

## FMLA

## An Overview of the 2007 FMLA Survey



## FMLA:

Family Medical Leave Act enacted by U.S. Congress in 1993

## Key findings:

- » Almost one-half of HR professionals experienced challenges in administering/granting leave under the FMLA for employees' episodic conditions.
- » Employees often do not provide advance notice of FMLA leave; typically, less than one week's notice is given for a serious health condition as result of a catastrophic event or episodic condition.
- » Tracking/administering intermittent FMLA leave was identified as the most difficult activity by eight out of 10 organizations.
- » About four out of 10 HR professionals reported having approved FMLA requests that they believed to be illegitimate but felt they had to grant due to FMLA regulations and interpretations.
- » The FMLA and its regulations have had the greatest negative impact on employee absences, employee productivity and business productivity.

According to the Family and Medical Leave Act of 1993 (FMLA), regular employers with 50 or more employees within a 75-mile radius of the work location must provide eligible employees up to 12 weeks of unpaid, job-protected leave each year for one or more of the following reasons:

- » For a serious health condition that makes the employee unable to perform his or her job.
- » To care for an employee's spouse, son or daughter, or parent who has a serious health condition.
- » To care for the employee's child after birth or placement for adoption or foster care.

Regulations issued by the U.S. Department of Labor (DOL) define key terms related to FMLA leave rights and specify procedures for implementation of the Act. The existing FMLA regulations have been in place for 14 years and are currently under review by the DOL.

**FMLA Provisions**

The FMLA mandates up to 12 weeks of unpaid leave in a 12-month period for certain medical and family reasons. Some organizations offer job-protected leave beyond what is required by the FMLA. Less than one-half of HR professionals (44%) indicated that their organizations offered job-protected leave beyond federal FMLA provisions. These organizations varied in terms of the form or manner in which they extended the FMLA requirement. The three most common

**Key Terms**

*Serious health condition* entitling an employee to FMLA leave means an illness, injury or impairment, or physical or mental condition as defined under the Act.

*Family-related reasons* include maternity, birth or adoption of a child or newly placed foster child.

*Medical reasons* include an employee's serious health condition or care for a child, spouse or parent who has a serious health condition.

*Catastrophic event* includes serious accidents, serious injuries and/or life-threatening diseases.

*Episodic condition* includes ongoing injuries, ongoing illnesses and/or non-life-threatening conditions.

situations in which organizations offered job-protected leave beyond federal FMLA provisions included: 1) substituting accrued sick/vacation leave for FMLA leave (51%); 2) allowing more than 12 weeks of job-guaranteed leave (48%); and 3) offering job-protected leave to employees who have been employed for less than 12 months (41%). These data are depicted in Figure 1.

**Use of the FMLA and Advance Notice of Leave**

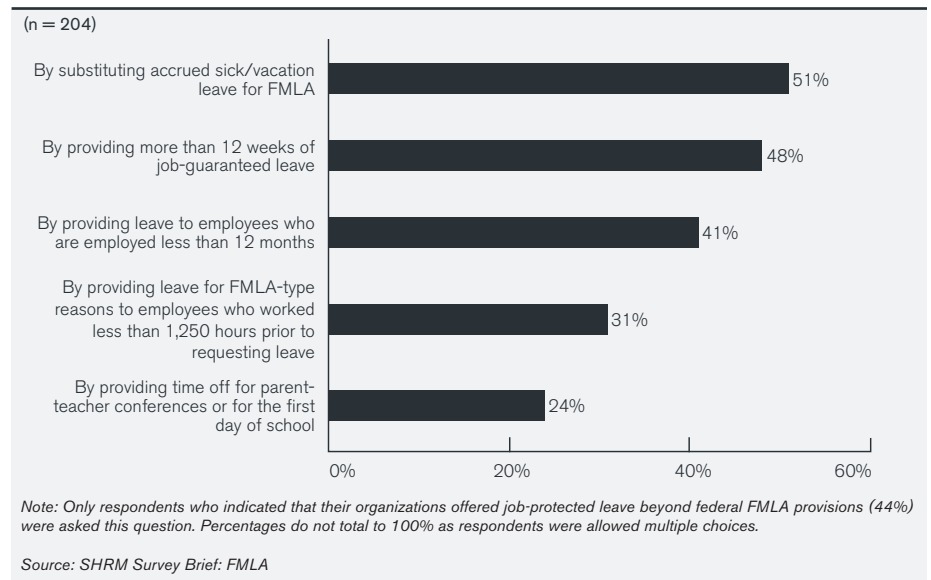
Overall, most HR professionals agreed (responded "somewhat agree" or "strongly agree") that there have been a greater number of employee requests to take FMLA leave in the past five years compared with 10 years ago. The top three types of leave were: 1)



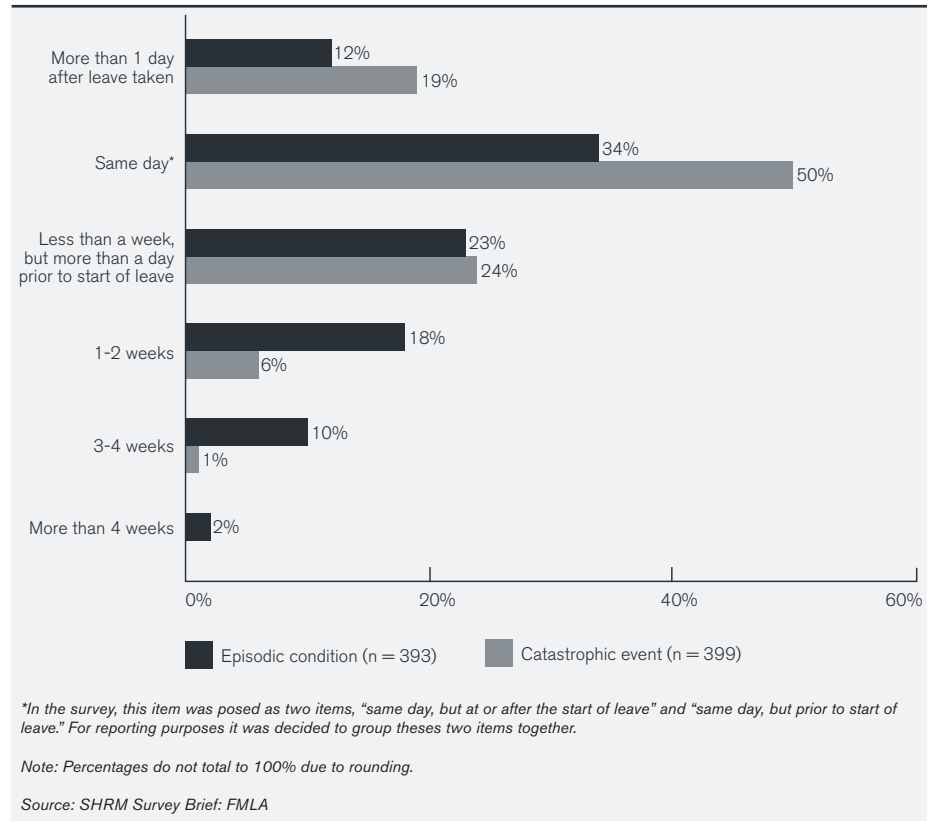
employee’s serious health condition as a result of an episodic condition (81%); 2) maternity, birth or adoption of a child (73%);<sup>1</sup> and 3) care for a parent with a serious health condition (72%). On average, HR professionals reported that 8% of employees at their organization took FMLA leave in the past 12 months. Of those who took leave, more than one-third took FMLA leave for family-related reasons (36%) and over one-half for medical reasons (55%). According to HR professionals, 32% of FMLA leave was taken for episodic conditions.

One of the challenges of the FMLA is that employees are sometimes unable to promptly notify their employers when they need to take FMLA leave, especially in unexpected circumstances. Currently, FMLA regulations require that employees provide their employers with at least a 30-day notice before their FMLA leave is to begin unless the need for leave is unforeseeable, in which case the employee shall provide notice that is “practicable.” HR professionals indicated that employees provided an average of 61 days of advance notice when using the FMLA for maternity, birth or adoption of child or newly placed foster child. The number of days ranged from 0 to 270 (nine months). Conversely, most HR professionals indicated that employees provided less than one week’s notice for a serious health condition as result of a catastrophic event (74%) or episodic condition (57%), making it difficult for HR professionals to plan for employees’ absences. For catastrophic events, it comes as no surprise if an employee only provides notice on the same day of leave (as reported by 50% of respondents) since some events are truly unforeseeable. These data are illustrated in Figure 2.

**Figure 1**  
Top Ways Organizations Offer Job-Protected Leave Beyond Federal FMLA Provisions



**Figure 2**  
Amount of Advance Notice Provided by Employee When Taking FMLA Leave for a Serious Health Condition



### Challenges With the FMLA

Although certain provisions of the FMLA are favorable for both employees and employers, HR professionals have struggled with several aspects of the FMLA, particularly with intermittent leave, the definition of a serious health condition, medical leave certification and determining overall costs.

In November 2006, SHRM conducted two polls on the specific challenges that organizations encountered when employees used FMLA leave for various circumstances.<sup>2,3</sup> These data found that overall the most frequently cited organizational challenges with the FMLA were: 1) costs associated with labor; 2) loss of productivity; 3) compliance and leave tracking; 4) tracking and chronic abuse of intermittent leave; 5) morale problems with employees asked to cover for an absent employee; 6) vague documentation of the medical leave certification; and 7) legitimacy of the leave.

HR professionals were asked to indicate the extent to which various FMLA-related activities were difficult for their organizations to administer (see Figure 3). The top three most difficult (“somewhat difficult” or “very difficult”) activities cited were as follows:

*Tracking/administration of intermittent leave:* Tracking/administering intermittent FMLA leave was identified as the most difficult activity for organizations (80%). Currently, FMLA regulations specify no minimum increment of intermittent leave, though an employer may limit leave to the shortest period of payroll time, as long as that period is an hour or less.

*Determination of overall FMLA costs:* Determining an organization’s overall costs incurred while complying with requirements of the FMLA was found to be a difficult activity for most HR professionals (79%). HR professionals may experience difficulties in determining costs because the FMLA can have various financial implications on an organization, such as

lost productivity, replacement costs and continuation of benefits.

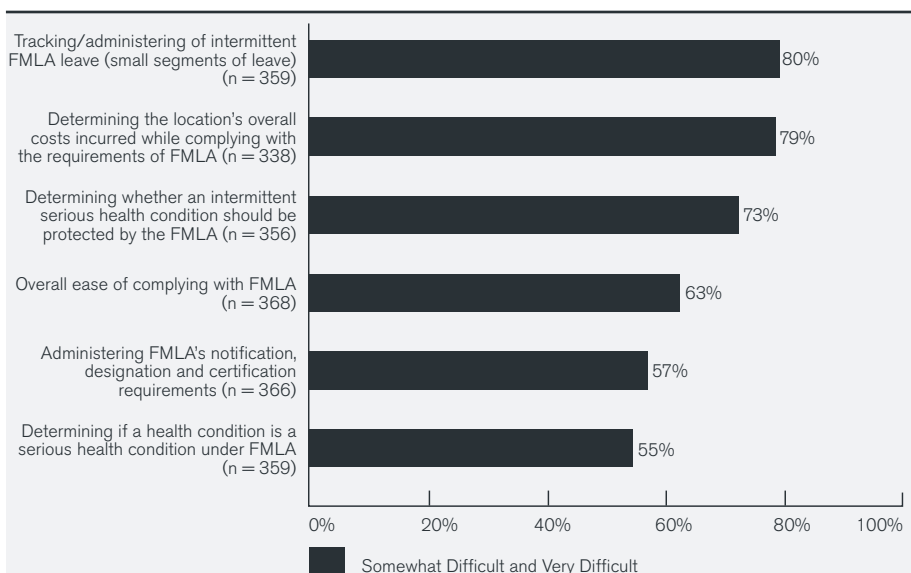
*Determination of intermittent serious health conditions:* Nearly three-fourths (73%) of HR professionals reported difficulties determining whether an intermittent serious health condition should be protected by the FMLA. As defined under the Act, a serious health condition entitling an employee to FMLA leave means an illness, injury or impairment, or physical or mental condition. Under some circumstances, employees may take FMLA leave intermittently by taking leave in blocks of time or by reducing their normal weekly or daily work schedule.<sup>4</sup> As cited in the 2006 polls, some HR professionals have found DOL regulations, guidance and opinion letters to be contradictory and confusing for various types of FMLA leave. As a result, it may not always be clear to employers what specific conditions, and under what circumstances, qualify as a serious health condition.

### Legitimacy of FMLA Cases

The sometimes contradictory and confusing aspects of the DOL information on the FMLA may leave employers feeling uncertain when administering the FMLA. In some cases, employers may perceive employee requests for FMLA leave as illegitimate but still feel the need to grant the leave, perhaps to avoid liability. About four out of 10 (39%) HR professionals reported having approved FMLA requests that they perceived to be illegitimate but felt they had to grant due to DOL regulations and interpretations (see Figure 4).

HR professionals were asked to provide written comments on FMLA cases that they perceived as illegitimate. There were several main themes that arose from their comments, and they are summarized below.

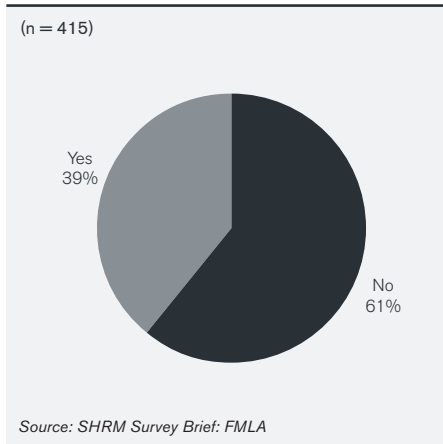
**Figure 3**  
Top Difficulties in Administering FMLA-Related Activities



Note: Percentages are based on a scale where 1 = “very easy”, 2 = “somewhat easy”, 3 = “somewhat difficult” and 4 = “very difficult.” The data in this figure represents those HR professionals who answered “somewhat difficult” and “very difficult.”

Source: SHRM Survey Brief: FMLA

**Figure 4**  
FMLA Requests Perceived as Illegitimate, but Granted Due to the DOL's Regulations/ Interpretations



*Intermittent leave administration:* Some of the most frequently voiced issues were about the administration and abuse of the FMLA, particularly with respect to intermittent leave. The unpredictable nature of certain conditions and conditions that are difficult to prove medically (e.g., migraines), do not necessarily require a doctor's visit (e.g., seizures) or where medical recertification was not allowed (e.g., diabetes) posed challenges for HR professionals. In addition, due to the broad definition of serious health conditions, HR professionals questioned the use of FMLA leave for specific conditions such as migraines, allergies, asthma, stress-related reasons (anxiety, depression, change in work environment/expectations), flu, cold, back problems, bronchitis, elective surgery and care for a child/spouse/parent.

*Intermittent leave timing:* The timing of the intermittent leave has also raised suspicions of abuse. Leave may be taken or extended beyond what seems necessary, and absences tend to occur regularly around specific days or times of the year. For example, HR professionals reported that it was common for employees to take

intermittent leave around the weekends, regularly scheduled days off and holidays or when the weather was nice. In other situations, leave may have been used when an employee was losing interest in his or her job or avoiding/delaying disciplinary action due to poor performance.

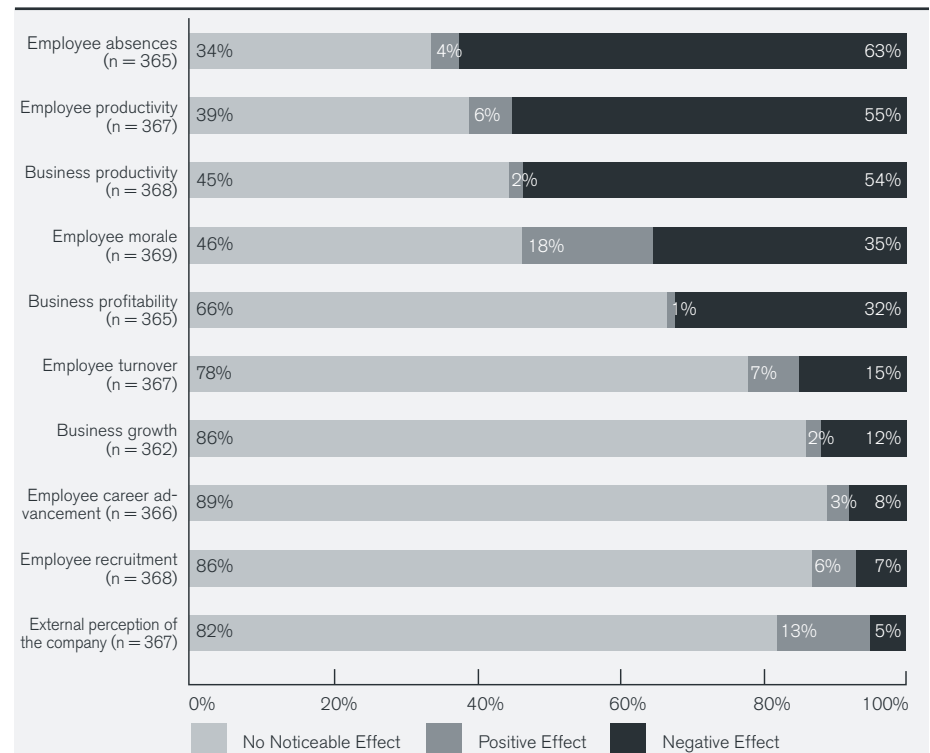
*Validity of documentation/medical certification:* The validity of the documentation and medical leave certification from health care professionals was questioned by HR professionals. Respondents cited instances where physicians asked employees how many days they wanted off. In addition, HR professionals also reported examples of paperwork being backdated, conditions being exaggerated to meet qualifications, allowing more time than what really seemed necessary (e.g., employee could have worked or at least

worked with restrictions) and an attitude that all illnesses fall under a serious health condition. The fact that there is little to no recourse in following up on suspicious absenteeism was a commonly shared sentiment among HR professionals.

**Consequences of the FMLA in the Workplace**

FMLA leave has benefited millions of employees in helping to meet their particular family and medical needs. However, when employees use the FMLA, it may create job disruptions and have adverse effects on the workplace in terms of additional costs and a loss of productivity. As illustrated in Figure 2, it is not unusual for an employer to receive notice on the same day of the employee's absence for a serious health condition. Employers may opt to hire a temporary worker or have the work

**FIGURE 5**  
Effect of FMLA and Its Regulations on the Organization



Note: Data sorted in descending order by the percentage of HR professionals who answered "negative effect." Percentages do not total to 100% due to rounding.

Source: SHRM Survey Brief: FMLA

go unfinished, but typically other employees are asked to step in and help cover the absent worker's duties. Eighty-eight percent of organizations often ("often" or "extremely often") assign work temporarily to other employees during an employee's FMLA leave, and this, in turn, may affect employee morale and productivity.

HR professionals were asked about the effects that the FMLA and its regulations had on their organizations (see Figure 5). Overall, FMLA and its regulations have had the most negative impact on employee absences (63%), employee productivity (55%) and business productivity (54%). The majority of HR professionals reported that the FMLA and its regulations had no noticeable effect on employee career advancement (89%), business growth (86%), employee recruitment (86%) and external perception of the company (82%).

### Endnotes

<sup>1</sup> In the survey, this item was posed as two items, "maternity" and "birth or adoption of a child." For reporting purposes, it was decided to group these two items together when the responses were consistent with one another.

<sup>2</sup> Society for Human Resource Management. (2006, November 7). Has your organization experienced challenges in granting leave under FMLA? [SHRM Weekly Survey]. Retrieved February 15, 2007, from [www.shrm.org/surveys](http://www.shrm.org/surveys).

<sup>3</sup> Society for Human Resource Management. (2006, November 15). Leave administration challenges under FMLA for the birth or adoption of a child [SHRM Weekly Survey]. Retrieved February 15, 2007, from [www.shrm.org/surveys](http://www.shrm.org/surveys).

<sup>4</sup> U.S. Department of Labor Employment Standards Administration Wage and Hour Division. *Fact Sheet #28: The Family and Medical Leave Act of 1993*. Retrieved April 30, 2007, from [www.dol.gov/esa/regs/compliance/whd/whdfs28.htm](http://www.dol.gov/esa/regs/compliance/whd/whdfs28.htm)

### Methodology

In January 2007, the Society for Human Resource Management (SHRM) conducted a workplace survey of human resource professionals about the impact of the Family Medical Leave Act on their organizations (the survey instrument is available upon request by contacting the SHRM Survey Program at [surveys@shrm.org](mailto:surveys@shrm.org) or by phone at 703-535-6301). An e-mail that included a link to the online survey was sent to 3,300 randomly selected SHRM members. Of these, 2,989 e-mails were successfully delivered, and 610 HR professionals responded, yielding a response rate of 20%. Of the 610 HR professionals who responded to the survey, 89 responses were submitted by HR professionals whose organizations were not required to comply with FMLA. Some organizations may have locations in multiple states or internationally; however, HR professionals were asked to think of the FMLA only at their

location when answering, unless otherwise specified. Since the study focused specifically on FMLA-related compliance issues, these HR professionals were excluded from the study (even though their organizations may voluntarily comply with FMLA). The survey was online for a period of two weeks, and four e-mail reminders and a fax reminder were sent to nonrespondents in an effort to increase response rates.

### Project Team

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