

## **Basic Provisions/Requirements**

The FMLA entitles eligible employees of covered employers to take job-protected, unpaid leave for specified family and medical reasons. Eligible employees are entitled to:

- Twelve workweeks of leave in any 12-month period for:
  - Birth and care of the employee's child, within one year of birth
  - Placement with the employee of a child for adoption or foster care, within one year of the placement
  - Care of an immediate family member (spouse, child, parent) who has a serious health condition
  - For the employee's own serious health condition that makes the employee unable to perform the essential functions of his or her job
  - Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or has been notified of an impending call or order to active duty in the U.S. National Guard or Reserves in support of a contingency operation
- Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member (Military Caregiver Leave)

If an employee was receiving group health benefits when leave began, an employer must maintain them at the same level and in the same manner during periods of FMLA leave as if the employee had continued to work. An employee may elect (or the employer may require) the substitution of any accrued paid leave (vacation, sick, personal, etc.) for periods of unpaid FMLA leave. Substitution means the accrued paid leave runs concurrently with the FMLA leave period. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

Employees may take FMLA leave intermittently or on a reduced leave schedule (that is, in blocks of time less than the full amount of the entitlement) when medically necessary or when the leave is due to a qualifying exigency. Taking intermittent leave for the placement for adoption or foster care of a child is subject to the employer's approval. Intermittent leave taken for the birth of a child is also subject to the employer's approval. However, employer approval is not required for intermittent or reduced schedule leave that is medically necessary due to pregnancy, a serious health condition, or the serious illness or injury of a covered service member. Employer approval also is not required when intermittent or reduced schedule leave is necessary due to a qualifying exigency.

When the need for leave is foreseeable, an employee must give the employer at least 30 days notice, or as much notice as is practicable. When the leave is not foreseeable, the employee must provide notice as soon as practicable in the particular circumstances. An employee must comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. In requesting leave an employee must provide sufficient information for the employer to reasonably determine whether the FMLA may apply to the leave request. When the employee seeks leave for a qualifying reason for which the employer has

previously provided the employee FMLA-protected leave, the employee must specifically reference the qualifying reason for the leave or the need for FMLA leave.

An employer may require that a serious health condition, or a serious illness or injury of a covered service member, be supported by a certification from the employee's health care provider, the employee's family member's health care provider, or an authorized health care provider of the covered service member. An employer may also require periodic reports of the employee's status and intent to return to work during the leave. Additionally, under certain conditions, an employer may require that an employee who takes FMLA leave for his or her own serious health condition submit a certification from the employee's health care provider that the employee is able to return to work, a "fitness-for-duty" certification.

An employee who returns from FMLA leave is entitled to be restored to the same or an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. The employee may, but is not entitled to, accrue additional benefits during periods of unpaid FMLA leave. However, the employer must return him or her to employment with the same benefits at the same levels as existed when leave began.

## **Employee Rights**

The FMLA provides that eligible employees of covered employers have a right to take job-protected leave for qualifying events without interference or restraint from their employers. An eligible employee has the right to have group health insurance maintained during a period of FMLA leave under the same terms and conditions as if the employee had not taken leave and has the right to be restored to the same or an equivalent position at the end of the FMLA leave.

The FMLA also gives employees the right to file a complaint with the Wage and Hour Division, file a private lawsuit under the Act (or cause a complaint or lawsuit to be filed), and testify or cooperate in other ways with an investigation or lawsuit without being fired or discriminated against in any other manner.

Employees and other persons may file complaints with a [local Wage and Hour Division office](http://www.dol.gov/whd/america2.htm) (<http://www.dol.gov/whd/america2.htm>). The Department of Labor may file suit to ensure compliance and recover damages if a complaint cannot be resolved administratively. Most employees also have private rights of action, without involvement of the Department of Labor, to correct violations and recover damages through the courts.

Failure on the part of employers to follow the FMLA notice requirements, may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights.

## **Recordkeeping, Reporting, Notices and Posters**

## Notices and Posters

**Poster.** All covered employers are required to display and keep on display a poster explaining the provisions of the FMLA and telling employees how to file a complaint with the Wage and Hour Division of violations of the Act. The poster must be displayed prominently where employees and applicants for employment can see it. The poster and all the text must be large enough to be easily read and contain fully legible text. Covered employers must display the poster even if no employees are eligible for FMLA leave.

Where the employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer is required to provide the notice in a language in which the employees are literate. To meet the posting requirements, employers may use the prototype poster prepared by the Department or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice. Electronic posting is permitted as long as it meets all of the posting requirements.

The Department's FMLA prototype poster is available in [English](http://www.dol.gov/whd/regs/compliance/posters/fmla.htm)(<http://www.dol.gov/whd/regs/compliance/posters/fmla.htm>) and [Spanish](http://www.dol.gov/whd/regs/compliance/posters/fmlaspan.htm)(<http://www.dol.gov/whd/regs/compliance/posters/fmlaspan.htm>).

**Employer notices.** Covered employers are required to post a notice for employees outlining the basic provisions of the FMLA. Employers are also required to provide notice of an employee's eligibility and rights and responsibilities under the FMLA and to designate qualifying leave as FMLA and provide notice of that designation, including the amount of leave that will count against the employee's FMLA entitlement to the employee.

**General notice.** If a covered employer has any eligible employees, it must also provide general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning benefits or leave rights if such written materials exist. If such written materials do not exist, the employer may accomplish this by distributing a copy of the general notice to each new employee upon hire. In either case, distribution may be accomplished electronically.

An employer may duplicate the text of the Poster to meet this general notice requirement, or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice. Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate.

**Eligibility notice.** When an employee requests FMLA leave or the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances. The eligibility notice must state whether the employee is eligible for FMLA leave, and if the employee is not eligible, must state at least one reason why the employee is not eligible.

**Rights and Responsibilities notice.** Each time the eligibility notice is provided, the employer is also required to provide a written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. If leave has already begun, the employer should mail the notice to the employee's address of record. The employer must translate this notice in any situation where it is obligated to translate the general

notice into a language in which employees are literate. The written notice must also include information on:

- Leave designated and counted against the employee's annual FMLA leave entitlement if it qualifies as FMLA leave
- The applicable 12-month period for the FMLA entitlement
- Requirements for the employee to furnish certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status, and the consequences of failing to do so
- Employee's right to substitute paid leave, whether the employer will require the substitution of paid leave, the conditions related to any substitution, and the employee's entitlement to take unpaid FMLA leave if the employee does not meet the conditions for paid leave
- Requirement for the employee to make any premium payments to maintain health benefits, the arrangements for making such payments, and the possible consequences of the failure to make such payments on a timely basis
- Employee's status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial
- Employee's rights to maintenance of benefits during the FMLA leave and to restoration to the same or an equivalent job upon return from leave
- Employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave

The specific notice may include other information such as whether the employer will require periodic reports of the employee's status and intent to return to work, but is not required to do so. The notice of rights and responsibilities may be accompanied by any required certification form.

If the specific information provided by the notice changes, the employer must provide written notice referencing the prior notice and setting forth any of the information that has changed. This notice of changes should be provided within five business days of receipt of the employee's first notice of need for leave subsequent to any change.

**Designation notice.** The employer is responsible in all circumstances for designating leave as FMLA-qualifying and giving notice of the designation to the employee. When the employer has enough information to determine whether the leave is being taken for an FMLA-qualifying reason, such as after receiving a certification, the employer must notify the employee whether the leave is designated and will count as FMLA leave within five business days, absent extenuating circumstances. Only one designation notice for each FMLA-qualifying reason per applicable 12-month leave year is required. The employer must also notify the employee if it determines that the leave is not FMLA-qualifying and will not be designated as FMLA leave.

If the employer is requiring the employee to submit a fitness-for-duty certification to be restored to his or her job, the employer must provide notice of the requirement with the designation notice. If the employer will require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's position, the employer must indicate so in the designation notice and include a list of the essential functions. If the employer

handbook or other written documents describing the employer's leave policies clearly provide that a fitness-for-duty certification will be required in specific circumstances, the employer is not required to provide written notice of this requirement, but must provide at least oral notice no later than at the time of the designation notice.

The designation notice must be in writing. If the leave is not designated as FMLA leave because it does not meet the requirements for FMLA protection, the notice that the leave is not designated FMLA may be in the form of a simple written statement. If the information provided by the employer to the employee in the designation notice changes, the employer must provide written notice of the change within five business days of receipt of the employee's first notice of need for leave subsequent to the change.

Additionally, the employer must notify the employee of the amount of leave counted against his or her FMLA entitlement. If known at the time the leave is designated, the employer must notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA entitlement. If it is not possible to provide the hours, days, or weeks that will be counted against the entitlement (such as in the case of unforeseeable, intermittent leave), then the employer must provide notice of the amount of leave counted against the FMLA leave entitlement at the request of the employee, but no more often than once in a 30-day period and only if leave was taken in that period. Notice of the amount of leave taken may be oral, but if oral, must be confirmed in writing, generally by no later than the following payday; such written notice may be in any form, including a pay stub notation.

## **Recordkeeping**

Employers are required to make, keep, and preserve records pertaining to their obligations under FMLA in accordance with the recordkeeping requirements of the Fair Labor Standards Act (FLSA). The FMLA does not require that employers keep their records in any particular order or form, or revise their computerized payroll or personnel records systems to comply.

Employers must keep the records for no less than three years and make them available for inspection, copying, and transcription by Department of Labor representatives upon request. Records kept in computer form must be made available for transcription and copying.

Covered employers who have eligible employees must maintain records that must disclose the following:

- Basic payroll and identifying information (including name, address, and occupation)
- Rate or basis of pay
- Terms of compensation
- Daily and weekly hours worked per pay period
- Additions to or deductions from wages
- Total compensation paid

In addition, covered employers who have eligible employees must also maintain records detailing:

- Dates of FMLA leave taken by FMLA eligible employees. Leave must be designated in records as FMLA leave, and may not include leave required under state law or an employer plan which is not also covered by FMLA.
- Hours of FMLA leave taken by FMLA eligible employees, if leave is taken in increments of less than one full day
- Copies of employee notices of leave furnished to the employer
- Copies of all written notices given to employees as required under FMLA
- Documents describing employee benefits or employer paid and unpaid leave policies and practices
- Premium payments of employee benefits
- Records of disputes between the employer and the employee regarding FMLA

Records and documents relating to medical certifications, re-certifications or medical histories of employees or employees' family members, created for purposes of FMLA, are required to be maintained as confidential medical records in separate files/records from the usual personnel files. If the Americans with Disabilities Act (ADA) applies, then these records must comply with the ADA confidentiality requirements. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations. First aid and safety personnel may be informed, where appropriate, if the employee's physical or medical condition might require emergency treatment. Government officials investigating compliance must be provided access to relevant information.

### **Reporting**

There are no reporting requirements under the FMLA.

### **Penalties/Sanctions**

Covered employers are required to post a notice for employees outlining the basic provisions of the FMLA and are subject to a \$110 civil money penalty if they willfully fail to post such a notice.

### **Relation to State, Local, and Other Federal Laws**

A number of states have family leave statutes. Nothing in the FMLA supersedes a provision of state law that is more beneficial to the employee, and employers must comply with the more beneficial provision. Under some circumstances, an employee with a disability may have rights under the Americans with Disabilities Act.