

FAMILY AND MEDICAL LEAVE ACT (FMLA) Frequently Asked Questions

What is the FMLA?

The federal Family and Medical Leave Act of 1993 provides up to 12 weeks of unpaid leave during any 12 month period for certain family and medical reasons. The FMLA applies to employers that employ 50 or more employees during 20 or more weeks of the preceding or current calendar year.

Which employees are eligible for Family and Medical Leave?

Employees who have been employed at least 12 months or have worked 1,250 hours during the 12 months preceding the leave are eligible.

Under what circumstances can an employee request Family and Medical Leave?

1. The birth of a son or daughter and to care for such child;
2. The placement of a child with the employee for adoption or foster care;
3. To care for a spouse, son, daughter or parent who has a “serious health condition;” or
4. A serious health condition makes the employee “unable to perform the functions of the employee’s job.”

How do employers measure the “12 month” period?

There is a choice:

1. The calendar year;
2. Any fixed 12 month “leave year” such as a fiscal year;
3. 12 months measured forward from the date an employee’s first FMLA leave begins; or
4. A “rolling” 12 month period measured backwards from the date an employee uses any FMLA leave.

What is a “serious health condition”?

It is an illness, injury, impairment, or physical or mental condition that involves:

1. In patient care (overnight stay) and any period of “incapacity” or subsequent treatment; or

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2. Continuing treatment by a healthcare provider involving any of the following:
 - a. A period of incapacity for more than 3 consecutive calendar days that involves:
 - i. Treatment 2 or more times by a healthcare provider; or
 - ii. One treatment by a healthcare provider which results in a “regimen of continuing treatment;”
 - b. Any period of incapacity due to pregnancy or for prenatal care;
 - c. Any period of incapacity due to a “chronic, serious health condition;”
 - d. A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective;
 - e. Any period of incapacity to receive multiple treatments either for restorative surgery after an injury, or for a condition that would likely result in a period of incapacity of more than 3 days if not treated.

When is an employee “unable to perform the functions of the employee’s position”?

Employees are unable to perform the functions of the employees’ position when they are unable to perform any one of the job’s essential functions. Employees may not be forced to accept alternative light-duty work instead of taking or continuing FMLA leave.

Who is a “healthcare provider”?

A doctor of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists, chiropractors performing certain treatment, nurse practitioners, clinical social workers and mid-wives authorized to practice under state law, and Christian Science practitioners. Also, any person from whom an employer or the employer’s group health plan will accept medical certification for benefit claims qualifies as a healthcare provider.

What actions must employees take in order to take Family and Medical Leave?

Employees must give 30 days advance notice or “such notice as is practicable.” Employers may also require that employees provide medical certification documenting the need for leave.

Do employers have to continue healthcare benefits while an employee is on Family and Medical Leave?

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Benefits accrued prior to the leave are not affected, and employers must maintain the employee's group health coverage while on a Family and Medical Leave.

Is an employee entitled to the same job upon return to work from Family and Medical Leave?

Yes. Upon return from Family and Medical Leave, employees must be restored to their previous position or to an "equivalent" position with equivalent pay, benefits and other terms and conditions of employment.

Are employers required to provide employees notice of their right to take Family Medical Leave?

Yes. Employee handbooks or manuals must include a section on FMLA rights and obligations. If the employer does not issue a handbook, it must provide employees with a written notice explaining the FMLA when an employee requests FMLA leave.