

When it comes to personal or medical employee absences, the Family and Medical Leave Act provides a standard set of requirements for employers with over 50 employees.

But there are cases where FMLA does not apply. If you have less than 50 employees, or the employee has not worked for the company the required amount of time for FMLA eligibility—1,250 work hours or 12 months of active employment—how do you handle employee leave?

The process will vary based on the specific circumstances at your organization, as there isn't a "one-size-fits-all" approach when FMLA doesn't apply. But in general, here are two scenarios—one where the employee has Short-Term Disability coverage, and one without Short-Term Disability coverage.

First, it will benefit most companies to set an "Administrative Personal Leave" policy, typically spanning 6-8 weeks, to enable employees to take a period of leave when FMLA does not apply.

With Short-Term Disability

1. The employee takes any accrued Paid Time Off to cover deductions for benefits.
2. If or when the employee has no more PTO accrued, the employee takes a period of Administrative Personal Leave pursuant to the company's policy, until the employee's Short-Term Disability waiting period is met. During this time, if the employee is no longer being paid, the employee should remit payment monthly for benefit costs by personal check made payable to the employer.
3. Short-Term Disability can last up to 180 days or 6 months. During this time, the employer can replace the employee in their role with another individual.
4. If the employee can return to work, an Attending Physician Return to Work Form should be provided to document any restrictions or a full release.
5. If restricted, the company must evaluate if there is any job the employee could be able to perform at reduced capacity. If so, documentation should be written and signed by the employee and company.
6. If there is a not a role available, reduced or otherwise, the employee can be terminated and can reapply at a future date for any jobs they feel they may be qualified for.

7. Coverage continuation should be extended for medical, dental or vision coverage, if elected prior to termination. The employee would be charged the full cost of the premium plus any COBRA administration fees.

Without Short-Term Disability

1. The employee takes any accrued Paid Time Off to cover deductions for benefits.
2. If or when the employee has no more PTO accrued, the employee takes a period of Administrative Personal Leave pursuant to the company's policy. During this time, if the employee is no longer being paid, the employee should remit payment monthly for benefit costs by personal check made payable to the employer.
3. If the employee can return to work, an Attending Physician Return to Work Form should be provided to document any restrictions or a full release.
4. If restricted, the company must evaluate if there is any job the employee could be able to perform at reduced capacity. If so, documentation should be written and signed by the employee and company. The employer should evaluate payroll to ensure the employee is working enough hours to cover benefit deductions. If not, a personal check must be remitted.
5. If there is a not a role available, reduced or otherwise, the employee can be terminated and can reapply at a future date for any jobs they feel they may be qualified for.
6. Coverage continuation should be extended for medical, dental or vision coverage, if elected prior to termination. The employee would be charged the full cost of the premium plus any COBRA administration fees.

A key difference between an employee with Short-Term Disability policy and without a Short-Term Disability policy is the amount of time allowed on leave before termination. Typically, with a Short-Term Disability policy, the employee may take leave for the duration of that policy. Without such a policy, the employer may choose to terminate at the end of the company's Administrative Personal Leave period.

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