worker did so for a personal serious health condition. The employer further discriminated against workers when it reprimanded them and denied monthly attendance bonuses because of absences, which led to termination under the employer's point system, even though the leave was protected in both cases.

The division's investigators determined the employer also failed to:

- Inform employees that they may be eligible for FMLA leave within five business days of learning their requests could qualify.
- Reinstatement workers to the same or equivalent positions.
- Accurately record, maintain and calculate the amount of FMLA leave taken.
- Provide notice of FMLA rights and responsibilities, as required by law.
- Designate leave as FMLA-qualifying when appropriate.

*Financial and
reputational risks of
non-compliance*



FMLA Employee Protections



Job protection

After using FMLA leave, an employee must be able to return to the same job or to an "equivalent job."



Maintenance of benefits

If an employee has health insurance through an employer's group health plan, they can continue their group health insurance coverage during FMLA leave on the same terms as if they had continued to work.



FMLA Employee Protections, cont.



Anti-retaliation **Anti-interference**

Employers are prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right.

FMLA interference occurs when an employer prevents or discourages an employee from exercising their FMLA rights.

FMLA retaliation happens when an employer takes adverse action against an employee for using or attempting to use FMLA rights.



The DOL Wage and Hour Division

The mission of the Wage and Hour Division (WHD) is to promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce.

The WHD administers and enforces the FMLA for all private, state and local government employees, and some federal employees. The WHD investigates complaints.



AUGUST 4-7 • WASHINGTON, DC

DOL WHD Priorities

Compliance

WHD will ensure **good-faith employers** have an avenue for **correcting compliance issues** without additional penalties.

[FY 2026 Budget | U.S. Department of Labor](#)

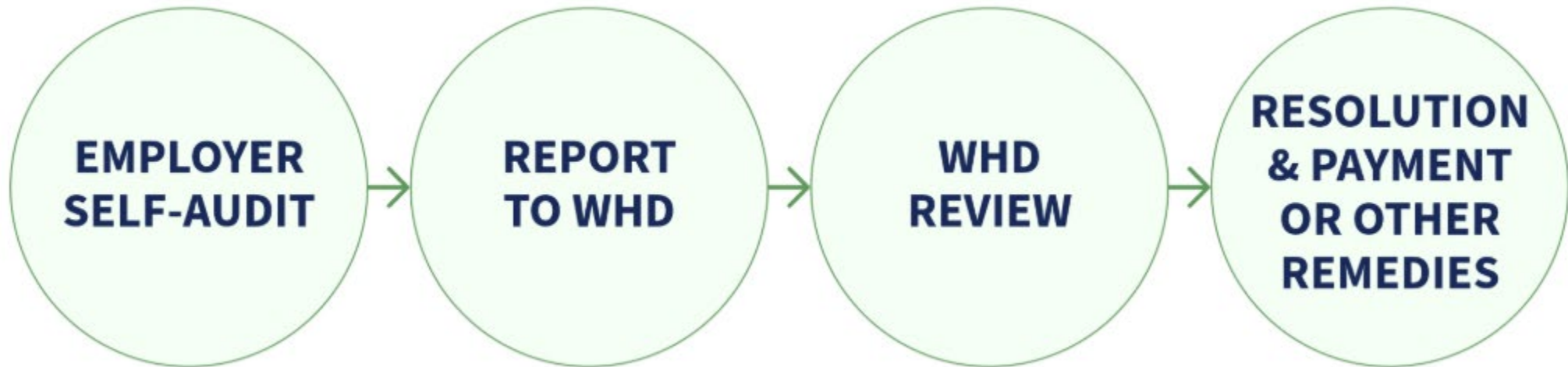
Announced in July 2025:

Payroll Audit Independent Determination (PAID) program for employer self-audit of FMLA and FLSA violations



AUGUST 4-7 • WASHINGTON, DC

DOL PAID Program



Employer must be interested in **proactively resolving potential FMLA claims.**

Employer must certify, among others, that the WHD is **not currently investigating the FMLA practices** at issue in the proposed PAID self-audit.

<https://www.dol.gov/agencies/whd/paid>



AUGUST 4-7 • WASHINGTON, DC

FMLA Violation Complaint Process

Contact the Wage and Hour Division (WHD)

Welcome to the Wage and Hour Division's Contact Us page. We are committed to ensuring that you are paid properly for all hours worked. We strive not only to answer your questions but also to help you understand how federal labor laws affect your individual situation.

Contact us:



By Telephone

Toll-Free Line: 1-866-4-USWAGE (1-866-487-9243)

- Monday to Friday 8:00 a.m. to 4:30 p.m. local time. Hours vary by region.

**If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.*



Online

Submit your question or concern online and a Wage and Hour Representative will contact you by telephone or email.

[Submit a General Question or Concern](#)



Visit your local Wage and Hour Office

Some offices may have limited hours for in-person visits, please contact your local office to learn more.

[Find your local Wage and Hour office](#)

Employees can file a complaint with the WHD through the following:

- By telephone
- Online
- In person



AUGUST 4-7 • WASHINGTON, DC

Complaint Process: Sample Options

Please select the option(s) that best applies to your inquiry.*

Child Labor

- ☐ I think someone is employing children unlawfully.

Wages and Hours

- ☐ I didn't get paid for the time I worked or didn't get my last paycheck.
- ☐ I wasn't paid extra for working over 40 hours in week.
- ☐ I think my employer is incorrectly garnishing my wages.
- ☐ My employer didn't give me a pay stub or isn't keeping records of my hours or pay.

Leave and Breaks

- ☐ I have questions or concerns about family or medical leave.
- ☐ My employer doesn't provide breaks for nursing employees to pump breastmilk at work.
- ☐ I have questions or concerns about vacation, holiday, or sick pay.
- ☐ My employer doesn't provide meal or rest breaks.

Unemployment and Workers' Compensation

- ☐ I have questions about unemployment benefits.
- ☐ I have questions about workers' compensation benefits.

Other

- ☐ I think my employer misclassified me as an independent contractor.
- ☐ I think my employer retaliated against me.
- ☐ I have questions or concerns about working on a federal government contract.
- ☐ I have questions or concerns about temporary work visas.
- ☐ I have questions or concerns about agricultural employment.
- ☐ I have a different issue that is not listed here.



AUGUST 4-7 • WASHINGTON, DC

DOL Investigations

Possible reasons:

- Complaint
- Industry-specific selection
- Geographic selection

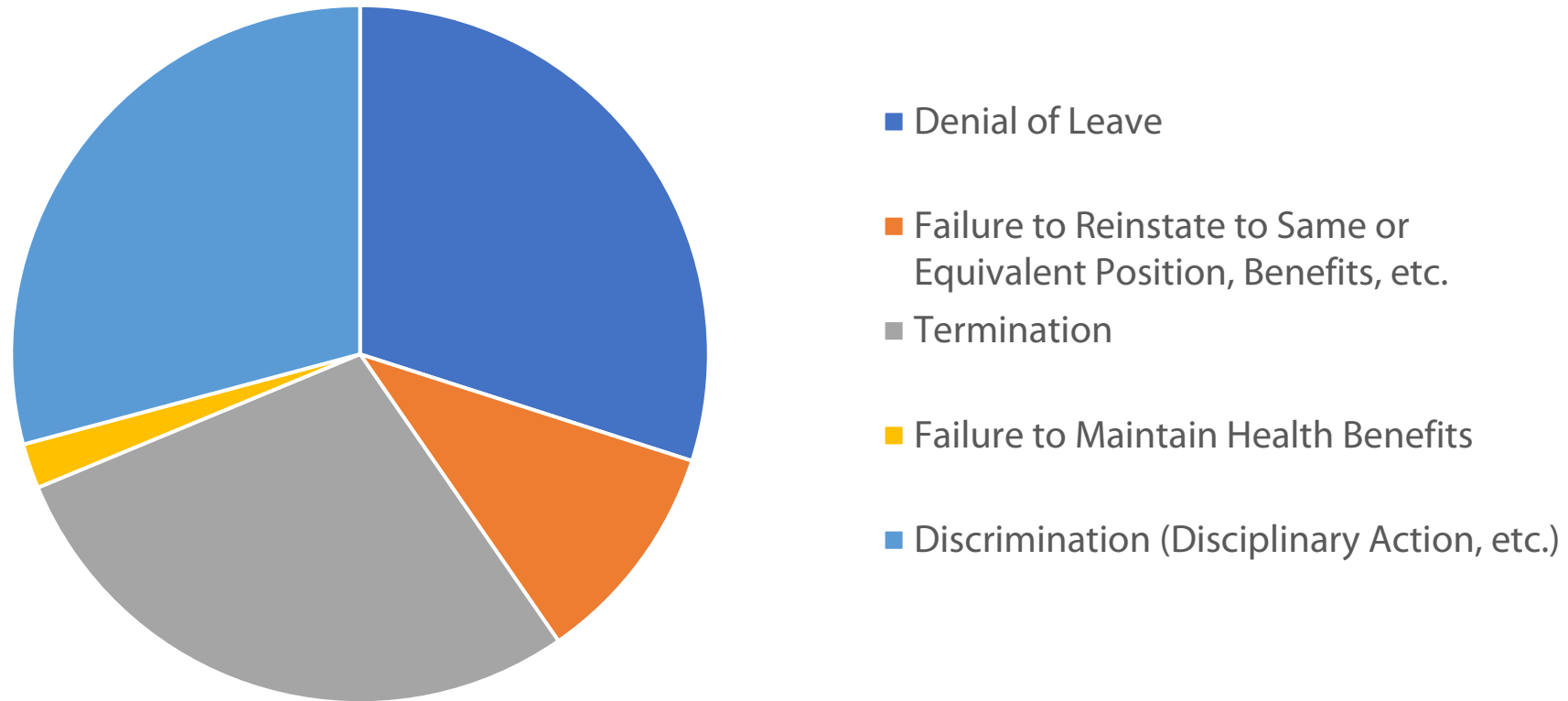
WHD does not typically disclose the reason for an investigation.

DOL asks for:

- Examination of records to determine which laws or exemptions apply
- Examination of payroll and time records, and taking notes or making transcriptions or photocopies essential to the investigation
- Interviews with certain employees in private



Common FMLA Violations



Reference: <https://www.dol.gov/agencies/whd/data/charts/fmla> (FY 2024)



AUGUST 4-7 • WASHINGTON, DC

Comparison: Ensuring FMLA Compliance

PAID self-audit

- Voluntary
- Good faith intent
- Employer control



DOL investigation

- Mandatory
- Reactive
- Investigator control



Questions for Discussion

Have you ever had to defend an FMLA decision during a DOL audit or lawsuit? What did you learn?

What's been your biggest challenge during an FMLA audit or internal compliance review? How did you address it?



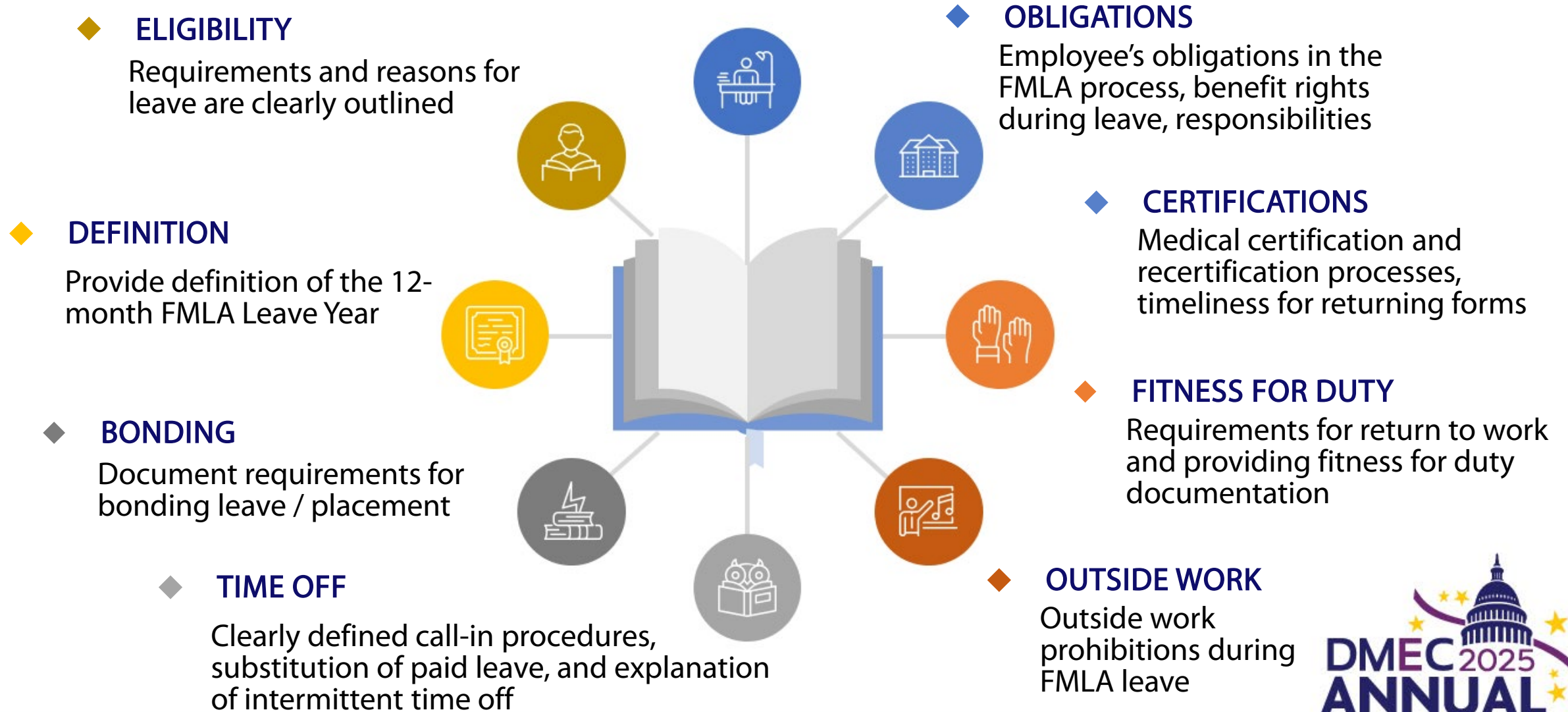
Internal Procedures

What to look for and implement internally

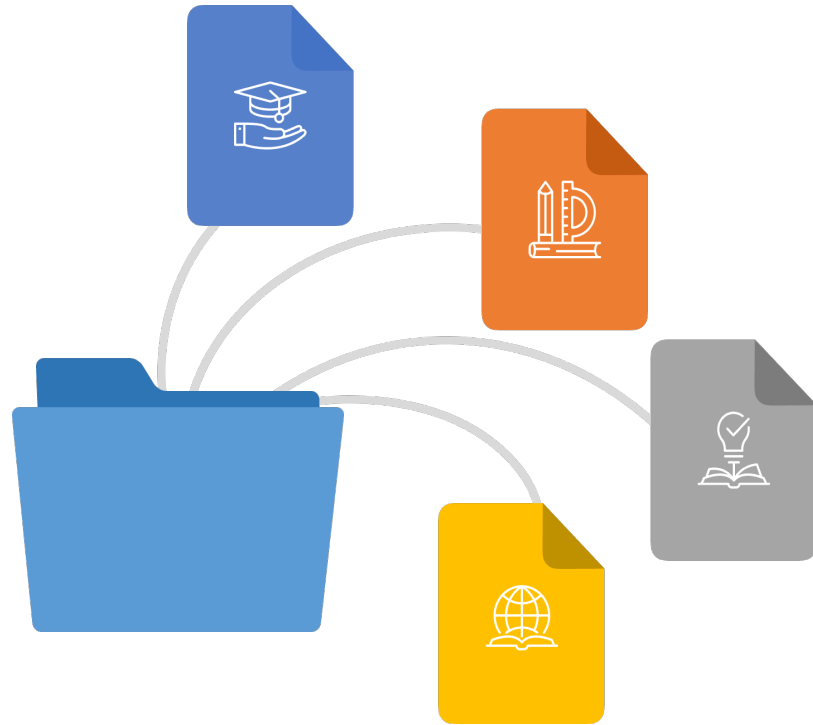


AUGUST 4-7 • WASHINGTON, DC

FMLA Readiness Deep Dive



Legally Compliant Correspondence



- Certification Notices
- Recertification Notices
- Failure to Provide a Certification
- Insufficient or Incomplete Certifications
- Return to Work / Fitness for Duty Notices
- Second and Third Opinions



AUGUST 4-7 • WASHINGTON, DC

FMLA Form Compliance Do's and Don'ts

Compliant

- Poster-sized rights notices are printed and posted in the employee break room
- Customized employer-specific forms following the regulatory requirements

Non-Compliant

- Rights notices are kept in a binder inside an executive's office
- FMLA Form+: information required beyond what is specified in §§ 825.306, 825.307, and 825.308



Reviewing Procedures & Practices



PROCEDURES

Confirm internal procedures clearly explain what's covered under FMLA, and that managers understand where to look



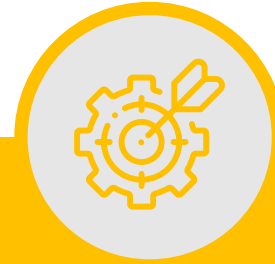
CALCULATIONS

Confirm that you are following regulations in calculating FMLA time and increments of intermittent time



CERTIFICATIONS

Confirm you are compliant in your medical certification, recertification and 2nd/3rd opinion processes



DESIGNATIONS

Confirm time is appropriately designated as FMLA, and notices are provided timely



PROTOCOLS

Confirm protocols for contacting employees on leave and fitness for duty are established

Recordkeeping Clean Up



Company Wide Training



- Focus on the managers as they are often the weak link in the chain
- Managers struggle to know your FMLA policy and leave procedures
- Train now and train often
- There are far too many examples of employers who have paid out a lot of money because their managers did not follow process



AUGUST 4-7 • WASHINGTON, DC

FMLA Audit Readiness Summary

- Review your FMLA or Policy handbook and make sure policies are documented and FMLA forms are up to date
- Check that reference materials, letters, training documents are clear and up to date
- Confirmed required posters are displayed in appropriate places (physical and digital placement)



Third Party Audits

The Pros and Cons



AUGUST 4-7 • WASHINGTON, DC

Strategic Value of Third-Party Audits

Expertise & Risk Mitigation

Experienced staff

Objective approach

Early issue identification
(preventing costly penalties)

Time & Resources

Frees up internal HR and legal team resources

Prevents bias or misses due to familiarity of program

Recommendations

Provides recommendations for improvement of training, process changes, and compliance



Cons of Third-Party Audits

Cost & Data Privacy Concerns

Expensive

Sharing of sensitive medical information and leave data could cause confidentiality concerns

Limited Context

Auditors may not fully understand culture, structure, or unique challenges of the organization

Vendor Quality

Effectiveness of the audit depends on experience and thoroughness

Employer must still implement changes and recommendations



Proactive Employer Preparation

Establishing procedures for success



AUGUST 4-7 • WASHINGTON, DC

Identifying and Addressing Issues

1. Conduct regular internal audits of your FMLA claims, focusing on:
 - Making sure everyone is following the right processes
 - Proactive addressing and correcting any issues that are discovered
 - Identify training opportunities, including coaching for managers
 - Monitoring patterns and trends, such as repeated denials, excessive delays, inconsistent treatment of employees
2. Implement employee surveys and seek feedback
 - Have a process by which employees can report concerns or inconsistencies in how their leave was handled
3. Considering using software to assist in remaining compliant, tracking time appropriately and flagging potential irregularities



Ongoing Monitoring and Preparedness

Employers can take proactive steps to audit their processes and identify red flags using the following steps:



Conduct internal audits, including processes, forms, correspondence, timekeeping



Review handbooks and policies regularly



Conduct ongoing training on FMLA, overtime, payroll and timekeeping records



Establish a DOL investigation response team and audit protocols



Train managers on key FMLA concepts, familiarize them with DOL processes



Prepare employees for DOL interviews by explaining what to expect



Q&A and Open Discussion

JOANNA FLOYD

Product Manager, FINEOS



TRISH ZUÑIGA

IDAM Compliance Manager, FINEOS



AUGUST 4-7 • WASHINGTON, DC