



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

# Fact Sheet #28A: Employee Protections under the Family and Medical Leave Act

**March 2023**

The Family and Medical Leave Act (FMLA) provides job-protected leave from work for family and medical reasons. This fact sheet explains the rights of employees during FMLA leave and when they return to work from FMLA leave.

## ABOUT THE FMLA

The FMLA provides eligible employees of covered employers with job-protected leave for qualifying family and medical reasons and requires continuation of 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. Employees must be restored to the same or a virtually identical position when they return to work after FMLA leave.

**Eligible employees:** Employees are eligible if they:

- Work for a covered 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.

**Covered employers:** 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 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).

**The FMLA protects** leave for:

- The birth of a child or placement of a child with the employee for adoption or foster care,
- The care for a child, spouse, or parent who has a serious health condition,
- A serious health condition that makes the employee unable to work, and
- Reasons related to a family member's service in the military, including
  - Qualifying exigency leave - Leave for certain reasons related to a family member's foreign deployment, and
  - Military caregiver leave - leave when a family member is a current servicemember or recent veteran with a serious injury or illness.

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

## TIME OFF WORK

Eligible employees have the right to use up to 12 workweeks of FMLA leave in a 12-month period, and up to 26 workweeks of leave during a single 12-month period for military caregiver leave.

*Examples:*

- Tom is eligible for FMLA leave and requests six weeks of FMLA leave to care for his wife when she is recovering from a serious health condition. However, Tom's boss says Tom can only use two weeks of leave during the store's busy season. Under the FMLA, Tom's boss must allow Tom the right to take FMLA leave.
- Meredith is on FMLA leave to care for her mother who was seriously injured during service with the Armed Forces. Meredith's employer tells her to come back to work because the person who was filling in for her quit. Under the FMLA, Meredith has the right to continue her FMLA leave and does not have to go back to work.
- Latrice was approved to use FMLA leave for 12 weeks to complete inpatient treatment for a serious health condition. When Latrice notifies her company's human resources office that she is ready to return to work early, after 8 weeks, she is told that she should stay on leave for four more weeks because the company hired new staff to fill in for her for 12 weeks. Latrice's employer may not require Latrice to use more FMLA leave than she needs, even if the company hired a temporary replacement.

**Intermittent or reduced schedule leave.** Employees have the right to take FMLA leave all at once, or, when medically necessary, in separate blocks of time or by reducing the time they work each day or week. Intermittent or reduced schedule leave is also available for military family leave reasons. However, employees may use FMLA leave intermittently or on a reduced leave schedule for bonding with a newborn or newly placed child only if they and their employer agree.

## PROTECTIONS DURING FMLA LEAVE

**Group health insurance benefits.** If an employee has health insurance through an employer's group health plan, they can continue their group health insurance coverage during FMLA leave on the same terms as if they had continued to work. For example:

- If an employee has family member coverage, they must continue to receive family member coverage during their FMLA leave.
- Employees must continue to receive benefit coverage for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, etc., on the same terms as before leave began.
- Employees must be given notice and an opportunity to change plans or benefits if plans or benefits change while they are on FMLA leave.

To maintain insurance coverage while on FMLA leave, an employee will need to continue to make any normal contributions to the cost of health insurance premiums. For example, if an employee uses paid leave at the same time as FMLA leave, the employee's share of group health plan premiums must be paid by payroll deduction, or another such method normally used during paid leave. In some instances, an employer may pay the employee's portion of the premium and the employee will need to repay these amounts, usually upon return to work.

If an employee chooses not to keep their group health plan coverage during FMLA leave, when they return to work, they have the right to be reinstated to the same coverage levels, including family or dependent coverages, as before their leave began. For example, no qualifying periods or physical examinations may be required, and no exclusions based on pre-existing conditions may be applied.

**Other benefits.** The FMLA requires that benefits such as life insurance, disability insurance, sick leave, vacation, educational benefits, pensions, retirement or 401(k) benefits, etc., must also be available when the employee returns from FMLA leave. These benefits must be resumed in the same manner and at the same level as when the leave began, unless changes came about that affected the entire workforce. An employee returning from FMLA leave does not have to requalify for any benefits they enjoyed before the leave began.

**Paid leave.** FMLA leave is unpaid, but employees may use paid leave at the same time they take FMLA leave if the reason they are using FMLA leave is covered by the employer's paid leave policy. An employer may also require an employee to use their paid leave during FMLA leave.

## RETURNING TO WORK

After using FMLA leave, an employee must be able to return to their same job or to an "equivalent job." An equivalent job means a job that is virtually identical to the employee's original job in terms of pay, benefits, and other employment terms and conditions. An employee should usually be able to return from FMLA leave to their original schedule and work location.

*Examples:*

- Edie works as a cook at an assisted living center. As a cook, Edie mainly works with other kitchen staff and interacts with residents when she serves meals. When Edie returns to work after using FMLA leave, she is assigned to work as an assistant who works with residents fulltime instead of as a cook preparing meals. Even though her pay, shift, benefits, and work location are the same, Edie has not been trained to work with residents fulltime and has never worked as an assistant before. The two jobs are not equivalent because they do not have the same or substantially similar duties or responsibilities, and Edie has a right under the FMLA to return to her job as a cook or to a job that is virtually identical to her job as a cook.
- Destiny is a payroll department manager who returns to work from FMLA leave and is placed as an accounts-receivables clerk with no supervisory responsibilities. Destiny's employer states that the reassignment is temporary, and that she will be paid the same amount she was paid as a manager. The two jobs are not equivalent because they do not involve equivalent status, responsibility, or authority. Destiny has a right under the FMLA to be reinstated to her original job or one that is virtually identical to her original job.

**Equivalent pay.** When an employee returns from FMLA leave they have a right to:

- The same or equivalent pay premiums, such as a shift differential,
- The same opportunity for overtime,
- Any unconditional pay increases that occurred while the employee was on FMLA leave, such as cost of living increases, and
- Any unconditional bonuses or payments.

**Conditional pay increases, bonuses or payments.** Some pay increases and bonuses are based on meeting certain requirements or achieving a goal. For example, an employee may be able to earn a pay increase based on their seniority, length of service, work performance, attendance history, or safety record. Employees who use FMLA leave have the same right to conditional pay increases, bonuses, or payments as employees who use similar types of leave.

*Example:*

Kathy, Serenity, and Ray work for the same employer. Their employer provides a bonus to employees who work or are paid for 40 hours a week.

In a particular week:

- Kathy works 38 hours and uses 2 hours of unpaid leave to have lunch with a friend. Kathy is paid a total of 38 hours for the week and is not eligible for the bonus.
- Serenity works 38 hours and uses 2 hours of paid sick leave to see a dentist for a health reason that does not qualify for FMLA leave. Serenity is paid a total of 40 hours for the week and is eligible for the bonus.
- Ray works 38 hours and uses 2 hours of paid sick leave at the same time as FMLA leave to see a physical therapist for treatment of a serious health condition. Ray is paid a total of 40 hours for the week and is eligible for the bonus.

Under the FMLA, Ray is eligible for the bonus because Ray used FMLA leave at the same time as paid sick leave, and employees like Serenity who use paid sick leave are not disqualified from the bonus.

In another week:

- Ray works 38 hours and uses 2 hours of unpaid FMLA leave because of a serious health condition. Ray is paid a total of 38 hours for the week and is not eligible for the bonus.

Ray is not eligible for the bonus because he took unpaid FMLA leave, and the employer's policy treats employees who use unpaid leave for other reasons, like Kathy in the previous example, the same way.

**Prohibited actions.** An employee may not be punished for using FMLA leave. For example, employers are prohibited from discriminating or retaliating against employees who have exercised or attempted to exercise any FMLA right and cannot use the taking of FMLA leave against the employee in applying negative points or deducting positive points under attendance policies.

*Examples:*

- At Francesca's office, everyone who has a late start to work gets a point under the employer's disciplinary policy, no matter why they are late. Francesca receives a disciplinary warning because they received three points for being late to work three different times. One of the times that Francesca was late for work, they were using FMLA leave to care for their child. However, Francesca is protected from being disciplined for using FMLA leave. Their employer must remove the point assessed when they were late due to FMLA leave from their record.
- Parker uses FMLA leave to go with her spouse to a prenatal care appointment. When Parker comes back to work, her supervisor threatens that she will not be considered for a promotion if she continues to use FMLA leave because of her spouse's pregnancy. Under the FMLA, Parker is protected from her employer interfering with or discouraging her FMLA leave. Parker must be allowed to use FMLA leave for the care of her spouse, provided she continues to be eligible to use FMLA leave. In addition, Parker's FMLA leave cannot be used as a negative factor in an employment action, and she has the right to fairly compete for promotions, regardless of whether she has taken leave.

## ADDITIONAL PROTECTIONS

### State Laws

Some States have their own family and medical leave laws. Nothing in the FMLA prevents employees from receiving protections under other laws. Workers have the right to benefit from all the laws that apply.

### Protection from Retaliation

The FMLA is a federal worker protection law. 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.

## Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website:

<http://www.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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