

Key Elements of the Federal Family and Medical Leave Act

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Overview

The federal [Family and Medical Leave Act](#) (FMLA) applies to companies with 50 or more employees. (It also applies to all public agencies, and all public and private elementary and secondary schools.) These employers must provide an eligible employee with up to **12 weeks** of **unpaid** leave **during any 12-month period** for any of the following reasons:

- Birth and care of the newborn child of an employee;
- Placement of a child for adoption or foster care with the employee;
- To care for an immediate family member (spouse, child, or parent) with a serious health condition;
- To take medical leave when the employee is unable to work because of a serious health condition; or
- A qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."

Covered employers must also provide up to 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

"In Loco Parentis"

- An employee with **no legal or biological relationship** to a child may be entitled to FMLA leave to care for a newborn or newly placed child, or to care for a child with a serious health condition. To be entitled to FMLA, the employee must provide **either** day-to-day care **or** financial support, if the employee intends to assume the responsibilities of a parent with regard to a child. In all cases, whether an employee stands in loco parentis to a child will depend on the particular facts. [Click here](#) for more information.
- Similarly, an eligible employee is entitled to take FMLA leave to care for a person who stood in loco parentis to the employee when the employee was a child. The fact that the employee also has a biological, adoptive, step, or foster parent **does not preclude** a determination that another individual stood in loco parentis to the employee when the employee was a child. The specific facts of each situation will determine whether an individual stood in loco parentis to the employee within the meaning of the FMLA. For more information, [click here](#).

Covered Employers

The FMLA applies to:

- Private-sector employers who employed **50 or more employees** in 20 or more workweeks in the current or preceding calendar year, including joint employers and successors of covered employers;
- All public agencies, including state, local and federal employers, regardless of the number of employees; and
- Local education agencies (schools), regardless of the number of employees.

Note: Private employers with fewer than 50 employees are not covered by the FMLA, but may be covered by state family and medical leave laws.

Eligible Employees

Not everyone who works for a covered employer is eligible. Employees are eligible for leave if they:

- Have worked for their employer for at least 12 months, which need not be consecutive (however, a period of employment prior to a break in service of more than 7 years generally cannot be counted);
- Have worked at least 1,250 hours over the past 12 months; and
- Work at a location where the company employs **50 or more employees** within 75 miles.

Due to having non-traditional work schedules, **airline flight crew members and flight attendants** are subject to special eligibility requirements under the FMLA. Please [click here](#) for more information.

Key Employees

In circumstances where restoration to employment will cause "substantial and grievous economic injury" to its operations, an employer may refuse to reinstate certain highly-paid, salaried "key" employees. In order to do so, the employer must notify the employee in writing of his/her status as a "key" employee (as [defined by FMLA](#)), and the reasons for denying job restoration, and provide the employee a reasonable opportunity to return to work after so notifying the employee. See "[FMLA Leave for Key Employees](#)" for more information.

Employer Notice Requirements

Covered employers must post a [notice](#) approved by the Secretary of Labor explaining rights and responsibilities under the FMLA. Additionally, employers must either include this general notice in employee handbooks or other written guidance to employees concerning benefits, or must distribute a copy of the notice to each new employee upon hiring.

Absent extenuating circumstances, an employer must notify an employee of whether the employee is eligible to take FMLA leave (and, if not, at least one reason why the employee is ineligible) within five business days of the employee requesting leave or the employer learning that an employee's leave may be for an FMLA-qualifying reason. Other notice requirements are addressed below and in the [Mandatory and Optional FMLA Notices](#) section.

Employee Notice Requirements

Eligible employees seeking to use FMLA leave may be required to provide:

- 30-day advance notice of the need to take FMLA leave when the need is foreseeable;

- Notice "as soon as practicable" when the need to take FMLA leave is not foreseeable ("as soon as practicable" generally means at least verbal notice to the employer within one or two business days of learning of the need to take FMLA leave);
- Sufficient information for the employer to understand that the employee needs leave for FMLA-qualifying reasons (the employee need not mention FMLA for his or her first leave request to meet this requirement, but must provide enough information so that the employer is aware it may be covered by the FMLA); and
- Timely notice (generally within two business days of returning to work) that leave was taken for an FMLA-qualifying reason if the employer was not made aware that the employee was absent for FMLA reasons and the employee wants the leave counted as FMLA leave.

An employee must follow the employer's usual notice or call-in procedures unless unable to do so (for example, if he or she is receiving emergency medical care).

Intermittent Leave and Reduced Leave Schedule

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. **Intermittent leave** is FMLA leave taken in separate blocks of time due to a single qualifying reason. A **reduced leave schedule** is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

Intermittent/reduced schedule leave may be taken:

- When medically necessary to care for a seriously ill family member, or because of the employee's serious health condition.
- Whenever medically necessary to care for a covered servicemember with a serious injury or illness.
- For a qualifying exigency arising out of the active duty status or call to active duty of a covered military member.

Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child **only with the employer's approval**.

Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave. Employers may account for FMLA leave in the shortest period of time that their payroll systems use, provided it is one hour or less.

Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider. In such cases, the employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodates recurring periods of leave better than the employee's regular job.

Maintenance of Health Benefits

A covered employer is required to maintain group health insurance coverage, including family coverage, for an employee on FMLA leave on the same terms as if the employee continued to work. Where appropriate, arrangements will need to be made for employees taking unpaid FMLA leave to pay their share of health insurance premiums.

Military Family Leave Entitlements

Military Caregiver Leave

A covered employer must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current servicemember 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:

- Incurred in the line of duty on active duty; or
- Caused by the aggravation in the line of duty of a preexisting condition

up to a total of **26 workweeks** of unpaid leave during a “single 12-month period” to care for the servicemember. This provision generally applies to the families of members of both the active duty and reserve components of the Armed Forces.

Qualifying Exigency Leave

A covered employer must grant an eligible employee up to 12 weeks of FMLA leave during any 12-month period for any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is on (or has been notified of an impending call to) “covered active duty” in the Armed Forces.

- “Covered active duty” for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country.
- “Covered active duty” for members of the reserve components of the Armed Forces (members of the U.S. National Guard and Reserves) means duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation.

FMLA qualifying exigency leave may be used to deal with financial, legal, or child care issues related to the family member’s call-up or deployment, as well as to attend certain military events, to spend time with the family member during rest and recuperation leave, and for other exigencies.

Note: The U.S. Department of Labor has issued [final rules](#) to implement previous amendments to the FMLA related to military family leave. Key provisions of the final rules include providing families of eligible veterans with the same job-protected FMLA leave currently available to families of military service members; increasing the amount of time an employee may take for qualifying exigency leave related to a military member’s rest and recuperation leave; and creating an additional qualifying exigency leave category for parental care. [Click here](#) for more information about the final rules.

Notices and Forms

A critical component of a covered employer’s FMLA responsibilities is to notify employees of pertinent FMLA information at certain times. The information includes employee rights and responsibilities under the FMLA, employer policies, and other information to help employees understand FMLA leave. They include:

- [WH-380-E Certification of Health Care Provider for Employee’s Serious Health Condition](#) (PDF)
- [WH-380-F Certification of Health Care Provider for Family Member’s Serious Health Condition](#) (PDF)
- [WH-381 Notice of Eligibility and Rights & Responsibilities](#) (PDF)
- [WH-382 Designation Notice](#) (PDF)
- [WH-384 Certification of Qualifying Exigency For Military Family Leave](#) (PDF)
- [WH-385 Certification for Serious Injury or Illness of Covered Servicemember -- for Military Family Leave](#) (PDF)
- [WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave](#) (PDF)

Additional Information

- [Family and Medical Leave Act Compliance Assistance from the Department of Labor](#)
- [Fact Sheet on the FMLA](#)
- [Family and Medical Leave Act Regulations, By Subpart](#)
- [FMLA 2010 Military Amendments](#)
- [The Family and Medical Leave Act Poster](#)
- [The Family and Medical Leave Act Poster — in Spanish](#)
- [The Employee's Guide to the Family and Medical Leave Act](#)
- [Information and Guidance on the Final Rule Implementing Statutory Amendments to FMLA for Military Families](#)