

GAME CHANGER

The history and evolution of the FMLA.

The law that started it all

February 5, 2018 marks the 25th anniversary of a law that changed how employers treat employees who need to take time off from work. The Family and Medical Leave Act (FMLA) was signed into effect in 1993 by then-President Bill Clinton in a bipartisan effort to “balance the demands of the workplace with the needs of families.” In the 25 years since it became a law, the FMLA has required employers across the country to provide important protections for workers who need to care for a new child, their own health conditions or the health condition of a family member, or to address situations arising from a family member’s military service.



FMLA
25 YEARS



The history of FMLA

Prior to the FMLA’s passage in 1993, there was no federal law that provided job security while an individual was absent from work for an extended period of time. Because of this, workers risked losing their job when they were off work for a week or more.¹ Whether or not an individual who needed leave got to keep their job depended on what state they lived in and what their employer’s policies were. Once the FMLA passed, employees across the country were afforded leave rights under a consistent regulatory framework, which provided job protection.

Did you know?

Despite the positive perception of FMLA after its passage (a 1996 poll by NBC News/*Wall Street Journal* showed 82% in favor and only 13% opposed²), it wasn’t easy to get the law passed.

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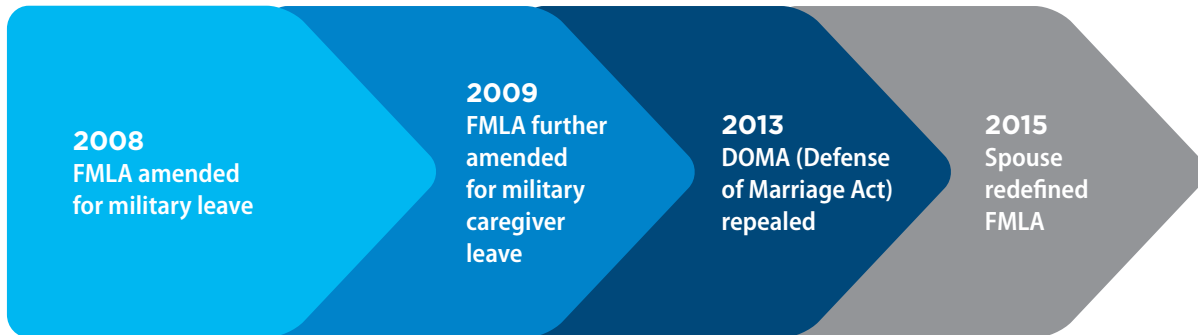


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FMLA was introduced to the House of Representatives in 1985 for the first time, but didn't go anywhere because the public didn't know anything about the proposed law. In April 1987, an ORC (Opinion Research Corporation) poll found that the proposed act was hardly making a splash: 59% had heard nothing about it at all, 29% just a little.² At the time, few people understood the issues associated with caretaking and job protection. But that's since changed. With the number of households in which both parents work being higher than ever today, the public understands the importance of family and medical leave.

Evolution of FMLA

The FMLA has continued to evolve over the past 25 years – coverage has been extended and amended to cover many additional employee groups that were not included in the original signed law. These milestones have continued to pave the way for future enhancements to employee leave.



January 2008

The FMLA was amended to provide family leave benefits to military families. Specifically, the FMLA was expanded to include up to 12 weeks of job-protected leave for any “qualifying exigency” arising out of the active duty or call to active duty status of a covered family member. It also expanded to include up to 26 weeks of leave to care for a covered family member currently serving, with a serious injury or illness incurred in the line of duty.³

October 2009

Further amendments were made to military caregiver leave under the FMLA to include certain veterans, as well as to permit leave to care for a covered service member with a preexisting injury or illness that was aggravated while on active duty.

December 2009

The Airline Flight Crew Technical Corrections Act (AFCTCA) modified the number of hours airline flight attendants and flight crew members must work in order to be eligible for FMLA.⁴ (Some of the changes from 2008 and 2009 did not go into effect until 2013.)

June 2013

The U.S. Supreme Court ruled that same-sex marriage was a constitutional right and federal agencies were directed to implement this ruling with respect to federal benefits and programs.

February 2015

The Department of Labor issued a new rule, which is still used today, amending the definition of “spouse” for employees in a same-sex marriage or a common law marriage in a state where such marriages are legally recognized.⁵

FMLA and the Sandwich Generation

Despite significant strides to improve the FMLA, many working professionals have experienced the challenges associated with taking unpaid family leave. For example, working professionals between the ages of 40 and 59 who are responsible for not only meeting workplace demands, but also raising children, while managing and financing the care for their aging parents and relatives. Working professionals with this family dynamic are referred to as the “Sandwich Generation,” which nearly 50% of Americans are a part of.⁶ The number of elderly Americans is projected to increase by more than 60% within the next 15 years,⁷ which means there will likely be more working professionals experiencing the unrelenting challenges of being a member of the Sandwich Generation.



NEARLY 50%
OF AMERICANS ARE
PART OF THE
SANDWICH GENERATION

The long-term financial consequences for caregivers in the Sandwich Generation are staggering. Research suggests that a caregiver can personally lose about \$659,139 over a lifetime (\$25,494 in Social Security benefits, \$67,202 in pension benefits and \$566,443 in forgone wages).⁸ While employers might think that offering protected unpaid leave through FMLA to employees is a viable solution, the reality is unpaid time off from work means less income. For employees who are likely financing their own lives, the lives of their children and possibly the lives of their elderly parents – a decrease in monthly income has the potential to carry with it significant emotional stress – which research suggests can lead to illness, injury⁹ or even more time off from work.

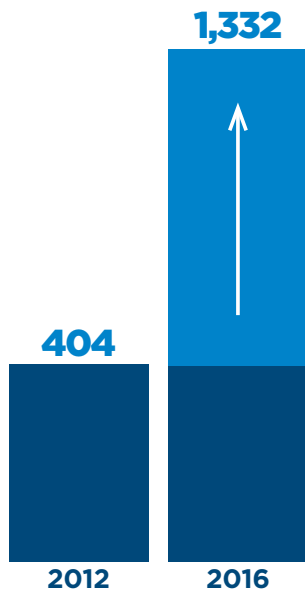
There’s no denying that the long-term care system in the U.S. is in dire need of an overhaul. The states of California, New Jersey, Rhode Island and New York mandate that employers provide employees paid family leave in some form. However, even though some employers in these states experienced higher return-to-work rates, increased job satisfaction and better productivity amongst their workforces, the future of paid family leave for the rest of the United States is still uncertain and inconsistent.

Administering FMLA and associated programs

From an employer perspective, managing family and medical leave can be complicated. **Research shows that the #1 challenge for employers is keeping up with new federal, state or local leave laws.**¹⁰ This challenge is exacerbated by the lack of consistency between different laws. Covered employers, qualified employees, permissible reasons for leave, and the length of leave available varies state by state. As a result, employers who operate businesses across state lines often times find themselves trying to understand: Who is qualified? How do you verify that FMLA applies? Which state law is applicable? What information can you get access to in order to verify eligibility if the state standard is different from the FMLA? Additionally, employers must consider how FMLA may interact with benefit programs, such as disability and workers’ compensation, as well as other statutory rights afforded to employees under federal laws, such as the Americans with Disabilities Act and state fair employment laws.

Understanding the rules and regulations associated with FMLA is undoubtedly important, but so is having the right technology in place to help manage and track family medical leave.

FMLA LAWSUITS INCREASED BY 200%



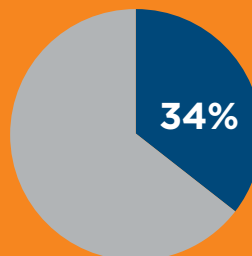
Did you know?

Today, **33% of employers** are not using an automated technology system to manage or track their family and medical leave. With so many rules and regulations to keep track of, it's no surprise that there's been over a **200% increase in FMLA lawsuits since 2012.**¹¹

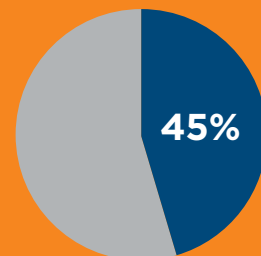
What can employers do to navigate the evolution of the FMLA?

Employers should have a written leave policy that clearly outlines the company's processes to ensure consistent management of absences. Because of the complex and ever-changing regulatory environment, organizations often err on the side of caution, granting leaves they don't have to – which can hurt productivity and their bottom line. Uncertainties around requirements, and the repercussions for violating the law, are why many employers (**34% with 50 or more employees and 45% with 1,000 or more employees**¹²) choose to outsource the management of FMLA, as well as many of the programs that often run alongside of it.

EMPLOYERS WHO
OUTSOURCE FMLA
MANAGEMENT



50+ employees



1,000+ employees

Cigna Leave Solutions®

At Cigna, we understand that no two organizations are alike. **That's why we take an individualized approach and help organizations build a one-of-a-kind absence management plan that's tailored to their unique needs, goals and preferences.** Working with Cigna can help employers feel confident they are:

- › Complying with federal, state and local regulations
- › Optimizing workforce health and productivity – and bottom line savings
- › Preventing and reducing costly absences



Employers who combine Cigna's disability and leave administration can see reduced absences and savings.¹³

- **7% fewer** recurrent disability claims
- **5 days shorter** disability durations
- **\$1,070** average cost savings

**For more information about Cigna Leave Solutions,
contact your Cigna representative or broker today.**



Sources

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