

FMLA Basics FAQ

Family and Medical Leave Act (FMLA) Basics

Question	Answer
What is FMLA?	The Federal Family and Medical Leave Act (FMLA) requires certain employers to provide some employees with unpaid, job-protected leave due to certain family and medical reasons.
Which employers must offer FMLA leave?	Employers with 50 or more employees for at least 20 workweeks in the current or prior calendar year.
Which employees are eligible for FMLA leave?	Employees that: <ul style="list-style-type: none"> • Have worked for the covered employer for at least 12 months • Have worked for at least 1,250 hours during the previous 12 months; and • Work at a location where the employer has at least 50 employees within 75 miles.
How long can an employee be out of FMLA leave?	Up to 12 weeks in a 12-month period for: <ul style="list-style-type: none"> • The birth or care of a newborn child • A serious health condition of the employee or an immediate family member • An adoption or foster care placement <p>Additional requirements apply for employees with military servicemembers in their immediately family.</p>
What are the military family leave provisions of the FMLA?	The National Defense Authorization Acts (NDAA) for FY 2008 and 2010 amended the FMLA to provide two types of leave entitlements for FMLA-eligible employees: <ul style="list-style-type: none"> • Qualifying Exigency leave - Up to 12 weeks in a 12-month period • Military Caregiver leave - Up to 26 weeks in a 12-month period
Must FMLA leave be taken all at one time?	No. FMLA leave may be taken intermittently or as part of a reduced schedule.
Must an employer maintain an employee's health benefits while he or she is on FMLA leave?	Yes, and employees must continue paying premiums as they did before taking FMLA leave.
Are employers required to provide FMLA notices to FMLA-eligible individuals?	Yes. Employers are generally required to: <ol style="list-style-type: none"> 1. Post the General FMLA Notice in the workplace. 2. Distribute the General FMLA Notice in the employee handbook or to employees at the time of hiring. <p>Additional notice requirements apply when an employee requests FMLA leave.</p> <p>See the FMLA Notice Requirements for additional details.</p>
Do states have their own family and medical leave laws?	Yes.

Can employers that offer paid family and medical leave qualify for a tax credit?	Yes.
How much notice must an employee give before taking FMLA leave?	<p>When the need for leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, an employee must give at least 30 days' notice. If 30 days' notice is not possible, an employee is required to provide notice "as soon as practicable." Employees must also provide notice as soon as practicable for foreseeable leave due to a qualifying exigency, regardless of how far in advance such leave is foreseeable. The regulations clarify that it should be practicable for an employee to provide notice of the need for leave that is foreseeable either the same day or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must account for the individual facts and circumstances.</p> <p>When the need for leave is unforeseeable, employees are required to provide notice as soon as practicable under the facts and circumstances of the case, which the regulations clarify will generally be within the time prescribed by the employer's usual and customary notice requirements applicable to the leave.</p>
How soon after an employee provides notice of the need for leave must an employer determine whether someone is eligible for FMLA leave?	Absent extenuating circumstances, the regulations require an employer to notify an employee of whether the employee is eligible to take FMLA leave (and, if not, at least one reason why the employee is ineligible) within five business days of the employee requesting leave or the employer learning that an employee's leave may be for a FMLA-qualifying reason.
Can employers require employees to submit a fitness-for-duty certification before returning to work after being absent due to a serious health condition?	Yes. As a condition of restoring an employee who was absent on FMLA leave due to the employee's own serious health condition, an employer may have a uniformly applied policy that requires all employees who take leave for such conditions to submit a certification from the employee's own health care provider that the employee is able to resume work. Under the regulations, an employer may require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the position if the employer has appropriately notified the employee that this information will be required and has provided a list of essential functions. Additionally, an employer may require a fitness-for-duty certification up to once every 30 days for an employee taking intermittent or reduced schedule FMLA leave if reasonable safety concerns exist regarding the employee's ability to perform his or her duties based on the condition for which leave was taken.
Where can I find FMLA forms?	<p>On the Department of Labor website: www.dol.gov/agencies/whd/fmla/forms</p> <ul style="list-style-type: none"> • WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition • WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition • WH-381 Notice of Eligibility and Rights & Responsibilities • WH-382 Designation Notice • WH-384 Certification of Qualifying Exigency for Military Family Leave • WH-385 Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave • WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

For More Information

For more information regarding FMLA, visit www.dol.gov/whd/fmla/ or call 1-866-4-USWAGE (1-866-487-9243) or contact The Olson Group at 402-289-1046 or at hrconsulting@theolsongroup.net.