



FAMILY MEDICAL LEAVE ACT (FMLA)

Whether you are unable to work because of your own serious health condition, or because you need to care for your parent, spouse, or child with a serious health condition, the FMLA provides unpaid, job-protected leave for qualified employees. Leave may be taken all at once, or may be taken intermittently as the medical condition requires.

This guide provides a simple overview of how the FMLA works. **At the end of this guide is supplemental information on how FMLA rights extend to nontraditional families.**



PROVISION	REQUIREMENTS
COVERED EMPLOYERS	<p>Employers subject to the FMLA include:</p> <ul style="list-style-type: none"> • Private-sector employers with 50 or more employees in at least 20 weeks of the current or preceding year; • Public agencies, including state, local and federal employers; and • Local education agencies, including elementary and secondary schools (public and private).
ELIGIBLE EMPLOYEES	<p>To be eligible for FMLA leave, an employee must:</p> <ul style="list-style-type: none"> • Have worked for the covered employer for at least 12 months (which need not be consecutive); • Have at least 1,250 hours of service for the employer during the 12-month period immediately before the leave; and • Work at a location within 75 miles of which the employer has 50 or more employees.
TYPE OF LEAVE	<p>Eligible employees may take unpaid leave under the FMLA for the following reasons:</p> <ul style="list-style-type: none"> • The birth of the employee's newborn child; • The placement of a child with the employee for adoption or foster care; • A serious health condition that makes the employee unable to perform the functions of his or her job; • To care for the employee's spouse, child or parent who has a serious health condition; • Any qualifying exigency arising out of the fact that the employee's spouse, child or parent is a military member on covered active duty (or call to covered active duty status); or • To care for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.

LEAVE AMOUNT

In general, employees may take up to 12 weeks of FMLA leave during a 12-month period.

Employees may take up to 26 weeks of leave during a single 12-month period to care for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.

Spouses who work for the same employer are limited to a combined total of 12 weeks of leave to care for a parent with a serious health condition or following the birth, adoption or placement of a child. Spouses who work for the same employer are limited to a combined total of 26 weeks of leave to care for a covered service member with a serious injury or illness if each spouse is a parent, spouse, son or daughter, or next of kin of the servicemember.

**SERIOUS HEALTH
CONDITION**

An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Serious health conditions may include:

- An overnight stay in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with the overnight stay;
- A period of incapacity of more than three consecutive full calendar days that involves a certain level of treatment from a health care provider;
- A period of incapacity due to (or treatment for) a chronic serious health condition;
- A period of incapacity which is permanent or long-term due to a condition for which treatment may be ineffective;
- Absences to receive multiple treatments (including recovery periods) for a restorative surgery or for a condition that if left untreated likely would result in incapacity of more than three days; or
- Any incapacity related to pregnancy or for prenatal care.

Incapacity means inability to work, or inability to attend school, or perform other regular daily activities due to the serious health condition.

**COVERED
SERVICE
MEMBER**

A "covered service member" is:

- A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or is otherwise on the temporary disability retired list for a serious injury or illness; or
- A veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

**SERIOUS INJURY
OR ILLNESS**

In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, a "serious injury or illness" is an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.

For a veteran of the Armed Forces, including a veteran of the National Guard or Reserves, a "serious injury or illness" is an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) and that manifested itself either before or after the member became a veteran and is:

- A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the member unable to perform the duties of his or her office, grade, rank or rating;
- A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave;
- A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
- An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

**QUALIFYING
EXIGENCY**

Eligible employees may take FMLA leave for one or more of the following qualifying exigencies:

- Short-notice deployment (leave can be used for a period of seven days beginning on the date the military member is notified of a call to active duty);
- Military events and related activities, such as attendance at official ceremonies, informational briefings, family support or assistance programs, etc.;
- Childcare and school activities;
- Financial and legal arrangements;
- Counseling (leave can be used to attend counseling if the need arises from the active duty or call to active duty of the military member);
- Rest and recuperation (leave can be used for up to 15 calendar days, beginning on the date the military member commences each instance of rest and recuperation leave);
- Post-deployment activities, such as attendance at arrival ceremonies, reintegration briefings and events or other official ceremonies or programs for a period of 90 days following the termination of active duty status, or to address issues that arise from the death of the military member;
- Parental care (when the parent of the military member is incapable of self-care and is the member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the military member when the member was under 18 years of age); and
- Additional activities, such as to address other events that the employer and employee agree qualify as an exigency.

**HEALTH CARE
PROVIDER**

The term "health care provider" includes:

- Doctors of medicine or osteopathy authorized to practice medicine or surgery;
- Podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under state law and consistent with the scope of their authorization;
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA;
- Any provider so recognized by the employer or its group health plan's benefits manager; and
- Any health provider listed above who practices and is authorized to practice in a country other than the United States.

**INTERMITTENT
LEAVE**

Employees are entitled to take FMLA leave on an intermittent or reduced schedule basis:

- When there is a medical need for this type of leave for an employee's own serious health condition;
- To care for a spouse, parent or child with a serious health condition; or
- To care for a covered service member with a serious injury or illness.

An employee is also entitled to use intermittent or reduced schedule leave for qualifying exigencies.

An employee is not entitled to take intermittent leave for the birth and care of a newborn child or for the placement with the employee of a child for adoption or foster care unless the employer agrees to the arrangement.

**SUBSTITUTION OF
PAID LEAVE**

An eligible employee may choose, or an employer may require the employee to substitute, accrued paid leave for unpaid FMLA leave. Substitute means that the accrued paid leave will run concurrently with the unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

**REINSTATEMENT
RIGHTS**

Following FMLA leave, an employee must be restored to the same position or one equivalent to it in all benefits and other terms and conditions of employment.

**KEY EMPLOYEE
EXCEPTION TO
REINSTATEMENT
RIGHTS**

There is a limited exception to the FMLA's reinstatement requirement for a salaried employee if he or she is among the highest paid 10 percent of all employees within 75 miles of the employee's worksite, restoration would lead to grievous economic harm to the employer and other conditions are met.

**MAINTENANCE
OF HEALTH
BENEFITS
DURING LEAVE**

Health insurance must be continued under the same conditions as prior to leave. If applicable, arrangements must be made for employees to pay their share of health insurance premiums while on leave. In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

LEAVE REQUESTS

An employee must give at least 30 days' advance notice of the need to take FMLA leave when he or she knows about the need for the leave in advance and it is possible and practical to do so.

For planned medical treatment, the employee must consult with his or her employer and try to schedule the treatment at a time that minimizes the disruption to company operations.

When the need for leave is unexpected, the employee must provide notice as soon as possible and practical.

EMPLOYER
NOTICES

Employers must provide the following FMLA notices:

- General Notice—Every employer covered by the FMLA must post a notice which explains the FMLA in a conspicuous place where employees work.
- Eligibility Notice—When an employee requests FMLA leave, or when an employer learns that an employee's leave may be covered by the FMLA, the employer must notify the employee of his or her eligibility for FMLA leave. Absent extenuating circumstances, the eligibility notice should be provided within five business days.
- Rights and Responsibilities Notice—Along with the Eligibility Notice, an employer must notify an employee of the specific expectations and obligations surrounding FMLA leave. This notice is often included as part of the Eligibility Notice.
- Designation Notice—Employers must designate leave as FMLA leave and must notify the employee of this designation. Absent extenuating circumstances, the designation should take place within five business days of an employer's learning that the leave is being taken for an FMLA purpose.

The DOL has provided model notices for employers to use, which are available on the DOL's [website](#).

CERTIFICATION
REQUIREMENT

An employer may require an employee to submit a certification to support the employee's need for FMLA leave when the leave request is for:

- The employee's serious health condition;
- The serious health condition of the employee's parent, spouse or child; or
- Military family leave (qualifying exigency leave or leave to care for a covered service member with a serious illness or injury).

An employer may also, in certain circumstances, require a fitness-for-duty certification at the end of the employee's leave as a condition to returning the employee to the job.

STATUTE

29 U.S.C. § 2601. More information regarding the FMLA is available on the DOL's [website](#).

FMLA RIGHTS FOR NONTRADITIONAL FAMILIES

The federal Family and Medical Leave Act (FMLA) gives eligible employees the right to take unpaid, job protected leave each year in certain situations, including:

- For the birth, adoption or foster care placement of a child;
- To care for a newborn or newly placed child; or
- To care for a family member with a serious health condition.

The Department of Labor (DOL) has issued guidance on how these FMLA rights extend to nontraditional families.



Employers should review their FMLA policies and actual practices to ensure they are in compliance with the leave rights for nontraditional families.

LINKS AND RESOURCES

- [DOL Interpretation Letter](#) about the in loco parentis standard
- [The Employer's Guide to the FMLA](#), a publication of the DOL's Wage and Hour Division
- DOL Fact Sheets [#28B](#) and [#28C](#) about the in loco parentis standard for parents and children

FMLA RIGHTS—LEAVE FOR SAME-SEX SPOUSES

The FMLA entitles an eligible employee to take job-protected unpaid leave for a spouse in the following situations:

- To care for a spouse with a serious health condition;
- To address qualifying exigencies related to a spouse's covered military service; or
- To care for a spouse who is a covered service member with a serious injury or illness (military caregiver leave).

Under the FMLA, a "spouse" means a husband or wife as defined or recognized in the state where the individual was married, including in a common law marriage or same-sex 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.

The FMLA's definition of spouse does not include domestic partners, which means that an employee is not entitled to take FMLA leave to care for a domestic partner with a serious health condition.

Eligible employees in same-sex marriages are also entitled to take FMLA leave to care for:

- Their stepchild (the child of the employee's same-sex spouse) even if the in loco parentis requirement of providing day-to-day care or financial support for the child is not met; or
- A stepparent who is the same-sex spouse of the employee's parent, regardless of whether the stepparent ever stood in loco parentis to the employee.

FMLA RIGHTS—LEAVE FOR CHILDREN

The FMLA entitles an eligible employee to take up to 12 weeks of job-protected unpaid leave for the birth or placement of a son or daughter, to bond with a newborn or newly placed son or daughter, or to care for a son or daughter with a serious health condition.



DEFINITION OF SON OR DAUGHTER

The FMLA defines a “son or daughter” as a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis. According to the DOL, this broad definition is intended to reflect the reality that many children in the United States live with a parent other than their biological father and mother.

IN LOCO PARENTIS STANDARD

In loco parentis refers to a relationship in which a person puts himself or herself in the situation of a parent by assuming and discharging the obligations of a parent to a child. The *in loco parentis* relationship exists when an individual intends to take on the role of a parent to a child who is under 18 or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Although no legal or biological relationship is necessary, grandparents or other relatives, such as siblings, may stand *in loco parentis* to a child under the FMLA as long as the relative satisfies the *in loco parentis* requirements.

Under the FMLA, persons who are *in loco parentis* include those with **day-to-day responsibilities to care for or financially support a child**. Courts have indicated some factors to be considered in determining *in loco parentis* status include:

- The age of the child;
- The degree to which the child is dependent on the person;
- The amount of financial support, if any, provided; and
- The extent to which duties commonly associated with parenthood are exercised.

The fact that a child has a biological parent in the home, or has both a mother and a father, does not prevent an employee from standing *in loco parentis* to that child. The FMLA does not restrict the number of parents a child may have. The specific facts of each situation will determine whether an employee stands *in loco parentis* to a child.

Under the FMLA, an employee who actually has day-to-day responsibility for caring for a child may be entitled to leave even if the employee does not have a biological or legal relationship to the child.

EXAMPLES

Examples of situations in which FMLA leave may be based on an *in loco parentis* relationship include:

- A grandfather may take leave to care for a grandchild whom he has assumed ongoing responsibility for raising if the child has a serious health condition.
- An aunt who assumes responsibility for caring for a child after the death of the child's parents may take leave to care for the child if the child has a serious health condition.
- A person who will co-parent a same-sex partner's biological child may take leave for the birth of the child and for bonding.

FMLA RIGHTS—LEAVE FOR PARENTS

The FMLA entitles an eligible employee to take up to 12 weeks of job-protected unpaid leave to care for a spouse, son, daughter or parent with a serious health condition.

DEFINITION OF PARENT

For FMLA leave purposes, a “parent” is defined broadly as the biological, adoptive, step or foster parent of an employee or an individual who stood *in loco parentis* to the employee when the employee was a son or daughter. Parent does not include the employee’s parents-in-law.

IN LOCO PARENTIS

An eligible employee is entitled to take FMLA leave to care for a person who provided such care to the employee when the employee was a child. If the individual stood *in loco parentis* to the employee when the employee was a child, the employee may be entitled to take FMLA leave even if he or she also has a biological, step, foster or other parent, provided that the *in loco parentis* relationship existed between the employee and the individual when the employee met the FMLA’s definition of a son or daughter. Although no legal or biological relationship is necessary,

grandparents or other relatives, such as siblings, may stand *in loco parentis* to a child under the FMLA as long as the relative satisfies the *in loco parentis* requirements.

EXAMPLES

An eligible employee may take leave to care for any individual who stood *in loco parentis* to the employee when the employee was a child regardless of any biological relationship of the two people. For example:

- An employee may take leave to care for his aunt with a serious health condition, if the aunt stood *in loco parentis* to him when he was a son or daughter.
- An employee may take leave to care for her grandmother with a serious health condition if the grandmother stood *in loco parentis* to her when she was a son or daughter.
- A son or daughter of a same-sex partnership may take leave to care for the non-adoptive or non-biological partner who stood *in loco parentis*.

Unless an *in loco parentis* relationship existed when the employee was a son or daughter, an employee is not entitled to take FMLA leave to care for a grandparent or an aunt with a serious health condition.

DOCUMENTING THE FAMILY RELATIONSHIP



An employer may, but is not required to, request that an employee provide reasonable documentation of the qualifying family relationship.

An employee may satisfy this requirement by providing either a simple statement asserting that the requisite family relationship exists, or other documentation, such as a child’s birth certificate or a court document. It is the employee’s choice whether to provide a simple statement or other documentation. Employers may not use a request for confirmation of a family relationship in a manner that interferes with an employee’s exercise or attempt to exercise his or her FMLA rights.