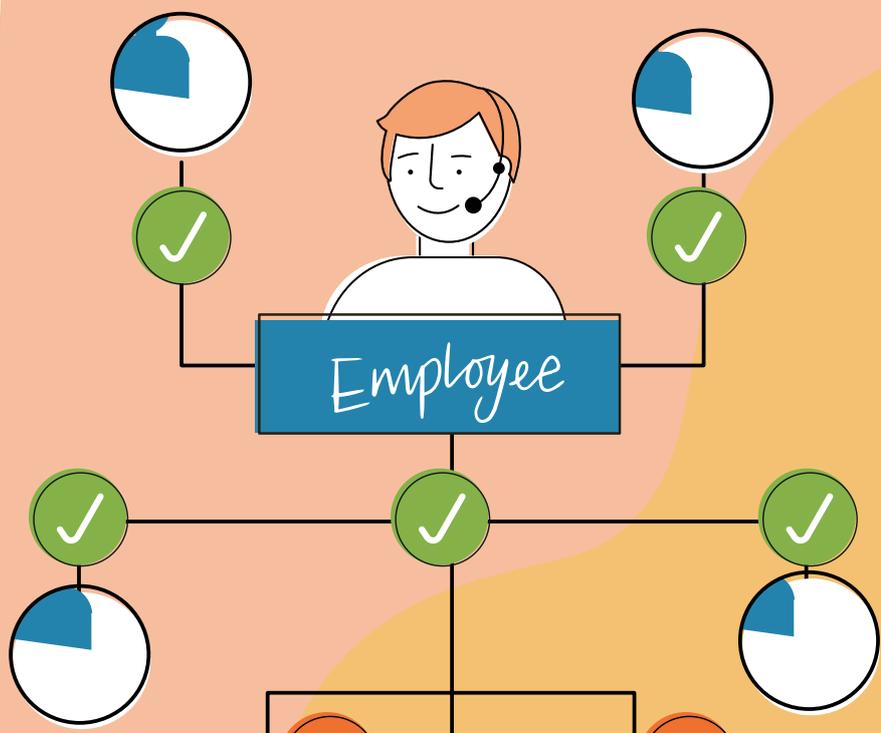
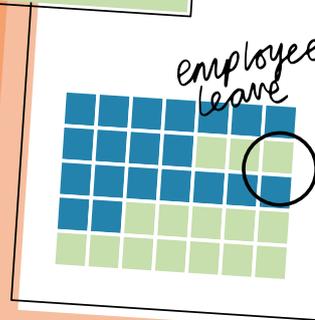
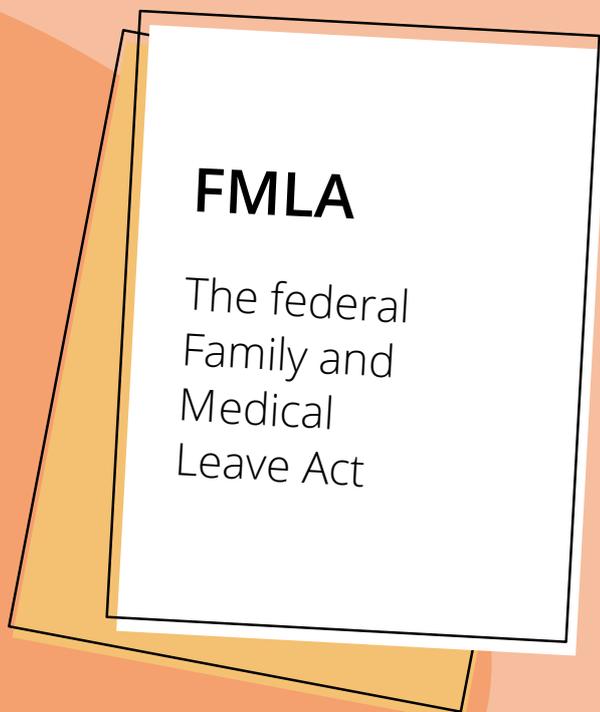


# Employee Leave Of Absence Guide



LESS THAN 5 YEARS UNIFORMED SERVICE

NOT RELEASED FROM SERVICE

# Introduction

Dealing with an employee’s leave of absence can be a complicated, difficult process for companies, but providing time off under certain situations is not only a federal and state law—it’s a way to show your team that you value them as people, not just for the work they perform as employees.

This guide will provide you with a starting point for identifying your compliance obligations as an employer under:

- The federal Family and Medical Leave Act (FMLA)
- The federal Americans with Disabilities Act (ADA)
- The federal Uniformed Services Employment and Reemployment Rights Act (USERRA)
- Any applicable state and local laws regarding employee leave, including laws regarding paid sick leave



# Leaves of Absence: An Overview

When employees request time off from work, employers should consider their obligations under federal, state, and local leave laws.

At the federal level, there are three primary laws that employers may need to comply with when handling leave requests and creating leave policies: FMLA, ADA, and USERRA.

Additionally, employers should also be aware of the state and local laws that impact employee leaves. Many states have their own family and medical leave regulations, or other laws that allow employees to take leave in certain situations, such as leave for parents to attend school events.

Coordinating employee leaves under the various leave laws can be a challenge for employers. State leave laws often provide greater protections to employees than federal leave laws. Also, state and local laws tend to change more frequently than federal laws, which means employers need to monitor legal developments to stay up to date. Several states, including Massachusetts, have implemented paid leave requirements, which provide another layer of compliance to consider.

Employers should make sure their leave policies are consistent with applicable laws and are administered correctly. In some circumstances, more than one type of leave law may apply to an employee's request for time off. In these situations, the employer should generally comply with the leave rule that is most favorable or generous to the employee. Also, employers should always review the leave laws as well as the specific employee's employment details in every situation.

For instance, [in Massachusetts](#), the Massachusetts Parental Leave Act allows for up to eight weeks of unpaid maternity or paternity leave to employees for the purpose of giving birth or adopting a child, and they could also be eligible for FMLA. The two leave protections would run concurrently.



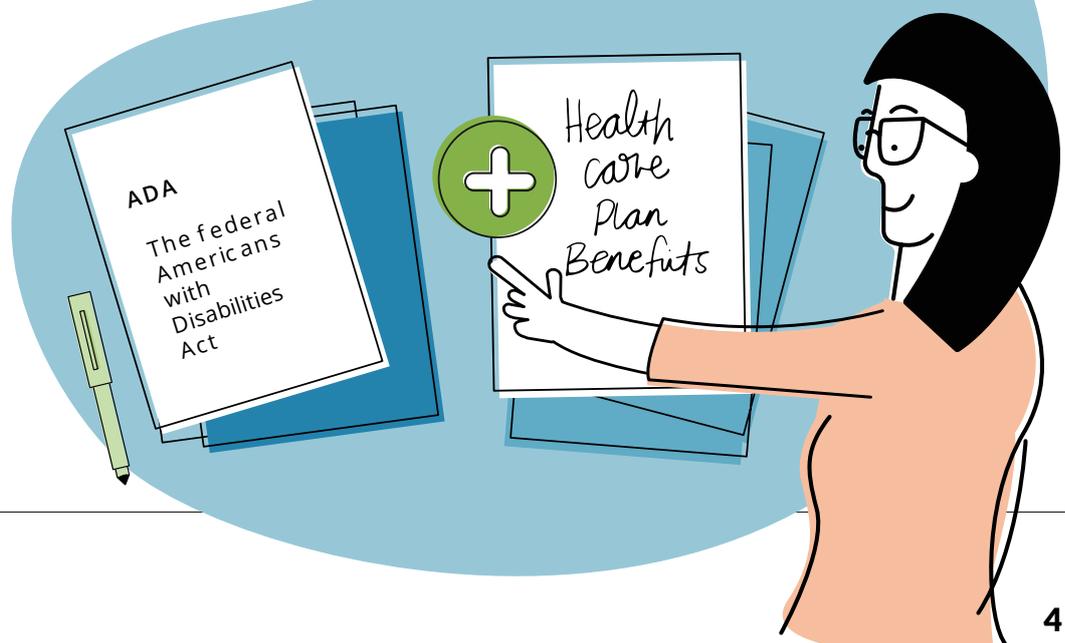
## Compliance Tips

Administering leaves of absence can be a complex and confusing process. Consider the following compliance tips when managing employee leaves:

- **Determine which employee leave laws and policies may apply to an employee's leave request. Employers may need to review an employee's situation carefully to determine their leave obligations. Employees are not always clear about why they need to take leave and may not cooperate with the employer's leave process. However, despite these obstacles, the employee may still have leave rights under the law.**
- **Make sure that any managers or supervisors who are involved in the employee leave process receive training on the employer's leave policies. This will help ensure employee leaves are administered in a manner that is consistent with applicable laws.**
- **Administer the employer's leave policies in a consistent and nondiscriminatory manner across the organization. Maintaining consistency can help protect an employer from claims of illegal leave administration, including claims of retaliation or discrimination.**

- If an employee's leave is covered under more than one leave law or policy, determine if the leave periods can run concurrently in order to reduce the amount of time off. For example, when an employee takes a workers' compensation leave due to a workplace injury, an employer should consider counting this leave against the employee's FMLA entitlement.
- Remember the employer's obligation to provide a reasonable accommodation under the ADA. Although the ADA is not an employee leave law per se, it does require covered employers to provide employees with leave as a reasonable accommodation, unless doing so would cause an undue hardship for the employer.
- Continue group health plan benefits during the leave, if required to do so by the employee leave law or employer policy.

PROVIDE REASONABLE ACCOMMODATION



# Family and Medical Leave (FMLA)

The FMLA provides eligible employees of covered employers with unpaid, job-protected leave for specified family and medical reasons. Private-sector employers are covered by the FMLA if they have 50 or more employees during 20 or more calendar workweeks in the current or previous calendar year.

Under the FMLA, eligible employees may take up to 12 workweeks of unpaid FMLA leave in a 12-month period for one or more of the following reasons:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care, and to bond with a newborn or newly placed child.
- To care for a spouse, son, daughter, or parent who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care.
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job, including incapacity due to pregnancy and for prenatal medical care.
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or has been notified of an impending call or order to covered active duty.

In addition, eligible employees may take up to 26 workweeks of FMLA leave during a single 12-month period to care for a covered service member with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the service member.

# Americans With Disabilities Act (ADA)

The ADA defines an “individual with a disability” as a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

## Disability Discrimination

The ADA prohibits employment discrimination on the basis of disability and requires that covered employers provide reasonable accommodations to employees with disabilities. Employers are covered by the ADA if they have 15 or more employees.

## Leave Requests

The ADA is not necessarily a “leave law.” However, according to the Equal Employment Opportunity Commission (EEOC), employees with disabilities must have access to leave on the same basis as all other similarly situated employees. Also, in certain situations, leave may be considered a reasonable accommodation under the ADA.

When an employee requests leave, or additional leave, for a medical condition, the employer must treat the request as one for a reasonable accommodation under the ADA. However, if the request for leave can be addressed by an employer’s leave program, the FMLA, or a similar state or local law, the employer may provide leave under those programs. But if the leave cannot be granted under any other program, or leave under these programs has been exhausted, then an employer should engage

in an “interactive process” with the employee—a process designed to enable the employer to obtain relevant information to determine the feasibility of providing the leave as a reasonable accommodation without causing an undue hardship.

An employer must consider providing unpaid leave to an employee with a disability as a reasonable accommodation if the employee requires it, and so long as it does not create an undue hardship for the employer. That is the case even when:

- The employer does not offer leave as an employee benefit;
- The employee is not eligible for leave under the employer’s policy; or
- The employee has exhausted the leave the employer provides as a benefit (including leave exhausted under a workers’ compensation program, or the FMLA or similar state or local laws).

## Compliance Tip

**An employee’s request for *indefinite leave*—meaning an employee cannot say whether or when they will be able to return to work at all—does not have to be approved as a reasonable accommodation under the ADA because it imposes an undue hardship on the employer.**



The interactive process can be a minefield for many people in HR. If you’re looking for a partner to help guide you through the interactive process, Genesis can help.

# The Uniformed Services Employment and Reemployment Rights Act (USERRA)

The Uniformed Services Employment and Reemployment Rights Act (USERRA) was enacted to ensure that members of the uniformed services are entitled to return to their civilian employment upon completion of their service.

## Employee Protections

Under USERRA, employers may not:

- Deny individuals who are members of the uniformed services employment, re-employment, retention, promotion, or any other benefit of employment on the basis of that service.
- Take adverse action against individuals who are members of the uniformed services, unless the employer can prove that the action would have been taken anyway.
- Discriminate or take adverse action against any person taking action to enforce rights under USERRA.

## Re-Employment Rights

To be eligible for re-employment, an individual generally must not have:

- Accumulated more than five years of uniformed service-related absences from a position of employment with this employer (with some exceptions).
- Been released from service under dishonorable or other punitive conditions.

Maintenance of benefits during leave and health benefits relating to USERRA are two common issues employers face. At Genesis, we can help you understand and deal with these and other complexities.



# State Leave Laws

Many states have enacted their own laws to provide different, or additional, leave rights for employees than those provided under federal law. Many states have their own family and medical leave laws.

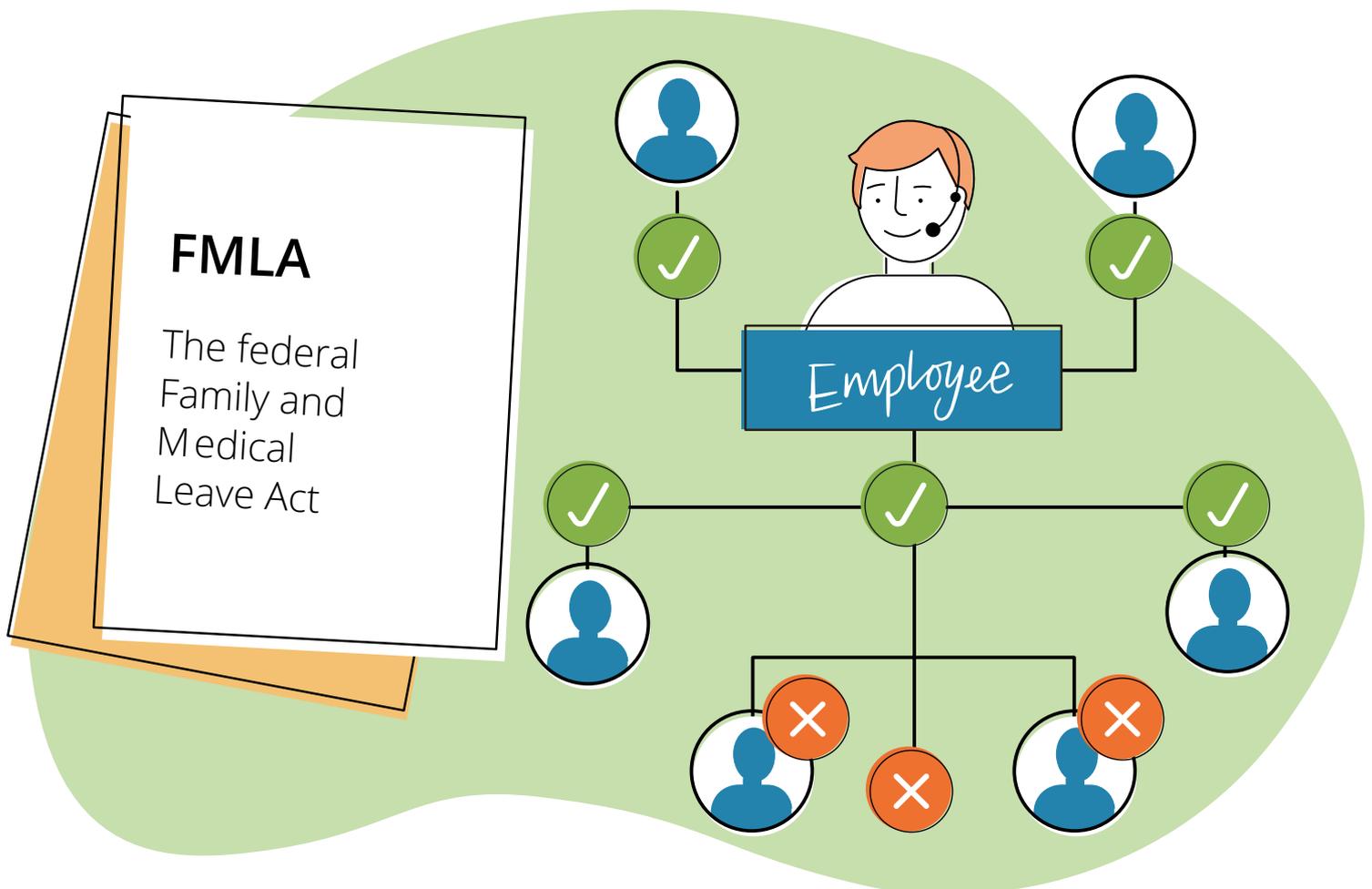
Depending on an employer's size and location, it may be covered under the FMLA and state family and medical leave laws. If both the FMLA and state law apply to the same situation, the employer must follow the law that gives the employee greater rights. Where an employee's leave is covered by the FMLA in addition to a state leave law, the employer must determine whether the state law permits (or prohibits) the leave to run concurrently with the federal FMLA. Many state leave laws include specific language regarding how they interact with the federal FMLA.

When an employer appropriately runs FMLA concurrently with other types of leave (including employer-provided leave, if applicable), it will be able to limit the amount of time off an employee is entitled to in any 12-month period. An employee's request for family or medical leave may not be covered by the FMLA, but may be subject to a state leave law. For example, a state's leave law may cover small employers that are not subject to the federal FMLA, or it may provide leave rights in situations not covered by federal law, such as leave to care for a domestic partner or a shorter tenure of employment to qualify for the leave.



## Compliance Tip

To help determine if the FMLA and a state leave law apply to a family or medical leave, employers should consider each law's definition of "family member." In some cases, state laws include more individuals (for example, parents-in-law or domestic partners) under this definition than the FMLA does. Employers may not designate an employee's leave as FMLA if the reason for leave is not FMLA-qualifying.



# Contact Genesis Today

If leave of absence guidelines followed a script, employers and HR managers wouldn't have trouble administering them—but the truth is, many types of leave find themselves outside of the boxes that need to be checked. These gray areas, anomalies, and circumstances that aren't factored in to the regulations leave you to interpret and navigate them—which may put your company at risk.

That's where we come in. At Genesis HR, we have seen and helped clients in these scenarios, and we can help you, too. When a leave request arises, Genesis will advise conservatively, being mindful of the risk of legal claims for interference, retaliation, and discrimination when managing employee leave. To reduce legal risk for these types of claims, leave policies are administered in a consistent and nondiscriminatory manner throughout the partnership.

Don't try to meet your compliance obligations based on a simple Google search—contact us today to make sure your leave policies (and all areas of HR, including benefits, payroll, and compliance) are covered. We'd love to find out if partnering with our PEO is a good choice for your business!

## Ready to see how we can help **your company?**

Talk to our experts to find out how you can benefit from a partnership with Genesis.

[Contact Us Now!](#)

