



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #28P: Taking Leave from Work When You or Your Family Member Has a Serious Health Condition under the FMLA

The Family and Medical Leave Act (FMLA) provides certain workers job-protected leave when they need time off work because of a serious health condition. Workers can also take FMLA leave from work to care for a child, parent, or spouse with a serious health condition.

This fact sheet explains when a mental or physical illness, injury, or other condition meets the FMLA's requirements as a serious health condition.

ABOUT THE FMLA

The FMLA requires covered employers to provide eligible employees leave for qualifying family and medical reasons and to continue 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. Workers' compensation and short-term or long-term disability also may run concurrently with FMLA leave.

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 the 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).

Eligible employees are those who work for covered employers under the FMLA and:

- Have worked for their 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.

Eligible employees may take up to 12 workweeks of FMLA in the FMLA leave year for, among other reasons, their own serious health condition or to care for a family member that has a serious health condition. An eligible employee may also take up to 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. For more information about military caregiver leave for current servicemembers and veterans, see [Fact Sheets 28M\(a\)](#) and [28M\(b\)](#).

Employees using FMLA leave for their own or for a family member's serious health condition may do so all at once or in short blocks of time. Employees must be restored to the same or virtually identical position at the end of each leave period.

For more information about the FMLA generally, including information about other reasons employees may use FMLA leave, see [Fact Sheet #28](#).

LEAVE FOR YOUR OWN SERIOUS HEALTH CONDITION

Eligible employees may take up to 12 workweeks of FMLA in a 12-month period, the FMLA leave year, for, among other reasons, their own serious health condition that makes the employee unable to perform the functions of their job. An employee is unable to perform the functions of their job where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position, including when an employee must be absent from work to receive medical treatment for a serious health condition.

LEAVE FOR YOUR FAMILY MEMBER'S SERIOUS HEALTH CONDITION

Employees may also take up to 12 workweeks of FMLA in a 12-month period to care for a family member who has a serious health condition. An FMLA serious health condition generally involves a period of incapacity. Incapacity means an individual is unable to work, attend school or perform other regular daily activities because of the serious health condition, due to treatment of it, or for recovery from the condition.

TYPES OF SERIOUS HEALTH CONDITIONS

The FMLA defines a serious health condition as an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider. Both physical and mental health conditions qualify for FMLA leave. For more information about mental health conditions and the FMLA, specifically, see [dol.gov/agencies/whd/fmla/mental-health](https://www.dol.gov/agencies/whd/fmla/mental-health).

Health Conditions Involving Inpatient Care

Inpatient care under the FMLA means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with the overnight stay.

Example:

Nelle uses FMLA leave when her eight-year-old daughter has an accident at school, is treated by an emergency room physician, and is admitted to the hospital for observation until being released the following day. Nelle continues to use FMLA leave to care for her daughter as she recovers at home.

If an eligible employee requests FMLA leave for surgery which requires or results in an overnight stay in the hospital, the leave request would meet the definition of a serious health condition even if the surgery is elective.

Example:

Collin, who is in good health, decides to donate a kidney to an unknown recipient. Collin uses several weeks of FMLA leave for testing, hospitalization, surgery, and recovery.

Health Conditions Involving Continuing Treatment

Health conditions also meet the FMLA's criteria as serious if they require **continuing treatment by a health care provider**. Treatment includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment includes a telemedicine visit with a health care provider provided specified criteria are met. See Field Assistance Bulletin No. 2020-8.

Conditions that may require continuing treatment include **incapacity plus treatment, pregnancy, chronic conditions, permanent or long-term conditions, and conditions requiring multiple treatments**.

Incapacity plus treatment involves a period of incapacity of more than three consecutive, full calendar days with follow-up treatment. To qualify as a serious health condition under the FMLA, the employee or the employee's family member experiencing the period of incapacity must also:

- Be treated by a health care provider within seven days of the first day of incapacity, and;
- Be prescribed a course of treatment by a health care provider (e.g., a course of prescription medication), **or**,
- Have at least one other visit with a health care provider within 30 days of the first day of incapacity

Examples:

Tony has a fever and other flu symptoms and is unable to work for four days. He sees his doctor who runs tests and schedules Tony for a follow up appointment by video conference the next week. Tony uses FMLA leave for the days he is ill and for his follow-up appointment.

Angelle learns that her mother, Mira, has been struggling with shortness of breath, fatigue, and chest discomfort for several days. Mira saw her doctor after she was ill for three days and her doctor recommended a few more days of rest and prescribed an antibiotic. Angelle uses two days of FMLA leave to care for Mira while she is incapacitated from her illness.

Pregnancy includes any period of incapacity due to pregnancy, or for prenatal care. An expectant mother can be incapacitated due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days. For example, an employee may take leave for severe morning sickness, complications requiring bed rest.

Examples:

Xavier uses four workweeks of FMLA leave before the birth of his child to help care for his spouse while she is on bed rest due to a high-risk pregnancy.

Ramona is pregnant and uses FMLA leave to attend prenatal appointments and when she is experiencing morning sickness that makes her unable to work.

Any period before and after childbirth where a person is not able to work for either physical or mental medical reasons may be considered a serious health condition under the FMLA. For example, an employee may take leave to recover from childbirth, including to recover from a stillbirth, or may take leave to care for a spouse while they are recovering from childbirth.

See [Fact Sheet #28Q](#), for more information about FMLA leave for childbirth and bonding.

A **chronic condition** is one that requires periodic visits to a health care provider, or a nurse supervised by the provider, at least twice a year, and which includes periods of incapacity that recur over an extended period. A chronic condition may cause short periods of incapacity. An employee can be incapacitated due to a chronic condition even though they do not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days.

Examples:

Ghalen occasionally needs 30 to 40 minutes of FMLA leave before reporting to work when he needs to give his 10-year-old daughter, who has asthma, a breathing treatment.

Andrea uses FMLA leave for two to three days every few months to care for her spouse when her spouse has Multiple Sclerosis flare-ups.

Raffiel uses FMLA leave to attend outpatient treatment for his mood disorder.

Permanent or long-term conditions are ones in which the period of incapacity itself is permanent or long-term and for which treatment may not be effective. These are qualifying serious health conditions under the FMLA if the employee or the employee's family member is under the continuing supervision of a health care provider, even if they are no longer receiving active treatment.

Examples:

Maurice uses FMLA leave to care for his spouse who is in the terminal stages of cancer.

Nia takes FMLA leave for three weeks to travel to another country and provide care, including emotional support and comfort, for her father, who has Alzheimer's disease.

Conditions requiring multiple treatments includes any period of absence to receive multiple treatments by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, as well as any period of recovery from the treatments. The treatments must be for:

- restorative surgery after an accident or other injury, or
- a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days if the individual did not receive the treatment.

Examples:

Bryan has severe arthritis in his knees. He uses FMLA leave one day a week to attend physical therapy and prevent his injury from worsening.

Naomi uses FMLA leave every Wednesday for dialysis.

Matt uses FMLA leave for chemotherapy treatment and recovery.

ADDITIONAL INFORMATION

Medical Certification of a Serious Health Condition

An employer may require an employee to provide a medical certification when requesting leave for their own or a family member's serious health condition. A medical diagnosis is not required for certification of a serious health condition. See [Fact Sheet #28G](#) for more information on the FMLA's medical certification requirements.

Certification by a Health Care Provider

If an employer requires a medical certification, part of it must be completed by a **health care provider**. Under the FMLA a **health care provider** includes:

- A doctor of medicine or osteopathy authorized to practice medicine or surgery in the state in which they practice,
- A podiatrist, dentist, clinical psychologist, optometrist, or chiropractor (with limitations) authorized to practice in the state and performing within the scope of their practice;
- A nurse practitioner, nurse-midwife, clinical social worker, or physician assistant authorized to practice in the state performing within the scope of their practice;
- A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or
- Any health care provider from whom the employer or the employer's group health plan's benefits manager will accept a medical certification to substantiate a claim for benefits.

Protection from Retaliation

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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