



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #28K: Using FMLA Leave to Care for an Adult Child with a Disability

February 2023

The Family and Medical Leave Act (FMLA) provides job-protected leave from work for family and medical reasons, including to care for a child with a serious health condition.

This fact sheet explains when workers may use FMLA leave to care for a child with a serious health condition if the child is 18 or older and incapable of self-care because of a disability.

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](#).

LEAVE TO CARE FOR A CHILD UNDER THE FMLA

The FMLA broadly defines a child to include a:

- Biological, adopted or foster child,
- Stepchild,
- Legal ward, or
- Child of a person standing *in loco parentis*, or in the role of a parent. (See [Fact Sheet 28B](#) for more information on standing *in loco parentis* to a child.)

FMLA leave is available to parents for the care of a child with a serious health condition if the child is under 18 or, in some circumstances, if the child is 18 years or older. Employees may use FMLA leave to care for an adult child with a serious health condition who is incapable of self-care at the time the FMLA leave will start because of a mental or physical disability. The disability does not have to have begun or been diagnosed before the employee's child turned 18. A disability may occur at **any age** for FMLA purposes.

INCAPABLE OF SELF-CARE

Incapable of self-care means the employee's adult child requires active assistance or supervision with three or more "activities of daily living" or "instrumental activities of daily living."

Activities of daily living include, but are not limited to:

- Grooming and hygiene,
- Bathing,
- Dressing, and
- Eating.

Instrumental activities of daily living include, but are not limited to:

- Cooking,
- Cleaning,
- Shopping,
- Taking public transportation,
- Paying bills,
- Maintaining a home,
- Using a phone, and
- Using the post office.

BECAUSE OF A DISABILITY

The adult child's need for assistance or supervision with activities of daily living must be because of a disability. The FMLA uses the definition of a disability provided under the Americans with Disabilities Act (ADA). The ADA definition of disability is inclusive and provides broad coverage. The definition includes mental or physical conditions that substantially limit one or more major life activities (such as standing, breathing, or communicating) or bodily functions (such as brain or immune system functioning).

Major life activities include, but are not limited to:

- Caring for oneself,
- Performing manual tasks,
- Seeing,
- Eating,
- Standing,
- Reaching,
- Breathing,
- Communicating,
- Interacting with others, and
- Major bodily functions (such as, brain or immune system functions or normal cell growth).

Conditions that occur on an occasional basis rather than continuously are included in the definition if the condition would substantially limit a major life activity when active. For example, cancer in remission or conditions with episodic periods of illness, such as multiple sclerosis, asthma, epilepsy, diabetes, or post-traumatic stress disorder (PTSD), are considered disabilities even when the individual does not show symptoms of the condition on an ongoing basis.

SERIOUS HEALTH CONDITION

An eligible employee may use FMLA leave to care for a child who is 18 years or older if the child has a serious health condition, the parent is needed to care for the child, and the child is incapable of self-care because of a disability at the time when the employee's FMLA leave, due to the serious health condition, will start. A serious health condition is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Although an adult child's serious health condition need not be directly related to the adult child's disability, the same condition may satisfy both the ADA definition of disability and the FMLA definition of serious health condition. However, the terms "disability" and "serious health condition" must be analyzed individually. See [Fact Sheet #28P](#) for more information about using FMLA leave for a family member's serious health condition.

A parent may be needed to care for a child with a serious health condition, if, for example, their adult child is unable to care for their own basic medical, hygienic, or nutritional needs or safety, or is unable to transport themselves to the doctor, because of the serious health condition. "Needed to care" also includes providing psychological comfort and reassurance that would be beneficial to an adult child with a serious health condition who is receiving inpatient or home care.

EXAMPLES

- Angelique uses FMLA leave to provide psychological support for her 19-year-old daughter who is in hospice care in the terminal stages of cancer. Angelique's daughter is incapable of self-care because of cancer, a disability, and she has a serious health condition.
- Wesley uses FMLA leave to transport his 29-year-old son to physical therapy as he recovers from an accident. Wesley's son does not live independently and is incapable of self-care because of a life-long developmental disability. He was injured in an accident and his injuries qualify as a serious health condition.
- Isaac uses FMLA leave to stay home and help care for his stepson, 33-years-old, when his stepson has a severe depressive episode that makes him incapable of self-care. His stepson's severe depression is a disability and qualifies as a serious health condition under the FMLA.

ADDITIONAL INFORMATION

For more information about taking FMLA leave to care for a child who is 18 or older and incapable of self-care because of a mental or physical disability, see [Administrator's Interpretation No. 2013-1](#).

Documentation of a Family Relationship

Employers may, but are not required to, request that employees provide reasonable documentation of a family relationship when they need to take 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.

An employer may require that an employee provide a medical certification for a family member's serious health condition.

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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