

EMPLOYEE RIGHTS AND RESPONSIBILITIES **UNDER THE FAMILY AND MEDICAL LEAVE ACT**

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- 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.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12-month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

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Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

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.

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Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

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.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.

Special Provisions Concerning Instructional Employees

In addition to the general leave requirements summarized for the Family and Medical Leave Act, the Act contains special rules which govern the family and medical leave rights of instructional employees. Instructional employees are those employees whose principal function is to teach and instruct students in a class, small group or in an individual setting. This term includes teachers, athletic coaches, driving instructors and special education assistants such as signers for the hearing impaired. It does not include auxiliary personnel such as counselors, psychologists, curricular specialists, cafeteria workers, bus drivers or teacher aides who do not have as their principal job actual teaching or instruction. These special rules represent a Congressional effort to balance the educational needs of children with the family and medical leave needs of teachers.

The first special rule applies in cases where a teacher or other instructor needs to be out of the classroom intermittently or on a reduced schedule because of planned medical treatments for a serious health condition. If the teacher would be on leave for greater than 20 percent of the total number of working days during which the leave would extend, the Board may require the teacher to choose between (1) being temporarily transferred to a position outside of the classroom, which has equivalent pay and benefits and which better accommodates the teacher's need for recurring leave; or (2) taking continuous leave for the entire treatment period rather than a leave on an intermittent basis.

The second special rule applies in cases where a teacher or other instructor is scheduled to return from a family or medical leave near the end of a school term. A teacher may be required to extend the leave through the end of a term if he or she would otherwise have returned within the last two or three weeks of the term's end, depending on when the leave began and its duration. This special rule applies in three instances: (1) when a teacher begins a leave of at least 3 weeks duration more than 5 weeks before the end of the term, and the teacher is scheduled to return to school during the last 3 weeks of such term; (2) when a teacher begins a leave of at least 2 weeks duration within the 5-week period preceding the end of the term, and the teacher is scheduled to return to school during the last 2 weeks of such term; or (3) when a teacher begins a leave of at least 5 days duration within the 3-week period preceding the end of the term. In each of these instances, the Board of Education may require the teacher to extend his or her leave until the end of the semester in order to afford the teacher the needed leave without interrupting the educational process at a critical point in the school year. In such cases, the teacher possesses the same rights to reemployment and continuation of health insurance benefits as are provided under the Act's general provisions.

An instructional employee, when required by the District to extend his or her leave, shall not have the "extra" leave counted against the employees 12 work week entitlement unless the employee requests said additional leave be counted against the FMLA entitlement.