

Understanding the Family Medical Leave Act



After eight years of Congressional debate, thirteen votes, and two vetoes by George Bush, the Family and Medical Leave Act (FMLA) was signed by President Bill Clinton in 1993. U.S. Department of Labor regulations were issued in 1995.

The FMLA covers:

- Private employers with 50 or more employees
- Public employers, including federal, state, city, and local agencies and schools

You are eligible for FMLA leave if you:

- Work for a covered employer
- Have worked for this employer for at least 12 months
- Have worked at least 1,250 hours during the 12 months immediately preceding the start of your leave, and
- Are employed at a worksite with at least 50 workers at the site or within 75 miles of the site

You may take up to 12 workweeks of job-protected FMLA leave in a 12-month period:

- For a serious health condition that makes you unable to perform your job (medical leave)
- To care for a seriously ill child, spouse, or parent (family leave)
- For childbirth or to care for a newborn child up to age one (childbirth and newborn care leave)
- For the placement of a child with you for adoption or foster care (adoption and foster placement leave)

Serious health conditions that qualify for FMLA protection include injuries and illnesses requiring medical treatment which incapacitate you or a family member for more than three consecutive calendar days as well as incapacities due to pregnancy or a serious chronic disorder. The FMLA does not apply to colds, ear infections, or stomach upsets.

You may take medical or family leave on a continuous basis or in intervals of as short as a day or part of a day. Leave may not be denied because of production needs, a busy schedule, or because your employer considers you too important to take time off.

A reduced work schedule must be granted if you cannot work full-time because of your own health condition or that of a family member. For example: If your doctor restricts you to 20 hours a week following surgery, your employer must place you on this schedule for up to 24 weeks (at half-time, the equivalent of 12 full weeks).

Group health plan benefits must be maintained during your FMLA leave as if you were working. If your employer has been paying 100% of your health insurance premium, it must contribute at this rate during your absence. Otherwise, you must continue paying your share.

Your employer may require a certification from a health care provider to verify that leave is necessary because of your own or your family member's serious health condition. In some medical leave cases, a fitness-for-duty report can be requested when you are ready to return to work.

FMLA leave does not have to be paid. However, if you have accrued paid vacation, annual, or personal leave, you may use it during your leave. Sick pay and family leave benefits may also be available depending on your employer's plan. If it would violate the union contract, an employer may not require a worker to use vacation or other paid leave during an FMLA absence. Otherwise, substitution of paid leave is allowed. Paid leave generally counts toward seniority and pensions; unpaid leave generally does not.

Your employer may not use FMLA absences as a basis for imposing a warning, suspension, discharge or other discipline, issuing a negative evaluation, denying advancement, making an adverse assignment, or taking other negative action against you. Absences for FMLA purposes may not be counted in any manner under an attendance control policy.

You must provide 30 days advance notice if your need for leave is foreseeable. If your need for leave is unexpected (e.g., an absence due to a medical emergency), you must notify your employer of the medical facts within two working days. Although it is important to accurately describe the condition involved, you do not have to cite the FMLA specifically.

When your leave is completed you must be restored to your former position or its equivalent. An equivalent position is one which has identical pay, benefits, and working



conditions; requires substantially equivalent skills, efforts, and responsibilities; and involves the same or substantially similar duties. Reinstatement is not required if a layoff or reorganization unrelated to your leave eliminates your position during your absence and you do not have transfer or bumping rights to another position.

Your employer must post notices explaining the FMLA, place information about the act in employee handbooks and benefit materials, designate your absence as FMLA leave, and explain your specific rights and obligations.

Under most union contracts, FMLA violations can be raised in the grievance system. Discipline based on FMLA absences violates just cause.

The FMLA is enforced by the U.S. Department of Labor (DOL) Wage and Hour Division. In the event of a violation, you or your union may file a complaint in person, by letter, or by telephone. The DOL cannot order an employer to obey the act, but it can sue or threaten to sue on your behalf.

You can file an FMLA lawsuit in federal or state court seeking reinstatement, back pay, and other relief. If you win, you can be awarded double damages and attorneys' fees. The statute of limitations is two years unless the violation was willful, in which case the period is three years. Collective lawsuits are allowed.

You may have additional privileges under your union contract or the law of your state. Contract provisions or state laws that provide greater leave benefits than the FMLA are binding. Provisions that diminish FMLA entitlements are not.

An FMLA violation occurs if your employer:

- Refuses to allow you time off for FMLA purposes
- Fails to pay for health insurance during an FMLA leave
- Orders you to report for light duty during an FMLA leave
- Fails to restore you to your former position or to an equivalent position after an FMLA leave
- Uses coercion, threats, or intimidation to discourage you from taking FMLA leave
- Discharges, disciplines, or demotes you because of FMLA absences
- Gives you a poor evaluation or denies you a promotion because of FMLA absences
- Punishes you for complaining about FMLA violations, telling others about the FMLA, or taking legal action to enforce the FMLA
- Denies you any rights provided by the FMLA or the DOL's implementing regulations