

## Family & Medical Leave Act - FAQs

### What employers must abide by FMLA?

- All public agencies, including state, local and federal employers, local education agencies and private sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year.

### What are the requirements for an employee to take FMLA leave?

- An employee must satisfy all of the following requirements
  - Work for a covered employer
  - Worked for the employer for a total of 12 months (these 12 months need not be consecutive but breaks in service for longer than 7 years do not count in the 12 months, unless the break was due to a fulfillment of National Guard or Reserve military obligation or a written agreement exists regarding the employer's intention to rehire the employee after the break in service)
  - Worked at least 1,250 hours in the last 12 months
  - Work at a location where at least 50 employees are employed by the employer within 75 miles
  - The leave is for a FMLA qualified reason

### What reasons can an employee take FMLA leave?

- An employee can take up to 12 weeks in a 12 month period for:
  - The birth and care of a newborn
  - Placement of a child with the employee for adoption or foster care
  - Care for a spouse, son, daughter or parent with a serious health condition
  - The employee's own serious health condition
  - For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter or parent is called to active duty as a member of the National Guard or Reserves or is an active duty service member
- An employee can take up to 26 weeks in 12 month period for:
  - To care for a spouse, son, daughter, parent or next of kin who as a current member of the Armed Services (including National Guard or Reserves) received serious injury or illness while on active duty
- An employee can only take up to 26 weeks of leave in a 12 month period
- Spouses who work for the same company are limited to a combined 12 or 26 weeks

### Does the FMLA leave have to be taken all at one time?

- No. If medically necessary or dictated by the employee's situation for which documentation exists, the leave can be taken intermittently or as a reduced schedule. If the leave is needed for planned medical treatments, the employee must make a reasonable effort to schedule treatment so as not to disrupt business. If the intermittent leave is for the birth and care of or the placement of a newborn, the intermittent leave is subject to employer's approval.

**Is FMLA time paid?**

- No, FMLA time is unpaid. However, there are some states that have paid family leave. FMLA does allow an employee to use vacation or PTO to run concurrent with FMLA at either the employee's request or as a requirement of the employer.

**What are some of the responsibilities of the employee during FMLA leave?**

- An employee must provide the notice of need for leave as soon as practicable. They must also submit the required medical certification by the deadline given by the employer (can be no sooner than 15 days from when leave is requested). An employee may also be responsible for their portion of their health insurance premiums while on leave. If required by the employer, they must provide periodic updates on their condition and their intention of returning to work. Once they are medically released to return to work, they may be asked for a fitness-for-duty certificate by their employer.

**What are some of the responsibilities of the employer regarding FMLA leave?**

- An employer must have a general notice posted where it can be seen by employees and applicants. FMLA leave must be granted if the employee satisfies the eligibility requirements and the leave is needed for a FMLA qualified reason. If a person is on FMLA leave, they cannot be discriminated against in any form for taking FMLA leave. The employee has the right to continue their benefits, but they may be required to pay their portion of the insurance while they are on leave. Once the employee is medically released to return to work, they must be placed in the same job they were in prior to taking leave or in a job of equivalent pay, status, benefits and other conditions and terms of employment.

\*\*There are some states laws that run concurrent with FMLA or can extend an employee's leave. Also, other federal laws run very closely with or intertwine with FMLA such as ADA and USERRA.

## UNDER THE FAMILY AND MEDICAL LEAVE ACT

### Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

### Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

### Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

### Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

### Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

### Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

### Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

### Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

### Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

### Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

### Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

**FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.**



For additional information:  
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627  
[WWW.WAGEHOUR.DOL.GOV](http://WWW.WAGEHOUR.DOL.GOV)

