



## The Family and Medical Leave Act Compliance Guide

The [Family and Medical Leave Act](#) (FMLA) is a federal law passed in 1993. Its primary purpose is to provide job protection for eligible employees who need to take time off work to care for themselves or a family member with a serious health condition, or to care for a new child or adoptive child.

### Eligibility for FMLA

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

- Has worked for the employer for at least 12 months (not necessarily consecutively)
- Has worked at least 1,250 hours in the 12 months prior to taking leave
- Work at a location where the employer has at least 50 employees within 75 miles

### Covered Employers

Only a covered employer needs to offer FMLA leave. Covered employers include private sector employers with 50 or more employees in 20 or more workweeks in the current or previous calendar year, federal and state government agencies, and schools. An employee is considered to be employed each working day of the calendar week if the employee works any part of the week. The workweeks do not have to be consecutive.

### Reasons for Taking FMLA Leave

FMLA leave may be taken:

- To care for a newborn child, or a newly adopted or newly placed foster child
- To care for a family member (spouse, child, or parent) with a serious health condition
- To recover from a serious health condition that makes the employee unable to perform their job duties
- To care for a covered service member with a serious injury or illness incurred in the line of duty
- To manage family affairs during a covered service member's deployment

## Length of FMLA Leave

Eligible employees are entitled to take up to 12 weeks of unpaid leave in a 12-month period for FMLA-qualifying reasons. The 12-month period may be based on the calendar year, a fixed 12-month period, a 12-month period measured forward from the date of the employee's first FMLA leave, or a rolling 12-month period measured backward from the date the employee uses FMLA leave.

If the employee's spouse, child, or parent is a covered service member with a serious injury or illness, the employee may take up to 26 weeks of FMLA leave in a 12-month period to care for them.

## Intermittent or Reduced Schedule

Employees can take FMLA leave all at once, or, when medically necessary, in separate blocks of time or by reducing the time they work each day or week.

However, employees may use FMLA leave intermittently or on a reduced leave schedule for bonding with a newborn or newly placed child only if they and their employer agree.

## Requesting FMLA Leave

Employees do not have to specifically ask for FMLA leave but do need to provide enough information so the employer is aware the leave may be covered by the FMLA.

An employee's notice of a need for FMLA leave may be oral or written. The first time the employee requests leave for a qualifying reason, they are not required to specifically mention the FMLA. Generally, an employee must give at least 30 days' advance notice of the need to take FMLA leave when it is possible and practical to do so.

## Certification

An employer may require a certification when an employee requests leave for:

- The employee's own serious health condition
- The serious health condition of the employee's parent, spouse, son or daughter
- Military family leave

Employers may not request a certification for leave to bond with a healthy newborn child or a child placed for adoption or foster care.

## Employee Rights and Employer Obligations

**Job protection.** An employee who takes FMLA leave has the right to be reinstated to their job or an equivalent job with equivalent pay and benefits when they return from leave.

**Health benefits.** The employee is entitled to maintain their health insurance coverage during the FMLA leave under the same terms and conditions as if the employee had not taken leave. If an employer provides a new health

plan or benefits, or the health benefits or plans change while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave.

If FMLA leave is unpaid, the employers may require the employee to pay their share of premium payments in accordance with the employers' policy. Options may include:

- Premiums paid by the method normally used during any paid leave, generally as a payroll deduction.
- Payment would be due on the same schedule as payments are made under COBRA.
- Payment would be prepaid pursuant to a cafeteria plan at the employee's option.
- The employer's existing rules for payment by employees on leave without pay would be followed, provided that such rules do not require prepayment of the premiums that will become due during a period of unpaid FMLA leave or payment of higher premiums than if the employee had continued to work instead of taking leave.
- Another system voluntarily agreed to between the employer and the employee, which may include prepayment of premiums (e.g., through increased payroll deductions when the need for the FMLA leave is foreseeable).

The employer must provide the employee with advance written notice of the terms and conditions under which these payments must be made.

An employee may choose not to retain group health plan coverage during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverage, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.

## Consolidated Omnibus Budget Reconciliation Act (COBRA)

The employer's obligation to maintain existing health benefits during leave ceases only if a COBRA qualifying event occurs:

- Employment would have terminated had the employee not taken FMLA leave (e.g., if the employee's position is eliminated as part of a non-discriminatory reduction in force and the employee would not have been transferred to another position)
- The employee informs the employer of their intent not to return to work
- The employee fails to return from leave
- The employee remains on leave after exhausting their FMLA leave entitlement in the 12-month period

## Required Notice

Employers are required to provide employees with notice of their rights under the FMLA, including a general notice and an eligibility notice. The general notice may be distributed electronically provided all the requirements are met. All covered employers are required to display a U.S. Department of Labor (DOL) poster summarizing the FMLA and telling employees how to file a complaint.

## Enforcement of FMLA

Employees who believe that their rights under the FMLA have been violated may file a complaint with the Wage and Hour Division of the U.S. Department of Labor (DOL). The DOL may investigate the complaint and may bring legal action against the employer if it finds that the employer has violated the FMLA.

Employers who violate the FMLA may be required to provide back pay, job reinstatement, and other damages to the employee. Employers may also be subject to civil penalties and fines.

## Resources

[Family and Medical Leave Employee Guide](#)

[Family and Medical Leave Employer Guide](#)

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This information is general information and provided for educational purposes only. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.