

Your Rights

Under The

Family and Medical Leave Act of 1993

FMLA requires covered employers to provide up to 12 weeks of 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, and if there are at least 50 employees within 75 miles.

Reasons For Taking Leave:

Unpaid leave must be granted for *any* of the following reasons:

- 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.

At the employee's or employer's option, certain kinds of *paid* leave may be substituted for unpaid leave.

Advance Notice and Medical Certification:

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

Job Benefits and Protection:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."

- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

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:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

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:

Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

 U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

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FAMILY AND MEDICAL LEAVE ACT OF 1993

(Effective August 5, 1993)

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U.S. Department of Labor Family and Medical Leave Act Compliance Guide

[The following provisions are excerpted from the U.S. Department of Labor's Compliance Guide for the Family and Medical Leave Act. The entire Compliance Guide can be seen on the internet at <http://www.dol.gov/esa/regs/compliance/whd/1421.htm>.]

Summary

The FMLA became effective **August 5, 1993**, for most employers and employees. (For those covered by a collective bargaining agreement (CBA) in effect on that date, the FMLA became effective on the expiration of the CBA or February 5, 1994, whichever was earlier.)

This law covers only certain employers; affects only those employees eligible for the protections of the law; involves entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; sets requirements for notice and certification of the need for FMLA leave; and protects employees who request or take FMLA leave. The law also includes certain employer recordkeeping requirements.

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Employer Coverage

FMLA applies to all:

- public agencies, including State, local and Federal employers, and local education agencies (schools); and,
- private sector employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year ^{3/4}/₄ including joint employers and successors of covered employers.

For FMLA purposes, most Federal and Congressional employees are under the jurisdiction of the U.S. Office of Personnel Management (OPM) or the Congress.

Employee Eligibility

To be eligible for FMLA leave, an employee **must work for a covered employer and:**

- have worked for that employer for at least 12 months; and

- have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave; and,
- work at a location where at least 50 employees are employed at the location or within 75 miles of the location.

Leave Entitlement

A covered employer must grant an eligible employee up to a total of **12 workweeks of unpaid leave** in a 12 month period for one or more of the following reasons:

- for the birth of a son or daughter, and to care for the newborn child;
- for the placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
- to care for an immediate family member (spouse, child, or parent — but not a parent “in-law”) with a serious health condition; and
- when the employee is unable to work because of a serious health condition.

Leave to care for a newborn child or for a newly placed child must conclude within 12 months after the birth or placement. (See CFR Section 825.201)

Spouses employed by the same employer may be limited to a **combined** total of 12 workweeks of family leave for the following reasons:

- birth and care of a child;
- for the placement of a child for adoption or foster care, and to care for the newly placed child; and,
- to care for an employee's parent who has a serious health condition.

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Serious Health Condition

“Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- a period of incapacity requiring absence of more than **three calendar days** from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
- any period of incapacity due to pregnancy, or for prenatal care; or
- any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or,
- any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

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Job Restoration

Upon return from FMLA leave, an employee must be restored to his or her original job, or to an “**equivalent**” job, which means virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using (but not necessarily during) FMLA leave.

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Employee Notice 29CFR825.302

Eligible employees seeking to use FMLA leave *may* be required to provide:

- 30-day advance notice of the need to take FMLA leave when the need is foreseeable;
- notice “as soon as practicable” when the need to take FMLA leave is not foreseeable (“as soon as practicable” generally means at least verbal notice to the employer within **one or two business days** of learning of the need to take FMLA leave);
- sufficient information for the employer to understand that the employee needs leave for FMLA-qualifying reasons (the employee need not mention FMLA when requesting leave to meet this requirement, but may only explain why the leave is needed); and,
- where the employer was not made aware that an employee was absent for FMLA reasons and the employee wants the leave counted as FMLA leave, timely notice (generally within **two business days** of returning to work) that leave was taken for an FMLA-qualifying reason.

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Unlawful Acts

FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by this law. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions; nor can FMLA leave be counted under “no fault” attendance policies.

Enforcement

FMLA is enforced by the Wage and Hour Division of the U.S. Department of Labor's Employment Standards Administration. This agency investigates complaints of violations. If violations cannot be satisfactorily resolved, the Department may bring action in court to compel compliance.

An eligible employee may bring a private civil action against an employer for violations. An employee is not required to file a complaint with the Wage and Hour Division prior to bringing such action.

Questions and Answers

Q: How much leave am I entitled to under FMLA?

If you are an “eligible” employee, you are entitled to 12 weeks of leave for certain family and medical reasons during a 12-month period.

Q: How is the 12-month period calculated under FMLA?

Employers may select one of four options for determining the 12-month period:

- the calendar year;
- any fixed 12-month “leave year” such as a fiscal year, a year required by State law, or a year starting on the employee's “anniversary” date;
- the 12-month period measured forward from the date any employee's first FMLA leave begins; or
- a “rolling” 12-month period measured backward from the date an employee uses FMLA leave.

Q: Does the law guarantee paid time off?

No. The FMLA only requires unpaid leave. However, the law permits an employee to elect, or the employer to require the employee, to use accrued paid leave, such as vacation or sick leave, for some or all of the FMLA leave period. When paid leave is substituted for unpaid FMLA leave, it may be counted against the 12-week FMLA leave entitlement if the employee is properly notified of the designation when the leave begins.

Q: Does workers' compensation leave count against an employee's FMLA leave entitlement?

It can. FMLA leave and workers' compensation leave can run together, provided the reason for the absence

is due to a qualifying serious illness or injury and the employer properly notifies the employee in writing that the leave will be counted as FMLA leave.

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Q: If an employer fails to tell employees that the leave is FMLA leave, can the employer count the time they have already been off against the 12 weeks of FMLA leave?

In most situations, the employer cannot count leave as FMLA leave retroactively. Remember, the employee must be notified in writing that an absence is being designated as FMLA leave. If the employer was not aware of the reason for the leave, leave may be designated as FMLA leave retroactively only while the leave is in progress or within two business days of the employee's return to work.

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Q: Which employees are eligible to take FMLA leave?

Employees are eligible to take FMLA leave if they have worked for their employer for at least 12 months, and have worked for at least 1,250 hours over the previous 12 months, and work at a location where at least 50 employees are employed by the employer within 75 miles.

Q: Do the 12 months of service with the employer have to be continuous or consecutive?

No. The 12 months do not have to be continuous or consecutive; all time worked for the employer is counted.

Q: Do the 1,250 hours include paid leave time or other absences from work?

No. The 1,250 hours include only those hours actually worked for the employer. Paid leave and unpaid leave, including FMLA leave, are not included.

Q: How do I determine if I have worked 1,250 hours in a 12-month period?

Your individual record of hours worked would be used to determine whether 1,250 hours had been worked in the 12 months prior to the commencement of FMLA leave. As a rule of thumb, the following may be helpful for estimating whether this test for eligibility has been met:

- 24 hours worked in each of the 52 weeks of the year; or
- over 104 hours worked in each of the 12 months of the year; or
- 40 hours worked per week for more than 31 weeks (over seven months) of the year.

Q: Do I have to give my employer my medical records for leave due to a serious health condition?

No. You do not have to provide medical records. The employer may, however, request that, for any leave

taken due to a serious health condition, you provide a medical certification confirming that a serious health condition exists.

Q: Can my employer require me to return to work before I exhaust my leave?

Subject to certain limitations, your employer may deny the continuation of FMLA leave due to a serious health condition if you fail to fulfill any obligations to provide supporting medical certification. The employer may not, however, require you to return to work early by offering you a light duty assignment.

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Q: Can my employer refuse to grant me FMLA leave?

If you are an "eligible" employee who has met FMLA's notice and certification requirements (and you have not exhausted your FMLA leave entitlement for the year), you may **not** be denied FMLA leave.

Q: Will I lose my job if I take FMLA leave?

Generally, no. It is unlawful for any employer to interfere with or restrain or deny the exercise of any right provided under this law. Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies. Under limited circumstances, an employer may deny reinstatement to work—but not the use of FMLA leave—to certain highly-paid, salaried ("key") employees.

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Court Decision: Employer Notification Required

The Federal Sixth Circuit Court of Appeals in *Plant v. Morton Int'l Inc.* (6th Cir. 5/12/00), No. 97-03234, has held that an employer must decide whether an employee's leave is FMLA leave and inform the employee of that designation within 2 days after it learns the reason for the leave. If the employer does not give notice within 2 days, it cannot retroactively count the leave toward the employee's FMLA entitlement and the employee's 12 weeks of FMLA leave do not start until the employer notifies the employee that it is designating the leave as FMLA leave.