

Happy Anniversary, FMLA!

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FMLA 20th Anniversary

It's been an adventurous 20 years! Since President Bill Clinton signed you into law on Feb. 5, 1993, FMLA, you have never failed us. Employment lawyers and HR professionals around the country have relied upon you for job security and cursed you for (and your accompanying regulations) our constant headaches. According to the DOL's 2012 Survey, though, you are apparently beginning to grow on us.

FMLA, your anniversary gives us the opportunity to reflect on some of your highlights.

Your Most Challenging Features

It is probably cliché to gently chide you for your rules (or lack thereof) on Intermittent Leave. Indeed, employees, once certified, need not present a doctor's excuse for their unexplained, intermittent absences, and employers often find their workers leaving unexpectedly, complaining of a migraine headache, back pain, or complications from medication. Although we don't want to diminish those who legitimately need the time off, we have to recognize you, FMLA, for having given employees a new and improved (and protected) way of saying "The dog ate my homework." Still, according to the DOL's 2012 survey, abuse is rare.

Memorable Moments in FMLA History

Who can forget the Supreme Court's 2002 ruling in the famous case, *Ragsdale v. Wolverine Worldwide, Inc.* 535 U.S. 381 (2002)? Just before your tenth birthday, FMLA, the Court invalidated one of your old regulations that penalized an employer that had provided an employee with 12 weeks of leave, but didn't "designate" it properly. The Supreme Court reiterated that your purpose, FMLA, was to provide a fundamental substantive guarantee; that is, 12 weeks of leave in a 12-month period. The old DOL regulation resulted in employees receiving *more* than 12 weeks. It took until 2008 before new regulations were proposed, and until 2009 when new regulations were implemented, putting the post-Ragsdale rules into effect. And according to the DOL's 2012 survey, the burdens of those regulations are minor.

Another memorable moment was the amendment by the National Defense Authorization Act (NDAA) in 2008, and then again in 2010 to provide protections for injured members of the military and military families. That's when we spent our time updating our policies to include terms like "Qualifying Exigency Leave" and "Care for Injured Servicemember Leave."

Starting the 21st Year with a Bang

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This week, marking the 20th Anniversary of the FMLA, you gave us two important developments:

On Monday, Feb. 4, 2013, the DOL released a **Final Report of a 2012 FMLA Survey** (referenced above) of employees and employers in 2012. The survey reveals, according to the DOL, that the FMLA makes a positive contribution to the lives of workers, without creating an undue burden for employers.

According to the DOL, "The study shows that employers generally find it easy to comply with the law, and misuse of the FMLA by workers is rare. The vast majority of employers, 91 percent, report that complying with the FMLA has either no noticeable effect or a positive effect on business operations such as employee absenteeism, turnover and morale. Finally, 90 percent of workers return to their employer after FMLA leave, showing little risk to businesses that investment in a worker will be lost as a result of leave granted under the act."

Then, on Tuesday, your 20th Anniversary, the DOL unveiled the **Final Rule to Implement Statutory Amendments**, which establishes the procedures for the 2010 amendments to the FMLA, and expands protections for military families. For example, a military member now includes members of the Reserves, National Guard *and* Regular Armed Forces. There are also special protections for airline personnel and flight crews, who have not been eligible for key aspects of the FMLA. See the DOL website for details.

All in all, we want to thank you, FMLA, for the past 20 years. We know we can count on you to provide us with new challenges in the years ahead.