

FMLA:

SIMPLIFIED

The Family and Medical Leave Act (“FMLA”) of 1993 is a cornerstone of employment law. FMLA provides eligible employees of a covered employer, unpaid, job-protected leave to care for themselves or family members for a prescribed period. FMLA is designed to benefit both employees and their employers.

What are FMLA benefits?

- **Job-protected, unpaid leave** (or an appropriate substitute paid leave) for a total of 12 work weeks in any 12-month period
- Maintenance of **health benefits** while on leave as if the employee had continued to work
- A right to return to the **same position or an equivalent position** with equivalent pay, benefits, and working conditions

How long is FMLA leave?

An eligible employee is entitled to

12 weeks

of FMLA leave, taken **intermittently or continuously**.

“Serious Health Condition”

(i.e. incapacitation) Illness, injury, impairment or a physical or mental condition that involves inpatient care in a medical facility or continuing treatment by a health care provider

Who is eligible for FMLA leave?

Leave is generally available when the following three conditions are met:

1. The employer employs **50 or more employees** for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year
2. The employee has been employed for **12 months prior** to the requested leave, been employed for at least **1,250 hours** of service during the previous 12-month period **AND**
3. The employee works at a site with **at least 50 employees within 75 miles**.

What counts as an FMLA qualifying event?

- Birth or care of a **newborn child**
- Placement of a child for **foster care or adoption** & care for the same
- A **Serious Health Condition** of the employee’s family (defined as the employee’s spouse, child or parent)
- A **Serious Health Condition** of the employee rendering them unable to perform one or more essential functions of the job

What must an employee do?

- Provide **advance notice** of leave (if foreseeable) to the employer
- Submit **certification** to substantiate the leave
- Provide a **certification of fitness** to return to work if the absence was caused by an employee's serious health condition

What may an employer do?

- **Delay restoring** the employee back to their position without receipt of **certification of fitness** to return to work
- Move the employee to a **same-pay position** to better accommodate intermittent leave
- Establish the **time frame** to calculate leave; this may be on a calendar year, anniversary year, or moving date

Where can I find FMLA forms?

The **Department of Labor's** ("DOL") website houses **FMLA** forms. Though not required to secure FMLA leave, it is standard practice for an employer to request completed forms. **Documenting FMLA leave protects both the employer and employee:** employers establish a record of leave and employees learn about leave aspects.

Three Commonly Used FMLA Forms:

WH-381: Notice of Rights and Responsibilities

Provided by an employer to an employee within 5 days of the employee's request for FMLA leave.

WH-382: FMLA Designation Notice

A employee record verifying the employer's designation of requested leave as FMLA eligible.

WH-380-E: Certification of Health Care Provider for Employee

Provided by an employer to an employee to secure certification by a health care provider of a Serious Health Condition.

**This document is intended for general education only and not as legal advice.
Please contact your counsel on the applicability of FMLA to each request States may enhance federal guidance.*