

# FACT SHEET

## FMLA Rules and Clarifications

### REASONS THAT WORKERS MAY TAKE LEAVE UNDER THE FAMILY AND MEDICAL LEAVE ACT

Brought to you by **Salus Group**

The Family and Medical Leave Act (FMLA) provides job-protected leave from work for family and medical reasons. This fact sheet explains reasons that workers may take FMLA leave.

#### ABOUT THE FMLA

The FMLA provides eligible employees of covered employers with job-protected leave for qualifying family and medical reasons and requires continuation of their group health benefits under the same conditions as if they had not taken leave. FMLA leave may be unpaid or used at the same time as employer-provided paid leave. Employees must be restored to the same or virtually identical position when they return to work after FMLA leave.

**Eligible employees:** Employees are eligible if they:

- Work for a covered employer for at least 12 months,
- Have at least 1,250 hours of service with the employer during the 12 months before their FMLA leave starts, and
- Work at a location where the employer has at least 50 employees within 75 miles.

**Covered employers:** Covered employers under the FMLA include:

- Private-sector employers who employ 50 or more employees in 20 or more workweeks in either the current calendar year or previous calendar year,
- Public agencies, including Federal, State, and local government employers, regardless of the number of employees, and
- Local educational agencies, including public school boards, public elementary and secondary schools, and private elementary and secondary schools, regardless of the number of employees.

The FMLA protects leave for:



**SALUS GROUP**

## FMLA Rules and Clarifications

- The birth of a child or placement of a child with the employee for adoption or foster care,
- The care for a child, spouse, or parent who has a serious health condition,
- A serious health condition that makes the employee unable to work, and
- Reasons related to a family member's service in the military, including
  - Qualifying exigency leave – leave for certain reasons related to a family member's foreign deployment, and
  - Military caregiver leave – leave when a family member is a current servicemember or recent veteran with a serious injury or illness.

For more information about the FMLA generally, see [Fact Sheet #28](#).

### REASONS EMPLOYEES MAY TAKE FMLA LEAVE

Eligible employees have the right to take up to 12 workweeks of FMLA leave in a 12-month period for any of the reasons listed below.

**Birth and bonding.** Parents may use FMLA leave when their child is born and to bond with their child during the 12-month period beginning on the date of birth. All parents, regardless of gender, have the same right to take FMLA leave for the birth of a child and bonding.

*Examples:*

- Dolores' spouse gives birth to a child in March. Dolores takes ten weeks of FMLA leave beginning in June to bond with the newborn while traveling to visit family.
- Ian takes 12 weeks of FMLA leave for bonding after a surrogate gives birth to his child.

**Placement of a child for adoption or foster care.** Employees may use FMLA leave when a child is first placed with them for adoption or foster care and to bond with their newly placed child. An employee's entitlement to leave for adoption or foster care ends at the end of the 12-month period beginning on the date of the placement. Employees may also use FMLA leave before the actual placement or adoption of a child in situations where, for example, the employee may be required to:

- Attend counseling sessions,
- Appear in court,
- Consult with the attorney or doctor(s) representing the birth parent,
- Submit to a physical examination, or
- Travel to another country to complete an adoption.

*Example:*

- Jun takes FMLA leave to travel to the child's birth country, consult with attorneys and appear in court. After the adoption, he takes additional available FMLA leave to bond with the child.

For more information about taking leave from work for birth, placement and bonding with a child under the FMLA, see [Fact Sheet #28Q](#).

**Serious health condition of the employee.** A serious health condition is one that makes the employee unable to perform the functions of their job. An employee is unable to perform the functions of their job

## FMLA Rules and Clarifications

where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position, including when an employee must be absent from work to receive medical treatment for a serious health condition.

*Examples:*

- Rajinder takes FMLA leave for migraine headaches which prevent him from working.
- Trinh takes FMLA leave for an ongoing chronic illness which makes her unable to work from time to time. Her condition requires periodic visits to a nurse under the direct supervision of a health care provider.

**Care for a family member with a serious health condition.** Eligible employees can take FMLA leave to care for a child, spouse, or parent who has a serious health condition. Caring for a family member under the FMLA includes assistance with basic medical, hygienic, nutritional, safety, transportation needs, physical care, or psychological comfort.

An FMLA serious health condition generally involves a period of incapacity. Incapacity means an individual is unable to work, attend school, or perform other regular daily activities because of the serious health condition, due to treatment of it, or for recovery from the condition. For more information about the FMLA definition of a serious health condition, see [Fact Sheet #28P](#).

*Examples:*

- Hira's son has a chronic illness that is a serious health condition. Hira takes FMLA leave once per month to transport her 14-year-old son to his specialist's office for treatments, provide psychological comfort and reassurance, and keep him at home during recovery from the treatment's effects.
- Shaye takes FMLA leave to care for her spouse during inpatient surgery for and recovery from gastric bypass.

**Qualifying exigency.** Qualifying exigencies are situations caused by the military deployment of an employee's spouse, child, or parent to a foreign country. An employee may take FMLA leave for qualifying exigencies including making alternative child care arrangements for a child of the military member when the deployment of the military member requires a change in the existing child care arrangement, attending certain military ceremonies and briefings, taking leave to spend time with a military member on Rest and Recuperation leave during deployment, making financial or legal arrangements to address the military member's absence, or certain activities related to care of a parent of the military member while the military member is on covered active duty.

For more information about qualifying exigencies under the FMLA, see [Fact Sheet #28M\(c\)](#).

*Example:*

- Lucero takes FMLA leave to enroll his granddaughter in his local school district during his son's deployment to a foreign country for a year. Lucero will also take FMLA leave when his son visits during the son's two weeks of Rest and Recuperation leave.

**Military caregiver leave.** Additionally, an eligible employee may also take up to 26 workweeks of FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness, if the employee is the spouse, child, parent, or next of kin of the servicemember.

Eligible family members of both current servicemembers and certain veterans are entitled to military caregiver leave. For more information about taking military caregiver leave to care for a current

## FMLA Rules and Clarifications

servicemember, see [Fact Sheet #28M\(a\)](#). For more information about taking military caregiver leave to care for a veteran, see [Fact Sheet #28M\(b\)](#).

*Examples:*

- Lupe takes FMLA leave to fly overseas and meet her daughter, a current member of the armed forces, after she is seriously injured on active duty. Lupe uses FMLA leave to provide psychological support during her daughter's inpatient care.
- After Lupe's daughter is placed in outpatient status, Lupe uses FMLA leave to transport her daughter to extensive physical therapy treatments and to counseling for a related mental health condition.
- Chen's father is a veteran who suffers from seizures related to injuries he received before his honorable discharge from the armed forces 18 months ago. Chen uses FMLA leave to transport his father to treatment.

### QUALIFYING FAMILY RELATIONSHIPS

**Spouse** means a husband or wife as defined or recognized in the state where the individual was married and includes a same-sex or common law marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have been entered into in at least one state.

**Parent** means a biological, adoptive, step or foster parent, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law."

**Child** means a biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. For more information, see [Fact Sheet #28K](#). For military family leave, the child of an eligible employee may be of any age.

**In Loco Parentis** includes those in the role of a parent with day-to-day responsibilities to care for or financially support a child. Employees who have no biological or legal relationship with a child may stand in loco parentis to the child and be entitled to FMLA leave. For more information, see [Fact Sheet #28B](#).

Additionally, an eligible employee is entitled to FMLA leave to care for a person who stood in loco parentis to that employee when the employee was a child, even if the person does not have a biological or legal relationship to the employee. For more information, see [Fact Sheet #28C](#).

**Next of kin** of a current servicemember is the nearest blood relative, other than the current servicemember's spouse, parent, or child.

### ADDITIONAL INFORMATION

#### Intermittent Leave

Employees have the right to 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. Intermittent or reduced schedule leave is also available for military family leave reasons. 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.

#### Certification

## FMLA Rules and Clarifications

The employee may be required by the employer to submit a certification from a health care provider to support the need for FMLA leave to care for a covered family member with a serious health condition or for the employee's own serious health condition. For more information about medical certification of a serious health condition, see [Fact Sheet #28G](#). An employee may also be required to submit a certification to use military family leave under the FMLA. The employer may not request a certification for leave to bond with a newborn child or a child placed for adoption or foster care.

### Spouses Who Work for the Same Employer

When spouses work for the same employer and each spouse is eligible to take FMLA leave, the FMLA limits the combined amount of leave they may take for some, but not all, FMLA-qualifying leave reasons. For more information, see [Fact Sheet #28L](#).

## ADDITIONAL PROTECTIONS

### State Laws

Some States have their own family and medical leave laws. Nothing in the FMLA prevents employees from receiving protections under other laws. Workers have the right to benefit from all the laws that apply.

### Protection from Retaliation

The FMLA is a federal worker protection law. Employers are prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right. Any violations of the FMLA or the FMLA regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA. For more information about [prohibited employer retaliation](#) under the FMLA, see [Fact Sheet #77B](#) and [Field Assistance Bulletin 2022-2](#).

### Enforcement

The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court. State employees may be subject to certain limitations in pursuit of direct lawsuits regarding leave for their own serious health conditions. Most Federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress.

## WHERE TO OBTAIN ADDITIONAL INFORMATION

For additional information, visit our Wage and Hour Division Website: <http://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

Source: [U.S. Department of Labor, Wage and Hours Division](#)