

# What you need to know for City Leaves of absences & the Family Medical Leave Act (FMLA)



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## Presenters / LOA Administrators



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## Agenda

Topic One- FMLA/RIPFMLA 101

Topic Two- What is & isn't a serious health condition?

Topic Three- Fitness for Duty

Topic Four- Supervisor Responsibilities

Topic Five- Leave Tracking & Payroll

Topic six- Other City Leaves



## Topic One

FMLA / RIPFMLA 101

# Introduction

Of all federal employment laws, FMLA is one of the most popular & beneficial to employees. Most employees are aware of the basic requirements of the law, but they may not realize the law provides employers with how to administer FMLA leave or other leave options available to them at the City of Providence.

The City of Providence administers several leave policies which have different eligibility requirements and certification processes. Some employees may be eligible for multiple leaves of absence which would run concurrently when applicable.

## Federal & State Leaves:

Family Medical Leave Act  
(FMLA)

Rhode Island Parental and  
Family Medical Leave Act  
(RIPFMLA)

## City of Providence Leaves:

Paid Parental Leave  
Sick Leave Extension  
General Leave of Absence  
Non-Union Sick Bank  
Military Leave in accordance with USERRA

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# Leave Requests

Employees in need of leave shall complete the Asana Leave Request Form by scanning this QR Code.

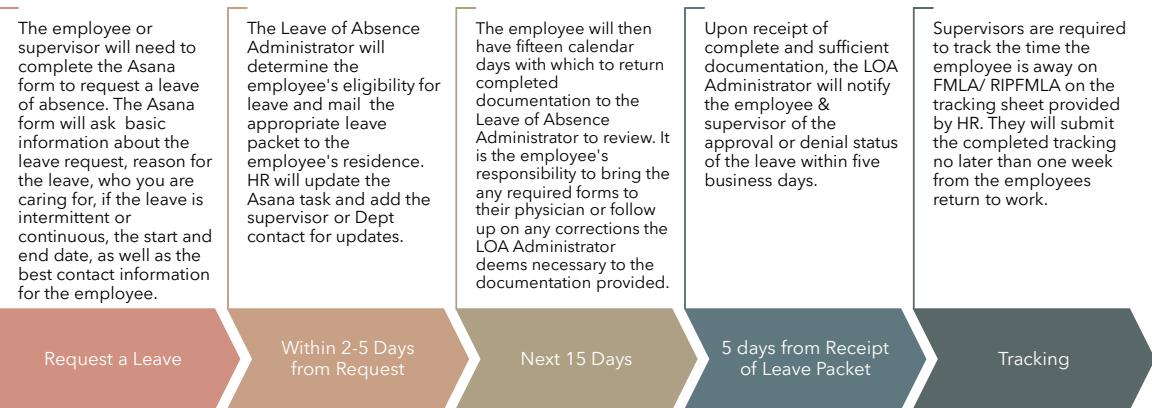
If the employee is already out of work and not capable of completing the form, their supervisor should do so on their behalf with as much information as they have pertaining to the absence.



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# Leave Request Process



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## Eligibility Criteria

### **FMLA (FEDERAL LEAVE)**

#### **Eligibility:**

- Employed 12 months prior to request made\*
- Worked 1250 hours in the 12 months immediately preceding the leave

#### **Covers:**

- 12 weeks in a 12-month period
- Continuous or intermittent
- (480 hours for 40-hour EE or 420 hours for 35-hour EE)
- 26 weeks in 12 months for Military Caregiver leave

### **RIFMLA (STATE LEAVE)**

#### **Eligibility:**

- Employed 12 consecutive months prior to leave
- Work an average of 30 hours per week over the period of last 12 months

#### **Covers:**

- 13 weeks in a 24-month period
- Continuous leave only
- 520 hours for all EE's

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# What can FMLA/ RIFMLA be used for?

## FMLA

1. The birth, adoption, foster placement or bonding of a child within 1 year of the qualifying event.
2. To care for a family member's serious health condition (*Federal defines as: Spouse, child, parent*).
3. For the employee's own qualifying serious health condition.
4. For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child or parent.



## RIFMLA

1. The birth, adoption, or foster placement of a child within 1 year of the qualifying event.
2. To care for a family member's serious health condition (*RI defines as: Spouse, qualifying domestic partner, child, parent, & parent-in-laws*).
3. For the employee's own qualifying serious health condition.
4. To attend a child's qualifying school activity \*limited to 10 hours in a 12-month period.

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# FMLA Qualifying Reasons

## **SPOUSE:**

Includes:

- Husband
- Wife
- Same sex marriage
- Common law marriage

## Does not include:

- Domestic partner
- Civil union partner

## **PARENT:**

Includes:

- Biological
- Adoptive
- Step-parent
- Foster parent
- In loco parentis individuals

## Does not include:

- In-laws

## **CHILD:**

Includes:

- Son or daughter (biological, adopted, foster, step, legal ward, and in loco parentis under age 18)
- Over age 18 if incapable of self-care because of mental or physical disability and no other care provider.

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# Differences & Similarities between FMLA/ RIPFMLA

## FMLA/ RIPFMLA DIFFERENCES

### FMLA

- Eligibility based on 1250 previous 12-months
- Doesn't allow for qualifying domestic partners & parent-in-law's
- Allows intermittent use

### RIPFMLA

- Eligibility based on average 30 hrs/ wk previous 12-months
- Allows for qualifying domestic partners & parent-in-law's
- Doesn't allow intermittent use

## FMLA/RIPFMLA SIMILARITIES

- Doesn't allow for siblings or grandparents

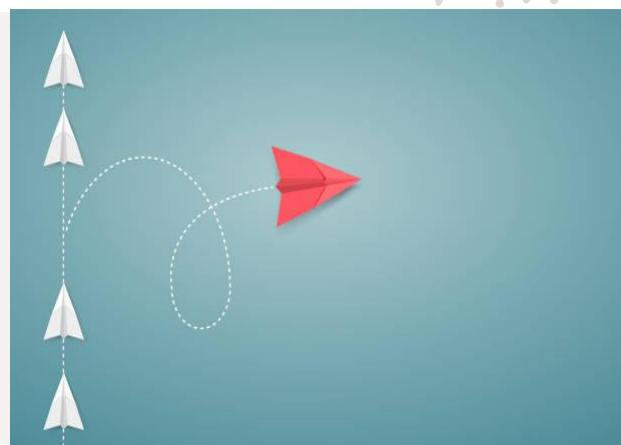


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## Why is that important to know?

- Some employees may only be eligible for one type of leave- which means they would not run concurrently!!!
- An employee may exhaust all their Federal FMLA intermittent time but still be eligible for continuous leave under RIPFMLA \*note see slides on FMLA/RIPFMLA tracking.
- An employee may or may not have a qualifying family member and may or may not be eligible for intermittent versus continuous time.



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# Same Employer Limitation



For companies that employ married couples (even in different departments)

FMLA leave is limited to a combined total of 12 weeks in a 12-month period when leave is taken for:

- The birth, adoption, foster care placement of a child, or bonding time
- To care for the employee's parent with a serious health condition

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## FMLA & Workers' Compensation

- **FMLA/RIPFMLA runs concurrently with a workers' compensation injury** as long as the employee is:
  - 1) Eligible under FMLA/RIPFMLA (hours and service requirements).
  - 2) The injury meets the definition of a serious illness (days missed/multiple treatments).
- Employees may be out on workers compensation longer than the FMLA/RIPFMLA entitlement allows.
- You would not continue to track the FMLA/RIPFMLA once the allotted 12-13 weeks has been exhausted.
- It is important to track only the time that reflects the employee's working schedule. For example, if that employee is Monday- Friday 35 hours, you would only track 7 hours each day Monday-Friday, you would not count weekend hours.

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# Employee's Responsibility

- Employees must provide 30 days advanced notice of the need for a leave of absences. If the event is unforeseeable the employee should provide as much notice as practicable.
- Employees who are eligible for a leave of absence will need to complete the required Certification of HCP form for the leave and return to the Human Resources Department within 15 days.
- If an employee is out for their own serious illness- they will need to provide a return-to-work release from their physician before they can return to work.
- Incomplete certifications will be returned to the employee and leave approval will not be granted until complete.



- Please note that all absences by employees that qualify for FMLA/RIPFMLA shall be designated as such even if the employee does not request such leave.
- An Employee on an approved FMLA is required to discharge all accrued sick time.
- Employee will continue or make arrangements to continue to pay towards group health insurance and union dues where applicable.
- Provide timely notice for leave or absences- Call out procedures.

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# Employee Notice

Verbal notice is **sufficient**.

**Employee request need not mention FMLA specifically, only that leave is needed for an FMLA qualifying reason** \*examples: Asthma, Migraines, Chemo, Dialysis, etc.

If employee calling out- they must give adequate information to indicate illness/injury may be FMLA qualifying.

"I am sick" is not enough.

Supervisors and Managers need to know that **failing to notify HR immediately can put the employer and themselves at risk**.

- Notices will not be provided to employee in required timeframe of 2 to 5 days.
- Absences that should be protected could be held against an employee.
- Managers should not be handling medical information.



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## Topic TWO

What is & isn't a serious health condition?

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FMLA & Other Leaves

### Definition of a Serious Health Condition



An illness, injury, impairment, or physical or mental condition which involves:

- 1) Inpatient care & treatment,
- 2) Incapacitated more than 3 consecutive calendar days plus two HCP visits (1st within 7 days, 2nd within 30 days),
- 3) Incapacitated more than 3 consecutive calendar days plus one HCP visit (within 7 days) & regimen of treatment (prescription, medicine, physical therapy, etc.).

- Any period of incapacity because of pregnancy/prenatal care.
- Chronic condition- any period of incapacity due to chronic condition which:
  - 1) Requires at least 2 visits per year for treatment,
  - 2) Continues over an extended period,
  - 3) May cause episodic incapacity, i.e., "intermittent leave".  
A doctor's visit at the time of each absence is not required.  
Examples: Asthma, Migraines, Diabetes, Epilepsy.
- Restorative surgery or for conditions that if left untreated would result in incapacity of more than 3 consecutive calendar days.  
Examples: Chemotherapy or radiation for cancer, Dialysis for kidney disease.
- Permanent or long-term condition under the continuing supervision of a healthcare provider. Examples: Alzheimer's, stroke, terminal stages of a disease, physical therapy for arthritis.

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## What does it mean "to care for" a family member?

- Physical and psychological care
- Includes situations where the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care.
- Transportation, medication, assistance with medical treatments and appointments, hygiene, nutritional or safety needs, physical or psychological comfort.



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## What is not a Serious Health Condition?

- Some, although very few, conditions are explicitly excluded by FMLA regulations from recognition as a Serious Health Condition.
- Conditions for which cosmetic treatments are administered (ex: Acne or plastic surgery unrelated to an injury or illness).
- The common cold, flu, earaches, upset stomach, minor ulcers, headaches (other than migraine), routine dental or orthodontia problems and periodontal disease.
- These treatments are covered under FMLA leave if they prevent an outcome that would result in meeting the definition of a serious health condition- 3 consecutive days of incapacity plus 2 doctors' visits or on-going treatment or hospitalization if they were left untreated.



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# FMLA & Substance Abuse

- Substance Abuse may be a Serious Health Condition!
- FMLA leave may be taken only for substance abuse treatment by a health care provider or by a provider of health care services on a referral by a health care provider.
- FMLA leave is not available for absences due to an employee's use of legal/illegal substances.



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## Recertification

- Employer may ask for recertification on a **"reasonable basis"**
- If the Serious Health Condition has a **finite duration**, must wait until that time expires to ask for a recertification.
  - **However, if the duration is longer than 6 months - can ask every 6 months in conjunction with an absence for recertification.**
- Otherwise, no more than every 30 days in conjunction with an absence, unless:
  - **Employee requests an extension**
  - **Circumstances of leave have changed significantly, or**
  - **Validity of certification is in doubt**
- Any recertification requested by the employer shall be at the **employee's expense** unless the employer provides otherwise.
- An employer may not require a second or third opinion on recertification.

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## Topic Three

### Fitness for Duty

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FMLA & Other Leaves

## Fitness for Duty



- Employers require employees to provide a **"fitness-for-duty"** certification **upon return from a continuous absence due to employee's own serious health condition.**
- Just a simple statement but employer may ask the HCP to review the employee's job description to ensure that the employee is able to perform their job duties.
- Federal FMLA **reasonable safety concerns** - allows employer to require "fitness for duty" note every 30 days for employee on **intermittent leave** in conjunction with an absence.
- Must be **"reasonable safety concerns"** regarding employee's ability to perform job.

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# Fitness for Duty & Maternity leaves

- **Birth**- Serious health condition for self (Needs to provide a return-to-work note).
- **Bonding**- Not a serious health condition (Does not need to present a return-to-work note).
- For either birth or bonding- a doctor can complete the certification to allow for up to the full 12-13 weeks (depending on eligibility for RIPFMLA).

Differences between Birth and Bonding:

- Absences in connection with a pregnancy related medical condition (birth) that rendered the employee ineligible to work- most doctors give 6-8 weeks depending on type of birth.
- Bonding is the time to build a bond/provide care to newborn child \*Foster or adoption child.
- Keep in mind that employers ARE prohibited by federal and state law from discriminating against employees on the basis of gender, including pregnancy.
- This means that the employer should ensure that any policy requiring a fitness for duty certification from employees who take leave to have a baby should be similarly imposed upon employees who take leave in connection with other temporary medical conditions (such as FMLA serious health condition).



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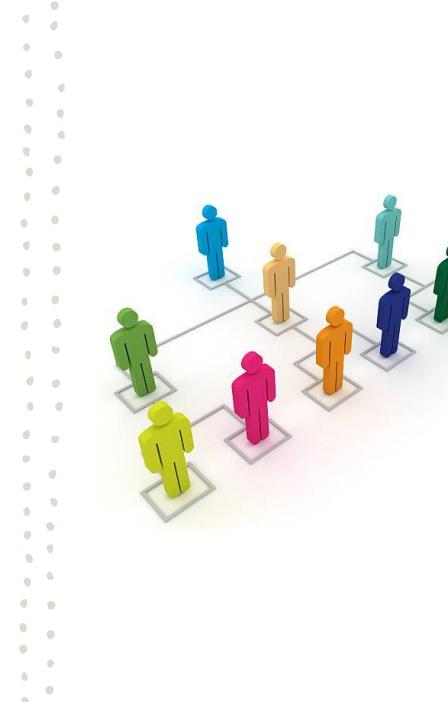
## Right to Reinstatement

- **Employee must be reinstated to the same or, if not available, an equivalent position upon return.**

Equivalent is identical in terms of pay, benefits, working conditions (i.e., duties, responsibilities, privileges, perquisites and status).
- If employee is medically unable to perform their original job at the expiration of FMLA/RIPFMLA.
  - Employer must transfer the employee to work suitable to employee's physical condition **if such work is available**.
  - Suitable work may include part-time work or work at a lesser pay scale.
  - Employer may also have obligations under the ADA to provide the employee with reasonable accommodations.
- However, **there is no right to reinstatement under the following circumstances:**
  - After the leave entitlement is exhausted;
  - If the employment relationship would have ended, regardless of the employee's taking FMLA leave (e.g., layoff); or
  - Where employee obtains FMLA leave fraudulently.

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## Topic Four

### Supervisor Responsibilities

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FMLA & Other Leaves

## Just Don't: A Guide to Making Smart Decisions

1. Do not interfere with the employee's FMLA rights
2. Do not contact the employee excessively
3. Do not disclose confidential medical information
4. Do not assign additional work or pressure colleagues
5. Do not discriminate or show bias
6. Do not penalize or take adverse actions
7. Do not treat the employee differently upon return



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# Reaching out- what you need to know

Supervisors can **NOT** directly contact an employee's treating physician for several reasons:

- 1. Privacy Protection:** Violation of the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations.
- 2. Legal Constraints:** Under the FMLA, direct contact with the physician can be seen as an overreach and a violation of the employee's privacy rights.
- 3. Risk of Discrimination:** Can raise concerns about discrimination & bias based on the employee's health condition.
- 4. Legal Liability:** Unauthorized contact with an employee's treating physician does expose the employer to legal liability, including potential lawsuits for invasion of privacy or violation of medical confidentiality laws.

While supervisors may have a legitimate interest in understanding an employee's medical situation for the purpose of managing workload or planning for their return, they must do so within the boundaries of legal and ethical guidelines. Only HR should have contact with the treating physician.

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## Supervisors Liability



- "Employer" includes managers who act with some degree of control over the employee or who discuss or have responsibility to discuss leave with the employee.
- Supervisors exercising sufficient control over the decision to terminate an employee may be held individually liable for violations of FMLA.
- All individuals to whom this policy applies are responsible for becoming familiar with and following this policy. Supervisors are responsible for promoting the understanding of this policy and for taking appropriate steps to help ensure compliance with it.

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# Best Practices

Training supervisors on FMLA /RIPFMLA helps **avoid**:

- **Retaliation** against employees whose absences are protected
- **Improper questions** about medical condition
- **Interference** with a leave
- **Recordkeeping**
- **Both supervisors and HR should keep detailed and accurate records of FMLA**  
\*Note Asana is used to keep the supervisor and HR on the same page with what is sent to the employee and expectations
- When employee calls out, document the reason the employee gives for calling out
- Communicate with the employee in writing- texts
- Be responsive if employee has questions



- Communicate with the employee in writing- Sent Notice by mail- HR Dept Does
- Be specific about what the employee is entitled to and what is required of the employee- HR Dept Does
- Maintain the records in accordance with record retention laws- HR Dept Does

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## Call Out Procedures - Intermittent FMLA

- **Enforce Employer Call Out Procedures**
- Employers have the right to enforce their regular call out procedures when an employee is claiming an absence under intermittent leave.
- **Specific information about when and who to call when calling out of work should be known to all employees.**
- When employees call out make sure you **obtain sufficient information to determine if the absence may be FMLA qualifying** if they do not already have an approved leave of absence.
- To obtain that information, consider asking the following:
  - What is the specific reason for the absence?
  - Is the employee going to see a physician?
  - When does the employee expect to return to work?
  - What job duties is the employee unable to perform?
  - Has the employee taken leave for this condition previously?



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## Topic Five

Leave Tracking & Payroll

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### Patterns of Absence

- If an employee has a pattern of FMLA absences (such as before or after every holiday or weekends), the employer may ask the employee about the pattern and require a recertification from the Health Care Provider (HCP) and attach the employee's attendance information.



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# Sick Time Abuse Policy



- Employees who are absent from work for three (3) or more consecutive days, or who **discharge three (3) or more full sick days (with or without pay) within a one (1) month period** not associated with an approved leave of absence.
- Employees who **discharge sick time on an hourly basis on five (5) or more occasions within a one (1) month period** not associated with an approved leave of absence.
- Employees who exhibit a pattern or trend of sick time use, such as immediately before or after weekends or holidays, to circumvent the denial of vacation time, or any other established pattern of use that is not verified by a healthcare provider or associated with an approved leave of absence.
- Employees who exhibit a pattern or trend of hourly sick time use, such as for consistent tardiness, consecutive or specific days of the week, or any other established pattern of hourly use that is not verified by a healthcare provider or associated with an approved leave of absence.
- Employees who do not make good faith efforts to notify their department director or designated supervisor of their need to utilize sick time.
- Departments are responsible for monitoring their employees' use of sick time. Violations of this policy will be subject to progressive disciplinary action.**

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# Intermittent and Reduced Leave Schedules

- Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason.
- A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.
- Employers must accommodate intermittent or reduced schedule leave when deemed medically necessary by a health care provider.
- When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees.



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# FMLA/ RIFMLA Tracking

- **Why is it important for supervisors to track FMLA/RIFMLA hours used?**

An FMLA tracker ensures that all employees have the proper level of accountability in meeting FMLA compliance. For both the benefit of the employee and the employer.

- Which means we have an accurate representation of the **hours** the employee has **used** and how many **hours** they have **remaining** for use (should be up to the date of last time used).
- **Eligibility!** With Federal FMLA and RIFMLA having different durations (**12 or 13 weeks**) or leave as well as different leave time frames (**12 or 24-month renewal**). It is imperative to know how much of which type of leave was used to determine next eligibility period.



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# FMLA/RIFMLA Tracking (cont.)

- **Tracking made easy** - I provide an excel spreadsheet that does the calculations as time is entered to reflect what is used and available. \*note the RIFMLA allows for an additional week of time longer than FMLA, so the tracker could go to negative 40.
- Due Date for FMLA/RIFMLA tracking is one week after the employee returns from leave \*note Asana task is created for this- as the director if you are not handling the tracking (payroll) please make sure the appropriate person is included in the task!
- **Tracking multiple leaves can be complicated!**
  - I recommend tracking each employee leave on a separate tracking sheet and labeling them clearly.  
For example (a) Self- Intermittent  
(b) Child- Continuous
  - I highly recommend tracking continuous and intermittent leaves separately!  
**Only Federal FMLA allows for intermittent use.**
  - You would not continue to track the FMLA/RIFMLA once the allotted 12 or 13 weeks has been exhausted- even if the employee continues to be out of work for other leave or workers comp injury!

FMLA ABSENCE TRACKING CALENDAR																																			
Employee Name:	FMLA Start Date:			FMLA End Date:			FMLA Hours Used:			FMLA Hours Total:																									
Average hours scheduled per week for an FMLA week: 40.0																																			
Instructions: Enter employee's name, break start and end dates above. Also, change the average hours above to what the employee is regularly scheduled to work on a weekly basis if not 40 hours per week. Enter the number of weeks of FMLA leave to be taken. Enter the start and end dates for the leave. The "Available" column will show the number of hours available for FMLA leave. The "Used" column will show the number of hours used for FMLA leave. The "Total" column will show the number of hours available for FMLA leave.																																			
Days of Month																																			
Month	Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total	Used	Total Available
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## FMLA/RIPFMLA Tracking (Cont.)



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## Substitution of Paid Leave

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- Proper FMLA leave tracking doesn't just focus on tracking when an employee is on leave. It's also important to track how time away from work is logged.
- ***FMLA regulations specify that an employer must account for intermittent leave using increments that aren't greater than the shortest amount of time used for other forms of leave*** (provided that period is no greater than one hour).
- In other words, if you track employee sick leave in half-hour increments and vacation time in one-hour increments, you must track FMLA leave in half-hour increments (the shortest amount of time).
- ***For example: The lowest time amount for the City of Providence would be 1 hour.***



- FMLA does not require paid leave.
- The law allows employers to require employees to use any paid leave that they may have as part of their FMLA leave.
- The law also allows employees to use their paid time off (PTO) during their FMLA leave if the use of the PTO would meet the normal requirements for use (i.e., if PTO policy allows an employee to use PTO leave to care for a sick child, the employee may also use this leave during FMLA leave to care for a sick child).



## Payroll and Holiday pay on leave

If the FMLA is taken in weeklong increments the holiday counts as FMLA. If the FMLA leave is taken in less than weeklong increments the holiday does not count as FMLA.

To be eligible for holiday pay, employees must work during the week that the holiday occurs or during the previous week.

If utilizing vacation, float or personal time, bereavement time or jury duty for at least one day during the week.

Employees who discharge paid sick time during the week of the holiday and the entire preceding week, will not receive holiday pay, even if they are on approved medical leave pursuant to the FMLA.

Employees on approved leave in an unpaid status during the entire week of the holiday and the entire preceding week will not receive holiday pay.



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## FMLA & Payroll

- **All payroll questions should be addressed with Brenda and Jill. (Pay codes, accruals, timesheets, etc.)**
- **FMLA and Overtime-** Regulations clarify that the hours an employee would have been required to work if the employee were not on FMLA leave may be counted against the employee's FMLA entitlement. Any OT that is voluntary or discretionary would not be counted against the employee's leave.

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# Employer's Responsibility

- Once an employer becomes aware of an employee's need for leave or is aware of a reason that may qualify under the FMLA the employer must notify the employee if they are eligible for FMLA leave or not,
- If eligible, must also provide a notice of rights and responsibilities under the FMLA within 5 days.**
- If the employee is not eligible, the employer must **provide a reason for ineligibility within 5 days.**
- Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be **designated as FMLA leave within 5 days of receiving the employee's certification form.**
- Employer is to maintain employees group health insurance while out on leave.
- Employer is to maintain FMLA records in accordance with record retention laws.



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## FMLA Case Studies



### Knox v City of Monroe (2009)

- Facts: Ms. Knox began to have attendance issues while employed with the City of Monroe. The supervisor warned Knox that she could be disciplined if she continued to incur excessive absences. He also offered Knox FMLA leave, which she specifically declined. Ms. Knox was later terminated for excessive absenteeism. Knox sued after her discharge, charging that the City of Monroe interfered with her FMLA rights because her supervisor did not warn her that she could be fired for excessive absenteeism if she did not protect herself by taking FMLA leave.
- Court's Finding: The court rejected the claim, stating the supervisor "had no duty under the FMLA to threaten Knox with discharge."
- Human Resources Comments: The City of Providence satisfies its FMLA notice requirements by recognizing that a situation may involve the FMLA and alerting the employee to the availability of FMLA leave. This procedure is satisfied by issuing our FMLA packet. The responsibility of accounting for FMLA leave passes to the employee upon the packet's receipt, where they then have 15 calendar days (absent extenuating circumstances) to provide sufficient certification.
- Lesson Learned from Case: Employees who decline FMLA leave, or otherwise fail to provide the required FMLA certification, expose themselves to discipline and/or termination.

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# FMLA Case Studies

## Branham v Gannett Satellite Network (2007)



- Facts:** Ms. Deborah Branham worked for Gannett Satellite Information Network as a receptionist and began to miss work for personal health problems on 11/9/2006. She made a doctor's appointment on 11/13 & documentation indicated she could return to work the next day. She didn't report to work the next day, but on 11/15 she advised her supervisor that she still was not feeling well and would need to miss work for more upcoming doctor's appointments. Branham was asked to fill out a form (which also served as an FMLA leave form) "to see if she qualified for anything" in the area of medical leave. She returned another medical certification form on 11/17 which again indicated she could return to work the next day; furthermore, the form did not trigger eligibility for FMLA leave. She was verbally informed on 11/20 that her job was in jeopardy unless she could provide documentation to show she was not medically able to return to work. Branham did not provide information and was notified in a letter dated 11/24 that she was terminated immediately. However, Branham's physician faxed an updated certification form later the afternoon on 11/24. The updated statement indicated that she would not be able to return to work for several weeks. Gannett Satellite stood by its decision to terminate, & Branham sued, claiming that her employer interfered with her FMLA rights.
- Court's finding:** The court sided with the company, saying it was entitled to terminate the employee because she did not return to work after her initial documentation showed she could return to work. The employee appealed the decision.
- Appellate Court's finding:** The decision was reversed; the employee's case will now go to trial or be settled out of court. In short, the appeals court judge ruled that the employer did not advise the employee of her FMLA rights and did not allow her the requisite 15 calendar days to return sufficient documentation.
- Human Resources Comments:** The employer should have recognized the definitions of a "serious health condition" under the FMLA and should have immediately issued a packet. As the previous case study, the responsibility of accounting for potential FMLA leave would have passed to Branham upon the packet's receipt. As seen from the timeline of events, the employee was terminated on 11/24, only 11 days after the first absence for her condition.
- Lesson Learned From Case:** Learn to recognize the "triggers" of FMLA and immediately issue a packet if the employee's circumstances show they may need FMLA benefits.

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# FMLA Case Studies

## Atkins v Wayne-Dalton (2010)



**Facts:** Mr. Atkins' pregnant wife called him at work and asked him to come to the emergency room because she was having complications. He told his supervisor about the situation & left. When he returned to work five days later, he brought a doctor's note which covered the days in question & called HR to explain his wife's condition. Later that day, she again returned to the ER, & he told his supervisor he had to leave. Atkins was terminated the next day.

Atkins sued, alleging that the FMLA covered his time off. The employer argued that:

- They did not know that Atkins' absences were due to his wife's serious health condition;
- Atkins' wife did not have a serious health condition; and
- Atkins' termination was not related to his FMLA leave request.

**Court's finding:** The court disagreed with the employer's arguments and ordered a trial.

**Human Resources Comments:** The supervisor and HR made crucial legal errors in this case. The supervisor was aware of Atkins' wife's condition since first ER visit, but the supervisor didn't immediately communicate this information to HR. The employee did notify HR area on the second visit to the ER; however, HR did not act on this information & didn't provide FMLA notification as is required.

**Lesson Learned From Case:** Supervisors and administrators should learn to recognize the "triggers" of FMLA. HR should immediately issue a packet if the employee's circumstances show the employee may need FMLA.

Supervisors/administrators should never assume that an employee or an employee's family member doesn't have a serious health condition. The physician's Certification Form should be the sole determinant of whether or not a serious health condition exists. The employee should always be given a minimum of 15 calendar days to provide the necessary FMLA documentation. Additionally, subjecting the employee to adverse employment action (termination, disciplinary counseling, etc.) during the 15-day period is not advised.

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# FMLA Case Studies

## Render v. FCA US LLC (2022)

**Facts:** In one of the most recent appellate FMLA opinions, *Render v. FCA US LLC*, the 6th U.S. Circuit Court of Appeals ruled in November 2022 that an employee did not need to provide formal notice every time he needed days off for his recurrent mental health condition, which already had been approved for FMLA leave.

The employee, Edward Render, notified FCA of his condition in October 2017 & applied for FMLA leave the following month. The company approved up to four days of leave per month for major recurrent depression and moderate/generalized anxiety disorder. Render called FCA to report that he would be absent three days in December 2017 & one day in January 2018 but did not specify that those absences were related to his FMLA leave. The employer considered those absences unexcused and terminated Render for a pattern of attendance problems.

**Court's finding:** In the lead opinion on the ruling, U.S. Circuit Judge Eric Clay said "notice need only be given one time" whether the leave was continuous or intermittent.

**Human Resources Comments:** When an employee calls out of work (even to Telestaff) a supervisor should be following up with their staff to inquire if they employee needs to apply for a leave, or it relates to an existing leave for tracking purposes. Employees with intermittent leave don't have to provide medical documentation for each absence.

**Lesson Learned From Case:** A reminder for employers to be conscious of their communications and employee leave. The takeaway, is for employers to have very clear call-in procedures, especially as more mental health-related FMLA notices are filed.

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## Topic Six

Other City Leaves

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# Paid Parental Leave (Non-Union Leave)

## ELIGIBILITY:

- Must be a non-union, management employee.
- Must be a City employee for 12 consecutive months.
- Must not have used any other leave entitlements during the previous 12 months.
- Must be in good standing with an acceptable performance record as determined by the Chief Human Resources Officer (CHRO).

## ENTITLEMENTS:

- Approvals for paid parental leave require the employee to discharge all but 2 weeks of paid time off prior to receiving leave with pay.
- Employees must apply for paid leave 30 days in advance of the qualifying event or as soon as it is practicable.
- Up to 6 weeks of paid leave to accommodate the birth, adoption, or foster placement of a child in the home.

## NOTES:

- This policy does not cover employees in a temporary position, those who are represented by the Laborers' Local 1033, the Fraternal Order of Police, Local 799 of the International Association of Fire Fighters Unions, PPSD teacher or clerical unions.
- Incomplete applications will be returned to the employee and leave approval with not be granted until completed.

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# Sick Leave Extension (Union)

## ELIGIBILITY:

- Any employee represented by the Laborer's Union Local 1033 with at least 5 years continuous service,
- Who has a serious illness\*
- Subject to Department and CHRO approval.

## ENTITLEMENTS:

- Sick leave extensions are granted in 30-day increments not to exceed 90 days.
- Employees are entitled to three 30-day extensions over the course of their employment with the City.

## NOTES:

- Employee will need to complete the Sick Leave Extension form and provide a letter from their treating physician stating the time employee will be out of work.
- An employee is only approved for sick leave extensions after discharge of all accumulated time.

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# Non-Union Sick Bank

## ELIGIBILITY

- Must be experiencing a situation that meets one of the following criteria:
- **Medical emergency**, an acute and unforeseen medical condition of the employee or an immediate family member which requires the absence of the employee from work and which will result in a substantial loss of income to the employee due to the exhaustion of all paid leave available.



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- **Major disaster**, declared by the president under §401 of the Stafford Act, or as a major disaster or emergency declared pursuant to 5 U.S.C. §6391 for federal government agencies. An employee shall be considered to be adversely affected by a major disaster if the disaster has caused severe hardship to the employee or to an immediate family member of the employee which requires the employee to be absent from work.

## ENTITLEMENTS:

- Non-Union Sick Bank Leave is granted in hourly increments not to exceed 210 hours in a rolling 12-month period.

## NOTES:

- Employee will need to complete the Non-Union Sick Bank Form and provide a letter from their treating physician starting the time employee will be out of work.
- An employee approved for Non-Union Sick Bank Leave Extension after discharge of all accumulated time.
- Employees accepting donated time from the City's Sick Leave Bank shall be responsible for any and all tax consequences of such donation and are advised to consult with their tax professional before acceptance.

# General Leave of Absence

## ELIGIBILITY:

- Any full-time, regular employee may be granted leave for personal illness, disability or other purposes deemed proper and approved by their Department Director and CHRO.
- Subject to Department and CHRO approval.

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## ENTITLEMENTS:

- Not to exceed 1 year duration.
- While on leave, the utilization of your accrual balance is required.
- Going unpaid subject to the approval of the Chief Human Resources Officer (CHRO).

## NOTES:

- Except for employees on leave for medical reasons- employees on unpaid leave of any nature will not accrue sick and vacation time after 26 weeks of unpaid leave.
- While on a leave for medical reasons it is mandatory to discharge all accrued sick time.

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# Military Leave (USERRA)

## ELIGIBILITY:

- Any full-time employees who have been continuously employed for at least 6 months &
- Who by reason of membership in the active reserve forces of the United States or member of RI National Guard with orders for duty.



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## ENTITLEMENTS:

- Can be paid or unpaid leave.
- Paid 15 days in 1 year.
- Employees requesting more than 15 days of paid military leave must provide proof of military salary to allow for calculations of compensation amounts in accordance with the City Ordinance.

## NOTES:

- Employees must give written or verbal notice along with (if available), a copy of the military orders to their supervisor and Department of Human Resources at least 2 weeks prior to the start date of the military leave of absence.



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# Key Take Aways

- Applying for leave.
- Employee eligibility.
- Length of leave.
- Serious health condition.
- Medical documentation.
- Fitness-to-return-to-work certification.
- Benefits while on leave.
- Intermittent leave & reduced schedules.
- FMLA/RIPFMLA Tracking.
- Sick time abuse policy.
- Other City leaves.



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# Quiz

How do I know if I am eligible for the FMLA benefit?

Is FMLA/ RIPFMLA paid time off?

Who is considered an immediate family member?

Who do employees need to notify if they are out on approved leave?

How do employees know how much FMLA/ RIPFMLA time they have available?

How is FMLA time tracked?

What benefits does FMLA/ RIPFMLA guarantee?

When do employees have to add new dependents by on insurance?

What other types of leave run concurrent with FMLA?

When should I notify my supervisor and HR of my intent to apply for a Leave of Absence?

Are FMLA/ RIPFMLA eligibility and approval the same thing?

What if employees do not contact HR to request FMLA within the first four days of their absence?

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# Answers

## How do I know if I am eligible for the FMLA benefit?

You must have one year of service with the City of Providence and have worked at least 1,250 hours within the previous 12 months.

## Is FMLA/ RIPFMLA paid time off?

No, FMLA/RIPFMLA is 12-13 weeks of job protected unpaid leave. While on FMLA you are required to use your Sick time accruals. You can then elect to go unpaid or use your other accruals.

## Who is considered an immediate family member?

- Employee's Spouse
- Employee's Children under the age of 18
- Employee's Parents

## Who do I need to notify if I am out on approved leave?

When your leave is foreseeable the request should be requested 30 days in advance.

You must notify your supervisor when calling out for FMLA/RIPFMLA or other City leave based on department procedures.

## How do I know how much FMLA/ RIPFMLA time I have available?

You can contact the leave of absence administrators or your supervisor for an estimate of time used.

## How is FMLA time tracked?

For all locations FMLA time is recorded on a rolling calendar year. This means if your first FMLA day is May 3, then your FMLA calendar year begins on May 3.

## How may FMLA leave be taken?

As a continuous block of time up to 12 weeks and/ or intermittently (leave taken in separate blocks of time due to a single qualifying reason) or on a reduced schedule (an agreed upon reduction of an employee's usual number of working hours per week, or hours per workday).

## What benefits does FMLA/ RIPFMLA guarantee?

FMLA/ RIPFMLA leave guarantees the continuation of employee's health benefits. You can continue your medical, dental, and life insurance benefits as long as you are paying your portion of your premiums or set up a payment arrangement when you return.

To do this you must contact the benefits office at:

benefits@providenceri.gov P: 401-680-5616, option 2

F: 401-272-0867

## When do I have to add my new dependents to my insurance?

Within 30 days or you will not be eligible to make changes to your benefits plan until open enrollment.

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# Answers

## What other types of leave run concurrent with FMLA?

- Rhode Island Parental and Family Medical Leave Act (RIPFMLA)
- Worker's Compensation Claims
- Other City Leaves per LOA Policy
- Americans with Disabilities Act
- Pregnancy Disability Act
- RI Fair Employment Practice Act

## When should I notify my supervisor and HR of my intent to apply for Leave of Absence?

- You must notify your supervisor immediately if you need to apply for a leave.
- You must contact HR no later than the fourth business day of your absence to apply for a leave of absence.
- If your absence is foreseeable you should apply up to 30 days in advance.

## Are FMLA / RIPFMLA eligibility and approval the same thing?

No, eligibility means you have one year of service and have worked 1,250 hours in that year.

Approval means that you have submitted the completed documentation to HR that meets the federal and/or state guidelines for the requested leave and you have not exhausted all of your FMLA time.

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## What if I do not contact HR to request FMLA within the first four days of my absence?

Absences not covered under an approved City leave are subject to the Sick Time Abuse Policy. It is the employee's responsibility to make sure all parties are contacted in a timely manner.

## Where can I find more information on FMLA?

You can contact the Department of Labor (DOL) at <https://dlt.ri.gov/> or contact Human Resources.

## Beginning the Process

Filing for Leave of Absence is quick and easy. For new claims, Complete the form with the basic information about you and your leave (scan QR Code below).

Human Resources will mail your leave eligibility packet to your home within two to five business days.

Make sure you have a signed authorization form on file with your doctor. Your doctor will need to complete the medical certification forms, and

you or your doctor must fax the completed documentation to HR at 401-273-9510 within 15 days of your request.

If HR has not received any medical documentation or incomplete information within 15 days from the date you requested leave, you will be given one 7-day extension for missing documents before your leave request is denied.

Upon HR receiving a completed application, HR will send an approval or denial letter within five days. Continue to follow your department's call-in procedures (unless approved for continuous leave).

For more information on types of leaves, eligibility criteria and entitlements; please visit: <https://www.providenceri.gov/hr/employee-leaves/> and review employee educational materials and policies.

# Questions? Comments? Concerns?

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Thank you all for joining us today! Your presence and engagement made this presentation truly special. We appreciate your time and insightful questions. Let's keep the conversation going! If you have any further inquiries or need additional information, feel free to reach out. Until next time!

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