

Your Rights & Responsibilities Under the Family & Medical Leave Act

FMLA requires covered employers to provide unpaid, job protected leave to “eligible” employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year and for 1,250 hours over the previous 12 months, work at a site with at least 50 employees within 75 miles, and have leave time available.

Reasons for taking leave:

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave:

- To care for the employee’s child after birth, or placement for adoption or foster care;
- To care for the employee’s spouse, son, daughter, or parent who has a serious health condition;
- To address certain qualifying exigencies arising from an employee’s spouse, son, daughter, or parent on active duty or call to active duty in the National Guard or Reserves in support of a contingency operation;
- For incapacity due to pregnancy, prenatal medical care, or post-partum recovery;
- For a serious health condition that makes the employee unable to perform his or her job.

Qualifying exigencies may include attending certain military events, arranging for alternative child-care or parental care, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post deployment reintegration briefings.

FMLA requires covered employers to provide a special leave entitlement of up to 26 weeks of unpaid, job-protected leave during a single, 12-month period to care for a child, parent, spouse or next of kin who is a covered servicemember. A covered servicemember is a current member of the Armed Forces (including Guard and Reserves), or a veteran who has been honorably discharged within the past five years, who has a serious injury or illness incurred or aggravated in the line of active duty that may render the servicemember medically unfit to perform his/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.

Use of Leave

An employee does not need to use this leave entitlement in one block. When medically necessary, leave may be taken on an intermittent or reduced-schedule basis. Employees must make reasonable efforts to schedule leave for planned medical treatment so as to not unduly disrupt the employer’s operations.

Definition of a 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 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.

Benefits and Protections:

While on 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 cannot result in the loss of any employment benefit that accrued prior to the start of the employee’s leave.

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

Employee 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 procedure.

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 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 the circumstances supporting the need for military family leave. Employees must also inform their employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees may also 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 the employee is eligible, the notice must specify any additional information required along with a copy of this notice. If the employee is 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 related 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.

For Additional Information

Please contact the nearest office of the Wage and Hour Division, listed in most telephone directories under US Government – Department of Labor, or contact your human resource department.