Herrera
HR GROWTH PARTNERS

FOUNDER FIELD GUIDE

THE FMLA AND ADA PLAYBOOK

# Leave and accommodations, *handled right the first time.*

How FMLA, the ADA, pregnancy accommodation and state leave laws fit together, the notices and deadlines that trip employers up, and what to do when leave runs out.



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A NOTE BEFORE YOU START

Leave and accommodation requests rarely arrive with a label on them. They show up as “my mom is sick,” “my back is killing me” or “can I work from home for a while?”

That’s why so many problems start with a manager who meant well. They said no too fast, said yes without telling anyone, or asked for a doctor’s note the law doesn’t allow.

This guide gives you a process that works for every request: spot it, route it, run the right law, document it and bring the person back. The laws are federal, but your states add their own layer, so use it alongside your state requirements.

*Peter Herrera*

Founder, Herrera HR Growth Partners

SECTION 01

# How the laws fit together

One request can trigger several laws at once. They don’t replace each other; you have to meet each one that applies.

| LAW | WHO’S COVERED | WHAT IT REQUIRES |
|---|---|---|
| **FMLA** | Private employers with 50+ employees in 20 or more workweeks this year or last | Up to 12 weeks of unpaid, job-protected leave a year for eligible employees, with group health coverage continued |
| **ADA** | Employers with 15+ employees | Reasonable accommodation for qualified employees with disabilities, unless it causes undue hardship. Leave can be an accommodation |
| **Pregnant Workers Fairness Act (PWFA)** | Employers with 15+ employees | Reasonable accommodation for known limitations related to pregnancy, childbirth or related conditions |
| **State and local leave** | Often smaller employers, sometimes everyone | Paid sick leave, state family leave, paid family and medical leave insurance and more |
| **Workers’ compensation** | Nearly all employers | Wage replacement and medical care for work injuries. Time off can run alongside FMLA |

## Three rules that prevent most mistakes

### 1 Route every request

Managers don’t decide leave or accommodation requests. They pass them to one person, the same day.

### 2 Run every law

Check each request against FMLA, the ADA, the PWFA and your state laws, not just the one the employee named.

### 3 Write it down

Notices, conversations, options considered and decisions, dated. If it isn’t written, it didn’t happen.

> **Under 50 employees? You’re not off the hook**
>
> The ADA and the PWFA start at 15 employees, and many state leave laws start lower. A company of 20 can owe an employee extended leave as an accommodation without ever being covered by FMLA.

SECTION 02

# FMLA, step by step

Being a covered employer and having an eligible employee are two different tests. Check both.

### IS THE EMPLOYEE ELIGIBLE?

- Worked for you at least 12 months (they don't have to be consecutive)
- Worked at least 1,250 hours in the 12 months before leave starts
- Works at a site where you have 50+ employees within 75 miles

### IS THE REASON COVERED?

- Birth of a child, or adoption or foster placement, and bonding
- Caring for a spouse, child or parent with a serious health condition
- The employee's own serious health condition
- Qualifying military exigencies, and up to 26 weeks for military caregiver leave

## Pick how you count the 12 months

You can use a calendar year, any fixed 12-month year, 12 months measured forward from the first day of leave, or a rolling 12 months measured back from each day of leave. Choose one, put it in your policy and apply it to everyone. A rolling period is the hardest for employees to "stack" two years of leave back to back.

> **Remote employees count too**
>
> The Department of Labor says remote employees are eligible on the same basis as everyone else. For the 75-mile test, a remote employee's worksite is the office they report to or get their assignments from, not their home. So a remote employee in Denver who reports to your Chicago office can be eligible if Chicago has 50 people within 75 miles.

**What the employee keeps during leave**

Group health coverage on the same terms as if they were working, and the right to come back to the same or an equivalent job with the same pay, benefits and terms. You can require employees to use accrued paid leave at the same time, if the reason is covered by your paid leave policy.

## The FMLA timeline

Most FMLA claims come from a missed notice or a missed deadline, not a bad decision. Here's the sequence.

| STEP | DEADLINE | WHAT TO DO |
|---|---|---|
| **Post the notice** | Always | Display the FMLA poster where employees can see it (it can also be posted electronically) and include the general FMLA notice in your handbook, or give it at hire |
| **Employee asks or you learn of a possible FMLA reason** | 30 days ahead if foreseeable; otherwise as soon as practicable | The employee doesn't have to say "FMLA." If you have enough information to suspect a qualifying reason, the clock starts for you |
| **Eligibility notice** | Within 5 business days | Tell the employee whether they're eligible and, if not, why |
| **Rights and responsibilities notice** | With the eligibility notice | What's expected: certification, paid leave use, health premiums, key-employee status and return rights |
| **Medical certification** | Employee gets at least 15 calendar days | Use the DOL forms. If it's incomplete, say what's missing in writing and allow at least 7 calendar days to fix it |
| **Designation notice** | Within 5 business days of having enough information | Say whether the leave is FMLA-protected and how much will count against the 12 weeks, if known |
| **During leave** | Ongoing | Keep health coverage, track hours used, and check in on a schedule you agreed on |
| **Return to work** | When leave ends | Restore the same or an equivalent job. If your policy requires a fitness-for-duty certification, you must have said so in the designation notice |

### Who can call the doctor

To clarify or confirm a certification, HR, a leave administrator or a management official can contact the health care provider. The employee's direct supervisor never can. You may ask for a second opinion at your expense, and a third if the first two disagree.

## The hard parts

### 1 Intermittent leave

Leave can be taken in blocks, days or hours when medically necessary. Track it in the smallest increment your payroll uses for other leave, up to one hour. Recertification is generally limited to every 30 days, and only in connection with an absence, unless the certification says the condition lasts longer.

### 2 Travel to appointments

In a January 2026 opinion letter, the Department of Labor said time spent traveling to and from medical appointments for a serious health condition can be FMLA leave, for the employee's own condition or a family member's. The certification doesn't need to mention travel time.

### 3 Discipline that touches leave

Counting FMLA absences toward attendance points, a missed bonus or a poor review is interference. Remove protected absences before you decide anything about attendance.

### 4 Key employees

You can deny job restoration to a salaried employee among your highest-paid 10% within 75 miles, but only to prevent substantial and grievous economic injury to the business, and only with written notice. Use it rarely, and with counsel.

### 5 Working during leave

A quick question is fine. Asking someone on leave to keep doing their job is not. Assign coverage before leave starts and tell the team who it is.

> **Keep the records**
>
> Keep FMLA records for at least three years, including dates and hours of leave, notices and policies. Store medical certifications separately from personnel files, as confidential medical records.

SECTION 03

# The ADA interactive process

The ADA doesn’t ask you to give every employee what they ask for. It asks you to have a real, good-faith conversation and find something that works.

| STEP | WHO | WHAT GOOD LOOKS LIKE |
|---|---|---|
| **1. Recognize the request** | Manager | Any words that link a medical issue to a work problem count. No form or magic words required. Route it the same day |
| **2. Meet and listen** | HR and the employee | Ask what the limitation is and what would help. Don’t ask for a diagnosis |
| **3. Get information if needed** | HR | If the disability or need isn’t obvious, ask for reasonable documentation of the limitation, not full medical records |
| **4. Explore options** | HR, manager, employee | List every option, including the employee’s. Check the job’s essential functions |
| **5. Decide and document** | HR | Choose an effective option. It doesn’t have to be the employee’s first choice. Put it in writing |
| **6. Follow up** | HR and manager | Check in after 30 days. If it isn’t working, go back to step 4 |

COMMON ACCOMMODATIONS

### Usually simple

- Schedule changes or more frequent breaks
- Equipment or software changes
- Remote work, when the essential duties can be done from home
- Moving some marginal duties to a coworker
- Reassignment to a vacant position

UNDUE HARDSHIP

### A high bar

- Means significant difficulty or expense, judged against your size and resources
- Coworker grumbling isn’t enough
- You must still look for an option that isn’t a hardship
- Ask counsel before relying on it

SECTION 04

# When FMLA runs out

The end of 12 weeks is not an automatic termination date. Under the ADA, more unpaid leave can be a reasonable accommodation.

The Equal Employment Opportunity Commission (EEOC) says employers must consider unpaid leave as an accommodation for an employee with a disability, unless it causes undue hardship. That applies even if the employee isn't eligible under your leave policy or has used up FMLA.

## ! Policies that create risk

**Automatic termination after a set amount of leave.** You can have a leave limit, but you may need to make an exception as an accommodation.

**"100% healed" return rules.** Requiring a full recovery before return violates the ADA if the employee can do the job with or without an accommodation.

**Open-ended "we'll see."** Indefinite leave usually isn't required. Ask for an expected return date, even an estimate.

### Six weeks before leave runs out

- [ ] Send a written check-in: when FMLA ends, and an invitation to talk about the return or more time.
- [ ] Ask whether the employee can return, with or without an accommodation, and when.
- [ ] If they need more time, ask for the expected duration and assess hardship: length, predictability, effect on coworkers and customers.
- [ ] If they can't return to their job, consider reassignment to a vacant position they're qualified for.
- [ ] Document each step and every option you considered, before any decision to separate.

> **Sample check-in language**
>
> "Your FMLA leave is scheduled to end on [date]. We want to support your return. Please let us know by [date] whether you expect to return then, whether anything would help you do your job when you're back, or whether you need more time. If you do, we'll talk through the options together."

SECTION 05

# Pregnancy and state leave

## The Pregnant Workers Fairness Act

Since June 27, 2023, employers with 15 or more employees must reasonably accommodate known limitations related to pregnancy, childbirth or related medical conditions, unless it causes undue hardship. The condition doesn't have to be a disability. Common accommodations include extra breaks, schedule changes, telework, light duty, time off for appointments and leave to recover from childbirth.

- Don't require leave if another accommodation would keep the employee working.
- Keep documentation requests limited, and skip them when the need is obvious.
- A temporary suspension of an essential function can be required.

> **Watch this space**
>
> A federal court struck the portion of the EEOC's PWFA rule covering elective abortion in May 2025. The rest of the rule remains in effect, and the EEOC has said it plans to revisit parts of it. The law itself still applies. Check for updates before you rely on the regulation's details.

## The state layer

| TYPE OF LAW | WHAT TO KNOW |
|---|---|
| **Paid family and medical leave insurance** | Paid through payroll in a growing list of states, including California, New York, New Jersey, Washington, Massachusetts, Colorado, Oregon and Connecticut. Delaware and Minnesota began paying benefits in January 2026 and Maine in May 2026; Maryland and Virginia follow in 2028 |
| **Paid sick leave** | Required in about 20 states plus D.C. and many cities, often from the first employee |
| **State family and medical leave** | Some states offer job-protected leave at lower headcounts or for more family members than FMLA |
| **Pregnancy and lactation** | Many states add their own accommodation, leave and break-time rules |

State programs can run at the same time as FMLA; one doesn't automatically use up the other. Check each state's rules.

> **Paid and protected are different questions**
>
> A state program may pay the employee while FMLA, the ADA or a state law protects the job. For every request, answer both: is this time paid, and is this job protected?

SECTION 06

# Build your system

Answer yes only if it’s true today, for every state where you have employees.

| | | | |
|---|---|---|---|
| 1 | One named person handles every leave and accommodation request, and managers know to route them the same day. | YES | NO |
| 2 | Managers have been trained to spot requests that don’t use the words “FMLA” or “accommodation.” | YES | NO |
| 3 | We have templates for the eligibility, rights and designation notices, and a way to track the 5-day deadlines. | YES | NO |
| 4 | Our handbook covers FMLA (if we have 50+), accommodations and every state leave law that applies to us. | YES | NO |
| 5 | Medical documents are stored separately from personnel files, with limited access. | YES | NO |
| 6 | Our attendance and bonus rules exclude protected leave. | YES | NO |
| 7 | No policy terminates employees automatically when leave runs out. | YES | NO |
| 8 | We document every accommodation conversation, including options we considered and rejected. | YES | NO |

## COUNT YOUR YES ANSWERS

**8**
A solid system. Refresh manager training once a year.

**5–7**
Some gaps. Start with routing and notice templates.

**0–4**
Real exposure. One request could turn into a claim. Let’s fix the process first.

### The five documents every company needs

A leave and accommodation policy for each state you’re in, an intake form or email template, notice templates (eligibility, rights and responsibilities, designation), a request log with deadlines, and a return-to-work checklist. Build them once and every request gets easier.

SECTION 07

# How I help

I lead HR for growing companies on a fractional basis, on one fixed monthly retainer. Leave and accommodation requests come to me, so your managers aren't guessing and nothing falls through the cracks.

- Managing each FMLA, ADA and pregnancy request from first notice to return
- Notice templates, tracking and recordkeeping
- Leave policies built for every state you're in
- Manager training on spotting and routing requests
- The hard calls: extended leave, hardship and return to work
- Coordinating with your PEO, insurer and counsel

| | | | |
|---|---|---|---|
| **20+ years** of HR leadership | **4 industries** financial services, healthcare, hospitality and tech | **2 companies** where I built HR from scratch | **1 to 250** employees: the companies I serve |

## ABOUT PETER HERRERA

I've spent more than 20 years leading HR in financial services, healthcare, hospitality and tech, including building the HR function from scratch at two companies. I founded Herrera HR Growth Partners to give growing companies senior HR leadership on a monthly retainer, for a fraction of the cost of a full-time hire. I'm based in Chicago and work with companies across the U.S.

## SOURCES

1. U.S. Department of Labor, Fact Sheet #28: The Family and Medical Leave Act; Employer's Guide to the FMLA; Field Assistance Bulletin 2023-1; Opinion Letter FMLA2026-2 (January 5, 2026).
2. EEOC, Employer-Provided Leave and the Americans with Disabilities Act (2016); Enforcement Guidance on Reasonable Accommodation and Undue Hardship; What You Should Know About the Pregnant Workers Fairness Act.

YOUR NEXT STEP

# A leave request on your desk? *Let's walk through it.*

Bring your readiness score from page 10, or the situation you're handling right now, to a free intro call.

FREE 20-MINUTE INTRO CALL

## What you'll leave with

- Which laws apply to your headcount and states
- The two or three gaps to fix first in your leave process
- How a monthly retainer would work for a company your size

**No pitch deck, no obligation.** If you don't need me, I'll tell you.


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