



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #28C: Using FMLA Leave to Care for Someone Who Was in the Role of a Parent to You When You were a Child

February 2023

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

This fact sheet explains when workers may use FMLA leave to care for someone who is not their biological or legal parent, but who was in the role of a parent to them when they were a 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 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](#).

CARING FOR A PARENT UNDER THE FMLA

The FMLA provides eligible employees with the ability to use job-protected leave to care for a parent with a serious health condition, including providing psychological comfort. Under the FMLA, a parent is an employee's biological, adoptive, step, or foster parent, or someone who stood *in loco parentis* to the employee when the employee was a child. Standing *in loco parentis* means a person is in the role of a parent.

To have been in the role of a parent to an employee when the employee was a child, an individual will need to have been in this role when the employee was either under 18 or was 18- years-old or older and incapable of self-care because of a mental or physical disability. For more information about FMLA leave to care for an adult child with a disability, see Fact Sheet 28K.

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. A person does not have to have a biological or legal relationship to a child to stand *in loco parentis* to the child, but in some circumstances grandparents or other relatives, such as siblings, may 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 a biological parent at home, or both a mother and a father, 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 individual stood *in loco parentis* to an employee when the employee was a child.

Examples:

- An employee has an aunt who acted in the role of his parent during part of his childhood. He uses FMLA leave to care for her when she has an FMLA-qualifying serious health condition.
- An employee's grandfather acted in the role of a parent to her when she was growing up.

She uses FMLA leave to care for him when he is hospitalized for a week.

- An employee uses military caregiver leave to help with the care of his father's ex-partner who acted in the role of a parent to the employee when the employee was a teenager.

For more information about the legal meaning of *in loco parentis* as it applies to the FMLA, see [Administrator's Interpretation No. 2010-3](#). For information about taking FMLA leave for the care of a child when you are not their biological or legal parent, but are in the role of a parent, see FMLA [Fact Sheet #28B](#).

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. Employees may satisfy an employer's request for documentation of a family relationship by providing a simple statement asserting that the required 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 name of the person who stood *in loco parentis* to the employee when the employee was a child, along with enough information for the employer to be aware that the person acted in the role of a parent to the employee.

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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