

An FMLA "To Do" List for **2014**

1. **Update your FMLA policy and any relevant personnel policies (and inform employees!).**
2. **Update your Employee Handbook to include your FMLA Policy.** The FMLA regulations require all employers who maintain an employee handbook to publish their FMLA Policy within the handbook. Easy enough -- take your newly updated FMLA policy and publish it in your handbook.
3. **Change your FMLA leave year to a rolling year measured "backward."** The FMLA allows employers to define the 12-month FMLA year in a number of different ways, such as a calendar year, a look-forward period (from the time the employee first takes leave), or a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave. **The rolling 12-month period typically is the best choice for employers,** since it avoids stacking 12-week FMLA periods back-to-back. Keep in mind, though, that employers must provide employees with 60 days' notice of any change to the FMLA 12-month period.
4. **Ensure that your FMLA forms are up to date and useful.** On several occasions, we have noticed that some clients were still using pre-2009 DOL forms for FMLA leave. The new regulations require employers (and employees) to use a whole new suite of FMLA forms. Consider adapting [FMLA Forms](#) to ensure you are obtaining all the information available to you under the rules.
5. **It's a New Year, so update job descriptions!** When employers seek medical certification of an employee's serious health condition, they now may require the employee's health care provider to identify in the medical certification form those "essential duties" the employee cannot perform. Similarly, employers also may require a health care provider to confirm in a [Fitness-For-Duty Certification](#) that the employee can perform all essential job functions upon his/her return to work. Updating job descriptions will help promote an efficient and accurate certification process.
6. **Revise severance agreements.** Employees now may release past FMLA claims. However, many employers are not including the requisite language in severance and settlement agreements. Consider updating your model agreements to maximize your protection, and use employment counsel to ensure the language is sufficient.

NOTE: Before adding any FMLA language to your current severance agreement, we recommend conferring with legal counsel.
[29 CFR 825.220 - Protection For Employees Who Request Leave Or Otherwise Assert FMLA Rights](#)
7. **Analyze bonus programs/criteria.** As you set new goals for 2014, keep in mind that the new FMLA regulations allow employers to deny such bonuses as "**perfect attendance**" awards to employees who take FMLA leave. Have you taken this into account for 2014?
8. **As always, Train! Train! Train!** From the front-line supervisor to the top executive, managers must understand their responsibilities to effectively manage an employee with a medical condition. Properly training your managers as to their responsibilities under the FMLA should become a regular part of an employer's operations, as it will significantly reduce the risk of legal liability.

Resources:

*FMLA: <http://www.dol.gov/whd/fmla>

*Pay & Leave: <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/family-and-medical-leave/>

*Society for Human Resource Management (SHRM) <http://www.shrm.org/searchcenter/Pages/Results.aspx?k=fmla>

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