



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #28B: Using FMLA Leave When You are in the Role of a Parent to a Child

April 2023

The Family and Medical Leave Act (FMLA) provides job-protected leave from work for certain family and medical reasons.

This fact sheet explains when a worker may use FMLA leave for bonding with a new child, or for the care of a child with a serious health condition, when the worker *is in the role of a parent* to the child.

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](#).

PARENTAL LEAVE

The FMLA allows eligible employees to take job-protected leave upon the birth of a child or placement of a child with the employee for adoption or foster care and to bond with their child within the first 12 months beginning on the date of the birth or placement. The FMLA also provides leave for parents to care for a child with a serious health condition. For more information about using FMLA leave for the birth, placement, and bonding with a child under the FMLA, see [Fact Sheet #28Q](#). For more information about using FMLA leave when the employee or their family member has as a serious health condition, see [Fact Sheet #28P](#).

For military family leave, "child" may refer to a person of any age. For more information about military family leave, see [Fact Sheet #28M](#). In all other circumstances, the FMLA definition of child applies only to children under the age of 18 or a child 18 years of age or older and incapable of self-care because of a mental or physical disability. For more information about using FMLA leave for the care of a child who is 18 or older, see [Fact Sheet #28K](#).

Under the FMLA, a child includes an employee's biological, adoptive, step, or foster child, a legal ward, or a child to whom the employee stands *in loco parentis*. Standing *in loco parentis* means a person is in the role of a parent.

IN THE ROLE OF A PARENT

Standing in the role of a parent includes having day-to-day responsibilities to care for or financially support a child. In some circumstances grandparents or other relatives, such as siblings, may stand *in loco parentis* to a child, but a person does not have to have a biological or legal relationship to a child to be in this role.

Factors that relate to whether a person is *in loco parentis* to a child include the:

- Age of the child,
- Degree to which the child is dependent on the parental figure,
- Amount of financial support, if any, provided, and
- Extent to which the parental figure performs duties commonly associated with parenthood.

Additionally, the fact that a child has one or two biological parents at home does not prevent an employee from standing in the role of a parent to the child. The FMLA does not restrict the number of parents a child may have. The specific facts of each situation will determine whether an employee stands *in loco parentis* to a child.

Examples:

- An employee who is not married to their partner, but will co-parent their partner's child, may take leave for the birth of the child, and for bonding with the child, even if they are not the biological parent of the child.
- An employee who has ongoing responsibility for raising a grandchild may take FMLA leave to care for the child when the child has a serious health condition.
- An employee who becomes responsible for her nephew's care following the passing of her sibling may take FMLA leave for the care of her nephew when he has a serious health condition.

For more information about the meaning of *in loco parentis* as it applies to the FMLA, see [Administrator's Interpretation No. 2010-3](#).

ADDITIONAL INFORMATION

Documentation of Family Relationship

Employers may, but are not required to, request that employees provide reasonable documentation of a family relationship when they need to use FMLA leave to care for a family member. The criteria for documenting family relationships is applied in the same way whether the relationship is biological, adoptive, *in loco parentis*, or other. Employees may satisfy an employer's request for documentation of a family relationship by providing a simple statement asserting that the family relationship exists. It is the employee's choice whether to provide a simple statement or other documentation. For example, an employee might provide the child's name and enough information for the employer to be aware that they are acting in the role of a parent to the child.

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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