

FMLA Audits: Is Your Company Ready When the DOL Comes Knocking?

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The U.S. Department of Labor can investigate a company's procedures to determine how well it complies with the Family and Medical Leave Act. Following is a discussion of why, and how, a company should prepare for a possible DOL audit.

Dear Employment Law Specialists,

A DOL investigator showed up today at our offices asking questions and wanting to audit the company's FMLA paperwork. I've heard of the DOL increasing enforcement of the Fair Labor Standards Act, but I've never heard of FMLA inspections. Can they do this? If so, how do I prepare?

D.N., Director of Operations

Dear D.N., DOL has always had the right to conduct unannounced, on-site investigations into a company's FMLA procedures. DOL has rarely acted on this right, but it is a brand new day in the world of FMLA enforcement and DOL is ramping up its efforts to police non-compliance.

For instance, DOL's 2014 budget earmarks an additional \$14 million dollars to help enforce both the FLSA and the [FMLA](#). Recently, a DOL on-site inspection revealed that the target company failed to include FMLA-related information in the employee handbook and DOL fined the company \$50,000 and ongoing compliance costs. In another recent case, a target employer had to pay out nearly \$500,000 for not following proper FMLA procedure when investigating an employee's suspicious FMLA leave. As you can see, ensuring that your company is following proper FMLA policy and procedure is more critical now than ever before, and you should take all steps necessary to prepare for a DOL audit before it ever occurs.



To prepare for a DOL FMLA inspection, you should begin by designating a human resources person who will be responsible for FMLA administration and compliance. Then conduct a review of your current FMLA policies and procedures. Remember that DOL issued new regulations in March 2013, and all policies and forms must be in compliance with these regulations. Most importantly, your [FMLA policy](#) should be contained in your handbook, if you have one, and should identify:

1. FMLA definitions;
2. the leave year (for example, calendar year, fixed year, looking forward, rolling backward);
3. eligibility requirements;
4. outside work prohibitions;
5. employee obligations;
6. the medical certification process;
7. substitution of paid leave;
8. other benefit rights; and
9. fitness for duty requirements.

Furthermore, all company FMLA-related correspondence should be reviewed for legal compliance. The company should err on the side of caution and make sure that anything that might be sent to an employee regarding FMLA leave complies with all DOL rules. The DOL website contains all of the forms a company needs to process an FMLA request. Your company can use these forms directly or can: (1) create [FMLA forms](#) that contain the required information; and (2) seek supplemental information such as an employee's work-related restrictions for intermittent leave requests. However, when using company-generated forms, be sure that your organization is not seeking information that violates FMLA. No matter what forms the company uses, FMLA requires that employees be provided specific information at the time they request leave (for example, whether they meet the eligibility requirements) and at the time leave is designated as FMLA (such as the beginning and end date and key employee status).

In addition, you should review the company's FMLA practices to ensure FMLA compliance, and ask the following questions:

1. Do the company's managers know what events trigger FMLA?
2. Do they understand intermittent leave?
3. Do your HR managers understand the rules on intermittent leave calculations and, are they performing those calculations correctly?
4. When employees are engaging in FMLA fraud or abuse, do your HR managers know how to seek medical certifications, second and/or third opinions and are they able to conduct investigations in a way that complies with the FMLA?

Managers and HR professionals should be well trained to manage FMLA issues, understand the intricacies of the statute and provide employees with the information and paperwork needs to be given.



FMLA Compliance Action Plan

While it is true that DOL is conducting more on-site investigations than you may be used to, the following actions should help keep your company in compliance.

1. Make up a sample packet of information that you have for employees requesting leave. This packet should include the company policy, the notice of eligibility, medical certification and [FMLA designation forms](#), as well as the company's fitness-for-duty form if you require one. This packet could be given to a DOL auditor if one ever knocks on the company's door. In addition, each employee requesting leave should be given such a packet, and when the information is returned to you, you should keep it all in one place for easy accessibility.
2. Make sure you have on hand all of your employees' identifying information, payroll data, dates of any FMLA leaves and copies of all notices, certifications, benefit documents, and dispute forms relating to the FMLA. Your employee files should go back at least three years to comply with all DOL rules.
3. Make sure your policy is in your employee handbook.
4. Prominently display the DOL's new FMLA poster, as of March 2013, where employees and applicants can see it. The poster also must be in the language that a substantial portion of your workforce speaks.

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