

I am wondering how other employers handle Family Medical Leave and accrued vacation. Do you require your employees to use their accrued vacation while out and if so do you have it designed a certain way? Or is the use of accrued vacation completely optional? What are the pros & cons of required vs optional?

Summary: mixed whether to require use of accrued PTO. Be sure to check your state laws first.

We require the use of accrued vacation while on FMLA. This keeps employees from returning after 12 weeks of leave and then taking an additional time for vacation. One of the cons is the coordination with short term disability.

We require all paid time off to be used in conjunction with FMLA. We do not do any special designation. In the notification letter employees are made aware that their paid time off will be used in conjunction with FMLA, if the FMLA is approved, and a copy of the notification is kept in the file.

The benefit is that the employee does not get 12 weeks unpaid time off in addition to paid time off. However, some previous FMLA users know companies are allowed to require that they be used simultaneously and will use up their paid time off before requesting FMLA. Also, if the FMLA is requested, but not approved, by the time the employee needs the leave, paid time off may be enough to cover the absence and protects the employee from termination, if FMLA is denied. However, if all paid time is used and FMLA is denied, then the employee can be terminated, depending on your attendance policy.

For employees that legitimately need more than 12 weeks, however, this can be a hardship and we have granted unpaid personal leaves of absence to cover the need, if that is the case.

From our handbook:

If eligible for family and medical leave, you must first use all available, unused PTO time first, then the remainder of the 12 week benefit will be unpaid. However, the amount of total time taken cannot exceed 12 weeks.

Our company policy allows the employee to choose if they want to be paid from accrued benefits.

There is a one week waiting period before our employees are eligible for short term disability; so many of them elect to use a week's vacation to cover the unpaid waiting week. However, it is optional and not a requirement.

Our company policy states...

FMLA leave is unpaid leave; however, employees must use all but one week of their total vacation entitlement concurrently with FMLA leave (including intermittent and reduced schedule leave) that is taken for a reason other than one that would entitle the employee to disability pay. Total vacation entitlement includes vacation already taken and/or scheduled for a future date in the calendar year. An employee can choose to use more than the required amount of vacation to run concurrently with an FMLA leave.

Employees who are on a FMLA on a designated holiday will not receive holiday pay. However, employees who are on vacation concurrent with this leave type will be considered on vacation and, as such, will be eligible to receive holiday pay.

Days away from work due to an employee's own serious health condition, short-term and/or long-term disability leaves, including maternity leaves, and worker's compensation leaves will apply toward the employee's FMLA entitlement.

The substitution of paid leave time for unpaid leave time does not extend the FMLA leave period.

We do not require employees to use vacation time while on FMLA. Most of the time, they are already receiving short-term disability if it is for their serious health condition. If it is for a family member, they typically are using their vacation time. The exception to that might be if an employee wants to take vacation time later in the year because in some departments first priority goes to those with vacation hours. This is why they may want to save their vacation time while on an FMLA leave to make sure they have sufficient time in their vacation bank to get the time off when they want it.

Compensation During Leave

Generally, FMLA Leave is unpaid. However, you may be eligible to receive benefits through State-sponsored or *Company*-sponsored wage-replacement benefit programs. If you are eligible to receive these benefits, you will be required to use all awarded and earned paid time off during an FMLA Leave beginning on the first day of such leave and continuing until all earned paid time off benefits are exhausted. Once paid time off has been exhausted, then the remainder of the FMLA Leave will be unpaid. The terms and conditions of the *Company's* accrued leave policies will apply when substituting paid leave for unpaid FMLA Leave.

Our policy is that an employee must take any available PTO prior to taking FMLA.

We require our employees to exhaust all of their paid time off. (sick and vacation) We designate it the same way. The con of not exhausting PTO would be if you have an employee out on leave for 12 weeks and they are not required to use PTO, they will, in effect, get another 4 weeks off for vacation and another 1 weeks off for sick time. They could potentially be off for 17 weeks in one year. The pro would be your employee would only be off for 12 weeks out of the year, and, taking advantage of FMLA is reduced.

Under Wisconsin FMLA we cannot mandate the use of vacation. Once Wisconsin FMLA is exhausted, though, if an employee is still absent and covered under Federal FMLA then we do require vacation to be used to cover the absence (if an employee is receiving any compensated under our short term disability plan then we only charge vacation for any hours that are unpaid). The con of requiring vacation usage is that employees likely will view mandates use of their vacation during FMLA leave as a negative and there could be a retention risk. The positive of requiring vacation usage is that it may at least somewhat discourage FMLA abuse since employees will want to save their vacation for when they truly want to use it. It may also be seen as a positive for the larger percentage of employees who are not on an FMLA leave, especially if they have to cover or work overtime for employees on leave and/or during vacation usage (and those who may be retention risks may be the employees you are not worried about losing). We just started requiring vacation be used this calendar year so have not yet noticed if we feel it has made a difference on the potential FMLA abuse situations.

Currently we do not require the employees to use their vacation while on FMLA. If they are on an extended leave past the 12 weeks, then yes they would be required to use their vacation.

Our FMLA policy states an employee must use all available PTO while on leave. One “pro” is that if your employee is getting paid while on leave, you are able to deduct the employee costs of insurance, etc., so that when the employee returns to work you do not have to double up on these deductions. Another pro is that if you allow unpaid FML or other leave, when they come back they still have all that leave time. So then you not only had to cover them while they are out on leave, but now you have to cover for them for PTO time.

A “con” would be for those who use up all their time. When they come back to work they have no paid time off available until they have accrued more time. However, at least they were receiving pay while they were off on medical leave.

I would recommend running FML concurrent with available PTO. It just makes life simpler.

We do not require our employees to use accrued PTO time during their FMLA time. However, the employee does not accrued PTO time while they are off on FMLA.

Here's our handbook policy:

Family and Medical Leave

Employees wishing to take time off from work to fulfill family obligations may be eligible for leave under the Federal Family and Medical Leave Act and the Wisconsin Family and Medical Leave Law.

An employee who has worked at (company) for at least one (1) year, and for at least 1,000 hours during the preceding 12 month period, is eligible for family and medical leave.

Employees who meet the criteria above are eligible to take twelve (12) weeks of unpaid family and medical leave during any twelve (12) month period. Reasons for leave include the following:

§ the birth or adoption of a child

§ the placement of a child for adoption or foster care

§ to care for a spouse, child or parent of the employee with a serious health condition

§ to care for the employee's own serious health condition which renders the employee unable to perform their job

General Family and Medical Leave Policies

- In all cases, to request family or medical leave, you need to complete an *Application for Family Leave*, available in the Human Resources Department. On the application state the reason for the leave and, to the best of your ability, the starting and ending dates of the leave.
- If you intend to take family or medical leave because of a planned birth, placement, or medical treatment, submit your application for leave at least thirty (30) days in advance. The law requires that you make a reasonable effort to schedule treatment so as not to unduly interrupt company operations. With respect to unplanned events, notify your Team Leader as soon as possible.
- If an employee exercises their right to take paid time off (i.e. sick, vacation, disability, etc.) simultaneous with FMLA, (company) requires that the paid time off run concurrently with FMLA leave.
- An application for leave based on the serious health condition of the employee or the employee's spouse, child or parent must also be accompanied by a *Medical Certification Statement* (available in Human Resources) completed by a health care provider.
- If the employee is needed to care for a spouse, child or parent, the certification needs to state this, along with an estimate of the amount of time the employee will be needed. If the employee has a serious health condition, the certification must state that the employee cannot perform the functions of their job.
- Subject to the terms, conditions, and limitations of the applicable plans, (company) will continue to provide health insurance benefits for the full period of the approved family leave. Employees are required to contribute their portions for the coverage on a timely basis.
- Seniority and benefit accruals, including vacation, sick leave, or holiday benefits, will be suspended during the leave and will resume upon return to active employment.

- So that an employee's return to work can be properly scheduled, an employee on family leave is requested to provide (company) with at least two weeks advance notice of the date that they intend to return to work. When a family leave ends, the employee will be reinstated to the same position, if it is available, or to an equivalent position for which the employee is qualified.
- If an employee fails to report to work promptly at the end of the approved leave period, (company) will assume that the employee has resigned.

While the required use of vacation is permitted under Federal law it is not permitted in Wisconsin under state FMLA laws. However Wisconsin only has 10 days of leave and so it is permitted once the state leave is exhausted.

While I have no specific stats to back this up, I believe that a majority of employers do not require vacation to be taken with FMLA.

There is a rule about this allocation of time & coverage/ usage within the law

We do not currently require our employees on FMLA to use accrued vacation, however, we are looking to require it in the future (our initial thought is to have them use all accrued vacation minus one week so that they still have an opportunity to have time off for leisure). As of now, it is strictly voluntary.

Once an employee is approved for FMLA time off, they must use all their paid accrued vacation days/weeks while off for FMLA. An easy way we notify employee's is by saying FMLA and Vacation time will run concurrently. They also are not eligible for any holiday pay while on FMLA.

This is not an option. For some employees if they are off for the full 12 weeks or longer end up not taking any time off later as it would be unpaid. Which is fine by us because we don't want someone off for 12 weeks then take a 2 – 3 week unpaid vacation after that. It would be a hardship on the company.

We just had someone how in March elected to take 2 weeks off in October. Then in April got sick and was off for FMLA for 3 weeks. Now that person has to decide if they want their October time off unpaid.... or cancel it.

Editor's note: FMLA was an agenda item during our 4 Quarterly HR Update webinar on May 4, 2016. Please see the next page for a slide with download links from Jim Kyger's presentation.

Revised FMLA Poster/Guidance

- ▶ On April 25, DOL revealed at a conference that a revised **FMLA poster** is now available
- ▶ Text is the same but format is redone to make it more “readable”
- ▶ No need to replace the poster you have posted now.
- ▶ www.dol.gov/whd/regs/compliance/posters/fmla.htm
- ▶ **Revised FMLA Guidance** also released
- ▶ *Employer’s Guide to the Family and Medical Leave Act*
- ▶ Organized to correspond to the order of events from an employee’s leave request to restoration of the employee to the same or equivalent job at the end of the employee’s FMLA leave. It also includes a topical index.
- ▶ *This is a must download and read*
- ▶ www.dol.gov/whd/fmla/employerguide.htm

