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### What is FMLA? FAQ on Federal Leave Law

#### What is FMLA?

"FMLA" refers to the Family and Medical Leave Act, which is a federal law that guarantees certain employees up to 12 workweeks of unpaid leave each year with no threat of job loss. FMLA also requires that employers covered by the law maintain the health benefits for eligible workers just as if they were working.

FMLA is a complicated law, but the answers to the questions below can help you understand what your rights and responsibilities are under the Family and Medical Leave Act.

#### What Employers Does FMLA Apply to?

Only those employers that reach the minimum requirements must comply with FMLA. All public agencies must follow FMLA rules, including State, Federal and local employers, as well as schools. For private employers, FMLA applies to those employers who employed 50 or more employees for at least 20 workweeks during either this year or the previous year.

#### How Do I Know if I'm Eligible for FMLA?

FMLA only applies to certain employees. First, the employee must work for a covered employer (see the question above). Second, the employee must work for the employer for a minimum of 12 months, and at least 1,250 hours during those 12 months, before taking leave under FMLA. Third, the employee's job must take place at a location where at least 50 employees work, or within 75 miles of such a location.

#### What Sorts of Situations Qualify for FMLA Leave?

Covered employers must grant FMLA leave for one or more of the following situations:

- The employee cannot work because of a serious medical condition.
- The employee must care for an immediate family member that has a serious medical condition.
- The birth and/or subsequent care of the employee's child.
- The placement and/or subsequent care of an adopted or foster care child.
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or

- A "qualifying exigency" that arises out of the fact that the employee's spouse, child or parent is on active duty or has been called to active duty for the National Guard or Reserve in support of a contingency operation.

#### My Wife's Father Has Recently Become Very Ill. Can I Take FMLA Leave to Care for Him?

Unfortunately, no. FMLA only allows employees to take leave to care for their own parents, not their in-laws. Your wife must be the one to take the leave.

#### Can I Take FMLA Leave to Care for My 19 Year-Old Son?

It depends. FMLA will only cover care for children over 18 if the child is "incapable of self care" because of a serious disability that impacts one of the "major life activities."

#### How Do Employers Determine the Applicable 12-Month Period?

FMLA creates four options for employers when calculating the 12-month period they will use. Employers can select:

- The calendar year;
- A fixed "leave year". This can be based on any 12-month period, such as a fiscal year, or the anniversary of the employee starting with the company;

- A 12-month period beginning with the date that an employee's first FMLA leave begins; or
- A 12-month period that goes backward from the date that an employee's first FMLA leave begins.

#### **Will I Get Paid During FMLA Leave?**

FMLA doesn't guarantee any sort of paid leave. An employee can elect to use paid leave that they have accrued, however. Employers can also require an employee to use paid leave as part of the FMLA leave as long as the employer provides the employee with the proper notification.

#### **Can Other Types of Leave Count Towards My 12-Week FMLA Leave?**

Yes. If the purpose of the leave meets the requirements for FMLA leave and the employer provides proper notice in writing that they will consider the leave as part of the employee's yearly FMLA allotment. This sort of situation typically occurs when an employee takes leave based on worker's comp or maternity/paternity.

#### **Can I Take FMLA Leave to Attend My Prescribed Sessions with a Therapist?**

Yes. FMLA leave covers ongoing treatments by a health care provider, so employees can count therapy sessions that are medically necessary as FMLA leave.

#### **My Employer Wants Proof That I'm Really Sick. Do I Have to Provide Medical Records?**

No. An employer can request that you provide some sort of medical certification of your serious medical condition, but you do not have to provide medical records to your employer.

#### **Can My Employer Require Me to End My Leave Early?**

If you fail to provide medical certification of your serious condition, then your employer may be able to cut your leave short. Assuming you've provided the proper certification, however, an employer cannot request that you come back to work, even by offering light or part-time work.

#### **Are There Limits to What I Can and Cannot Do While on FMLA Leave?**

You may have to follow policies your employer's policies on outside employment, but your employer cannot otherwise restrict your actions during your leave. This will not apply, however, if the original reason for the leave no longer exists, if you failed to provide medical certification or if you lied about the reasons for the leave in the first place.

#### **My Employer Has Refused to Grant My Request for Leave. Can They Do That?**

If your employer is covered by FMLA and you are an eligible employee under the statute, then your employer cannot deny your request as long as you comply with FMLA's notice and certification requirements and haven't already exhausted your leave for the relevant 12-month period.

#### **Can I Lose My Job If I Take FMLA Leave?**

No, but there are a few exceptions. Employers can't interfere with the rights conferred under the FMLA, and employers can't use FMLA leave as a negative factor in any employment decisions such as promotions or terminations. Employers can sometimes deny reinstatement to certain highly-paid, salaried workers, known as "key" employees.

#### **If I Complain About an FMLA Violation, Can My Employer Fire Me?**

No, employers cannot retaliate against an employee for alleging a violation of FMLA.

#### **What About My Bonus?**

If an employee is eligible for a bonus prior to taking FMLA leave, the employer cannot use the leave as a justification for denying the bonus. An employer does not have to count the time on FMLA towards a bonus or any accrual of benefits or seniority.