

Wage and Hour Division

Fact Sheet #28P: Taking Leave from Work When You or Your Family Member Has a Serious Health Condition under the FMLA

The Family and Medical Leave Act (FMLA) provides certain workers job-protected leave when they need time off work because of a serious health condition. Workers can also take FMLA leave from work to care for a child, parent, or spouse with a serious health condition.

This fact sheet explains when a mental or physical illness, injury, or other condition meets the FMLA's requirements as a serious health condition.

ABOUT THE FMLA

The FMLA requires covered employers to provide eligible employees leave for qualifying family and medical reasons and to continue their group health benefits under the same conditions as if they had not taken leave. FMLA leave may be unpaid or used at the same time as employer provided paid leave. Workers' compensation and short-term or long-term disability also may run concurrently with FMLA leave.

Covered employers under the FMLA include:

- Private-sector employers who employ 50 or more employees in 20 or more workweeks in either the current calendar year or the previous calendar year,
- Public agencies (including Federal, State, and local government employers, regardless of the number of employees), and
- Local educational agencies (including public school boards, public elementary and secondary schools, and private elementary and secondary schools, regardless of the number of employees).

Eligible employees are those who work for covered employers under the FMLA and:

- Have worked for their employer for at least 12 months,
- Have at least 1,250 hours of service with the employer during the 12 months before their FMLA leave starts, and
- Work at a location where the employer has at least 50 employees within 75 miles.

Eligible employees may take up to 12 workweeks of FMLA in the FMLA leave year for, among other reasons, their own serious health condition or to care for a family member that has a serious health condition. An eligible employee may also take up to 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. For more information about military caregiver leave for current servicemembers and veterans, see [Fact Sheets 28M\(a\)](#) and [28M\(b\)](#).

Employees using FMLA leave for their own or for a family member's serious health condition may do so all at once or in short blocks of time. Employees must be restored to the same or virtually identical position at the end of each leave period.

For more information about the FMLA generally, including information about other reasons employees may use FMLA leave, see [Fact Sheet #28](#).

LEAVE FOR YOUR OWN SERIOUS HEALTH CONDITION

Eligible employees may take up to 12 workweeks of FMLA in a 12-month period, the FMLA leave year, for, among other reasons, their own serious health condition that makes the employee unable to perform the functions of their job. An employee is unable to perform the functions of their job where the health care provider finds that the employee is unable to work at all or is unable to perform any

one of the essential functions of the employee's position, including when an employee must be absent from work to receive medical treatment for a serious health condition.

LEAVE FOR YOUR FAMILY MEMBER'S SERIOUS HEALTH CONDITION

Employees may also take up to 12 workweeks of FMLA in a 12-month period to care for a family member who has a serious health condition. An FMLA serious health condition generally involves a period of incapacity. Incapacity means an individual is unable to work, attend school or perform other regular daily activities because of the serious health condition, due to treatment of it, or for recovery from the condition.

TYPES OF SERIOUS HEALTH CONDITIONS

The FMLA defines a serious health condition as an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider. Both physical and mental health conditions qualify for FMLA leave. For more information about mental health conditions and the FMLA, specifically, see [dol.gov/agencies/whd/fmla/mental-health](https://www.dol.gov/agencies/whd/fmla/mental-health).

Health Conditions Involving Inpatient Care

Inpatient care under the FMLA 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 overnight stay.

Example:

Nelle uses FMLA leave when her eight-year-old daughter has an accident at school, is treated by an emergency room physician, and is admitted to the hospital for observation until being released the following day. Nelle continues to use FMLA leave to care for her daughter as she recovers at home.

If an eligible employee requests FMLA leave for surgery which requires or results in an overnight stay in the hospital, the leave request would meet the definition of a serious health condition even if the surgery is elective.

Example:

Collin, who is in good health, decides to donate a kidney to an unknown recipient. Collin uses several weeks of FMLA leave for testing, hospitalization, surgery, and recovery.

Health Conditions Involving Continuing Treatment

Health conditions also meet the FMLA's criteria as serious if they require **continuing treatment by a health care provider**.

Treatment includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment includes a telemedicine visit with a health care provider provided specified criteria are met. See Field Assistance Bulletin No. 2020-8.

Conditions that may require continuing treatment include **incapacity plus treatment, pregnancy, chronic conditions, permanent or long-term conditions, and conditions requiring multiple treatments**.

Incapacity plus treatment involves a period of incapacity of more than three consecutive, full calendar days with follow-up treatment. To qualify as a serious health condition under the FMLA, the employee or the employee's family member experiencing the period of incapacity must also:

- Be treated by a health care provider within seven days of the first day of incapacity, and:
- Be prescribed a course of treatment by a health care provider (e.g., a course of prescription medication), **or**,
- Have at least one other visit with a health care provider within 30 days of the first day of incapacity

Examples:

Tony has a fever and other flu symptoms and is unable to work for four days. He sees his doctor who runs tests and schedules Tony for a follow up appointment by video conference the next week. Tony uses FMLA leave for the days he is ill and for his follow-up appointment.

Angelle learns that her mother, Mira, has been struggling with shortness of breath, fatigue, and chest discomfort for several days. Mira saw her doctor after she was ill for three days and her doctor recommended a few more days of rest and prescribed an antibiotic. Angelle uses two days of FMLA leave to care for Mira while she is incapacitated from her illness.

Pregnancy includes any period of incapacity due to pregnancy, or for prenatal care. An expectant mother can be incapacitated due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days. For example, an employee may take leave for severe morning sickness, complications requiring bed rest.

Examples:

Xavier uses four workweeks of FMLA leave before the birth of his child to help care for his spouse while she is on bed rest due to a high-risk pregnancy.

Ramona is pregnant and uses FMLA leave to attend prenatal appointments and when she is experiencing morning sickness that makes her unable to work.

Any period before and after childbirth where a person is not able to work for either physical or mental medical reasons may be considered a serious health condition under the FMLA. For example, an employee may take leave to recover from childbirth, including to recover from a stillbirth, or may take leave to care for a spouse while they are recovering from childbirth.

See [Fact Sheet #28Q](#), for more information about FMLA leave for childbirth and bonding.

A **chronic condition** is one that requires periodic visits to a health care provider, or a nurse supervised by the provider, at least twice a year, and which includes periods of incapacity that recur over an extended period. A chronic condition may cause short periods of incapacity. An employee can be incapacitated due to a chronic condition even though they do not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days.

Examples:

Ghalen occasionally needs 30 to 40 minutes of FMLA leave before reporting to work when he needs to give his 10-year-old daughter, who has asthma, a breathing treatment.

Andrea uses FMLA leave for two to three days every few months to care for her spouse when her spouse has Multiple Sclerosis flare-ups.

Raffiel uses FMLA leave to attend outpatient treatment for his mood disorder.

Permanent or long-term conditions are ones in which the period of incapacity itself is permanent or long-term and for which treatment may not be effective. These are qualifying serious health conditions under the FMLA if the employee or the employee's family member is under the continuing supervision of a health care provider, even if they are no longer receiving active treatment.

Examples:

Maurice uses FMLA leave to care for his spouse who is in the terminal stages of cancer.

Nia takes FMLA leave for three weeks to travel to another country and provide care, including emotional support and comfort, for her father, who has Alzheimer's disease.

Conditions requiring multiple treatments includes any period of absence to receive multiple treatments by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, as well as any period of recovery from the treatments. The treatments must be for:

- restorative surgery after an accident or other injury, or
- a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days if the individual did not receive the treatment.

Examples:

Bryan has severe arthritis in his knees. He uses FMLA leave one day a week to attend physical therapy and prevent his injury from worsening.

Naomi uses FMLA leave every Wednesday for dialysis.

Matt uses FMLA leave for chemotherapy treatment and recovery.

ADDITIONAL INFORMATION

Medical Certification of a Serious Health Condition

An employer may require an employee to provide a medical certification when requesting leave for their own or a family member's serious health condition. A medical diagnosis is not required for certification of a serious health condition. See [Fact Sheet #28G](#) for more information on the FMLA's medical certification requirements.

Certification by a Health Care Provider

If an employer requires a medical certification, part of it must be completed by a **health care provider**. Under the FMLA a **health care provider** includes:

- A doctor of medicine or osteopathy authorized to practice medicine or surgery in the state in which they practice,
- A podiatrist, dentist, clinical psychologist, optometrist, or chiropractor (with limitations) authorized to practice in the state and performing within the scope of their practice;
- A nurse practitioner, nurse-midwife, clinical social worker, or physician assistant authorized to practice in the state performing within the scope of their practice;
- A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or
- Any health care provider from whom the employer or the employer's group health plan's benefits manager will accept a medical certification to substantiate a claim for benefits.

Protection from Retaliation

Employers are prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right. Any violations of the FMLA or the FMLA regulations constitute interfering with, restraining or denying the exercise of rights provided by the FMLA. For more information about prohibited employer retaliation under the FMLA, see [Fact Sheet #77B](#) and [Field Assistance Bulletin 2022-2](#).

Enforcement

The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court. State employees may be subject to certain limitations in pursuit of direct lawsuits regarding leave for their own serious health conditions. Most Federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress.

For additional information, visit our Wage and Hour Division Website: dol.gov/agencies/whd and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243) .

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Fact Sheet #28Q: Taking Leave from Work for Birth, Placement, and Bonding with a Child under the FMLA

The Family and Medical Leave Act (FMLA) provides certain workers job-protected leave when they take time off work for the birth, adoption, or foster care placement of a child and to bond with the child. Workers can also take FMLA leave for their own serious health condition and to care for a family member with a serious health condition, which includes pregnancy.

This fact sheet explains when employees may use FMLA leave for birth, adoption, and foster care placement, and for bonding with a child.

ABOUT THE FMLA

The FMLA requires covered employers to provide eligible employees leave for qualifying family and medical reasons and to continue their group health benefits under the same conditions as if they had not taken leave. Employees must be restored to the same or virtually identical position at the end of each leave period. FMLA leave may be unpaid or may be used at the same time as employer provided paid leave. Maternity or other parental leave also may run concurrently with FMLA leave.

Covered employers under the FMLA include:

- Private employers who employ 50 or more employees in 20 or more work weeks in the current calendar year or previous calendar year,
- Public agencies (including Federal, State, and local government employers, regardless of the number of employees), and
- Local educational agencies (including public school boards, public elementary and secondary schools, and private elementary and secondary schools, regardless of the number of employees).

Eligible employees are those who work for covered employers under the FMLA and:

- Have worked for their employer for at least 12 months,
- Have at least 1,250 hours of service with the employer during the 12 months before their FMLA leave starts, and
- Work at a location where the employer has at least 50 employees within 75 miles.

Eligible employees may take up to 12 workweeks of FMLA leave for, among other reasons, the birth or placement of a child for adoption or foster care, and to bond with the child.

Under the FMLA, a child is defined broadly and includes a biological child, an adopted child, a foster child, a stepchild, a legal ward, or a child of a person who is standing in loco parentis to the child. For more information about the definition of a child under the FMLA, see [Fact Sheet #28B](#) and [Administrator Interpretation #2010-3](#).

For more information about the FMLA generally, see [Fact Sheet #28](#).

LEAVE FOR THE BIRTH OF A CHILD AND BONDING

Parents may use FMLA leave when their child is born and to bond with their child during the 12-month period beginning on the date of birth. Both mothers and fathers have the same right to take FMLA leave for the birth of a child and bonding. Parents may also take FMLA leave for the care of a newborn child who has a serious health condition or for a serious health condition related to the pregnancy or birth. See Fact Sheet #28P on serious health conditions.

Examples:

Halima takes FMLA leave for a homebirth and to bond with the baby for several weeks afterwards.

Martin uses FMLA leave to go to the hospital where his girlfriend has given birth to their child and to bond with the baby for the next two weeks. With his employer's agreement, Martin takes another four weeks of bonding leave three months later when his girlfriend returns to work.

LEAVE FOR ADOPTION

Employees may use FMLA leave when a child is first placed with them for adoption or foster care and to bond with their newly placed child. An employee's entitlement to leave for adoption or foster care ends at the end of the 12-month period beginning on the date of the placement. Employees may also use FMLA leave before the actual placement or adoption of a child in situations where, for example, the employee may be required to:

- Attend counseling sessions,
- Appear in court,
- Consult with the attorney or doctor(s) representing the birth parent,
- Submit to a physical examination, or
- Travel to another country to complete an adoption.

Adoption, for FMLA purposes, means legally and permanently assuming the responsibility of raising a child as one's own.

Examples:

Terrance and his husband are adopting a child through a surrogacy agreement. Terrance uses FMLA leave for bonding when his child is first placed with him and his spouse.

Jewell adopts a seven-year-old girl. She uses ten weeks of FMLA bonding leave during her child's first year after placement with her.

LEAVE FOR FOSTER CARE

Foster care, for FMLA purposes, is 24-hour care for children in substitution for, and away from, their parents or guardians. Children are placed in foster care by or with the agreement of the State, and foster care involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody. Neither a minimum period for the foster care placement, nor a permanent placement is required for the employee to qualify for FMLA leave for the placement.

Examples:

Stephen's nephew Cordell is placed with Stephen for temporary foster care. Stephen's wife, Missy, uses FMLA leave to be with Cordell after his placement.

Sandra uses FMLA leave several times over a number of years when different children are placed with her as a foster parent through a State social services agency.

SCHEDULING CONSIDERATIONS

Generally, to take FMLA leave an employee must notify the employer at least 30-days in advance and follow the employer's policy for requesting leave. If an advance notice is not possible, such as because of a change in events or a medical emergency, notice must be given as soon as practicable. For more information, see [Fact Sheet #28E](#).

Intermittent or Reduced Schedule Leave

Employees may use FMLA leave for birth, placement, and bonding intermittently or to work a reduced schedule but only if they and their employer agree.

If a child has a serious health condition, a parent is entitled to use FMLA leave intermittently or to work a reduced schedule in order to care for the child even without an agreement with the employer.

Examples:

Khai uses two weeks of FMLA leave when his child is born, and for the next twenty workweeks he uses FMLA leave half-time and works half-time. Khai and his employer agreed to the reduced leave schedule in advance of his child's birth.

Harper's employer did not agree to allow her to work part-time and use FMLA leave part-time to care for her newly adopted child. Instead, Harper uses 12-continuous workweeks of FMLA leave to be with her new child.

Qiang uses FMLA leave for three hours a day for two weeks while his newborn baby is in a hospital neonatal intensive care unit (NICU). Qiang does not need his employer's permission to use FMLA leave intermittently or to work a reduced leave schedule for the care of his infant child with a serious health condition.

Consecutive FMLA Leave Years

Eligible employees may use FMLA leave for bonding with a new child any time during the first year of the child's birth or placement. In addition, eligible employees are entitled to 12 workweeks of leave during each new FMLA leave year. As a result, depending on the leave year an employer chooses, an employee may be entitled to more than 12 weeks of leave for bonding with their child during consecutive 12-month leave years.

Example:

Rebekah's employer uses the 12-month period from July 1 through June 30 for its FMLA leave year. Rebekah has a baby on April 29th and uses FMLA leave for 8 weeks from her child's birth through June 30th. During the next leave year that begins July 1st, Rebekah is eligible for FMLA leave and remains on maternity leave for another 8 workweeks of FMLA leave and reaches an agreement with her employer to take another 4 workweeks of reduced schedule leave for bonding with her child before her child's first birthday.

Spouses Who Work for the Same Employer

Eligible spouses who work for the same employer are limited to a combined total of 12 workweeks of leave in a 12-month period for, among other reasons, birth, placement, and bonding with a new child. This limit does not apply to unmarried partners who work for the same employer. For more information about FMLA leave and spouses who work for the same employer, see [Fact Sheet #28L](#).

Examples:

Raven and Miguel are married, FMLA-eligible employees, who work for the same employer. After Raven gives birth to their child, she uses six weeks of FMLA leave for her own serious health condition. Following recovery from childbirth, Raven uses four weeks of FMLA leave for bonding. Miguel uses eight weeks of FMLA leave to bond with their new child. Because they are limited to a combined total of 12 workweeks of FMLA leave for bonding with their new child, they have both exhausted their full entitlement for FMLA bonding leave. Miguel may also use up to four weeks of leave for some other FMLA-qualifying leave reasons, and Raven is entitled to another two weeks of FMLA leave for other FMLA-qualifying leave reasons.

Liam and Mateo are unmarried parents of a newly placed foster child. They work for the same employer. Since Liam and Mateo are not married, the FMLA leave limit on spouses who work for the same employer does not apply to them. During the first year that their child is placed with them, they each use FMLA leave to be with their child for 12 workweeks, for a total of 24 workweeks of bonding leave.

ADDITIONAL INFORMATION

Leave Before and After Childbirth

Any period before or after childbirth where an employee is not able to work for medical reasons may be considered FMLA leave for a serious health condition. An eligible employee may take leave for any period of their own or spouse, parent, or child's incapacity due to pregnancy. For example, employees may use FMLA leave for severe morning sickness or complications requiring bed rest, or for prenatal care.

An employee may take leave to recover from childbirth, including to recover from a stillbirth, or may take leave to care for a spouse recovering from childbirth. See [Fact Sheet #28P](#) for more information on serious health conditions.

An employer may require a medical certification when an employee requests leave for their own or a family member's serious health condition, including those related to pregnancy, such as recovery from childbirth. For more information about medical certification requirements, see [Fact Sheet 28G](#).

Lactation Breaks

In addition, the Fair Labor Standards Act (FLSA) provides covered employees with the right to take breaks at work to pump breast milk as needed. Employers are required to provide eligible employees with a private place to pump, which generally means the space must be shielded from view, free from intrusion, and not a bathroom. Employees who are eligible may use these breaks for up to one year after giving birth to a child. For more information about break time for nursing mothers under the FLSA, see [Fact Sheet #73](#).

Documentation of Family Relationship

Employers may not request a certification for FMLA leave to bond with a newborn child or a child placed for adoption or foster care. However, employers may require employees to provide reasonable documentation of a family relationship. To satisfy this requirement, an employee may provide the employer with a simple written statement or provide the employer with a copy of an official document, such as a child's birth certificate or a court document, for review and return to the employee.

Protection from Retaliation

The FMLA prohibits employers from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right. Any violations of the FMLA or the FMLA regulations constitute interfering with, restraining or denying the exercise of rights provided by the FMLA. Examples include refusing to authorize FMLA leave or discouraging an employee from using FMLA leave. For more information about prohibited employer retaliation under the FMLA, see [Fact Sheet #77B](#) and [Field Assistance Bulletin No. 2022-2](#).

Example:

When Ethan requests two weeks of FMLA leave to bond with his newborn baby, his supervisor denies the request and tells him that FMLA leave is only for women. Ethan files a complaint with the Wage and Hour Division who contacts his employer, secures the leave for Ethan, and ensures the employer understands the FMLA protections going forward.

Enforcement

The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court. State employees may be subject to certain limitations in pursuit of direct lawsuits regarding leave for their own serious health conditions. Most Federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress.

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