

The Family & Medical Leave Act (FMLA)

The Family and Medical Leave Act ("FMLA") is a federal law which became effective in 1993 and which provides, for covered employees of covered employers, basic leave rights in four situations: (1) for an employee's serious health condition that renders him or her unable to do the job; (2) to care for a seriously ill child, spouse, or parent; (3) for child birth or to care for a newborn child up to the age of one; or (4) for the placement of a child for adoption or foster care with the employee.

Covered Employers

The FMLA applies to all private employers with fifty or more employees who work twenty or more calendar weeks in a seventy five mile radius. The law also applies to all public employers.

Covered Employees

To be eligible for FMLA leave, an employee must: (1) work for a covered employer; (2) have worked for the employer for at least twelve months (the period need not be consecutive); (3) have worked at least 1,250 hours over the twelve month period preceding the leave; and (4) work at a location where fifty or more employees are employed within a seventy five mile radius.

Basic Leave Rights

Eligible employees are entitled to up to twelve weeks of unpaid leave for the four family and medical reasons listed at the outset of this article. An employee's "serious health condition" entitling him or her to leave is an illness, impairment, or physical or mental condition that involves either inpatient care, or continuing treatment by a health care provider. Without further complications, minor illnesses such as colds, flu, etc. do not meet the definition of a "serious health condition." Under the Family and Medical Leave Act, a covered employee of a covered employer is entitled to up to twelve weeks of unpaid leave per year for certain qualifying reasons.

An employee may take his or her annual FMLA twelve week leave entitlement all at once for one qualifying reason or at different times for different qualifying reasons. When medically necessary for a serious health condition of the employee or of a seriously ill family member, the employee may take FMLA leave on an intermittent basis. In such a case, the employer may be able to transfer the employee to an available open position which better accommodates the need for recurring leave, but the position must have equivalent pay and benefits. FMLA leave is normally unpaid, but the employee may be able to (or may be required to) use accrued paid leave during an FMLA absence.

At the conclusion of the leave, an eligible employee must be restored to the position held, or to a substantially equivalent position. An equivalent position is virtually identical in terms of pay, benefits, and working conditions, perquisites, status, duties, and responsibilities. An employee need not be reinstated if the employer can show that the employee would not have been employed at the time reinstatement is requested. For example, if an employee's department is abolished during the term of the leave, and all employees in the department are laid off, an employee on FMLA leave does not have reinstatement rights which rise above those of similarly situated employees. Certain highly compensated employees ("key employees") may be denied job restoration if the reinstatement (not the absence) would cause the employer "substantial and grievous economic injury."

Employees are entitled to continuation of group health plan benefits during FMLA leave, on the same terms as those benefits are available to other employees. Thus, if such benefits are provided to employees entirely at the employer's cost, they must be continued on the same basis during the leave. If provided on a co-pay basis, the employee must pay the co-pay share during the leave.

The Family and Medical Leave Act has notice requirements and verification of the need for leave. Employees are supposed to provide employers with at least thirty days advance notice before FMLA leave is to begin, if the need for the leave is foreseeable. If the need for the leave is not foreseeable, the employee should provide at least verbal notification of the leave as soon as practicable, which is ordinarily within two business days.

When giving notice of the need for the leave, the employee does not have the legal responsibility to mention the FMLA or to specifically say that they want family and medical leave. The employer has the responsibility to inquire further if necessary to determine whether the leave is FMLA qualifying leave.

Once the employee provides notice of the need for FMLA leave, the employer is required to notify the employee that the leave will be counted against the employee's twelve week annual FMLA entitlement. Employers are significantly restricted in their ability to retroactively designate leave as FMLA leave, and the employee's entitlement to FMLA leave normally runs from the date of designation forward.

If required by the employer, the employee must verify the need for FMLA leave from his or her health care provider. The employer may require, at its own expense, a second medical opinion. If the second opinion differs from the first, the employer may, at its expense, require certification by a agreed third health care provider, whose opinion is final.

An employer may request recertification of the need for leave no more often than every thirty days, unless the employee requests an extension of the leave, circumstances change significantly, or the employer obtains information casting doubt on the original certification.

An employer may condition return from leave on a fitness for duty certification. However, an employer may violate the Americans with Disabilities Act if the employee is disabled within the meaning of the ADA and the employer requires that the employee be completely recovered, or free of any impairment, as a condition of return to work.