



The Family and Medical Leave Act (FMLA) Frequently Asked Questions

Working people have certain basic legal rights in the workplace, including the right to unpaid job-protected leave. But this right, like others, is limited by the size of the employer, length of service and the reasons for needing leave. Some states have strengthened these protections for workers and expanded the opportunities to take leave. Workers with the benefit of a union contract may also have greater protections and benefits.

The legal information in this fact sheet is of a general nature and not meant to serve as legal advice in any particular situation. We recommend that you consult a lawyer or your local legal aid clinic or look for one at <http://www.nela.org/NELA/> before you take action to address a legal matter.

For more information, please e-mail the National Partnership for Women & Families at info@nationalpartnership.org or contact us at 202/986.2600.

For detailed information on the leave available to military family members, see our FAQs on FMLA for military family members or visit <http://www.dol.gov/esa/whd/fmla/finalrule/MilitaryFAQs.pdf> to access the Department of Labor's fact sheet.

What is the Family and Medical Leave Act?

The Family and Medical Leave Act (FMLA) is a law that was passed by Congress in 1993 which requires covered employers to provide eligible employees with up to **12 weeks** of unpaid, job-protected leave per year:

- To care for a newborn or newly-adopted child;
- To care for a seriously ill family member (spouse, child or parent); or
- To recover from a worker's own serious illness.

Am I eligible for FMLA leave?

Generally, workers are eligible if they have been employed for at least one year and 1,250 hours within the last 12 months by a:

- Business with 50 or more employees (within a 75 mile radius); or
- Public agency—including a school and state, local or federal employer.

What qualifies as a 'serious health condition' under the FMLA?

There is no list of what kind of conditions qualify. Instead, a serious health condition is defined by its effect on the individual. A serious health condition must involve either inpatient care at a hospital or medical facility, or continuing treatment by a health care provider. "Continuing treatment by a health care provider" covers many varied situations including:

- Pregnancy or prenatal care;
- Chronic conditions that extend over a long period of time and require periodic visits to a health care provider and may create periods of incapacity (asthma, diabetes);
- A permanent, long term condition for which treatment may be ineffective (e.g. Alzheimer's, a severe stroke, terminal cancer);
- Restorative surgery or treatment for a condition which, if left untreated, would likely result in a period of incapacity of more than three days (e.g. chemotherapy or radiation treatments for cancer, dialysis); or
- Any health condition that causes a period of three consecutive days of incapacity and is accompanied by at least two visits to a health care provider or one visit and continued monitoring by the health care provider.

When can I use FMLA leave to care for a family member?

You can take FMLA leave to care for your spouse, your son or daughter under the age of 18, or your parent. Your family member must have a qualifying serious health condition. You cannot take leave to care for a child who is over the age of 18 unless the child is unable to care for himself or herself due to a physical or mental disability. You cannot use FMLA leave to care for a father-in-law or mother-in-law.

How much FMLA leave am I entitled to?

If you are an eligible employee, you are entitled to up to 12 weeks of leave during a 12-month period or 26 weeks to care for a wounded servicemember.

How much notice must I give before using FMLA leave?

If you know in advance you will need to use leave, such as for a scheduled surgery or childbirth, you must give at least 30 days notice to your employer, or as soon as you can if you find out you will need to take leave in less than 30 days. If the need to use leave is unplanned, such as in the case of a sudden illness, you need to follow your employer's rules about giving notice. Your failure to follow such rules could lead to you being denied leave, unless there are unusual circumstances.

Must the 12 weeks of FMLA leave be taken consecutively (all at once) or can it be taken intermittently (in separate intervals)?

For the birth or placement of a child, the leave must be taken all at once unless your employer agrees to intermittent leave. For a serious health condition, leave can be taken intermittently when medically necessary. If it is medically necessary, you do not need your employer's permission to use the leave intermittently.

Can my employer require certification (proof) of my serious health condition?

Yes, your employer can require that you or the family member you are caring for obtain certification of the serious health condition from your health care provider. Your employer can require a second opinion, but your employer must pay for the second opinion. If the two opinions conflict, you and your employer must agree to a provider for a third opinion, paid for by your employer, whose determination will be final.

How does use of FMLA leave affect my health care benefits?

If your employer provides health care benefits, it must maintain those benefits at the same level and under the same conditions as if you had not taken leave. You will still have to pay your share of the premium, if you do so normally.

Can my employer refuse to grant me FMLA leave?

As long as you work for a covered employer, are an eligible employee, have met the notification and certification requirements, and have not already used 12 weeks of FMLA leave in the past 12 months, your employer cannot deny you FMLA leave and cannot interfere with your ability to take leave.

When I return from FMLA leave, am I entitled to the same job I held prior to my leave?

Your employer must assign you to your prior position or to an equivalent position with equal pay, benefits, and other terms and conditions of employment.

Can my employer punish me for using FMLA leave?

No, your employer cannot fire you, deny you a promotion, or take other disciplinary actions against you for using FMLA leave. Your employer also cannot fire or otherwise discipline you for complaining about a violation of the FMLA.

However, under certain limited circumstances an employer can refuse to reinstate certain highly-paid, 'key' employees after they have taken FMLA leave. The FMLA defines 'key' employees as salaried, eligible employees among the highest paid 10 percent of the firm's employees, within a 75 mile radius of where the employee works.

What about state laws regarding family and medical leave?

The FMLA sets forth the *minimum* standards to which employers must comply. Some states have laws which offer greater protection for employees. To find out more about whether or not your state has greater protections, visit the National Partnership for Women & Families website.

Am I entitled to *paid* leave under the FMLA?

No, the FMLA requires only that unpaid leave be granted.

You may be entitled to paid leave under your employer's short term disability program. You may also be able to (or your employer may require you) to use your sick time or vacation time while you are on FMLA leave.

Five states—California, Hawaii, New Jersey, New York, and Rhode Island—and Puerto Rico have Temporary Disability Insurance programs to provide some pay when a worker is out of work due to her own serious health condition, including pregnancy. California and New Jersey provide a more comprehensive paid family leave program allowing for payment when workers need time off to care for a family member or to bond with a new child. Washington State recently passed a paid parental leave program that will go into effect pending funding.

Through work at the national, state, and local levels, the National Partnership for Women & Families advocates for policies that would guarantee paid leave options for all workers. To find out how you can get involved in a campaign in your area, contact us at info@nationalpartnership.org.

What can I do if my employer is unlawfully denying my request for FMLA leave?

If your employer violates one or more provisions of the FMLA, you may either (1) file a complaint with the Dept. of Labor or (2) file a private lawsuit. If you wish to file a complaint with the Dept. of Labor, you need to contact your local Dept. of Labor Wage and Hour Division. Contact information can be found at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

The Dept. of Labor will investigate the complaint and may be able to resolve the problem through a phone call advising your employer of their obligations. If this is unsuccessful, the Dept. of Labor may sue the employer on your behalf. Information about how to locate an employment lawyer can be found on the National Employment Lawyers Association website at <http://www.nela.org>.