



FMLA Fact Sheet

What employers are covered? Those with 50 or more employees in 20 or more workweeks in the current or preceding calendar year

What employees are eligible? An individual who has been employed for at least 12 months with his or her current employer and has worked at least 1250 hours during the previous 12 months and worked at a location where at least 50 employees are employed at the location or within 75 miles of the location.

There is now also a mandatory note stating that special hours of service eligibility requirements apply to airline flight crew employees.

What's provided to employees?

- Up to 12 weeks of unpaid leave in a 12-month period for the serious health condition of the employee or a family member, for the birth or adoption of a child, or because a child, parent or spouse of the employee has been called to active duty in the military
- Up to 26 weeks of unpaid leave during a 12-month period to care for a spouse, child or parent who is an injured member of the military (a "covered servicemember" now also includes veterans discharged in the last five years).
- The leave can be intermittent

What are examples of a serious health condition?

- Pregnancy or prenatal care
- Chronic, long-term or permanent medical conditions
- Any condition that causes at least 3 consecutive days of absence combined with 2 or more treatments by a health care provider
- Any condition that causes a period of incapacity of any length combined with inpatient care
- A "serious injury or illness" for current servicemembers and veterans "are distinct from the FMLA definition of 'serious health condition.'"

Medical Certification Options

An employer may require that the need for leave for a serious health condition of the employee or the employee's immediate family member be supported by a certification issued by a health care provider. The employer must allow the employee at least **15 calendar days** to obtain the medical certification.

What are an employer's responsibilities?

- To restore an employee returning from leave to the same or a substantially equivalent position to the one the employee held prior to taking leave
- Must inform employee of FMLA rights
- Grant intermittent leave where requested

What are an employee's responsibilities?

- Provide at least 30 days of notice where the need for leave is foreseeable
- Provide as much notice as possible where the need for leave is not foreseeable

Can an employee substitute paid leave?

Yes — an employer can require or an employee can voluntarily elect to use paid leave benefits during FMLA leave

"Key" Employee Exception

Under limited 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), the reasons for denying job restoration, and provide the employee a reasonable opportunity to return to work after so notifying the employee.

What are the potential penalties?

- Back pay
- Reinstatement or promotion
- Benefits
- Attorneys' fees

Top FMLA tips

- Notify employees of their FMLA rights in employee handbook
- Provide written documentation to employees regarding an employee's obligations for leave and consequences for failing to satisfy those obligations
- Provide employees with the medical certification required for leave and, if necessary, the certification required to return to work following leave, ASAP
- Post the required FMLA poster
- FMLA leave can't count towards no-fault attendance policies