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Family and Medical Leave Act (FMLA)

Disclaimer: The American Cancer Society does not offer legal advice. This information is intended to provide general background in this area of the law.

The Family and Medical Leave Act (FMLA) of 1993 was designed to help employees balance their work and family responsibilities by allowing them to take reasonable unpaid leave for certain family and medical reasons. This is because workers should not have to choose between the job they need and the family members they love who may need their care.

The FMLA gives certain employees the right to take up to 12 weeks of unpaid, job-protected leave per year. It also requires that the employee's group health benefits be maintained during the leave. But good communication is key to getting the information you need so FMLA works for you if you need it.

FMLA applies to all public and private employers with 50 or more employees. These employers must provide an eligible employee with up to 12 weeks of unpaid leave each year for any of the following reasons:

- For the birth and care of the newborn child of an employee
- For placement with the employee of a child for adoption or foster care
- To care for an immediate family member (spouse, child, or parent, but not a parent-in-law) with a serious health condition
- When the employee is unable to work because of a serious health condition

Note that some states have family and medical leave laws with broader rights than FMLA. The US Department of Labor can help you get information about your state. (See Additional resources for their contact information.)

Special FMLA rules

There are [fact sheets](#)¹ available that explain special FMLA rules, such as those for:

- Military families
- Airlines and school employees
- Certification of a serious health condition

Who can take FMLA leave?

Employees are eligible for FMLA leave if **all** of the following apply:

- They've worked for their employer at least 12 months
- They've worked at least 1,250 hours over the past 12 months, or about 25 hours per week
- They work at a location where the company employs 50 or more employees within 75 miles

What does FMLA consider a serious health condition?

There's more than one way to define a serious health condition. It can mean any illness, injury, impairment, or physical or mental condition that involves any period of illness or treatment connected with inpatient care. This means at least one overnight stay in a hospital, hospice, or residential health-care facility, **and** any period of illness or treatment which involves incapacity afterward (the person cannot work, go to school, or perform regular activities).

But a serious health condition doesn't always mean a hospital stay. It may also be a condition that has ongoing treatment, which includes any length of incapacity due to **any** of the following:

- A health condition (including treatment and recovery from it) that lasts more than 3 days in a row, and any treatment after that. It includes any length of incapacity related to that same condition, and must also involve: **being treated 2 or more times by or under the supervision of a health care provider, or being treated once by a health care provider with an ongoing regimen of treatment.**
- A permanent or long-term condition for which treatment may not be effective (for

instance, a severe stroke, terminal cancer). Only supervision by a health care provider is required, not active treatment.

- Any absences for surgery or multiple treatments for a condition which would likely result in a period of incapacity if not treated (for example, chemotherapy or radiation treatments for cancer).

How far ahead of time must I request FMLA leave?

If possible, an employee must give an employer at least 30 days notice before FMLA leave is to start. This only applies to planned medical treatments and elective surgery. Knowing that far ahead is rarely possible when you have cancer or when you are taking care of a loved one with cancer. In the case of unexpected need due to serious illness, you must let your employer know as soon as possible, at least within 1 to 2 business days of when you first learn you'll need leave.

May I use FMLA to take off several short periods?

FMLA leave can be taken all at once or it can be taken in shorter blocks of time, such as 2 days a week, or 1 week a month, as long as it's taken for a single reason. FMLA can also be used to reduce the amount of time you work each day, for instance, so that you work a part-time schedule for a while. Keep in mind things like worker's compensation and maternity leave may count as FMLA or be counted against the 12 weeks' time.

You'll need a doctor's note to verify that the medical condition is serious and you are unable to work for these times, or that your family member's serious illness requires you to take this time for their care.

How is the FMLA 12-month period I can take off determined?

In selecting your 12-month period, the employer may choose to use:

- The calendar year, January through December
- Any fixed 12-month "leave year" such as their fiscal year, or a year required by state law
- A year that starts on the your anniversary date (counted from the date you were hired)
- The 12-month period counted forward from the date your first FMLA leave begins
- A "rolling" 12-month period measured backward from the date you last used FMLA

leave

Can I use my sick or vacation time for FMLA so that I can be paid?

The FMLA only requires unpaid leave. But it lets an employee choose to use accrued paid leave, such as vacation or sick leave, for some or all of the FMLA leave period. The law also lets the employer require the employee use paid leave for FMLA.

The employer must decide if an employee's use of paid leave counts as FMLA leave, based on information from the employee. When paid leave is used instead of unpaid FMLA leave, it may be counted against the 12 weeks of FMLA leave if the employee is notified that this is the case when the leave begins.

Who counts as immediate family?

For FMLA purposes, an employee's spouse, son or daughter under the age of 18, and parents are immediate family members. The term "parent" does not include a parent in-law. The terms "son" or "daughter" do not include those age 18 or over unless they are unable to take care of themselves because of mental or physical disability that limits one or more of the major life activities as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the [Americans With Disabilities Act \(ADA\)](#)². The term "parent" may include people who are acting as parents to the child, even though their legal relationship may not be formalized.

For military families in certain situations, the son, daughter, parent, or next of kin of an adult armed forces member can take FMLA to provide care for up to 26 work weeks.

If you are taking FMLA leave to take care of someone else, your employer may require that you prove your relationship with that person. You may also have to provide proof that they have a serious illness.

What is medical certification, and must I give my employer my medical records?

For any leave taken due to a serious health condition, the employer can request that you provide medical certification, which confirms that a serious health condition exists. This is usually a note or form signed and dated by a doctor that states all of the following:

- That you (or your family member) have a serious illness
- When the illness started
- Whether absences are expected to be continuous or in short blocks of time
- When you may be expected to return to work
- Whether further treatment will be needed after the absence

If your employer asks you for an update on your medical certification or for a second opinion, you might need to provide it to keep your FMLA rights (see below).

Can my employer make me come back to work before I run out of FMLA time?

Under some conditions, your employer may deny your continuing on FMLA leave if you don't provide the required medical certification (written information signed by your doctor). But the employer may not make you return to work early by offering you a light duty assignment.

Will I lose my job if I take FMLA leave?

Employers are not allowed to interfere with, restrain, or deny any right provided under this law. Most of the time, employees will not lose their jobs if they use FMLA leave. Here are some situations you may be wondering about.

- When you return to work, employers must give you the same job or an equivalent one. But, the employer doesn't have to allow certain highly paid, salaried ("key") employees to return to the same job after FMLA leave.
- Employers cannot use taking FMLA leave as a negative factor in employment decisions, such as hiring, promotions, or disciplinary actions. Also, FMLA leave cannot be counted under "no fault" attendance policies.
- Employers are also not required to continue FMLA benefits or give jobs back to employees who would have been laid off or otherwise would have lost their jobs if they had continued to work during the FMLA leave period as, for example, due to a general layoff.
- Employees who state that they don't intend to return to work lose their rights to FMLA leave and the job. Employees who are unable to return to work and have used up their 12 weeks of FMLA leave in the 12-month period (see *Who defines the FMLA 12-month period I can take off?*) no longer have FMLA protection of leave or of getting their jobs back.

- In some cases, if an employer has told an employee that they need a medical statement that they are fit for duty and can return to work, and the employee doesn't get that statement, the employer may not allow the employee to come back to the job. Or the employer may delay the employee's return until they get the statement.

Can my employer refuse to grant me FMLA leave?

If you are an eligible employee who has met FMLA's notice and certification requirements (written information from your doctor), and you have not already used up your FMLA leave for the 12-month period, you may not be denied FMLA leave. But any employee who lies or uses fraud to get FMLA leave from an employer loses their FMLA rights to get back their job or keep their health benefits.

Do I have to pay for my health insurance while I'm on FMLA leave?

Your employer is required to keep your group health insurance coverage while you're on FMLA leave if health insurance was provided before the leave was taken. It must be kept on the same terms as if you had continued to work. If you paid all or part of the health care premiums, arrangements will need to be made for you to continue to pay your share while on leave.

In some cases, the employer may make you repay the premiums it paid to keep your health coverage if you do not return to work after FMLA leave. Your employer cannot do this if your reason for not going back to work was your or your family member's serious health condition. You may need to check with the Wage and Hour Division of the Department of Labor (see Additional resources) if your employer asks you to pay back the premiums.

Note that your employer is not required to continue your other benefits during FMLA.

Are federal government employees covered by the FMLA?

Most employees of the United States government are covered by the FMLA or similar rules. Federal employee leave policies are administered by the US Office of Personnel Management (OPM). You might need to contact your agency's personnel or human resources office to find out exactly what applies to you.

I work for a company that employs fewer than 50 people. Is there any kind of leave my employer must offer?

Some states have their own laws or requirements for employers, and there may be other laws that apply to your situation. You can contact the Department of Labor (listed in Additional resources) to find someone who knows more about your state.

Where can I find out more about the FMLA?

To learn more about FMLA provisions and rules, read the FMLA Fact Sheet posted on the US Department of Labor website at www.dol.gov/whd/regs/compliance/whdfs28.pdf,³ or call the Wage and Hour Division's referral and information line at the Department of Labor at 1-866-4-USWAGE (1-866-487-9243). They can give you other helpful information and tell you how to reach the Department of Labor division office nearest you.

Hyperlinks

1. www.dol.gov/whd/fmla/fact_sheets.htm
2. www.cancer.org/treatment/finding-and-paying-for-treatment/health-insurance-laws/americans-with-disabilities-act.html
3. <http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>
4. www.dol.gov/agencies/whd
5. <http://www.cancerandcareers.org/>
6. <http://www.cancerlegalresources.org/>
7. www.dol.gov/agencies/whd
8. <http://www.cancerandcareers.org/>
9. <http://www.cancerlegalresources.org/>

Additional resources

Along with the American Cancer Society, other sources of information include:

United States Department of Labor, Wage and Hour Division Toll-free number: 1-866-487-9243 (1-866-4-USWAGE) TTY: 1-877-889-5627 Website: www.dol.gov/agencies/whd (www.dol.gov/agencies/whd)⁴

- This site includes subsections with pages that explain more about FMLA, including

how it impacts state law, employer policy variations, links to airline crew rules, specific changes for military families, and more.

Cancer and Careers Telephone: 646-929-8032 Website: www.cancerandcareers.org (<http://www.cancerandcareers.org/>)⁵

- A resource for working people with cancer and their employers; offers articles, news, charts, check lists, tips, and a community of experts, patients, and survivors.

Cancer Legal Resource Center (CLRC) Toll-free number: 1-866-843-2572 (1-866-THE-CLRC) TTY: 213-736-8310 Website: www.cancerlegalresources.org (<http://www.cancerlegalresources.org/>)⁶

- A non-profit program that gives free and confidential information and resources on cancer-related legal issues to cancer survivors, their families, friends, employers, health care professionals, and others coping with cancer.

**Inclusion on this list does not imply endorsement by the American Cancer Society*

References

US Department of Labor. *Family Medical Leave Act*. Accessed at <https://www.dol.gov/whd/fmla/> on May 13, 2019.

US Department of Labor. *FMLA frequently asked questions*. Accessed at <https://www.dol.gov/whd/fmla/fmla-faqs.htm> on May 13, 2019.

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