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# EANE

## Leave of Absence Toolkit

A guide to help employers manage and navigate the employee leave process.

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## Welcome

Dealing with leaves of absence can be very challenging for employers. They can also be very costly. Additional costs associated with lost time, paying other employees premiums to cover absences, and the resources spent on the administration of absences can lead to a significant increase in expenses for organizations. These expenses equate to over \$3,500 per employee per year (Forbes) and have continued to rise as wages and other costs increase. With the proper tools and training, there are ways to make sure you feel comfortable managing and communicating with your employees before, during, and after they return (or do not) from a state or federally mandated leave. This guide is here to help employers manage and navigate the employee leave process.

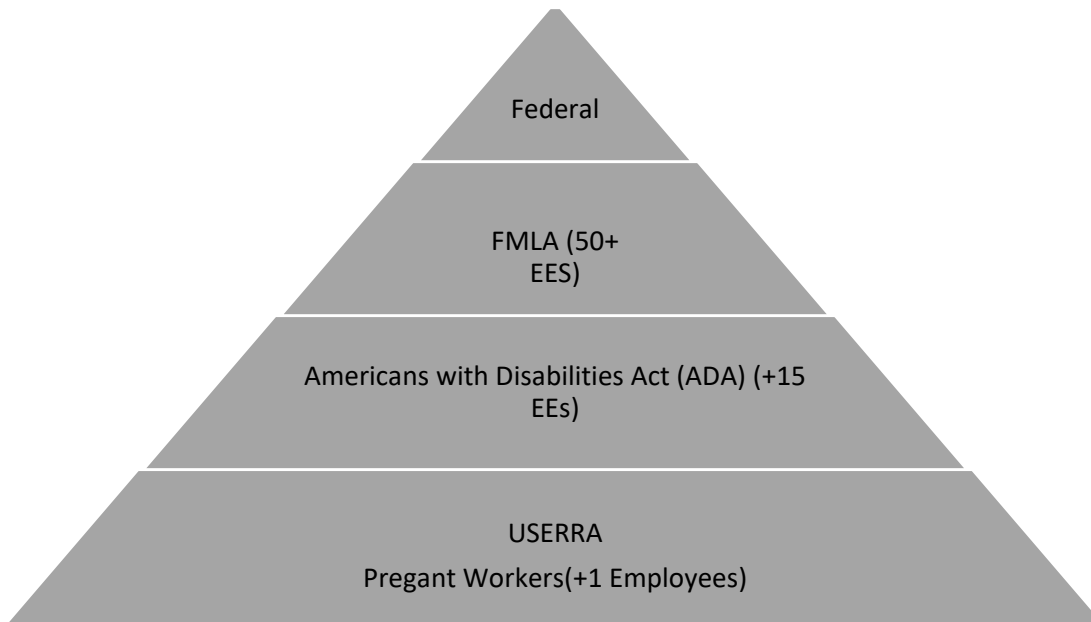
## How Do Companies Manage Leaves Effectively?

Organizations that manage leaves well have clear policies and procedures around the request, the tracking, and the follow up procedures of employee leaves. They have a detailed understanding of the laws and regulations that govern the protected leaves and how they fit together. They communicate clearly to their employees, and make it clear they expect that back. Their supervisors are trained in the processes and on what they can and cannot do in terms of disciplining or managing an employee on or returning from a leave. These companies show support for their employees while making sure they are in control of the process. They also have plans in place to help the organization continue to operate in the event key members of the team are on protected leaves.

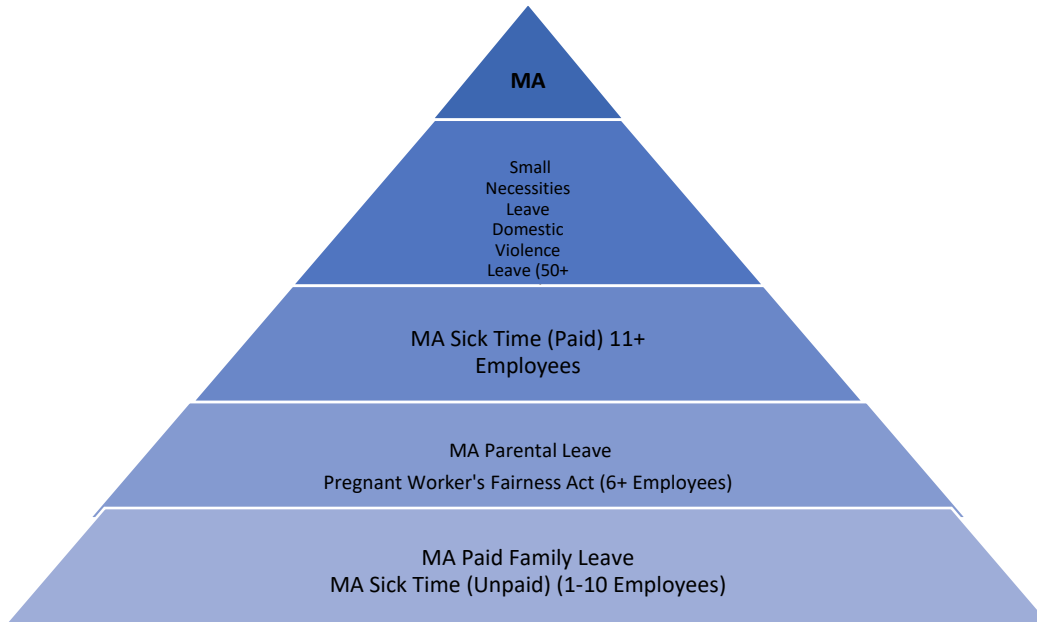
## What Should Employers Be Aware Of?

Depending on the size of your employer and the states you operate in, your organization may be required to offer a variety of leaves for your employees. Employers need to be aware of the leaves they are required to provide, how long they last, and what benefits must be offered and preserved for them. Attached is a high-level summary of the protected leaves by size of employer. Refer to the employee eligibility chart for individual employee's eligibility for these leaves.

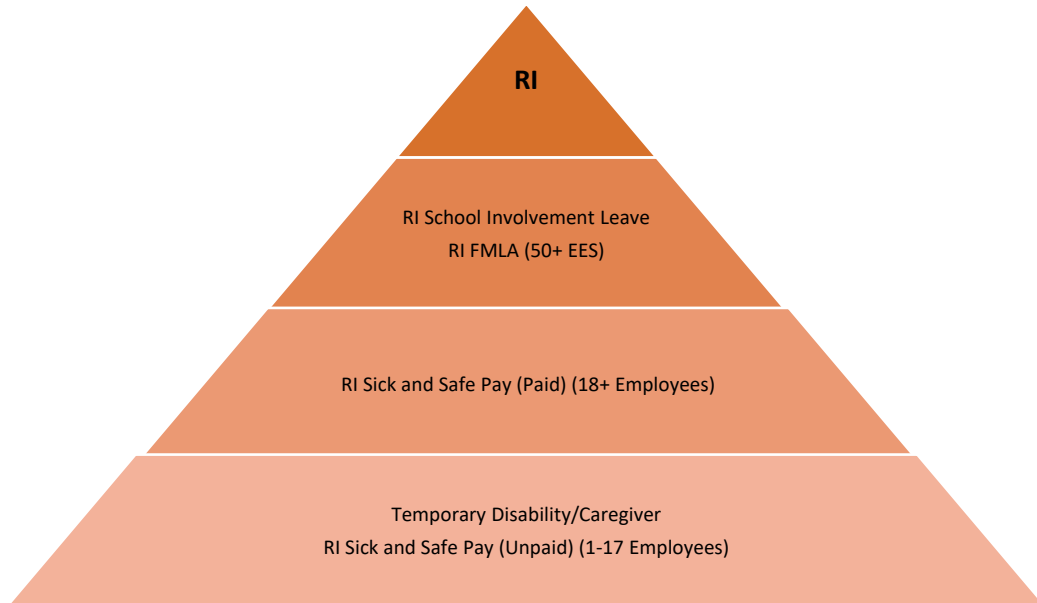
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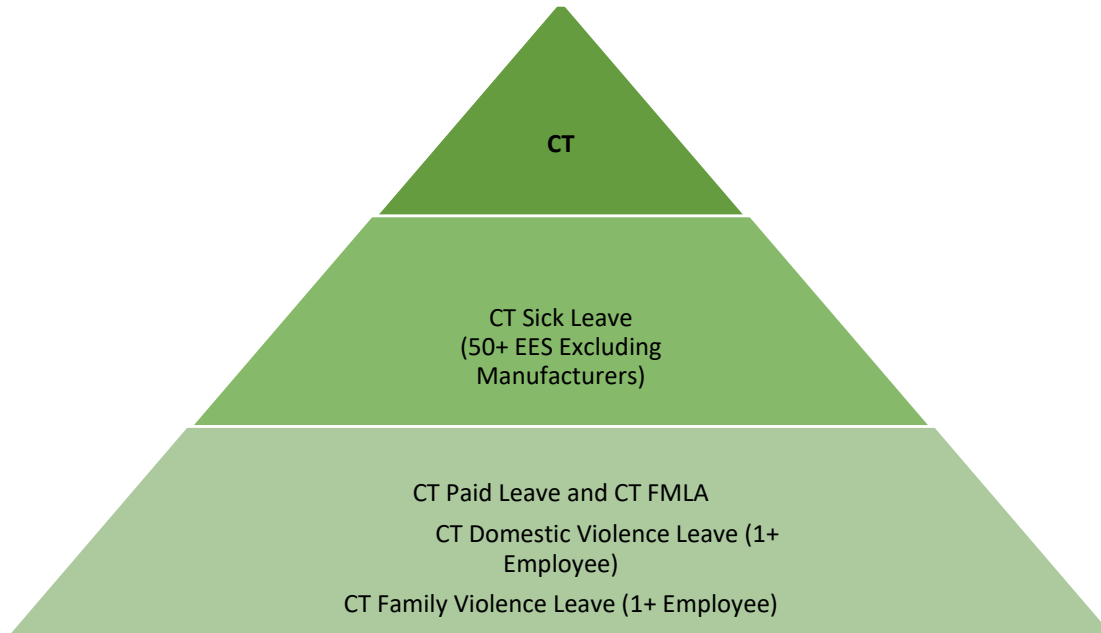
## MASSACHUSETTS



## RHODE ISLAND



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### How Long Can Employees Be on Leave?

The length of leaves can vary by type, the specific situation, and which laws may apply to the employee. Knowing how long the various leaves can last can help employers plan accordingly for coverage. It is important to note that leaves do not always last the maximum duration of the leave allowance and medical documentation may be required to extend leaves past their original date. Additionally, employers should be aware of how all applicable leave laws overlap with each other as this may reduce or extend the amount of leave available to the employee. The chart below outlines leaves and their durations.

Length of Leave*		
<u>State</u>	<u>Type</u>	<u>Length</u>
MA	-	
-	<b>MA Sick Leave</b>	Up to 40 hours a year. Can be taken in increments as small as 1 hour. (Can be smaller
-	<b>MA Parental Leave</b>	8 Weeks (Or split if the other parent works for the same organization)
-	<b>MA Paid Family Leave</b>	Up to 26 weeks of combined family and medical leave total per benefit year -- Up to 20 weeks of paid medical leave to manage a personal serious health condition -- Up to 12 weeks of paid family leave to care for a family member or to bond with a child -- Up to 26 weeks of paid family leave to care for a family member who is a member of the armed forces
-	<b>Domestic Violence Leave</b>	15 Days
-	<b>Small Necessities Leave</b>	24 Hours
-	<b>Pregnant Workers Leave</b>	Reasonable
CT		
-	<b>CT Sick Leave</b>	40 Hours in a 12-month period
-	<b>CT FMLA</b>	12 weeks every 12 months; any fixed 12-month period as determined by the employer policy.
-	<b>CT Paid Leave</b>	12 weeks every 12 months
-	<b>CT Domestic Violence Leave</b>	Reasonable
-	<b>CT Family Violence Leave</b>	12 Days

RI	-	
-	<b>RI Sick and Safe Leave</b>	40 Hours
-	<b>RI Family Medical Leave</b>	up to 13 consecutive weeks in any 2 calendar years.
-	<b>Temporary Disability Insurance</b>	30 weeks
-	<b>Temporary Caregiver Insurance</b>	6 weeks
-	<b>RI School Involvement Leave</b>	10 hours during any 12 month period
<b><u>Federal</u></b>		
-	<b>FMLA</b>	12 Weeks
-	<b>USERRA</b>	5 Years Cumulative
-	<b>Pregnant Workers</b>	Reasonable
*Note leave lengths may vary by event and whether one or more events overlap with other federal and state leave laws.		

### Intermittent Leaves

Federal FMLA and many state leave laws allow for employees to take incremental leave for a duration equivalent to the total protected leave time. This is referred to as intermittent leave. Employees may be eligible to miss days or hours of a work week as protected leave. Employers need to ensure hours are tracked appropriately and designated as protected leave if managed internally.

If the situation is for the serious health condition of the employee or a covered family member, employers want to ensure they have detailed medical evaluation forms that certify the frequency of the need for leave. Employers should also be vigilant to ensure that if the frequency or need for leave increases or changes, they are requesting a new medical certification that confirms the need for more/different leave.

For example, if an employee has migraines and brings in a medical note certifying the need to be absent up to 4 times a month and then begins to increase absences to 6 times a month, an employer can request a new note certifying that need. This will help ensure the need for leave is well documented and employees are working within the restrictions established by the medical professional.



## How Do I Know if My Employees are Eligible?

The eligibility of an employee for different leaves varies by such factors as length of service, earnings, and hours worked. Employers need to be aware of which employees in their organization qualify and how they measure that eligibility. The below chart explains eligibility by leave.

LEAVE ELIGIBILITY MA		
<u>State</u>	<u>Type</u>	<u>Eligibility (Employee)</u>
-	<b>MA Parental Leave</b>	The law clarifies that the right to leave applies to employees who have completed an initial probationary period set by the terms of employment, but which is not greater than 3 months.
-	<b>MA Paid Leave</b>	Employees who work in MA and have met the earning requirements (earned at least \$5,700 over the past 4 completed calendar quarters with any combined MA income)
-	<b>Domestic Violence Leave</b>	All Employees
-	<b>Pregnant Worker's Fairness Leave</b>	All Employees
-	<b>Small Necessities Leave</b>	Employed for at least 12 months and worked for at least 1,250 hours in the 12 month period preceding leave request.  Exempt employees employed for 12 months are presumed to have worked 1,250 hours.
-		

**LEAVE ELIGIBILITY CT**

<u>State</u>	<u>Type</u>	<u>Eligibility (Employee)</u>
-	<b>CT FMLA</b>	<p>Employed by the employer for at least 3 months; No hours worked requirement -13 weeks is deemed to be equal to 3 months. The employer's maintaining the employee on its payroll for any part of a week (including any paid or unpaid leaves) counts as a week of employment.</p> <p>An employee may request leave before they are eligible for a date after the 3 month-threshold. Excludes municipalities, local or regional boards of education, nonpublic elementary or secondary schools</p>
-	<b>CT PAID LEAVE</b>	<p>Earned at least \$2,325 in the highest earning quarter of the first 4 of the past 5 quarters (from 1 or more employers) &amp; Is either:</p> <ul style="list-style-type: none"> <li>- Currently employed and working in CT;</li> <li>- Was employed and working in CT during the past 12 weeks; or</li> <li>- A sole proprietor or self-employed individual who has opted to participate in the CTPL program.</li> </ul>
-	<b>CT Family Violence Leave</b>	All Employees
-	<b>CT Domestic Violence Leave</b>	All Employees

<b>LEAVE ELIGIBILITY RI</b>		
<b><u>State</u></b>	<b><u>Type</u></b>	<b><u>Eligibility (Employee)</u></b>
<b><u>RI</u></b>	-	
-	<b>Temporary Disability Insurance (TDI)</b>	Employee who is injured or ill and: 1. you are unemployed due to illness, surgery, or for a minimum of seven consecutive days or more 2. you are under the care of an approved Qualified Health Care Provider and 3. you have a timely exam - an in office physical exam the week within the calendar week in which the first day of unemployment due to sickness occurs or within the calendar week prior or subsequent thereto. 4. You earned enough qualifying wages during the base period to be monetarily eligible.
-	<b>Temporary Caregiver Insurance (TCI)</b>	1. You are unemployed because you are caring for a seriously ill family member or you are bonding with a newborn child and 2. You provide the department with the required medical evidence of the seriously ill family member and you need to care for them or the required proof of parent child relationship bonding claims and 3. You earned enough in qualifying wages to be monetarily eligible.
-	<b>Rhode Island Family Medical Leave</b>	Employees are eligible to apply for leave if they are full time who work an average of 30 hours a week or more and have been employed continuously for at least 12 months.
-	<b>School Involvement Leave</b>	After having worked an average of 30 hours/week for 12 consecutive months.

LEAVE ELIGIBILITY FEDERAL		
<u>State</u>	<u>Type</u>	<u>Eligibility (Employee)</u>
-	<b>FMLA</b>	Employed for at least 12 months (May not be consecutive) and worked for at least 1,250 hours in the 12-month period preceding leave request.  Exempt employees employed for 12 months are presumed to have worked 1,250 hours.
-	<b>USERRA</b>	All Employees
-	<b>Pregnant Workers</b>	All Employees

### Is Leave Paid or Unpaid- Protected or Unprotected?

Employers and employees should know which leaves are paid and which are not. This may affect how long employees stay out on leave and what additional benefits they can use (PTO, Sick, STD). Both parties should also understand which leaves are job protected and which ones only provide income replacement. By clearly communicating both of these to your employee, everyone can stay on the same page in regard to what the employee's rights are and what they are entitled to.

Leave Paid/Job Protected			
<u>State</u>	<u>Type</u>	<u>Paid</u>	<u>Protected</u>
<b>MA</b>			
	<b>MA Sick Leave</b>	<b>Y (Over 11)</b>	<b>Y</b>
	<b>MA Parental Leave</b>	<b>N</b>	<b>Y</b>
	<b>MA Paid Family Leave</b>	<b>Y</b>	<b>Y</b>
	<b>Domestic Violence Leave</b>	<b>N</b>	<b>Y</b>
	<b>Small Necessities Leave</b>	<b>N</b>	<b>Y</b>
	<b>Pregnant Workers Leave</b>	<b>N</b>	<b>Y</b>

<b>CT</b>			
	<b>CT Sick Leave</b>	<b>Y</b>	<b>Y</b>
	<b>CT FMLA</b>	<b>N</b>	<b>Y</b>
	<b>CT Paid Leave</b>	<b>Y</b>	<b>Y</b>
	<b>CT Domestic Violence Leave</b>	<b>N</b>	<b>Y</b>
	<b>CT Family Violence Leave</b>	<b>N</b>	<b>Y</b>
<b>RI</b>			
	<b>RI Sick and Safe Leave</b>	<b>Y (Over 18)</b>	<b>Y</b>
	<b>RI Family Medical Leave</b>	<b>N</b>	<b>N</b>
	<b>Temporary Disability Insurance</b>	<b>Y</b>	<b>N</b>
	<b>Temporary Caregiver Insurance</b>	<b>Y</b>	<b>Y</b>
	<b>RI School Involvement Leave</b>	<b>N</b>	<b>Y</b>
<b>Federal</b>			
	<b>FMLA</b>	<b>N</b>	<b>Y</b>
	<b>USERRA</b>	<b>N</b>	<b>Y</b>
	<b>Pregnant Workers</b>	<b>N</b>	<b>Y</b>

## What Does it Mean to be Job Protected?

When an employee is on a job protected leave, employers are required to hold their position for them for the duration of the leave. They may also be required to maintain their current benefits and tenure in the organization. Generally speaking, employers are not allowed to terminate an employee, demote or change an employee's job, schedule, pay, because the employee requested, is on, or took a protected leave.

Often times, employers may want to take action against an employee for poor performance or violation of company policy while they are on a leave or returning from one. They may also consider including these employees in layoffs or reductions in force for non-business reasons. Both of these could be considered adverse actions based on

the employee’s right to go on a protected leave. Retaliation can be something other than a disciplinary action- changes in schedules, less favorable assignments or customers, or moving their office could all potentially be seen as retaliation. Employers need to understand that in many cases, actions like the above mentioned could be illegal if the employer cannot prove that the adverse employment action was based on legitimate performance or policy violation and not due to the fact that they took a protected leave. Employers need to ensure their managers and supervisors are properly trained in handling employees on protected leaves to ensure they are not putting the company at risk.

## Running Leaves Concurrently

As an employer, it is important to know when a leave can run concurrently with other protected leaves. This helps control the amount of leave an employee can take each year. Leaves may typically run concurrently if they are for the same covered reason and the employee meets the eligibility for all leaves. It is important in the communication and your policies to note when and if leaves can run concurrently with other required leaves.

Employers should also keep in mind that if leaves do not run concurrently, additional time may be available for the employee in a given year or 12-month period. For example, if an employee is eligible for state PFMLA but not federal FMLA, they are entitled to that time when they meet the eligibility requirements and have a covered reason. Another example would be an employee in CT can take state FMLA to care for a sibling. That situation would not be covered under federal FMLA and that employee would then still be able to use federal FMLA for a covered reason.

Employers also need to be cautious while running leaves concurrently not to unintentionally violate the rules of one leave while following another. For example, under MA Paid Family Leave, employers cannot require the use of PTO by employees but under federal FMLA, employers can. If an employer requires the use of PTO due to FMLA regulations while the person is also on MA Paid Leave, the employer would be violating the leave rights under MA PFML.

## MASSACHUSETTS

MA		MA Sick Leave	MA Parental Leave	MA Paid Family Leave	Domestic Violence	Small Necessities	Pregnant Workers	FMLA
	MA Sick Leave	X	Y	Y (Week 1)	Y	Y	Y	Y
	MA Parental Leave	Y	X	Y	N	N	Y	Y
	MA Paid Family Leave	N	Y	X	Y	N	Y	Y
	Domestic Violence Leave	Y	N	Y	X	N	Y	N
	Small Necessities Leave	Y	N	N	N	X	N	N
	Pregnant Workers Leave	Y	Y	Y	Y	N	X	Y

## CONNECTICUT

CT		CT Sick Leave	CT FMLA	CT Paid Leave	CT Domestic Violence	CT Family Violence	FMLA
	CT Sick Leave	X	Y	Y	Y	Y	Y
	CT FMLA	Y	X	Y	Y	Y	Y
	CT Paid Leave	Y (2 Weeks)	Y	X	Y	Y	Y
	CT Domestic Violence Leave	Y	Y	Y	Y	Y	N
	CT Family Violence Leave	Y	Y	Y	Y	X	N

## RHODE ISLAND

RI		RI Sick and Safe Leave	RI Family Medical Leave	Temporary Disability	Temporary Caregiver	RI School Involvement	FMLA
	RI Sick and Safe Leave	X	Y	Y	Y	N	Y
	RI Family Medical Leave	Y	X	Y	Y	N	Y
	Temporary Disability Insurance	N	Y	X	N	N	Y
	Temporary Caregiver Insurance	N	Y	N	X	N	Y
	RI School Involvement Leave	N	N	N	N	X	N

**Note:** There may be reasons why leaves can or cannot run concurrently depending on the details of the leave. Employers should contact a EANE or their own HR resources if they had any concerns about concurrent leaves.

## Absence Reporting Procedures

Having a strong absent reporting process is one the best ways to recognize and potentially get ahead of leaves of absences. Having detailed expectations around reporting and recording absences can help employers guide the process and create a consistent channel where all requests are funneled into. This can prevent employers missing or losing sight of an employee’s prolonged absences or need for protected leave. Some best practices include:

- Clear policies on requesting absences (i.e “Call out procedure”) or extended leaves:
  1. Who should they contact? HR, Supervisor?
  2. How can they report the absence? Phone, text?
  3. When should they inform us by- 1 hour before shift? 15 minutes before shift?

4. How are specific situations addressed? Can employees leave messages?  
Can a family member call in?

- Absence and LOA request forms that employees complete and return to their supervisor and HR.
- Clear policies on communication during absences and leaves.
- Detailed procedures about return-to-work expectations.
- Detailed procedures for tracking and following up on employee's absences.

## When Does an Absence Become a Leave?

Employers need to be vigilant and stay on top of absences that extend beyond one or two days, especially if there is no clear return date for the employee. Often times, short absences turn into a week or more and the employer has failed to engage in the necessary paperwork or procedures to place the employee on a leave. Employers need to be aware of the time frames and qualifying reasons that may trigger the need for a leave. By ensuring we have detailed reporting procedures and expectations around communication, employers can stay ahead of leaves.

In most cases, personal injury or illness, the illness or injury of a family member, and pregnancy or pregnancy related condition can be considered leave eligible if they meet leave specific criteria. When employers are first made aware of these issues, they should engage with the employee to verify the duration of the absence and the reason needed. Additionally, employers should be aware of other state and federal leaves that are protected for other reasons (Depending on the state may include domestic violence, school related)

## Can We Require Our Employee to Use PTO?

Depending on the type of leave, employers may or not be allowed to require the use of some or all of an employee's paid time off. Employers should make sure they are familiar with their required leaves and ensure their policies properly address if and when an employee can or must use PTO while on a leave. Employers should also revisit their policies to address how employees accrue or earn time off while on required leaves.



<b>Require the Use of PTO</b>		
<b>State</b>	<b>Type</b>	<b>Can We Require the Use of PTO?</b>
<b>MA</b>		
	<b>MA Sick Leave</b>	<b>Y</b>
	<b>MA Parental Leave</b>	<b>Y</b>
	<b>MA Paid Family Leave</b>	<b>N</b>
	<b>Domestic Violence Leave</b>	<b>Y</b>
	<b>Small Necessities Leave</b>	<b>Y</b>
	<b>Pregnant Workers Leave</b>	<b>Y</b>
<b>CT</b>		
	<b>CT Sick Leave</b>	<b>Y</b>
	<b>CT FMLA</b>	<b>Y</b>
	<b>CT Paid Leave</b>	<b>Y (MUST BE ABLE TO LEAVE 2 WEEKS)</b>
	<b>CT Domestic Violence Leave</b>	<b>N</b>
	<b>CT Family Violence Leave</b>	<b>Y (IF FOR MEDICAL REASONS)</b>

<b>RI</b>		
	<b>RI Sick and Safe Leave</b>	Y
	<b>RI Family Medical Leave</b>	Y
	<b>Temporary Disability Insurance</b>	N
	<b>Temporary Caregiver Insurance</b>	N
	<b>RI School Involvement Leave</b>	N
<b>Federal</b>		
	<b>FMLA</b>	Y
	<b>USERRA</b>	N
	<b>Pregnant Workers</b>	Y

### Covered Family Members

The definition of family member and who is covered can vary by the type of leave and how the law defines who a family member is. Employers should be aware which family members are covered under all relevant leaves to ensure proper eligibility and to also designate all applicable and qualifying leaves concurrently. Below outlines the definitions of covered family members by leave.

<b>Covered Family Member MA</b>		
<b><u>State</u></b>	<b><u>Type</u></b>	<b><u>Covered Family Member</u></b>
<b>MA</b>		
	<b>MA Parental Leave</b>	Child
	<b>MA Paid Leave</b>	<ul style="list-style-type: none"> <li>- Your spouse or domestic partner</li> <li>- Your children, stepchildren or domestic partner's children</li> <li>- Your parents, stepparents or parent's domestic partner</li> <li>- Your spouse or domestic partner's parents</li> <li>- Your grandchildren, step-grandchildren or domestic partner's grandchildren</li> <li>- Your grandparents, step-grandparents, or grandparent's domestic partner</li> <li>- Your siblings or step-siblings</li> </ul>
	<b>Domestic Violence Leave</b>	persons who are married to one another; (ii) persons in a substantive dating or engagement relationship and who reside together; (iii) persons having a child in common regardless of whether they have ever married or resided together; (iv) a parent, step-parent, child, step-child, sibling, grandparent or grandchild; or (v) persons in a guardianship relationship.
	<b>Pregnant Worker's Fairness Leave</b>	Pregnant Employee
	<b>Small Necessities Leave</b>	Child. Parent over the age of 60.

**Covered Family Member RI**

<u>State</u>	<u>Type</u>	<u>Covered Family Member</u>
CT		
	<b>CT FMLA</b>	Family member means a spouse, sibling, son or daughter, grandparent, grandchild or parent, or an individual related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships (significant bond)
	<b>CT PAID LEAVE</b>	Spouse, sibling, son or daughter, grandparent, grandchild or parent, or an individual related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships (significant bond) -
	<b>CT Family Violence Leave</b>	Self, Covered Family Members including current and former spouses; parents and children; individuals at least 18 years of age who are related by blood or marriage; individuals at least 16 years of age who currently reside or formerly resided together; individuals who have a child together, regardless of whether they have ever been married or lived together; and individuals who are in, or were recently in, a dating relationship.
	<b>CT Domestic Violence Leave</b>	Self, Covered Family Members including current and former spouses; parents and children; individuals at least 18 years of age who are related by blood or marriage; individuals at least 16 years of age who currently reside or formerly resided together; individuals who have a child together, regardless of whether they have ever been married or lived together; and individuals who are in, or were recently in, a dating relationship.

**Covered Family Member RI**

<u>State</u>	<u>Type</u>	<u>Covered Family Member</u>
	<b>Temporary Disability Insurance (TDI)</b>	Self
	<b>Temporary Caregiver Insurance (TCI)</b>	If you are caring for a seriously ill: child, spouse, parent, parent-in-law, grandparent, domestic partner or you are bonding with a newborn child, adopted child or foster child within the first 12 months of parenting; you may be eligible to receive benefits if you meet the requirements identified below. .
	<b>Rhode Island Family Medical Leave</b>	Family member means a parent, spouse, child, mother-in-law, father-in-law, or the employee himself or herself, and, with respect to employees of the state, shall include domestic partners.
	<b>School Involvement Leave</b>	Child of whom the employee is a parent, foster parent, or guardian

**Covered Family Member FEDERAL**

<u>State</u>	<u>Type</u>	<u>Covered Family Member</u>
<b>Federal</b>		
	<b>FMLA</b>	Spouse, Parent: Biological parent, or an individual who stood “in the place of the parent” when the employee was a child. For Military Leaves Only-spouse, son, daughter, parent, or next of kin of the servicemember
	<b>USERRA</b>	Child: Biological, adopted or foster child, stepchild, legal ward, child or person standing in the place of the parent; includes a child over 18 years of age if the child is “incapable of self-care because of a mental or physical disability.”
	<b>Pregnant Workers</b>	Pregnant Employee

## Training Your Team

Your managers and supervisors should be properly trained on how to identify potential leave needs, how to report them timely, and how to handle employees while they are on leave and when they return. Supervisors should properly inquire about absences that will last more than a few days or do not have defined return dates. Supervisors should always alert human resources or their supervisor when they feel a situation could potentially be a leave situation. Managers should only be collecting work-related information including the expected time off needed and HR or the person responsible for managing leaves HR should then ask the necessary questions to better understand and assist the employee's situation. Educating your leaders on your policies, processes and the leave guidelines is essential to ensure your team is ready to handle the various employee absence scenarios.

While an employee is out on leave, it is important that the employer understands what they should do as well as what they can't do. Leaves can vary in the level of stress and availability of the employee and employers should work to support the employee as well as maintain a fair and respectful level of communication. Forcing too much communication can potentially upset or deter the employee on the leave from cooperating and too little communication can lead to the employer losing control or understanding of the individual's leave situation.

Below is a list of DO's and DON'T's for the employer while your employee is on protected leave. Leaders and HR should designate who is responsible for the following:

### DO

- Send them a letter outlining their leaves and their rights. Explain how benefits will be paid for (Catch up? Monthly Payments)
- Check in to see how the employee is doing from a well-being standpoint (Not business-related)
- Ensure they understand the requirements to return to work if applicable (Medical Certification)
- Check in the week before their return-to-work date to ensure they are still planning to return on that date.
- Review leaves to make sure the time available, time taken and the time approved are accurate and benchmarked to ensure additional leave is not given or missed.
- For intermittent leaves, ensure the daily/weekly/monthly absences align with current medical certification. If they do not, a new certification can be requested.

## DO NOT

- Excessively call in and check up with the employee or expect daily communication if we have a defined leave period.
- Discuss work related matters or ask them to perform work related activities.
- Pressure the employee to return earlier.
- Take any adverse action towards them for going out on the leave or otherwise exercising their rights under state and federal leave laws.

## The Leave of Absence Process

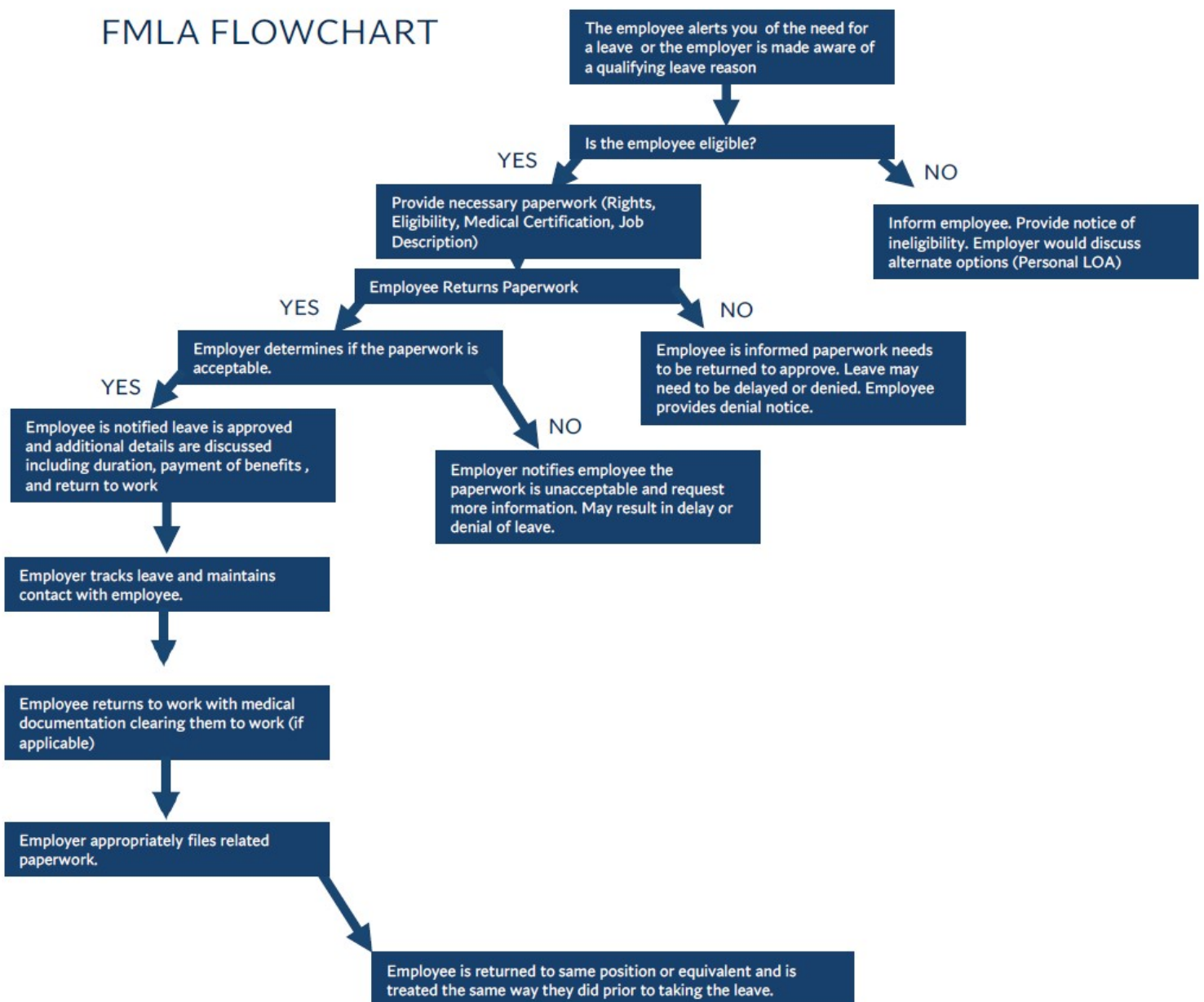
Depending on the type of leave, the LOA process can vary. Some processes require approval from the state or third parties while others can be designated internally. There may be times where additional medical information may be required. It is important that employers understand the various leave scenarios and how to manage each situation. The below graphic outlines a general process for employer managed leaves. **Note this is a general outline and may not apply to state leaves or leaves involving third parties.**



## Federal Leaves

Most companies are required to follow certain federal laws that provide protection for time off related to pregnancy or military leaves. Depending on the size of your organization, employers may be required to additionally comply with other federally protected leaves. The Family Medical Leave Act (FMLA) applies to most employers with over 50 employees in a 75 miles radius. FMLA requires employers to provide up to 12 weeks of protected leave for qualifying situations. Below is an outline of the FMLA leave process:

### FMLA FLOWCHART



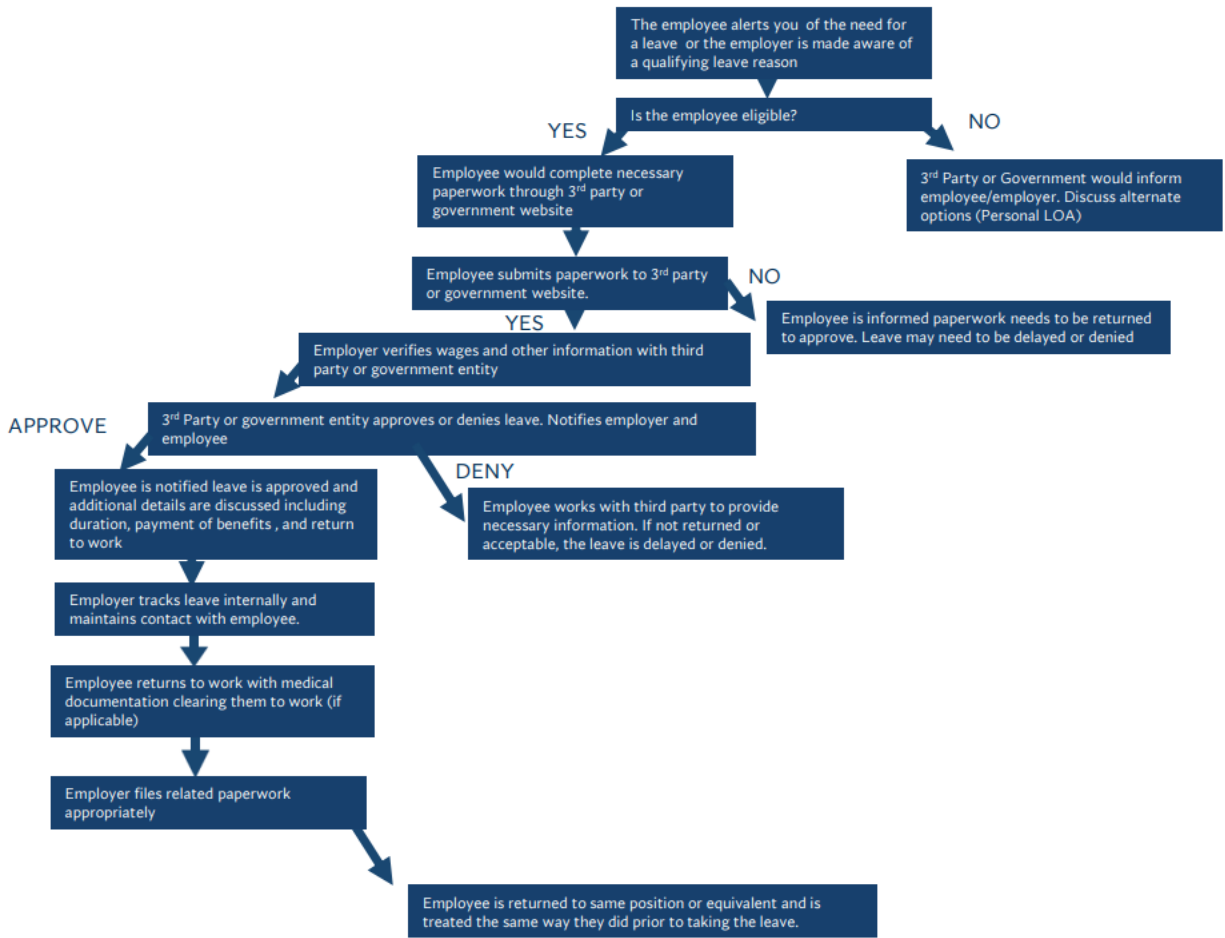


## State Specific Leaves

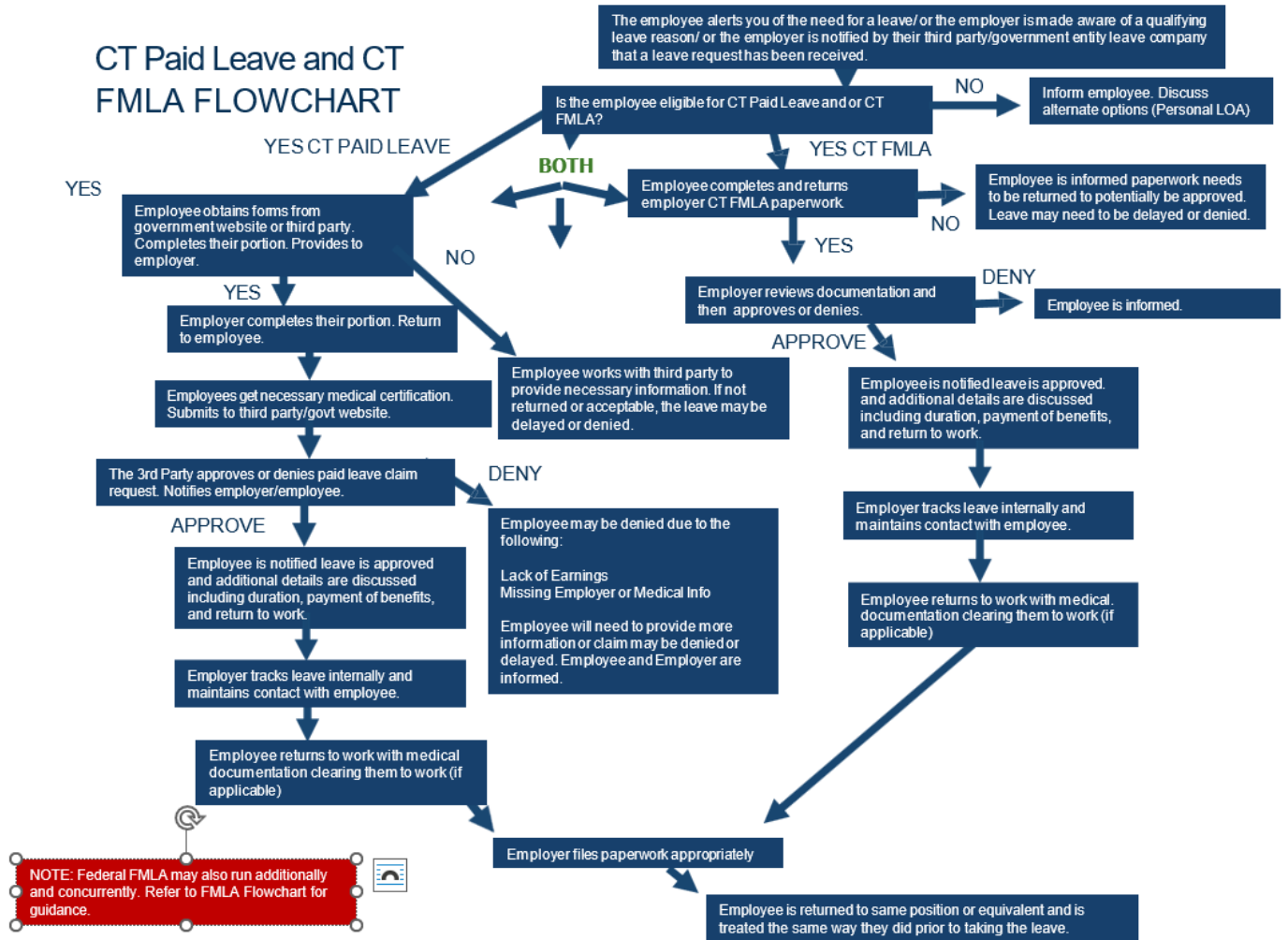
Aside from federal leave laws, many states have passed specific leave laws for the employees working or living in their state. Many times, these leaves can run concurrently with other state and federal leaves. Additionally, state leaves may have a significantly shorter time frame or no time frame at all to be eligible or may be based on different criteria like wages.

Most state leaves are administered by the state government or a qualified third party (must ensure the third party is approved). Employers should understand in detail how the application, approval, and payment (in the case of a state paid leave law) process work so they can assist their employees, designate, and track all applicable leaves, and know what they can and can't do while an employee is out. Below are the various state leave scenarios:

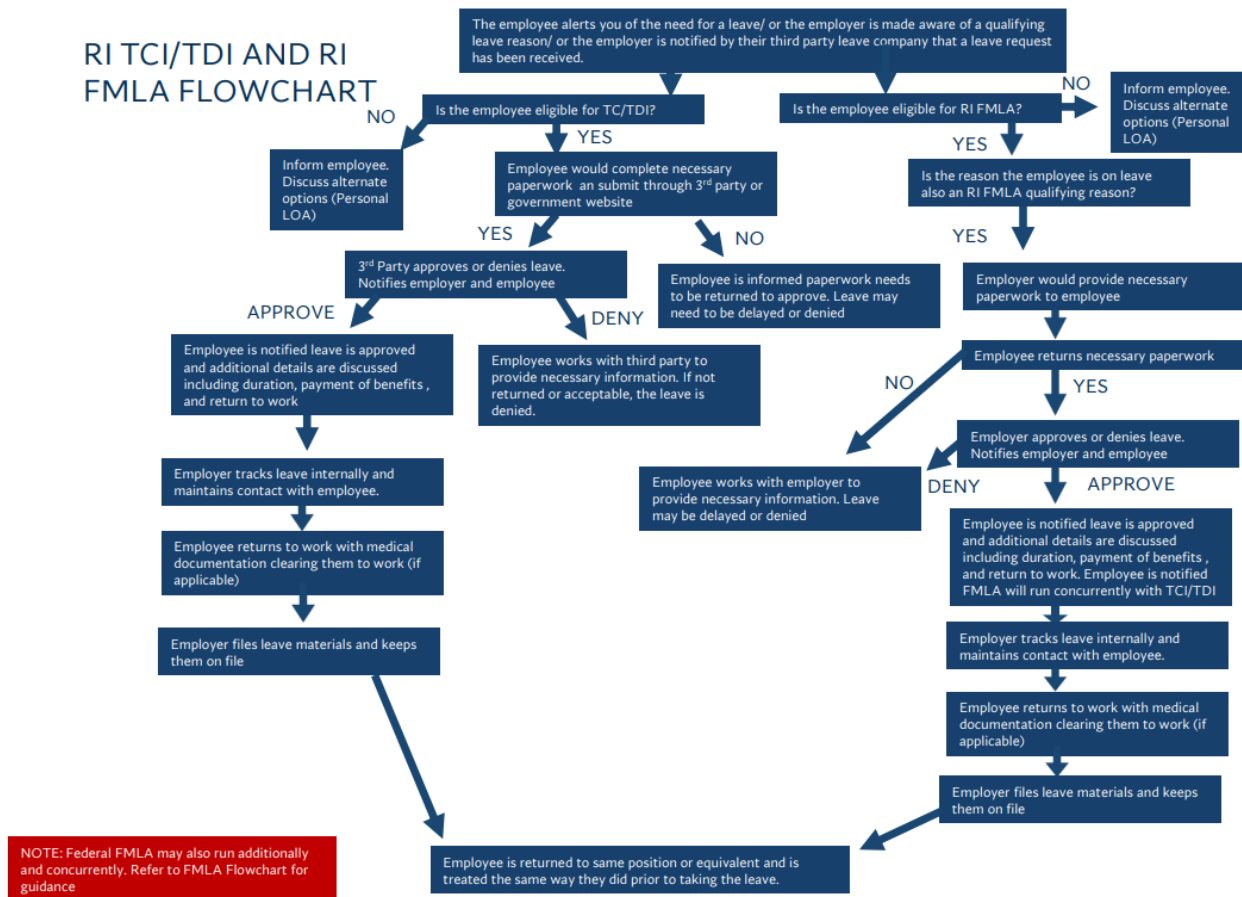
# MA PFMLA



# CT Paid Leave and CT FMLA FLOWCHART



## RI TCI/TDI AND RI FMLA FLOWCHART

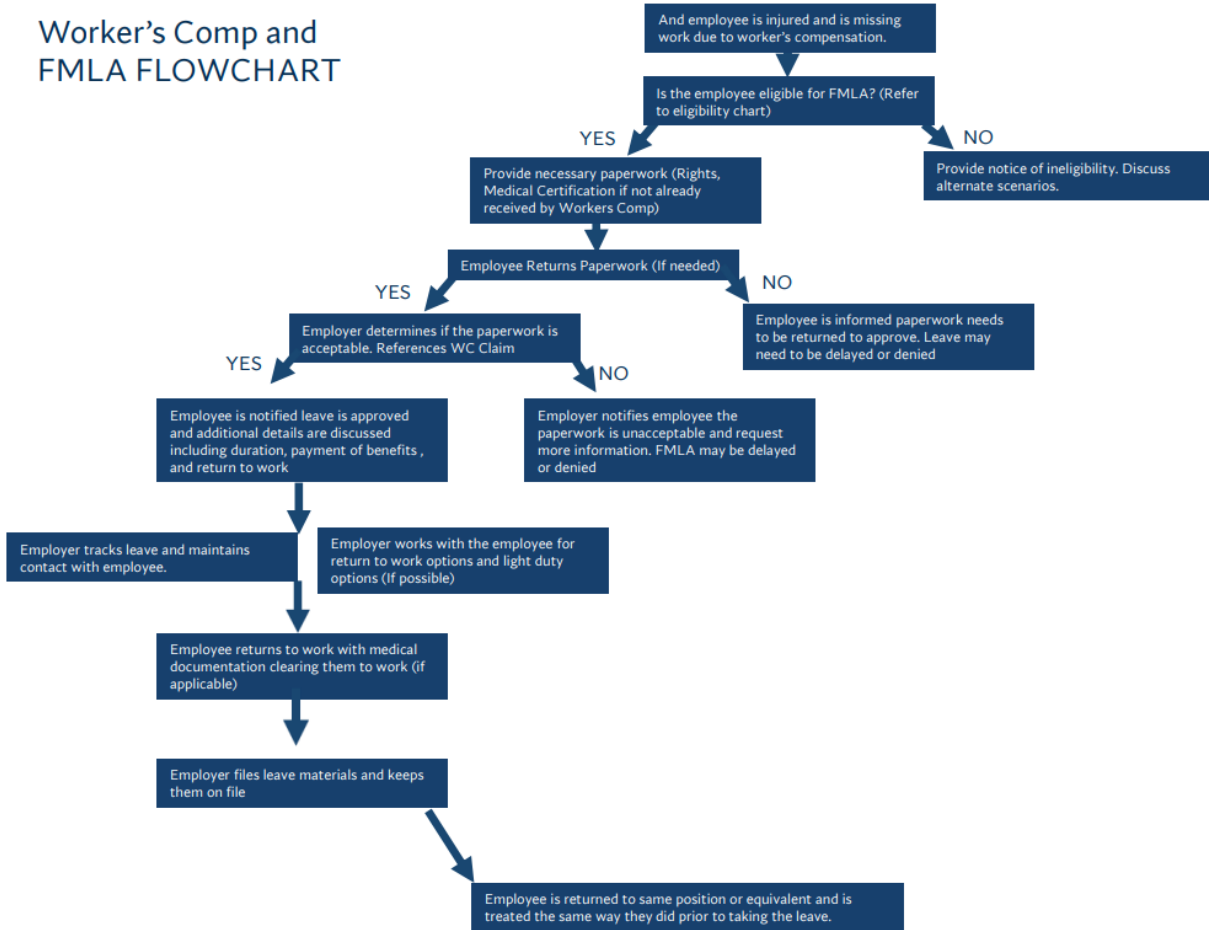


## Worker’s Comp and Other Leaves

Employers should be aware that worker’s compensation does and must run concurrently with FMLA and other applicable leaves where possible if both the employer and employee are eligible. In this circumstance, the employee would receive the job protection from FMLA or state FMLA even though worker’s comp is not job protected. Employers should be clear and consistent with their light duty and return to work requirements to ensure all employees are being treated fairly. This potentially reduces claims of retaliation for filing workers comp claims or taking protected leaves.

If an employer offers a short-term disability plan or company paid leave program, they need to be clear in their policies and procedures about which leave pays first and for what duration. They should also be clear around what situations qualify for your company leave programs and if they would run concurrently with other protected leaves. Below are examples of Worker’s Comp and Short-Term Disability leave Scenarios:

## Worker's Comp and FMLA FLOWCHART



## Tracking Your Leaves

To ensure we are properly accounting for our employees' leaves, proper tracking is essential for both compliance and legal protection. Additionally, employers need to understand how much time is available to employees in the event new leave requests or extensions arise and to ensure we are properly following up with employees timely. Proper tracking also helps employers know when it is time to discuss with employees return to work or unprotected leave situations. Leaves should be properly filed with all the relevant forms and correspondence from the employee. Be careful about protected medical information and ensure the files are stored in a secure location.

## LOA TRACKING LOG

Employee: \_\_\_\_\_

Date Leave Began \_\_\_\_\_

Hire Date \_\_\_\_\_

	Time should be entered in hours (or a fraction of an hour)																															DAYS				
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Days Used - Current	Days Used - Last 12 Months	Remaining		
Jan-17																																		0.00	0.00	60.00
Feb-17																																		0.00	0.00	60.00
Mar-17																																		0.00	0.00	60.00
Apr-17																																		0.00	0.00	60.00
May-17																																		0.00	0.00	60.00
Jun-17																																		0.00	0.00	60.00
Jul-17																																		0.00	0.00	60.00
Aug-17																																		0.00	0.00	60.00
Sep-17																																		0.00	0.00	60.00
Oct-17																																		0.00	0.00	60.00
Nov-17																																		0.00	0.00	60.00
Dec-17																																		0.00	0.00	60.00

## Syncing Up Your Leaves

To ensure your leaves run more concurrently, employers should also make sure their internal FMLA and LOA policies follow the same measurement periods as their respective state required leaves. Employers can decide whether their federal FMLA and internal LOA policies are measured as a “rolling forward”, “rolling backwards”, or a fixed 12-month period. Some state leave laws, however, have specific measurement periods that cannot change. By ensuring your measurement periods line up with state required leave laws, you can reduce the amount of time an employee can take on protected leaves in a given 12-month period. Below is an explanation of measurement periods.

**Rolling backwards-** Each time an employee takes leave, the remaining entitlement would be to the balance of time left in the preceding 12 months.

**Rolling Forward-** 12-month period measure forward from the date an employee first uses leave time.

**Fixed 12- Month Period-** Fiscal year, employees anniversary date, or any other set 12 month period.

12 Month Period		
State	Type	12 Month Period Options
MA	MA Paid Family Leave	Rolling Forward
CT	CT FMLA	Fixed 12 Month Period (Calendar, Anniversary Date) Rolling Forward/Backward
	CT PAID LEAVE	Rolling Backwards
RI	RI Family Medical Leave	Measured Forward or Backwards
FEDERAL	FMLA	Fixed 12 Month Period (Calendar, Anniversary Date) Rolling Forward/Backward

Below are recommended measurement periods based on the states and leaves that apply to your organization. For multi-state organizations, you will need to decide which method will be most effective for your company’s federal FMLA and internal leave policies. This may be based on the number of employees by state and other leave policies in your organization.

12 Month Period		
State	Type	12 Month Period Recommendation
MA	MA Paid Family Leave + Federal FMLA	Rolling Forward
CT	CT FMLA+ CT Paid Leave+ Federal FMLA	Rolling Backwards
RI	RI Family Medical Leave+ Federal FMLA	Fixed 12 Month Period (Calendar, Anniversary Date) Rolling Forward/Backward

### Returning To Work

Depending on the circumstance, employers may require that the employee certify their ability to return to work. This is typically done to ensure the employee can return to work and perform their job safely without injuring themselves or others. Employers should have defined processes and forms for employees returning to work on injury-related leaves. Best practice would be to include the job description with physical and mental requirements to help the medical provider better understand the requirements of the position. The employer should also have a defined policy and procedure for light or modified duty in the event the employee can not return at full capacity. Depending upon the employee’s condition, employers may have a responsibility to accommodate or allow additional time off under ADA and/or state disability laws.

## American with Disabilities Act (ADA) Considerations

In some instances, employee's may be on leaves for conditions that are considered protected under the Americans with Disabilities Act (ADA) and state disability protection laws. Employers may be required to engage in the interactive process and provide reasonable accommodations to covered employees. This could include:

- Extending the leave beyond the protected time
- Allowing remote work in some capacity
- Allowing the employee to return with an accommodation
- Light duty
- Flexible schedule
- Modifying their work area
- Reassignment of non-essential work functions.
- Transfer to a vacant assignment that they are qualified for.

When an employee has exhausted their leave and is unable to return to work, employers should be aware of these protections and make a proper assessment before making any decisions. In the event the employer decides to deny an accommodation or terminate due to an employee exhausting all protected leave, they should seek legal counsel to discuss the matter in more detail.

## When An Employee is Unable to Return to Work

When an employee has exhausted all of their protected leave and there is no expected return date that can be determined, employers may need to begin the initial steps of deciding if separation is necessary. Before an employer starts to consider this, they want to make sure they have addressed some key areas.

### All Available Leave is Exhausted

As stated above, employers want to make sure the employee has received and exhausted all their protected leave. Employers also need to make sure this was properly communicated, tracked, and documented. Employers should also make sure that if any new protected time has become available (Ex. More time for FMLA due to a rolling calendar year, sick time), we offer this and exhaust this time as well. Proper documentation is essential in the event the employee claims they were not offered all protected time and is seeking legal action.

### ADA

In some cases, if the employee has exhausted all of their protected time but has a condition covered under the Americans with Disabilities Act (ADA), employers are required to engage with the employee around reasonable accommodations to help them



meet the essential functions of their job. This may include additional weeks off (if there is a foreseeable return), remote work, light duty, modified workspaces, transfers to vacant positions or other situations where the employee is able to perform their job. Like any ADA situation, if an employer is taking the position that they are unable to accommodate the employee, they must be prepared to prove that the accommodation would pose a significant financial or operational impact or “undue hardship”. Companies should make sure the medical evaluation forms and ADA forms ask enough questions (without violating their rights) to make sure we have enough information to help make the best decision.

### Company Policies and Company LOA’s

Before deciding if an employee should be terminated for not returning from a leave, employers need to be aware of their company policies and procedures around returning to work and personal leaves of absences. If your organization offers a personal LOA or Short Term Disability employers need to make sure they are being consistent with their practices in terms of availability and eligibility to ensure they are not treating employees differently for going on protected leaves. Companies should also make sure they have clear parameters and policies around what happens when employees exhaust all leave and when they are unable to return.

### Leave Management is an Ongoing Process

With increasing regulations, focus on personal wellness, and ever-changing socioeconomic situations, employees and employers are feeling the stress of needing extended time off. Employers may feel like they have less control over the process than they would like, and employees feel like they are being detrimental to the organization. Proper leave management can help employers gain control of leave situations and give them the clarity to focus on supporting their employees during their times of need. While employers should consider additional ways to plan for extended time off (cross-training, back-ups, etc.), effective leave management is essential to help reduce loss of productivity and the cost associated with employee absenteeism.

