

# Guide to the Family and Medical Leave Act (FMLA)

## Questions and Answers

**SIXTH EDITION | 2013**

***CELEBRATING 20 YEARS, 100 MILLION STORIES***

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The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care and policies that help women and men meet the dual demands of work and family. More information is available at [www.NationalPartnership.org](http://www.NationalPartnership.org).

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## Introduction

### THE FAMILY AND MEDICAL LEAVE ACT: A LAW WITH MORE THAN 100 MILLION STORIES

The Family and Medical Leave Act (FMLA) is the nation's first and only law designed to help women and men meet the dual demands of job and family. President Clinton signed the law in 1993 after a nine-year campaign led by the National Partnership for Women & Families (then the Women's Legal Defense Fund). Since then, the FMLA has been used more than 100 million times by women and men across the United States who have needed time to care for loved ones or to address their own serious health needs without jeopardizing their jobs. And there have been significant changes in our national culture and the culture of our workplaces as a result.

For 20 years, the FMLA has guaranteed that people who work for employers with 50 or more employees within a certain radius can take up to 12 weeks of unpaid leave in a year to care for new children or seriously ill family members, or to recover from their own serious health conditions. In 2008 and 2009, the law was updated to reflect the caregiving needs of military families.

The FMLA's guarantees and protections are clear, but employees and employers often have questions about how it works and whether adjustments to the law have been made since its passage. This guide is designed to answer many of those questions. It is based on the law itself, regulations explaining the FMLA issued by the U.S. Department of Labor, and court decisions that have interpreted the law.

This guide explains the provisions of the federal FMLA alone. In many cases, however, employees have additional protections — such as protections found in state family and medical leave laws, union contracts or laws that prohibit discrimination based on disability. See Questions 59-61 of this guide for more information on other laws and protections that may affect family and medical leave. For specific information on state family and medical leave laws, see the National Partnership for Women & Families’ database of work and family policies at [www.NationalPartnership.org/WFDB](http://www.NationalPartnership.org/WFDB) or read *Expecting Better*, a 2012 report that provides a comprehensive assessment of state laws that improve upon the FMLA’s protections. It is available at [www.NationalPartnership.org/ExpectingBetter](http://www.NationalPartnership.org/ExpectingBetter).

To find out how the FMLA, as well as the laws or contracts mentioned above, affect your particular situation, contact a lawyer who specializes in employment law, the U.S. Department of Labor’s Wage and Hour Division (1-866-487-9243), your state labor department and/or your union.



## The Basics

### 1. When can I take family or medical leave under the FMLA?

If you are covered by the FMLA (see Question 3), you may take leave under the following circumstances:

- ▶ If you have a serious health condition;
- ▶ If you are caring for your new baby, or caring for a newly adopted or newly placed foster child;
- ▶ If you are caring for your child, spouse or parent with a serious health condition;
- ▶ If you are caring for a wounded servicemember or veteran; or
- ▶ If you need time away from your job to address particular circumstances arising from the deployment of a servicemember or a member of the armed forces.

The FMLA allows you to take time off (“leave”) without losing your job, your seniority or your employer-provided health insurance.

**Note:** You must work for an employer that is covered by the FMLA and meet certain eligibility requirements to qualify for FMLA leave (see Question 3).

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**Definitions:** This guide uses the term “family leave” to mean time off to care for another person in your family — a newborn or newly adopted child, or a child, spouse or parent with a serious health condition. “Medical leave” is used to mean time off to seek medical treatment for or to recover from your own serious health condition.

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## 2. Who counts as “family” when I need to take FMLA leave?

Under the FMLA, “family members” for the purposes of family leave are:

- ▶ Your **children** — when they are born, adopted, placed with you as a foster child, or when they have a “serious health condition;”
- ▶ Your **parents** — when they have a “serious health condition;”
- ▶ Your **spouse** — when she or he has a “serious health condition;” and
- ▶ Your **next of kin** – for wounded servicemember leave only.

The FMLA’s definition of “child” under 18 is broad. It includes a biological, adopted or foster child; a stepchild; or a legal ward. It also includes a child for whom you have responsibility for day-to-day care or financial responsibility, even if you have no biological or legal relationship with that child. For example, your grandchild or the child of your domestic partner may qualify as your child for purposes of taking leave under the FMLA, as long as you act as his or her parent. In addition, you can take leave to care for an individual who acted as a parent, or “in loco parentis,” for you when you were a child.

The definition of “child” includes a person older than 18 who is incapable of self-care due to a mental or physical disability. The U.S. Department of Labor recently clarified the terms “disability” and “incapable of self-care” to expand access to FMLA leave for care of a child 18 or older. (More here: [www.dol.gov/whd/fmla/AdultChildFAQs.htm](http://www.dol.gov/whd/fmla/AdultChildFAQs.htm))

You may take “wounded servicemember leave” (see Question 5) as the parent, child, spouse or “next of kin” (nearest blood relative) of a servicemember in the armed forces, including the National Guard or Reserves. You may take “qualifying exigency leave” (see Question 5), if you have a parent, child or spouse on active duty or who is called to active duty status in the armed forces, including the National Guard or Reserves.

Some states have state-based paid family and/or medical leave programs that cover more family members for more purposes. To learn more about state laws, visit [www.NationalPartnership.org/WFDB](http://www.NationalPartnership.org/WFDB) or read *Expecting Better* at [www.NationalPartnership.org/ExpectingBetter](http://www.NationalPartnership.org/ExpectingBetter).

### 3. How do I know if I can take family or medical leave under the FMLA?

You qualify for unpaid, job-protected leave under the FMLA if you meet three criteria:

**First**, your employer has 50 or more employees on the payroll for 20 workweeks during the current or preceding calendar year. (To determine whether your employer is covered, find out how many employees are on the payroll, including those who are on leave or working part time.) All 50 employees need not be on site at your worksite, but your employer must have at least 50 employees across all of its worksites within a 75-mile radius.

**Second**, you have worked for your employer for at least 12 months and for at least 1,250 hours during the last year. (If you have worked 25 or more hours for 50 weeks in a year, you have worked the required total of 1,250 hours. However, certain rules do apply to teachers, highly paid employees and airline flight crew members — see Questions 50-53.)

**Third**, you are taking time away from your job to address your own “serious health condition,” the “serious health condition” of a covered family member, to care for a new child, to care for a wounded servicemember in your family or to address particular circumstances arising from a covered family member’s deployment or call to active duty in the armed forces.

### 4. How are LGBT individuals and families covered under the family leave provision of the FMLA?

In states that recognize same-sex marriage, the FMLA provides family leave for the care of a same-sex spouse (see Question 20). In all states, a parent in a same-sex relationship who has no biological or legal connection to his or her child can take leave to care for that child (see Question 17). An adult child can take leave to care for his or her parent or a person who stood in a parental relationship when he or she was under 18, even if they do not have a biological or legal connection (see Question 23).

## 5. What circumstances are covered by the military families provisions for caregiving and deployment?

“Qualifying exigency leave” is available to certain employees whose spouse, son, daughter or parent is on active duty or has been called to active duty in the armed forces. These qualifying exigencies include but are not limited to: attending military meetings, arranging for alternative child care, making financial or legal preparations prior to deployment, addressing matters arising from the death of the servicemember, spending time with the servicemember while he or she is on rest and recuperation leave (limited to 15 days) and attending post-deployment reintegration briefings.

Congress also created a new type of extended leave of up to 26 weeks in a year for a spouse, son, daughter or “next of kin” caring for a covered servicemember with a serious injury or illness (“wounded servicemember leave”).

## 6. How much leave can I take under the FMLA? And what if I need more time?

The FMLA allows you to take either **family leave**, **medical leave** or **qualifying exigency leave**, or any combination of the three, for up to a total of 12 weeks per year. This means that if you are on family or medical leave or on qualifying exigency leave and away from your job for a total of up to 12 weeks in a year, your job is protected.

There is one circumstance that provides a more generous period of leave: Military family members are entitled to 26 weeks of **wounded servicemember leave** in a year.

If your employer gives male employees longer leave for serious health conditions, female employees may be entitled to more than 12 weeks of leave for pregnancy- or childbirth-related health conditions under the Pregnancy Discrimination Act. You may also have additional protections through state law or your employment contract. To learn about more generous state policies, visit [www.NationalPartnership.org/WFDB](http://www.NationalPartnership.org/WFDB) or read *Expecting Better* at [www.NationalPartnership.org/ExpectingBetter](http://www.NationalPartnership.org/ExpectingBetter).

## 7. Will I get paid while I'm on FMLA leave?

The FMLA does not require your employer to pay you during leave. You may be entitled to use any paid annual, vacation or sick leave that your employer provides. Your employer's policies determine whether you may — or must — use that leave in conjunction with your FMLA leave.

Some states have state-based paid family and/or medical leave programs and other laws that require your employer to allow you, if you choose, to use accrued paid sick, vacation or other time off during a period of FMLA leave. To learn more about state laws, visit [www.NationalPartnership.org/WFDB](http://www.NationalPartnership.org/WFDB) or read *Expecting Better* at [www.NationalPartnership.org/ExpectingBetter](http://www.NationalPartnership.org/ExpectingBetter).

(See Questions 24-26 and 37-39 for more information about how to use accrued paid leave when you are on unpaid FMLA leave.)

In addition, workers with serious health conditions relating to pregnancy must be treated the same as other employees with serious health conditions. For example, under the Pregnancy Discrimination Act, if male employees get paid while they are on leave because of serious health conditions like heart attacks, female employees on leave due to pregnancy- or childbirth-related conditions must get paid too. Under most short-term disability policies, women are entitled to six weeks of paid disability leave for vaginal deliveries and eight weeks for Cesarean sections.

## 8. What is the definition of “a year” or “12-month period” under the FMLA?

The FMLA permits employers to determine how to measure an employee's annual entitlement to FMLA leave. They are permitted to use a calendar year (January 1 through December 31); any fixed 12-month period of the employer's choosing (e.g., the employer's fiscal year, an employee's anniversary date, etc); or two different methods of measuring 12 months based on the employee's personal leave record or requests. More information is available from the U.S. Department of Labor at [www.dol.gov/whd/regs/compliance/whdfs28h.pdf](http://www.dol.gov/whd/regs/compliance/whdfs28h.pdf)

## **9. What information about the FMLA is my employer required to give me?**

All employers with 50 or more employees are required to post a notice about the FMLA where employees can see it. Copies of the notice are available from the U.S. Department of Labor's Wage and Hour Division. (See Question 58 for information about how to contact the Wage and Hour Division.)

If your employer fails to post the notice, you cannot be penalized if you do not give your employer advance notice that you will need leave. Also, the U.S. Department of Labor can fine your employer if its failure to post the notice was intentional.

In addition, when you request family or medical leave under the FMLA, your employer is required to give you information about the medical certification and other requirements that will apply to your specific leave.



## Family Leave

### CARING FOR A NEW BABY — FOR MOMS AND DADS, BIRTHS, ADOPTION AND FOSTER PLACEMENT

#### 10. How much FMLA leave time can I take for the birth of a baby?

If you are eligible for leave under the FMLA (see Question 3), your job will be protected for up to 12 weeks (in any 12-month period) if you need leave to address your own medical issues related to pregnancy, childbirth and recovery (medical leave) or to care for your new baby (family leave).

Twelve weeks combined for both purposes is the maximum permitted under the FMLA in a one-year period. Some states provide longer periods of leave, or offer different “buckets” for a new mother’s medical leave versus the time a new mother takes away from her job to care for her new child. To learn more about your state laws, visit [www.NationalPartnership.org/WFDB](http://www.NationalPartnership.org/WFDB) or read *Expecting Better* at [www.NationalPartnership.org/ExpectingBetter](http://www.NationalPartnership.org/ExpectingBetter).

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**Definitions:** Under the FMLA, new mothers *and* fathers are entitled to leave. **Mothers** are entitled to medical leave for the period of time during which they are physically unable to work due to pregnancy, childbirth, recovery and related medical conditions. Both **mothers and fathers** are entitled to family leave to care for a new baby, newly adopted child or newly placed foster child. This leave may be taken within the first year of a child’s entry into the family.

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## **11. I'm having a very difficult pregnancy and my doctor says I may need to take off time before my baby is born. Can I do that without losing my job?**

**Yes.** The FMLA covers any pregnancy-related leave that is medically necessary. As long as you are eligible to take leave under the FMLA (see Question 3), you can do so at the time it is medically necessary, intermittently (in chunks of time) or all at once. For example, if you have to be out of work due to morning sickness for two weeks, or you need to take leave for prenatal doctor's visits, your job (or an equivalent one) will be protected, and you can take time later in the pregnancy if needed.

At that time, you will have the remainder of your 12 weeks of FMLA leave to use for childbirth and recovery and to stay home with your new baby. All of this leave is unpaid, unless you have accumulated sick leave or vacation time you are permitted to use (or your employer has disability insurance or another paid leave program that covers some or all of your time off, or if your state provides different rules for employers). (See Questions 24-26 and 37-39 for more.)

## **12. My baby is due in early January and my company holds a big conference that I'm responsible for at the end of May. Assuming I need six weeks to recuperate from childbirth medically, can I take six weeks off in January and February, come back to work through the conference, and then take the remaining six weeks in June and early July?**

**Yes,** but you must take the non-medically necessary part of the leave within one year of the child's birth. (The U.S. Department of Labor interprets this limitation as meaning that you must complete the leave within that year.)

## **13. After I've recovered from childbirth, I'd like to work part time. Can my family leave under the FMLA be taken by reducing my workweek to a part-time schedule?**

You may take your family leave time by working part time only if you and your employer agree to the arrangement. If you stayed home full time for

six weeks, you might be able to take the remaining six weeks of leave by working half time for 12 weeks — going back to work full time when your baby is 18 weeks old. But your employer must agree to this arrangement.

#### **14. We are adopting or fostering a child. Am I entitled to leave under the FMLA, and is it paid or unpaid?**

Like biological parents, adoptive and foster parents who are eligible for FMLA leave (see Question 3) may take up to 12 weeks of leave to care for a child when she or he arrives as part of an adoption. This also applies to a child for whom you recently assumed parental responsibilities, such as a foster child.

An adoptive parent may be able to take paid sick leave along with FMLA leave, if her or his employer's plan permits it, but the FMLA itself does not provide an independent right for adoptive parents to use accrued paid sick leave. Like a biological parent, an adoptive parent may use their accrued paid annual leave in conjunction with his or her FMLA leave, as long as her or his employer's plan permits it.

#### **15. We need to take time off from work to complete the home study and other legal requirements before our child's adoption is final. Does the FMLA protect our jobs?**

**Yes.** Under the law, you can begin to take family leave before your child is adopted or placed with you (for example, in order to meet with a doctor or attorney, go to court or attend counseling sessions). As long as you have not used up your annual 12 weeks, your employer must give you unpaid leave for an absence from work that is required for the adoption to proceed.

#### **16. Are both parents permitted to take leave to care for a new child?**

**Yes,** and you can each take up to 12 weeks. You can both take leave at the same time; you can overlap your periods of leave; or you can take them consecutively (as long as each parent's leave occurs within one year of the child's birth or placement).

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**Exception:** If each parent works for the same employer, the employer may limit the *combined* parental leave to 12 weeks during a 12-month period.

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## **17. My same-sex partner and I are having a baby. What rights do we have to take leave under the FMLA?**

The FMLA’s definition of “son or daughter” encompasses many parent/child relationships, even if the connection is not biological or legal (see Question 2). Each of you can take leave under the FMLA for the birth or adoption of your child, as long as you intend to be that child’s parents by assuming day-to-day care responsibilities or financially supporting the child.

## CARING FOR A SERIOUSLY ILL CHILD, SPOUSE OR PARENT

### **18. How much leave can I take to care for a family member who has a serious health condition under the FMLA?**

If you are eligible to take FMLA leave (see Question 3), you can take up to 12 weeks of leave during any 12-month period.

If your family member is a wounded servicemember, you may be eligible for up to 26 weeks of leave during any 12-month period.

### **19. My mother-in-law has just been hospitalized. Can I take FMLA leave to care for her?**

**No.** You have the right to take leave only to care for someone who is a biological or adoptive parent, or who acted as your parent when you were a child. So, unless your relationship with your mother-in-law goes back that far, or you live in a state with a law that covers care for in-laws, you cannot take FMLA leave for this purpose.

### **20. May I take FMLA leave to care for my same-sex spouse or domestic or civil union partner if I live in a state that recognizes these relationships?**

**Yes, under federal law with respect to caring for a same-sex spouse.** If your marriage is legally recognized in your state, and you are eligible to take leave under the FMLA (see Question 3), then you can take FMLA leave to care for your same-sex spouse.

**No, under federal law with respect to domestic or civil union partners.** However, your state may have expanded the FMLA through a state law to cover same-sex domestic partnerships or civil unions. To see whether your state has a broader definition of “family” for the purposes of taking FMLA leave, visit the National Partnership’s work and family database at [www.NationalPartnership.org/WFDB](http://www.NationalPartnership.org/WFDB) or read *Expecting Better* at [www.NationalPartnership.org/ExpectingBetter](http://www.NationalPartnership.org/ExpectingBetter).

## 21. What kind of “serious health condition” must my family member have for me to take FMLA leave?

In general, if your family member is incapacitated for more than three consecutive days or has gone to see a doctor or other health care provider at least once and is under a regimen of continuing treatment by a health care provider, she or he is considered to have a condition that “involves continuing treatment by a health care provider” and is thus protected under the FMLA even if no hospitalization has occurred.

In some circumstances, a condition that does not last more than three days or that does not require actual doctor’s visits may qualify. If you are unsure, consult the U.S. Department of Labor and an attorney (see Question 58).

If your family member is a servicemember with a serious illness or injury and is undergoing medical treatment, recuperation or therapy; is in outpatient status; or is on the temporary disability retired list, you may be able to take wounded servicemember leave.

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**Examples:** The following are examples of conditions generally considered serious: heart conditions, strokes, back conditions, injuries caused by accidents and conditions such as cancer, asthma, pneumonia, diabetes, epilepsy, serious infections, Alzheimer’s and arthritis. Many conditions not on this list may also qualify as serious health conditions.

A pregnant woman can take FMLA leave for incapacity due to pregnancy (for instance, severe morning sickness that renders her unable to go to work), for prenatal care, to recover from childbirth or for other serious health conditions related to pregnancy, such as a miscarriage.

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## **22. I need a few hours every week to take my father, who is recovering from a stroke, to physical therapy. May I take that time as part of my family leave under the FMLA?**

**Yes.** Family leave may be taken intermittently when medically necessary. You may take leave in blocks of time — such as several hours, a half day, a day, a week, four weeks or 12 weeks — to care for a family member with a serious health condition (see Questions 2 and 21 for definitions).

If you are going to need intermittent leave regularly, your employer may require you to temporarily transfer to another position that has the same pay and benefits but is better suited to recurring periods of leave.

In addition, if you miss part of a shift because of intermittent leave, your employer may require you to miss your entire shift under certain circumstances, even if you would have been able to come to work part-way through the shift.

## **23. I am a child of same-sex parents. May I take family leave to care for them under the FMLA?**

**Yes.** As long as both parents acted as your parents when you were a child, and you are eligible to take leave under the FMLA (see Question 3), you may take FMLA leave to care for them — even if you do not have a biological or legal relationship.

## **USING VACATION OR SICK TIME WITH YOUR FMLA LEAVE TO CARE FOR A FAMILY MEMBER**

## **24. My employer offers two weeks of paid vacation (called “annual leave”). May I use my paid vacation as FMLA family leave?**

**It depends on your employer’s leave policy.** If your employer permits, you may use any paid vacation or annual leave you have accrued as part of the family leave you take under the FMLA. The paid vacation, personal or other leave time will run concurrently with the 12 weeks you are entitled to under the FMLA.

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**Example:** If you use two weeks of paid vacation for FMLA family leave, you are still entitled to an additional 10 weeks of unpaid FMLA family leave.

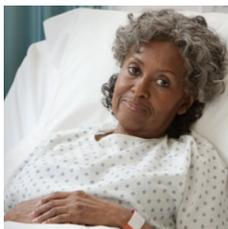
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## **25. My employer offers two weeks of paid sick leave. Can I use my paid sick leave as FMLA family leave?**

**It depends.** If your employer normally allows use of sick leave for such purposes, you should be permitted to use your accrued paid sick leave for family leave taken under the FMLA (your employer may even require you to use it). Some states require employers to allow employees to use their sick leave to care for sick family members. Check your employment contract or manual, state law or with your human resources department to determine if you can use your accrued paid sick leave for this purpose. For more information on state laws, visit [www.NationalPartnership.org/WFDB](http://www.NationalPartnership.org/WFDB) or read *Expecting Better* at [www.NationalPartnership.org/ExpectingBetter](http://www.NationalPartnership.org/ExpectingBetter).

## **26. I would like to take my paid vacation first and then take 12 weeks of unpaid leave, but my employer wants me to use up the accrued paid leave as part of my FMLA family leave time. Do I have to use my accrued paid leave as part of my FMLA family leave?**

**Yes.** In general, your employer may count your paid vacation leave as part of your 12 weeks of FMLA family leave. Of course, your employer does not have to insist on this, and there is no law that prevents you and your employer from making an alternative arrangement.



## Medical Leave

### TAKING FMLA LEAVE FOR YOUR OWN SERIOUS ILLNESS

#### **27. When can I take time off under the FMLA if I become seriously ill?**

If you are eligible to take leave under the FMLA (see Question 3), you may take medical leave when you are unable to perform your job duties because of a “serious health condition.” The same definition of “serious health condition” used for family members applies (see Question 21).

#### **28. I have to receive chemotherapy once a month and am too ill to work for a few days after each treatment. Can I use FMLA medical leave?**

**Yes.** As with family leave under the FMLA, medical leave may be taken intermittently — days or weeks or even hours at a time — if it is medically necessary. If your illness involves a planned medical treatment that occurs on a regular schedule, your employer may require you to temporarily transfer to another position — with the same pay and benefits — that is better suited to recurring periods of leave. If you need to miss only part of a shift, your employer may require you to miss the whole shift under certain circumstances even if you are able to come to work part-way through the shift.

#### **29. I recently took 12 weeks off to care for my sick spouse. Am I entitled to any more FMLA leave if I am temporarily too ill to work?**

**No.** Under the FMLA, you are entitled to a total of 12 weeks of family and medical leave in a year.

### **30. What if I can no longer return to work after taking my FMLA leave due to my condition? Can my employer force me to come back to work?**

**No.** If your serious health condition requires you to stop working altogether, you cannot be forced to return. However, your employer is not required to hold your job for you or to reinstate you after you have used 12 weeks of FMLA leave — unless your state law provides a more generous amount of leave (see [www.NationalPartnership.org/WFDB](http://www.NationalPartnership.org/WFDB)). Once you end your employment, your former employer has no obligation to provide benefits. Your employer is, however, likely required (under the Consolidated Omnibus Budget Reconciliation Act of 1986 or “COBRA”) to offer you the opportunity to continue your health coverage, provided you pay the full cost. On the other hand, your employer may require you to repay the employer’s share of your health insurance premium paid during your FMLA leave if you do not return to work following your leave. An employer cannot require this if you do not return because of circumstances that are beyond your control, including an FMLA-qualifying condition.

### **31. I recently suffered a back injury that makes it impossible for me to do my job, which requires a lot of lifting. My boss wants me to continue working at a different position that requires only “light duty,” but I want to recuperate completely before I return to work. Can my boss make me return to work if he accommodates my injury?**

**No.** Under the FMLA, if you cannot perform your job because of a serious health condition, you are entitled to up to 12 weeks of leave; you are not required to accept another job that is not equivalent during that time.

You may also be protected by the Americans with Disabilities Act (ADA), which requires employers to provide reasonable accommodations to workers with a range of mental and physical conditions, including temporary or episodic impairments, so long as it does not present an undue hardship to the employer. The U.S. Equal Employment Opportunity Commission provides information about rights under the ADA here: [www.eeoc.gov/policy/docs/accommodation.html](http://www.eeoc.gov/policy/docs/accommodation.html) and here: [www.eeoc.gov/laws/regulations/ada\\_qa\\_final\\_rule.cfm](http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm).

## MEDICAL CERTIFICATION REQUIREMENTS

### 32. To take leave under the FMLA, do I have to prove that I have a serious health condition or that my family member has a serious health condition?

If you are taking medical leave for yourself or family leave to care for a family member with a serious health condition under the FMLA, your employer may request certification by a doctor or other health care provider. You may also be required to recertify your need for leave every six months.

### 33. What must be in the medical certification?

If you are the **patient**, the certification must include:

- ▶ A description of the serious health condition;
- ▶ The date that the condition began;
- ▶ The expected duration of the condition or treatment; and
- ▶ Enough information to show that you cannot perform the essential functions of your job, along with the nature of other work restrictions and how long your condition is expected to last.

If you request intermittent leave or a reduced schedule, you must provide enough information to establish why this is medically necessary and estimate the frequency and duration of these episodes.

If the patient is your **family member**, the certification must include: information that establishes that your family member is in need of care and the duration of care and recovery. If your family member's care requires you to take intermittent leave, you must show that this leave is medically necessary and estimate the frequency and duration of the leave.

A sample medical certification form is available from the U.S. Department of Labor's Wage and Hour Division: [www.dol.gov/whd/regs/compliance/fairpay/wh380.pdf](http://www.dol.gov/whd/regs/compliance/fairpay/wh380.pdf). See Question 58 for information on how to contact the Wage and Hour Division.

### **34. What happens if my employer doesn't believe my doctor's certification?**

If your employer doubts your certification, your employer may require you to get a second opinion from a health care provider of its choosing. If the second opinion differs from the first opinion, then you and your employer must agree on a third health care provider to supply a third opinion. You and your employer must accept the third opinion as final. The employer pays for the second and third opinions.

### **35. What happens if I don't provide the medical certification?**

If a certification is requested by your employer and you don't provide it, your absence is not protected by the FMLA. This means that your employer has the legal right to fire you for that absence (unless some other law or your collective bargaining agreement applies).

### **36. Do I have to get a medical release to come back to work after taking FMLA leave?**

Before you return to work, your employer may require you to submit a medical release, also called a "fitness for duty" certification, from a health care provider that shows your ability to work. If you take intermittent leave, your employer may require you to provide a "fitness for duty" certificate every 30 days, provided there are reasonable safety concerns.

## **USING VACATION OR SICK TIME WITH YOUR FMLA LEAVE DURING YOUR OWN SERIOUS ILLNESS**

### **37. I have accrued four weeks of paid sick leave and two weeks of paid annual leave. May I use these so that I can be paid for part of my (otherwise unpaid) FMLA medical leave?**

**It depends on your employer's policy.** Your employer has the right to determine criteria for using paid vacation or personal leave while on FMLA leave. Some states provide different rights under state family

and medical leave law and require employers to allow employees to use accrued paid leave. Visit [www.NationalPartnership.org/WFDB](http://www.NationalPartnership.org/WFDB) or read *Expecting Better* at [www.NationalPartnership.org/ExpectingBetter](http://www.NationalPartnership.org/ExpectingBetter) to find out more.

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**Example:** If you had a heart attack, had to recuperate at home for 12 weeks, and had accrued four weeks of paid sick leave and two weeks of paid annual leave, your employer might permit you to use your sick and annual leave to cover six of the 12 weeks. The remaining six weeks of leave would be unpaid.

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**38. I've had a major illness this year and would like to take the paid sick leave and vacation time that I've accrued first, and then take 12 weeks of unpaid FMLA leave after that. But my employer wants me to use up my accrued paid sick and vacation time as part of my FMLA medical leave. Do I have to use my paid leave at the same time as my FMLA medical leave?**

**Yes.** In general, your employer may count your paid sick and vacation leave as part of your 12 weeks of FMLA medical leave. Of course, your employer does not have to insist on this, and there is no law preventing you and your employer from making an alternative arrangement.

**Note:** If you are pregnant, your employer cannot discriminate against you by making you use your accrued paid sick or vacation time as part of your FMLA leave for pregnancy and childbirth if it does not make the same requirement for FMLA leave taken for other health conditions.

**39. My 75-year old mother who lives out of town has recently suffered a stroke and is in the hospital. I'm planning to take a week's vacation to care for her, organize her financial affairs and find her a home health care provider so she can recuperate at home. I'm worried that she will have more health problems in the coming year, so I don't want to use any of my 12 weeks of FMLA leave now. But I know that if I tell my employer why I'm taking vacation, it will count it against my 12 weeks of FMLA leave. Do I have to tell my employer why I'm taking vacation?**

**No.** You have no legal obligation to disclose the purpose of your trip. (You do, of course, have to comply with the employer's usual rules about taking vacation, including getting advance approval if that is usually required.)

But if your employer finds out that you used your vacation for family leave, the employer can retroactively designate it as such and count it against your 12-week total. However, the employer has to do so within five business days of finding out the reason for your trip.

There may also be good reason for you to designate this vacation time as FMLA leave: As long as you provide the notice required under the FMLA, your employer will not be able to cancel your vacation. Using FMLA time will protect you if your mother's condition worsens and you end up having to stay more than one week — your employer will not be able to argue that you are not entitled to that additional leave because you failed to give adequate notice under the FMLA.



## How the FMLA Protects Your Job and Health Insurance

### 40. Will I get my job back when I return to work after taking family or medical leave under the FMLA?

When you return to work after taking FMLA leave, your employer must give you either the same job you had before you left, or a position that has equivalent benefits, pay, working conditions and seniority (see Question 55 for information on what happens if your employer refuses to reinstate you after taking FMLA leave).

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**Exception:** If your job would have been eliminated or downgraded while you were on leave, or you would have been laid off if you had not taken leave, then you are not entitled to the same or an equivalent position when your leave is over under the FMLA. There is also an exception for highly compensated employees (see Question 52).

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### 41. What happens to my health insurance while I am taking leave under the FMLA?

While you are on FMLA leave, your employer must continue to pay for your health insurance coverage as it normally would. If you usually contribute to your health insurance plan, you may also be required to continue making your usual payments while you are on leave.

## 42. When can my employer stop making health insurance payments?

If you do not return to work after 12 weeks of FMLA leave, your employer can stop making health insurance payments on your behalf. Even before that, if you tell your employer that you do not intend to return to work, your employer can stop making those payments. In addition, if your job is eliminated while you are on leave, your employer can stop making health insurance premium payments at the point at which your employment would have been terminated.

If your employer stops making these payments, you become eligible for health insurance through the Consolidated Omnibus Budget Reconciliation Act of 1986 or “COBRA” — under which you can choose to remain part of your employer’s group health plan if you pay the entire premium payment yourself.

## 43. What happens to my health insurance if I don’t return from FMLA leave?

If you do not return after taking FMLA leave, then your employer may require you to pay back the money it paid to maintain your health insurance during your leave. However, your employer cannot require this if you do not return to work because of circumstances that are beyond your control, including an FMLA-qualifying medical condition.

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**Example:** Your spouse being transferred to a job in another city while you are on FMLA leave is considered a circumstance beyond your control. In this situation, your employer cannot require you to pay back the money it paid to maintain your health insurance.

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#### **44. Will taking family and medical leave under the FMLA affect my seniority?**

**No.** When you return to work after taking FMLA leave, you are entitled to the same seniority you had before you went on leave. However, you are not entitled to earn seniority during your leave.

#### **45. Will taking family and medical leave under the FMLA affect my other benefits?**

**Yes and no.** During a period of FMLA leave, your employer has no obligation to continue to give you any benefits other than health insurance – and, therefore, those benefits may be discontinued during your leave.

But, when you return to work, your employer must give you the same benefits you had before you went on leave. These benefits must be resumed without you having to re-apply or meet any new criteria.

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**Example:** If your employer pays for your life insurance policy, then it is required to provide you with that same life insurance policy, at the same level of coverage, when you return from FMLA leave.

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Your employer may choose to continue payments for life insurance or other benefits while you are on leave and recover the costs from you at a later date.



## Requirements for Notifying Your Employer

### 46. How much notice should I give my employer before I plan to take family or medical leave under the FMLA?

If you know ahead of time that you will be taking leave for a new child or for a planned medical treatment for yourself or a family member, you are required to give your employer 30 days of advance notice. In the case of a planned medical treatment, you must try to schedule the medical treatment when it will not unduly disrupt your employer's business.

If the nature of a health condition makes advance notice impossible, whether it is because you cannot predict exactly when the leave will be needed or because of a medical emergency, you must still inform your employer as soon as is practical.

Regardless of whether your leave is anticipated or not, you must still follow your employer's usual requirements for requesting leave unless there are unusual circumstances.

### 47. What must I say in my notice to take FMLA leave?

Your notice must provide enough information for your employer to know what the leave is for – the birth or adoption of a child, your own serious health condition, the serious health condition of your child, spouse or parent, or circumstances related to military caregiving or qualifying exigency leave. There are no magic words required — your employer is supposed to know when the FMLA applies. You do not have to give detailed personal information, but your employer may request a medical certification (see Questions 32-36). To be safe, it is worth mentioning that you want to take leave under the FMLA so that your employer cannot claim that it did not know you were requesting FMLA leave.

## **48. What happens if I don't give the required notice for FMLA leave?**

If you need to take leave under the FMLA and fail to give your employer enough notice and do not have a reasonable excuse, your employer can delay the start date of your leave or refuse to provide FMLA protections for a leave that is already in progress.

## **49. My employer has a policy that anyone who is on FMLA leave must check in every four weeks and let her know how we are doing, and whether we still plan to return to work following our leave. Is this legal?**

**Yes.** While you are on FMLA leave, your employer may require you to report periodically on your status and intent to return to work. However, your employer may not do this in a discriminatory way — for example, requiring only women who are on leave following childbirth to check in, based on a belief that they will change their minds about returning to work.



## Does the FMLA Apply to Everyone?

### 50. I am a teacher. Is my school required to provide leave under the FMLA?

**Yes.** Teachers and other instructors are eligible for family and medical leave under the FMLA if they meet the other requirements for eligibility (see Question 3).

However, in some circumstances, limits may be placed on when teachers can return from leave to avoid disruptions in the school year. If you are scheduled to return from leave during the last few weeks of an academic term, for example, you may have to extend your leave through the rest of the term even though you might be ready to come back sooner. During this period, however, the time you take off does not count against the 12 weeks per year to which you are entitled under the FMLA. Your employer still must continue your health benefits, and your job (or an equivalent one) is still protected. (Your school or school board may have specific policies on the mechanics of how you will be restored to an equivalent position.)

If you need leave on a regular basis because of a planned medical treatment (e.g. chemotherapy treatments), your employer may require you to choose either to take leave for that whole block of time, or to transfer temporarily to a position with equal pay and benefits that is better suited to recurring periods of leave. If you choose to take a block of leave, all of the time you have off will count against your 12 weeks of FMLA leave.

### 51. What if I work for the government — federal, state or local? Can I take FMLA leave? And can I pursue a claim against my state employer if my FMLA rights are violated?

The FMLA covers all local, state and federal government agencies, regardless of the number of employees. But like employees of private

companies, government employees have to work at a worksite that has 50 or more employees within 75 miles, and to have worked for the employer for at least one year and for a minimum of 1,250 hours over the last year (see Question 3 for more information on these eligibility requirements).

Employees of the U.S. House of Representatives and U.S. Senate are also covered by the FMLA's protections, if they have worked at least 1,250 hours and at least 12 months. In Congress, the FMLA is administered by the Office of Compliance.

In the best case, FMLA leave and your return to work will go smoothly. However, if they don't and you're a state employee, there's something you should know about your right to recover damages. If you are a state employee who challenges and successfully proves in court that your employer violated the FMLA, your ability to collect monetary damages may be limited. The U.S. Supreme Court has ruled that state workers cannot obtain *monetary* relief when their state employers violate the *medical* leave provision of the FMLA. State workers can still obtain monetary relief for violations of the *family* leave provision.

Some states have their own laws that protect state employees and permit state employees to sue their state employer for damages in federal court.

## **52. I am a top executive at my company. Does the FMLA still apply to me?**

**In part.** If you are among the highest-paid 10 percent of employees at your company, your employer may not have to keep your job or a similar position open for you while you take leave under the FMLA. But, before your employer can deny you leave, it must show that guaranteeing you your job would cause substantial economic harm to the organization. And you must be told in advance that your job may not be open when you return. Whatever happens upon your return, your employer must maintain your usual health insurance coverage while you are on leave.

### **53. I am a member of an airline flight crew. Does the FMLA apply to me?**

**It depends.** In order to be protected under the FMLA as a member of an airline flight crew, you must either have worked or been paid for: 60 percent or more of your total monthly guaranteed hours in the past 12 months, or not less than 504 hours in the past 12 months – not counting personal commute time, vacation time or medical leave.

The calculation of your total monthly guaranteed hours depends on whether you are on reserve status. If you are not on reserve status, your total monthly guarantee is the minimum number of hours for which your employer has agreed to schedule you for any given month. If you are on reserve status, your monthly guarantee is the minimum number of hours for which an employer has agreed to pay you in any given month.



## What Should I Do if My Employer Violates My Rights Under the FMLA?

### 54. What should I do if my employer denies my request for family or medical leave under the FMLA?

**First**, make sure that you have complied with your obligations under the FMLA:

- ▶ Did you give your employer clear notice, long enough in advance? (See Question 46.)
- ▶ Did you provide any required or requested medical certification? (See Question 32-33.)

**Second**, make sure that your employer knows that you are requesting leave under the FMLA. Share a copy of this guide (available at [www.NationalPartnership.org/FMLAGuide](http://www.NationalPartnership.org/FMLAGuide)). Fact sheets are also available from the U.S. Department of Labor (see Question 58 for information on how to contact the Wage and Hour Division).

If this still does not affect your employer's decision, and you believe you are entitled to leave, you may consider hiring a lawyer who is familiar with employees' rights to help you.

You can also contact your regional office of the U.S. Department of Labor's Wage and Hour Division to file a complaint. You may file a complaint by phone, by mail or in person.

If the problem is not resolved by a phone call from the U.S. Department of Labor to your employer, then the department may sue your employer on your behalf. The department will investigate your complaint before doing so. That investigation may include a review of your employer's records and books, as well as other steps needed to resolve your complaint.

## 55. What should I do if I take family or medical leave under the FMLA but am told I have no job when I try to return to work?

You should inform your employer that you have a right to be reinstated under the FMLA (subject to the exceptions explained in Questions 50 and 52). If your employer still refuses to reinstate you to your job or an equivalent one, then you may consider hiring a lawyer who is familiar with employees' rights to help you and/or file a complaint with the U.S. Department of Labor's Wage and Hour Division immediately.

## 56. Can I sue my employer in court if my employer violates my FMLA rights?

**Yes.** If you believe that your rights under the FMLA have been violated, you can sue your employer in court. Generally, you must bring the suit within two years of the violation (three years if your employer knew of or recklessly disregarded its duties under the FMLA).

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**Exception:** If the U.S. Department of Labor files a lawsuit on your behalf, you can no longer file your own suit.

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## 57. If I can successfully prove my employer's violation of the FMLA in court, what remedies are available to me?

If a court finds that your rights under the FMLA have been violated, you may get:

- ▶ Your job back;
- ▶ Up to double your lost wages and benefits; and
- ▶ Reimbursement for your legal fees and costs.

**Note:** State employees have a right to recover *monetary* damages in only some cases (see Question 51).

## **58. Where can I get more information about enforcing my FMLA rights?**

To get more information about enforcing your rights under the FMLA, call or write:

U.S. Department of Labor  
Wage and Hour Division  
200 Constitution Ave., N.W. Washington, D.C. 20210  
(866) 487-2365

You can contact the U.S. Department of Labor by email here: [www.dol.gov/dol/contact/contact-emailtopics.htm](http://www.dol.gov/dol/contact/contact-emailtopics.htm). Or call your regional office of the U.S. Department of Labor's Wage and Hour Division.

The Wage and Hour Division has additional resources on the FMLA, including copies of the law and regulations, which you can get for free. These and other helpful materials are available at [www.dol.gov/WHD/fmla](http://www.dol.gov/WHD/fmla).



## Other Leave Laws and Protections

### 59. What if my state offers 16 weeks of family and medical leave? Can I take leave for 16 weeks a year instead of the 12 weeks provided by the FMLA?

**Yes.** The federal FMLA sets the minimum standard — 12 weeks of unpaid, job-protected family and medical leave. If your state has a more generous law than the FMLA, then you can take advantage of the more generous provisions.

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**Example:** The District of Columbia offers eligible employees 16 weeks of family leave and 16 weeks of medical leave over a 24-month period. So, if you work in D.C., you can take 16 weeks of family leave in one year — that's covered by the D.C. law — and then, in the following year, you can take 12 weeks of family leave under the federal law.

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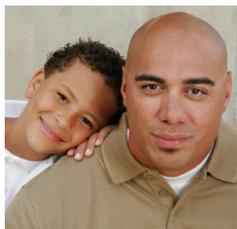
As of August 2013, 20 states provide some type of leave that is more generous than the FMLA. Most of these state laws increase the number of people who can access the FMLA by altering the eligibility requirements or increasing the amount of unpaid leave you can take. For more information on state leave laws, visit [www.NationalPartnership.org/WFDB](http://www.NationalPartnership.org/WFDB) or read *Expecting Better* at [www.NationalPartnership.org/ExpectingBetter](http://www.NationalPartnership.org/ExpectingBetter).

**60. Under our union contract, my employer already provides 16 weeks of paid medical leave. But, if FMLA is the law, can my employer refuse to pay me during my leave and give me only the 12 weeks provided by the FMLA?**

**No.** The FMLA was created as a minimum standard. It does not diminish your employer's obligation to comply with any benefit plan or collective bargaining agreement that provides more generous family and medical leave benefits than the FMLA provides.

**61. I recently suffered a stroke and my doctor tells me that my rehabilitation will take several months. With the time I already spent in the hospital, this means that I will be out of work for at least sixteen weeks. Is my job protected?**

The FMLA provides job security for only 12 weeks. However, you may also have additional protections under state law, the Americans with Disabilities Act (ADA) or through your employee contract. For more information on the ADA, visit the U.S. Department of Justice's ADA homepage at [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm).



## For More Information

For more information on the Family and Medical Leave Act and proposals to expand it, visit the National Partnership for Women & Families' FMLA page at [www.NationalPartnership.org/FMLA](http://www.NationalPartnership.org/FMLA), or email us at [info@nationalpartnership.org](mailto:info@nationalpartnership.org).

To learn more about family friendly state laws, including state family and medical leave laws that improve upon the FMLA, check out the National Partnership's database of workplace laws at [www.NationalPartnership.org/WFDB](http://www.NationalPartnership.org/WFDB) or read *Expecting Better*, a 2012 report that provides a comprehensive assessment of state leave laws. It is available at [www.NationalPartnership.org/ExpectingBetter](http://www.NationalPartnership.org/ExpectingBetter).

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