



**Family Medical Leave Act**

# The Family and Medical Leave Act



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

[dol.gov/agencies/whd](https://dol.gov/agencies/whd)  
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# Presentation Topics

- Introduction to the FMLA
- Family Relationships under the FMLA
- FMLA-Protected Leave Reasons
- Taking FMLA Leave
- Administering FMLA Leave
- Employee Rights
- Helpful Resources



# Introduction to the FMLA

# Employee Benefits and Protections

- Up to 12 workweeks of leave each leave year for family and medical reasons
- Up to 26 workweeks of leave in a single leave year to care for a covered military member with a serious injury or illness
- Continuation of group health benefits under the same conditions as if the employee did not use leave
- Return to work at the same or virtually identical job at the end of the leave period
- Protection from interference and retaliation

# Reasons for Using Family and Medical Leave

- Because of the birth of a child or placement of a child for adoption or foster care, and to bond with a newborn or newly-placed child
- To care for a covered family member with a serious health condition
- Because of the employee's own serious health condition

# Support for Military Families – Military Family Leave

- Qualifying Exigency Leave – for qualifying reasons when an employee’s family member is on a deployment to a foreign country
- Military Caregiver Leave – care for a current servicemember or a recent veteran, who has suffered a serious injury or illness, when the employee is the servicemember or veteran’s spouse, child, parent or next of kin

# Employee Eligibility

At the time the employee's FMLA leave will start, the employee:

- Has worked for the employer in total at least 12 months
- During the previous 12 months, worked at least 1,040 hours (full time, part time-at least half time)
- Can include time worked for Temporary Solutions (\*hours and pay status are different)





# Family Relationships under the FMLA

# Child

- A biological, adopted, or foster child, stepchild, legal ward, or child of someone who is *in loco parentis*, i.e., in the role of a parent, and
- At the time the employee's FMLA leave is to start:
  - under age 18 *or*
  - 18 or over *and* incapable of self-care because of a mental or physical disability
- For military family leave, an employee's child may be any age

# Parent

- A biological, adoptive, step or foster parent, or someone who stood *in loco parentis*, i.e., in the role of a parent to the employee when the employee was a child
- Does not include a parent-in-law

# Spouse

- A “husband or wife” as defined or recognized in the state where the employee was married and includes individuals in a same-sex marriage



# FMLA-protected Leave Reasons

# Birth, Adoption, or Foster Care Placement

- Parents may use FMLA leave for the birth, adoption, or foster care placement of a child, and to bond with their newborn or newly-placed child
- UNPAID Leave for bonding is only available for one year following a child's birth or placement
- For adoption or foster placement contact your HR Tech regarding eligibility and timeline

# The FMLA Definition of a Serious Health Condition

- Eligible employees may use FMLA leave because of their own serious health condition or
- To care for a family member with a serious health condition
- Under the FMLA, serious health condition means:
  - An illness, injury, impairment or physical or mental condition involving:
    - Inpatient Care, or
    - Continuing Treatment by a Health Care Provider

# Incapacity

- Inability to work, attend school or perform other regular daily activities due to the serious health condition
- Employee is unable to work if unable to perform any one of the essential functions of the employee's position due to the serious health condition
- Incapacity includes treatment or recovery from the serious health condition
- Physician cannot recommend place of work (telework)



# Qualifying Exigency Leave

- Employee's spouse, child, or parent
- In the Regular Armed Forces
  - Deployed to a foreign country
- In the Reserve components of the Armed Forces (National Guard and Reserves)
  - Deployed to a foreign country under a call or order to active duty in support of a contingency operation



# Taking FMLA Leave

# Amount of Leave

- Eligible employees may use up to 12 workweeks of FMLA in a 12-month period for:
  - Birth or placement of a child for adoption or foster care
  - Care for a spouse, son, daughter, or parent with a serious health condition
  - Employee's own serious health condition
  - Qualifying exigencies related to the employee's family member's deployment to a foreign country
- Eligible employees may use up to 26 workweeks of FMLA in a "single 12-month period" for military caregiver leave

# 12-Month Period or Leave Year

- Employers may select from:
  - Calendar year
  - Any fixed 12-month leave year
  - A 12-month period measured forward
  - A rolling 12-month period measured backward
- Same 12-month period for all employees
- Regardless of the 12-month period selected for other FMLA leave, the single 12-month period for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later

# Intermittent or Reduced Schedule Leave

- Employee is entitled to take FMLA leave in separate blocks of time, or intermittently, or on a reduced schedule, by working fewer hours each day or week, for:
  - Employee's or family member's serious health condition when the leave is medically necessary
  - Covered servicemember's serious injury or illness when the leave is medically necessary
  - A qualifying exigency arising out of a military member's covered active duty status
- Leave to bond with a child after the birth or placement can be intermittent or reduced schedule leave, but only if the employer agrees

# Planned Medical Treatment

- Employee should generally make a reasonable effort to schedule planned medical treatments to minimize disruption to employer operations
- Employer may temporarily transfer employee to alternative job with equivalent pay and benefits when the employee needs intermittent or reduced schedule leave that is foreseeable based on planned medical treatment, if the position better accommodates recurring periods of leave

# Use of Paid Leave Benefits During FMLA Leave

- Employees may choose or employers may require employees to use accrued paid leave, such as vacation or sick leave, if applicable, at the same time FMLA leave is used
- Employees may be eligible to use other benefits while they are using FMLA leave, including:
  - Workers' compensation
  - Short-term disability
  - Leave provided as an accommodation under the Americans with Disabilities Act (ADA)
  - Paid leave mandated under state or local law



# Employee Rights



# Job-Protected Leave

- After FMLA leave, employee has the right to return to work in the same job, or one that is nearly the same
  - Same duties, responsibilities, status
  - Same level of skill, effort, responsibility and authority
  - Identical pay, including premium pay, overtime and bonus opportunities
  - Identical benefits, such as life insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.
- Employees are not entitled to any additional benefits other than those they would have been entitled to if they had not taken FMLA leave

# Limitations on Restoration

- Employee uses all available FMLA leave and is not able to return to work
- Employer denies key employee return to work to prevent substantial and grievous injury to operations
  - Key employee means among highest paid 10% of all employees within 75 miles of the worksite
  - Employer must provide key employee notice
- Employment changes, such as a layoff or reduced hours, which would have occurred without FMLA leave

# Continuation of Health Insurance Coverage

- An employee has a right to continuation of group health insurance coverage during FMLA leave on the same terms as if they had continued to work
  - For example, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave
- During FMLA leave, the employee will need to continue to pay whatever share of group health plan premiums they typically paid before FMLA leave to maintain coverage during leave

# Limits to Continuation of Health Insurance Coverage

- An employee may choose not to retain group health insurance coverage during FMLA leave
  - However, when the employee returns from FMLA leave, the employee is entitled to reinstatement of benefits on the same terms as before the leave
- FMLA requirements to continue coverage generally do not apply if an employee is laid off or terminated unrelated to the FMLA, chooses not to return to work for the employer, or is unable to return to work after FMLA ends
  - The Consolidated Omnibus Budget Reconciliation Act (COBRA) may require that an employee's group health coverage continue for a limited period

# Prohibited Employer Actions

- Employers cannot:
  - Interfere with, restrain, or deny employees' FMLA rights
  - Discriminate or retaliate against an employee for having exercised FMLA rights
  - Use the taking of FMLA leave as a negative factor in employment actions
  - Discharge or in any other way discriminate against an employee because of involvement in any proceeding related to the FMLA

# Enforcement of the FMLA

- To enforce FMLA rights, employees may:
  - File a complaint with Wage and Hour Division
  - File a private lawsuit under section 107(a)
- Lawsuit must be filed within two years after the last action which the employee contends was in violation of the Act, or three years if the violation was willful

# The FMLA and Other Laws

- The FMLA may apply in addition to other federal laws, state laws, an employer's policies, or a collective bargaining agreement
- Nothing in the FMLA supersedes any provision of state or local law that provides greater family or medical leave rights than those provided by the FMLA
- An employer's practices, policies, benefit programs, or plans, including a collective bargaining agreement (CBA), may not reduce or deny FMLA benefits and protections

# FMLA Resources

Visit [www.dol.gov/agencies/whd/fmla](http://www.dol.gov/agencies/whd/fmla) for links to:

- Title I of the FMLA, as amended (29 U.S.C. 2601—2654)
- Regulations (29 C.F.R. Part 825)
- *The Employer's Guide to the FMLA*
- *The Employee's Guide to the FMLA*
- *The Employee's Guide to Military Family Leave under the FMLA*
- FMLA Forms and Forms Frequently Asked Questions
- FMLA Fact Sheets
- FMLA Posters (WH-1420)
- FMLA Frequently Asked Questions
- FMLA elaws Advisor