

## **Appendix C: Family and Medical Leave Act (FMLA)**

*The American Cancer Society does not offer legal advice. This information is intended to provide general background in this area of the law.*

### **What is the FMLA?**

The Family and Medical Leave Act (FMLA) of 1993 was designed to help employees balance their work and family responsibilities by allowing them to take reasonable unpaid leave for certain family and medical reasons. The FMLA gives certain employees the right to take up to 12 weeks of unpaid, job-protected leave per year. It also requires that the employee's group health benefits be maintained during the leave.

To whom does the FMLA apply?

FMLA applies to all public and private employers with 50 or more employees. These employers must provide an eligible employee with up to 12 weeks of unpaid leave each year for any of the following reasons:

- For the birth and care of the newborn child of an employee
- For placement with the employee of a child for adoption or foster care
- To care for an immediate family member (spouse, child, or parent, but not a parent-in-law) with a serious health condition
- When the employee is unable to work because of a serious health condition

Note that some states have family and medical leave laws with broader rights than FMLA. The US Department of Labor can help you get information about your state. (See the section "To learn more" for their contact information <http://www.dol.gov/whd/fmla/employeeguide.pdf>..)

Special FMLA rules

### **Military families**

In 2008, the FMLA was expanded to include military family leave entitlements. FMLA can be used by military families for these purposes:

- The spouse, son, daughter, parent, or next of kin of a member of the Armed Forces can take up to 26 work weeks of leave to care for the service member with a serious injury or illness.
- There may be urgent family situations (called qualifying exigencies) that arise due to active military duty, which may qualify family members to take up to 12 weeks of FMLA ([www.dol.gov/whd/fmla/fmlaAmended.htm](http://www.dol.gov/whd/fmla/fmlaAmended.htm) ).

Spouses that work for the same employer are limited to a combined total of 26 work weeks in a single 12-month period if the leave is to care for a covered service member. There are other differences and limitations in FMLA for military families. You can get more details from the Department of Labor (see “To learn more”) or visit [dol.gov/whd/regs/compliance/whdfs28.pdf](http://dol.gov/whd/regs/compliance/whdfs28.pdf) to read their fact sheet online.

### **Airlines and school employees**

Airlines have different rules about eligibility, and there are some limits on reduced schedules and taking FMLA leave near the end of a school term.

*The rest of the information here is focused only on FMLA for serious health conditions such as cancer.*

### **Who can take FMLA leave?**

Employees are eligible for FMLA leave if **all** of the following apply:

- They’ve worked for their employer at least 12 months
- They’ve worked at least 1,250 hours over the past 12 months, or about 25 hours per week.
- They work at a location where the company employs 50 or more employees within 75 miles.

Military reservists returning from active duty are entitled to the rights and benefits they would have had if they had been continuously employed.

For example, George returned to his regular job on June 1 after a one-year tour of active duty. On July 6, he learned that his child has cancer and will need intensive treatment. He can request FMLA to care for his sick child right away, even though his hourly job requirement was not fulfilled. For more details, [visit](#)

[dol.gov/vets/media/fmlarights.pdf](https://www.dol.gov/vets/media/fmlarights.pdf) to see the memo from the Solicitor of Labor, or contact the Department of Labor (see the “To learn more” section).

### **What if I left my job and then returned to it? What counts toward the 1,250 hours that I need to qualify for FMLA?**

First, the 12 months of service do not have to be continuous or consecutive; all of the time you’ve worked for the employer is counted. But you still must have worked 1,250 hours in the past 12 months to qualify (unless you are a military reservist returning from active duty). The 1,250 hours include only those hours actually worked for the employer or spent in active military duty. Paid leave time, previous FMLA leave, and other absences from work don’t count toward the 1,250 hours.

Your individual record of hours worked is used to decide whether 1,250 hours had been worked in the 12 months before you start FMLA leave. The following may help you figure out whether the 1,250-hour requirement has been met:

- Roughly 25 hours worked in each of the 52 weeks of the past year, **or**
- More than 104 hours worked in each of the 12 months of the past year, **or**
- About 40 hours worked per week for more than 31 weeks (over 7 months) of the past year.

If you’re a military reservist returning to your job after active military duty, you’ll be treated as if you had been continuously employed during your active duty period. See the section called “Who can take FMLA leave?”

### **What counts as a serious health condition?**

There’s more than one way to define a serious health condition. It can mean any illness, injury, impairment, or physical or mental condition that involves any period of illness or treatment connected with inpatient care. This means at least one overnight stay in a hospital, hospice, or residential health care facility, **and** any period of illness or treatment that involves incapacity afterward (the person cannot work, go to school, or perform regular activities).

But a serious health condition doesn’t always mean a hospital stay. It may also be a condition that has ongoing treatment, which includes any length of incapacity due to **any** of the following:

- A health condition (including treatment and recovery from it) that lasts more than three days in a row, and any treatment after that. It includes any length of incapacity related to that same condition, and must also involve:
  - Being treated two or more times by or under the supervision of a health care provider, or
  - Being treated once by a health care provider with an ongoing regimen of treatment.
- A permanent or long-term condition for which treatment may not be effective (for instance, a severe stroke, terminal cancer). Only supervision by a health care provider is required, not active treatment.
- Any absences for surgery or multiple treatments for a condition that would likely result in a period of incapacity if not treated (for example, chemotherapy or radiation treatments for cancer).

### **How far ahead of time must I request FMLA leave?**

If possible, an employee must give an employer at least 30 days notice before FMLA leave is to start. This only applies to planned medical treatments and elective surgery. Knowing that far ahead is rarely possible when you have cancer or when you are taking care of a loved one with cancer. In the case of unexpected need due to serious illness, you must let your employer know as soon as possible, at least within one to two business days of when you first learn you'll need leave.

### **May I use FMLA to take off several short periods?**

FMLA leave can be taken all at once or it can be taken in shorter blocks of time, such as 2 days a week, or 1 week a month, as long as it's taken for a single reason. FMLA can also be used to reduce the amount of time you work each day, for instance, so that you work a part-time schedule for a while. You'll need a doctor's note to verify that the medical condition is serious and you are unable to work for these times, or that your family member's serious illness requires you to take this time for their care. See the section "What is medical certification and must I give my give my employer my medical records?"

### **Does time I took off for illness or pregnancy count against my FMLA time if I need to take off again for a new illness in the same 12 months?**

Time taken off work because of any illness, pregnancy, or complications of pregnancy can be counted against the 12 weeks of family and medical leave in a 12-month period. The employer must let the employee know that the pregnancy leave was counted as FMLA.

### **Does workers' compensation leave count against my FMLA leave?**

It can. FMLA leave and workers' compensation leave can run together. This means that time off for a serious work-related injury or illness can be counted as FMLA leave. The employer must notify the employee when the leave time starts that the workers' compensation leave will be counted as FMLA leave.

### **Who defines the 12-month period during which I can take off up to 12 weeks under the FMLA?**

In selecting your 12-month period, the employer may choose to use:

- The calendar year, January through December
- Any fixed 12-month "leave year" such as their fiscal year, or a year required by state law
- A year that starts on the your anniversary date (counted from the date you were hired)
- The 12-month period counted forward from the date your first FMLA leave begins
- A "rolling" 12-month period measured backward from the date you last used FMLA leave

### **Can I use my sick or vacation time for FMLA so that I can be paid?**

The FMLA only requires unpaid leave. But it lets an employee choose to use accrued paid leave, such as vacation or sick leave, for some or all of the FMLA leave period. The law also lets the employer require the employee use paid leave for FMLA.

The employer must decide if an employee's use of paid leave counts as FMLA leave, based on information from the employee. When paid leave is used instead of unpaid FMLA leave, it may be counted against the 12 weeks of FMLA leave if the employee is notified that this is the case when the leave begins.

### **Who counts as immediate family?**

For FMLA purposes, an employee's spouse, son or daughter under the age of 18, and parents are immediate family members. The term "parent" does not include a parent in-law. The terms "son" or "daughter" do not include those age 18 or over unless they are unable to take care of themselves because of mental or physical disability that limits one or more of the major life activities as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans With Disabilities Act (ADA). The term "parent" may include people who are acting as parents to the child, even though their legal relationship may not be formalized.

For military families in certain situations, the son, daughter, parent, or next of kin of an adult armed forces member can take FMLA to provide care for up to 26 work weeks. See the section called "Special rules for military families" under "What is the FMLA?"

If you are taking FMLA leave to take care of someone else, your employer may require that you prove your relationship with that person. You may also have to provide proof that they have a serious illness.

### **What is medical certification, and must I give my employer my medical records?**

No, you do not have to provide medical records to use FMLA. But for any leave taken due to a serious health condition, the employer can request that you provide *medical certification*, which confirms that a serious health condition exists. This is usually a note or form signed and dated by a doctor that states all of the following:

- That you (or your family member) have a serious illness
- When the illness started
- Whether absences are expected to be continuous or in short blocks of time
- When you may be expected to return to work

- Whether further treatment will be needed after the absence

If your employer asks you for an update on your medical certification or for a second opinion, you might need to provide it to keep your FMLA rights (see below).

### **Can my employer ask questions about my leave while I'm absent?**

Yes, your employer can ask questions about your leave while you are out, but they can only ask you. Your employer may ask you questions to be sure the leave you are taking qualifies for FMLA. The employer may also make you give them reports on your status and ask whether you intend to return to work after leave.

If the employer wants a second opinion about your condition, you may have to get another medical certification (a letter or form signed by a doctor that states that a serious illness is involved). The employer would have to pay for this second opinion.

The employer may also have a doctor representing them contact your doctor or health care provider, but they need your permission to do so. They can contact your doctor only to clarify what is said in your medical certification or to be sure that it was actually written by them. They may *not* try to get more information about your health condition or that of a family member.

### **Can my employer make me come back to work before I run out of FMLA time?**

Under some conditions, your employer may deny your continuing on FMLA leave if you don't provide the required medical certification (written information signed by your doctor). But the employer may not make you return to work early by offering you a light duty assignment.

### **Will I lose my job if I take FMLA leave?**

Most of the time, employees will not lose their jobs if they use FMLA leave. When you return to work, employers must give you the same job or an equivalent one. Employers are not allowed to interfere with, restrain, or deny any right provided under this law. Employers cannot use taking FMLA leave as a negative factor in employment decisions, such as hiring, promotions, or disciplinary actions. Also, FMLA leave cannot be counted under "no fault" attendance policies. (A "no-fault" policy might have a fixed maximum number of allowed absences and

automatically discipline or fire a person who reaches that number, regardless of the reason for the absences.)

The employer doesn't have to allow certain highly paid, salaried ("key") employees to return to the same job after FMLA leave. But the employer still must allow the FMLA leave and maintain the employee's benefits. The key employee can ask to be restored to their former job after the leave is over. It's important to know that the employer may refuse to let the employee go back to their previous job if doing so causes "substantial and grievous" financial injury to the company.

Employers are also not required to continue FMLA benefits or give jobs back to employees who would have been laid off or otherwise would have lost their jobs if they had continued to work during the FMLA leave period as, for example, due to a general layoff.

Employees who state that they don't intend to return to work lose their rights to FMLA leave and the job. Employees who are unable to return to work and have used up their 12 weeks of FMLA leave in the 12-month period (see section, "Who defines the 12-month period during which I can take off up to 12 weeks under FMLA?") no longer have FMLA protections of leave or of getting their jobs back.

In some cases, if an employer has told an employee that they need a medical statement that they are fit for duty and can return to work, and the employee doesn't get that statement, the employer may not allow the employee to come back to the job. Or the employer may delay the employee's return until they get the statement.

### **Can my employer refuse to grant me FMLA leave?**

If you are an eligible employee who has met FMLA's notice and certification requirements (written information from your doctor), and you have not already used up your FMLA leave for the 12-month period, you may not be denied FMLA leave. But any employee who lies or uses fraud to get FMLA leave from an employer loses their FMLA rights to get back their job or keep their health benefits.



## **Do I have to pay for my health insurance while I'm on FMLA leave?**

Your employer is required to keep your group health insurance coverage while you're on FMLA leave if health insurance was provided before the leave was taken. It must be kept on the same terms as if you had continued to work. If you paid all or part of the health care premiums, arrangements will need to be made for you to continue to pay your share while on leave.

In some cases, the employer may make you repay the premiums it paid to keep your health coverage if you do not return to work after FMLA leave. Your employer cannot do this if your reason for not going back to work was your or your family member's serious health condition. You may need to check with the Wage and Hour Division of the Department of Labor if your employer asks that you pay back the premiums. (See the "To learn more" section.)

Note that your employer is not required to continue your other benefits like Life insurance, accrual of seniority, etc. during FMLA. Employers must reinstate your benefits on return to work.

## **Are federal government employees covered by the FMLA?**

Most employees of the United States government are covered by the FMLA or similar rules. Federal employee leave policies are administered by the US Office of Personnel Management (OPM). You might need to contact your agency's personnel or human resources office to find out exactly what applies to you.

## **I work for a company that employs fewer than 50 people. Is there any kind of leave my employer must offer?**

Some states have their own laws or requirements for employers, and there may be other laws that apply to your situation. You can contact the Department of Labor (listed in the "To learn more" section) to find someone who knows more about your state.

## **Where can I find out more about the FMLA?**

To learn more about FMLA provisions and rules, read the FMLA Fact Sheet posted on the US Department of Labor website at [www.dol.gov/whd/regs/compliance/whdfs28.pdf](http://www.dol.gov/whd/regs/compliance/whdfs28.pdf), or call the Wage and Hour Division's referral and information line at the Department of Labor at 1-866-4-

USWAGE (1-866-487-9243). They can give you other helpful information and tell you how to reach the Department of Labor division office nearest you.

## **To learn more**

More information from your American Cancer Society

Here is more information you might find helpful. You can find the following information on our website at [cancer.org](http://cancer.org) or order free copies from our toll-free number, 1-800-227-2345 [www.cancer.org](http://www.cancer.org).

## **Job protections for people with cancer or other disability**

[\*Americans With Disabilities Act: Information for People Facing Cancer\*](#) (also in Spanish)

## **Caregiving**

[\*What It Takes to Be a Caregiver\*](#)

## **Insurance and finances**

[\*Health Insurance and Financial Assistance for the Cancer Patient\*](#) (also in Spanish)

[\*How to Find a Financial Professional Sensitive to Cancer Issues: Financial Guidance for Cancer Survivors and Their Families\*](#)

[\*In Treatment: Financial Guidance for Cancer Survivors and Their Families\*](#) (also in Spanish)

[\*Advanced Illness: Financial Guidance for Cancer Survivors and Their Families\*](#)

[\*Children Diagnosed With Cancer: Financial and Insurance Issues\*](#)

[\*What Is COBRA?\*](#) (also in Spanish)

[\*What Is HIPAA?\*](#) (also in Spanish)

National organizations and websites\*

Along with the American Cancer Society, other sources of information include:

## **United States Department of Labor, Wage and Hour Division**

Toll-free number: 1-866-487-9243 (1-866-4-USWAGE)

TTY: 1-877-889-5627

Website: [dol.gov/whd/fmla/](http://dol.gov/whd/fmla/)

Visit [dol.gov/dol/topic/benefits-leave/fmla.htm](http://dol.gov/dol/topic/benefits-leave/fmla.htm) for a direct link for citizens/employees. For more detail, visit: [www.dol.gov/whd/regs/compliance/whdfs28.htm](http://www.dol.gov/whd/regs/compliance/whdfs28.htm). This site includes subsections with pages that explain more about FMLA, including how it impacts state law, employer policy variations, links to airline crew rules, specific changes for military families, and more.

## **Cancer and Careers**

Telephone: 646-929-8032

Website: [cancerandcareers.org](http://cancerandcareers.org)

A resource for working people with cancer and their employers, including articles, news, charts, check lists, tips, and a community of experts, patients, and survivors

## **Cancer Legal Resource Center (CLRC)**

Toll-free number: 1-866-843-2572 (1-866-THE-CLRC)

TTY: 213-736-8310

Website: [cancerlegalresourcecenter.org](http://cancerlegalresourcecenter.org)

A non-profit program that gives free and confidential information and resources on cancer-related legal issues to cancer survivors, their families, friends, employers, health care professionals, and others coping with cancer

*\*Inclusion on this list does not imply endorsement by the American Cancer Society.*

The American Cancer Society is available 24 hours a day, seven days a week to provide – among other things – the latest cancer information, emotional support, or free lodging when patients need treatment away from home. Visit [cancer.org](http://cancer.org), or call us at **1-800-227-2345**.

## References

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United States Office of Personnel Management. Family-Friendly Leave Policies for Federal Employees. Accessed at [www.opm.gov/oca/leave/html/levbro.htm](http://www.opm.gov/oca/leave/html/levbro.htm) on November 14, 2014.

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