

FMLA

Family and Medical Leave Act

Provided by: Clarke & Company Benefits, LLC

Federal Family and Medical Leave Laws

PROVISION	REQUIREMENTS
Covered Employers	<p>The FMLA applies to:</p> <ul style="list-style-type: none">• Private employers with 50 or more employees in at least 20 weeks of the current or preceding calendar year;• Public agencies, including state, local and federal employers; and• Local education agencies (covered under special provisions).
Eligible Employees	<p>An employee is eligible for FMLA leave if he or she:</p> <ul style="list-style-type: none">• Worked for the employer for at least 12 months (which need not be consecutive);• Has worked at least 1,250 hours for the employer during the 12-month period immediately before the leave; and• Is employed at a location where the employer has at least 50 employees within a 75-mile radius.
Type of Leave	<p>An eligible employee is entitled to unpaid leave for any of the following:</p> <ul style="list-style-type: none">• Birth and care of the employee's newborn child;• Placement of a child with the employee for adoption or foster care;• Care for the employee's own parent, child or spouse with a serious health condition (see below for a definition of "serious health condition");• The employee is unable to work because of his or her own serious health condition;• Any qualifying exigency arising out of the fact that the employee's spouse, child or parent is a military member on covered active duty or has been notified of an impending call or order to covered active duty status (see below for a description of "qualifying exigency"); or• Care for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness (see below for definitions of "serious injury or



	illness” and “covered service member”).
Leave Amount	<p>Generally, employers must provide eligible employees with up to 12 weeks of FMLA leave during a 12-month period. However:</p> <ul style="list-style-type: none"> • If leave is taken to care for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness, employers must provide up to 26 weeks of FMLA leave during a single 12-month period. • Leave for birth, adoption, foster care, care for a parent with a serious health condition or care for a covered service member with a serious injury or illness must be shared by spouses working for the same employer.
Serious Health Condition	<p>A “serious health condition” is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. “Inpatient care” means an overnight stay in a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with the inpatient care. A serious health condition involving continuing treatment by a health care provider includes:</p> <ul style="list-style-type: none"> • Any period of incapacity of more than three consecutive full calendar days and involving a certain level of treatment; • Any incapacity related to pregnancy or for prenatal care; • Any period of incapacity or treatment for an incapacity due to a chronic serious health condition; • Any period of incapacity which is permanent or long-term due to a condition for which treatment may be ineffective; or • Any period of absence to receive multiple treatments (including recovery periods) for a restorative surgery after an accident or other injury or for a condition that, if left untreated, likely would result in incapacity of more than three consecutive full calendar days. <p>For FMLA purposes, “incapacity” means the inability to work, attend school or perform other regular daily activities due to a serious health condition.</p>
Covered Service Member	<p>A “covered service member” is:</p> <ul style="list-style-type: none"> • A current member of the Armed Forces, including a member of the National Guard or Reserves, 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; or • A veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.
Serious Injury or Illness	<p>In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, a “serious injury or illness” is an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) that may</p>

	<p>render the member medically unfit to perform the duties of the member’s office, grade, rank or rating.</p> <p>For a veteran of the Armed Forces, including a veteran of the National Guard or Reserves, a “serious injury or illness” is an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) and that manifested itself either before or after the member became a veteran and is:</p> <ul style="list-style-type: none"> • A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the member unable to perform the duties of his or her office, grade, rank or rating; • A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; • A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or • An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
<p>Qualifying Exigency</p>	<p>Eligible employees may take FMLA leave for one or more of the following qualifying exigencies:</p> <ul style="list-style-type: none"> • Short-notice deployment (leave can be used for a period of seven days beginning on the date the military member is notified of a call to active duty); • Military events and related activities, such as attendance at official ceremonies, informational briefings, family support or assistance programs, etc.; • Childcare and school activities; • Financial and legal arrangements; • Counseling (leave can be used to attend counseling if the need arises from the active duty or call to active duty of the military member); • Rest and recuperation (leave can be used for up to 15 calendar days, beginning on the date the military member commences each instance of rest and recuperation leave); • Post-deployment activities, such as attendance at arrival ceremonies, reintegration briefings and events or other official ceremonies or programs for a period of 90 days following the termination of active duty status, or to address issues that arise from the death of the military member; • Parental care (when the parent of the military member is incapable of self-care and is the member’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the military member when the member was under 18 years of age); and • Additional activities, such as to address other events that the employer and employee agree qualify as an exigency.

<p>Health Care Provider</p>	<p>The term “health care provider” includes:</p> <ul style="list-style-type: none"> • Doctors of medicine or osteopathy authorized to practice medicine or surgery; • Podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under state law and consistent with the scope of their authorization; • Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; • Any provider so recognized by the employer or its group health plan's benefits manager; and • Any health provider listed above who practices and is authorized to practice in a country other than the United States.
<p>Intermittent Leave</p>	<p>Intermittent FMLA leave is permitted when leave is taken for a serious health condition, for care of covered service member when medically necessary and for active duty (qualifying exigency) leave.</p> <p>Intermittent leave is not permitted for care of a newborn or new placement by adoption or foster care, unless the employer agrees.</p>
<p>Substitution of Paid Leave</p>	<p>FMLA leave is unpaid leave. Employees may elect, or employers may require, accrued paid leave (for example, sick, vacation or personal leave) to be substituted for FMLA leave in some cases. When paid leave is substituted, it runs concurrently with the unpaid FMLA leave. An employee must follow the terms and conditions of his or her employer’s normal paid leave policies.</p>
<p>Reinstatement Rights</p>	<p>Following FMLA leave, an employee must be restored to the same position or one equivalent to it in all benefits and other terms and conditions of employment.</p>
<p>Key Employee Exception to Reinstatement Rights</p>	<p>There is a limited exception to the FMLA’s reinstatement requirement for a salaried employee if he or she is among the highest paid 10% of all employees within 75 miles of the employee’s worksite, restoration would lead to grievous economic harm to the employer and other conditions are met.</p>
<p>Maintenance of Health Benefits During Leave</p>	<p>Health insurance must be continued under the same conditions as prior to leave. If applicable, arrangements must be made for employees to pay their share of health insurance premiums while on leave. In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.</p>
<p>Leave Requests</p>	<p>An employee must request leave at least 30 days prior to the date leave is to begin, where the need for leave is known in advance. When not foreseeable, leave must be requested as soon as practicable.</p> <p>If leave is due to a planned medical treatment or for intermittent leave, the employee, subject to the health care provider's approval, must make a reasonable effort to schedule it in a way that does not unduly disrupt the employer's operations.</p>

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	<p>If leave is due to the foreseeable active duty of a family member, the employee must request leave as soon as practicable.</p> <p>An employee giving notice of the need for FMLA leave must explain the reasons for the leave so as to allow the employer to determine whether it qualifies as FMLA leave.</p>
Employer Notices	<p>Employers must provide the following FMLA notices:</p> <ul style="list-style-type: none"> • <u>General Notice</u>—Every employer covered by the FMLA must post a notice which explains the FMLA in a conspicuous place where employees work. • <u>Eligibility Notice</u>—When an employee requests FMLA leave, or when an employer learns that an employee’s leave may be covered by the FMLA, the employer must notify the employee of his or her eligibility for FMLA leave. Absent extenuating circumstances, the eligibility notice should be provided within five business days. • <u>Rights and Responsibilities Notice</u>—Along with the Eligibility Notice, an employer must notify an employee of the specific expectations and obligations surrounding FMLA leave. This notice is often included as part of the Eligibility Notice. • <u>Designation Notice</u>—Employers must designate leave as FMLA leave and must notify the employee of this designation. Absent extenuating circumstances, the designation should take place within five business days of an employer’s learning that the leave is being taken for an FMLA purpose. <p>The DOL has provided model notices for employers to use, which are available on the DOL’s website.</p>
Certification Requirement	<p>An employer may require certification for the following:</p> <ul style="list-style-type: none"> • A request for leave because of a serious health condition or to care for a covered service member with a serious illness or injury; • A request for qualifying exigency leave because of a family member’s active duty or call to active duty in the Armed Forces; or • To demonstrate an employee’s fitness to return to work from medical leave, where the employer has a uniformly applied practice or policy to require this type of certification.
Executive, Administrative, and Professional Employees	<p>These individuals are entitled to FMLA benefits. However, their use of FMLA leave does not change their status under the Fair Labor Standards Act (FLSA). This means that an employer does not lose its exemption from the FLSA’s minimum wage and overtime requirements.</p>
Statute	29 USC 2601

More information regarding the FMLA is available on the DOL’s [website](#).

This chart is provided to you for general informational purposes only. It broadly summarizes federal statutes and regulations under the FMLA, but does not include references to other legal resources, unless specifically noted. Please seek qualified and appropriate counsel for further information and/or advice regarding the application of the topics discussed herein to your employee benefits plans.