



# THE FAMILY AND MEDICAL LEAVE ACT

The Family and Medical Leave Act (FMLA) is a federal law that recognizes that workers should not have to choose between their jobs and the need to deal with family emergencies. The FMLA establishes a basic floor for family leave benefits for workers. Where greater family and medical leave benefits are provided either by union contract or state law, the more generous benefits apply.

## Who is covered by the FMLA?

An estimated 40 percent of U.S. workers are covered by the FMLA. Employees, including part-time and temporary workers, who have worked for an employer at least 1,250 hours (25 hours per week) during the last 12 months are eligible if they work for:

- ▲ Federal, state, and local governments and school districts.
- ▲ Private sector companies which had 50 or more employees during at least 20 weeks in the previous year. For a specific employee to be eligible, there have to be at least 50 company employees working within a 75 mile radius of where he or she works.

## What are the benefits under the FMLA?

Eligible workers are entitled to 12 weeks of unpaid leave in any 12-month period:

- ▲ To deal with the birth of a child or the placement of a child with their family for adoption or foster care.
- ▲ To care for an immediate family member (child, spouse, or parent, not in-laws) with a "serious health condition."
- ▲ To take medical leave when the employee is unable to work because of his or her own "serious health condition."

Any employer-paid health insurance must be continued during the leave. Workers are guaranteed the same position or one that is equivalent in pay, benefits, shift, and responsibilities after the leave is over.

## What is a serious health condition?

A serious health condition is an illness, injury, impairment or physical or mental condition that involves either:

- 1 Any period of incapacity or treatment in a hospital,

hospice or residential medical-care facility or subsequent treatment in connection with such facility; or

- 2 Continuing treatment by a health care provider which includes any period of incapacity (i.e. inability to work, attend school or perform other regular daily activities due to:
  - a health condition lasting more than 3 consecutive days; or
  - b pregnancy or prenatal care; or
  - c a chronic serious health condition which continues over an extended period of time which requires periodic doctor visits, and may involve occasional episodes of incapacity (i.e. asthma, diabetes); or
  - d a permanent or long term condition for which treatment may not be effective (i.e. Alzheimers, a severe stroke or terminal cancer); or
  - e any absences to receive multiple treatments for restorative surgery or a condition which would likely cause a period of incapacity of more than three days (i.e. chemotherapy or radiation treatments for cancer).

## How does the FMLA work?

Covered employers are required to post a U.S. Department of Labor notice explaining rights and responsibilities under Family and Medical Leave Act, and provide employees detailed information when they request FMLA leave.

It is unlawful for employers to discriminate against an employee who requests leave or complains about an employer violation of the FMLA.

Employers may require 30-day advance notice when an employee takes leave under the FMLA for something that is foreseeable — like major surgery scheduled in advance. Employers also may require:

- 1 medical certification of the serious health condition from a doctor or other health care provider supporting the need for leave affecting the employee or an immediate family member;
- 2 second or third opinions at the employer's expense, or periodic recertification;

- 3 periodic reports during FMLA leave regarding employee's status and intent to return to work.

### **What happens to seniority and benefits during leave?**

Health coverage is the only benefit that employers are required to continue during FMLA leave. Other benefits — such as vacation time, sick leave, and seniority — must be restored when the worker returns from leave, but need not be continued or accrued during the leave period itself.

However, under anti-discrimination laws, workers on FMLA leave cannot be denied benefits that are routinely provided to workers on other types of unpaid leave. For example, if a contract provides life insurance coverage to workers on unpaid educational leaves, the employer must extend that coverage to workers on family and medical leave as well.

### **Does leave always have to be taken in large blocks?**

No. For medical leave (but not for birth or adoption), employers are required to allow leave on an intermittent or reduced work schedule if the worker chooses.

However, when intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must attempt to schedule treatment so as not to disrupt the employer's operation.

For example, a worker who needs continuing medical treatment, such as chemotherapy, could take one week of unpaid leave a month for 12 months (intermittent leave), while a worker whose mother needs part-time care while recovering from a fractured hip could work a half-day schedule for 24 weeks (reduced leave).

Under the FMLA, it is unlawful for an employer to discipline an employee for excessive absences when the leave is being taken in accordance with the FMLA.

A worker on a reduced or intermittent schedule may be transferred temporarily to another job that better accommodates the new schedule, as long as pay and benefits are equivalent.

### **How does the FMLA affect accrued sick leave and vacation time?**

Subject to certain conditions, the law gives both workers and employers the right to substitute accrued paid leave

for all or part of the 12 weeks of FMLA leave.

- ▲ If a worker eligible for unpaid leave under the FMLA asks to substitute accrued paid leave, such as vacation, the employer must grant that request. Requests to use accrued sick leave to care for a relative with a serious medical condition need not be granted if the employer does not ordinarily allow sick leave to be used to care for ill family members.
- ▲ According to federal regulations, employers may require workers to exhaust their accrued paid leave, such as vacation time, while taking FMLA leave. The paid leave counts against the 12 weeks of unpaid leave required by law. However, unions have begun to file grievances challenging the required use of paid leave for FMLA leave since it is a use of paid leave that has not been negotiated through the collective bargaining process. At least one published arbitration decision supports this union position. Grand Haven Stamped Products Co. (Daniel, 1996) 107 LA 131.

**Bargaining Tip:** Negotiate for paid leave to be used with FMLA leave at the worker's option.

### **How will the FMLA affect the leave we get under our contract?**

The FMLA is intended to be a floor, not a ceiling, for family and medical leave rights. Where greater family and medical leave benefits are provided either by union contract or state law, the more generous benefits apply.

### **How Can We Enforce the FMLA?**

If you are disciplined because of FMLA absences, denied leave or reinstatement, refused benefits, or harmed by any other FMLA violation, you and the Union may raise these issues through the grievance procedure. You and the Union may also file an FMLA complaint with the Department of Labor Wage and Hour Division. FMLA complaints must be filed within two years of the violation.

**For more information about the Family and Medical Leave Act,** contact the International Brotherhood of Teamsters Human Rights Commission, at (202) 624-7471.

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