



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

# Fact Sheet #28Q: Taking Leave from Work for Birth, Placement, and Bonding with a Child under the FMLA

The Family and Medical Leave Act (FMLA) provides certain workers job-protected leave when they take time off work for the birth, adoption, or foster care placement of a child and to bond with the child. Workers can also take FMLA leave for their own serious health condition and to care for a family member with a serious health condition, which includes pregnancy.

This fact sheet explains when employees may use FMLA leave for birth, adoption, and foster care placement, and for bonding with a child.

## 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. Employees must be restored to the same or virtually identical position at the end of each leave period. FMLA leave may be unpaid or may be used at the same time as employer provided paid leave. Maternity or other parental leave also may run concurrently with FMLA leave.

**Covered employers** under the FMLA include:

- Private employers who employ 50 or more employees in 20 or more work weeks in 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).

**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 leave for, among other reasons, the birth or placement of a child for adoption or foster care, and to bond with the child.

Under the FMLA, a child is defined broadly and includes a biological child, an adopted child, a foster child, a stepchild, a legal ward, or a child of a person who is standing in loco parentis to the child. For more information about the definition of a child under the FMLA, see [Fact Sheet #28B](#) and [Administrator Interpretation #2010-3](#).

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

## LEAVE FOR THE BIRTH OF A CHILD AND BONDING

Parents may use FMLA leave when their child is born and to bond with their child during the 12-month period beginning on the date of birth. Both mothers and fathers have the same right to take FMLA leave for the birth of a child and bonding. Parents may also take FMLA leave for the care of a newborn child who has a serious health condition or for a serious health condition related to the pregnancy or birth. See Fact Sheet #28P on serious health conditions.

Examples:

*Halima takes FMLA leave for a homebirth and to bond with the baby for several weeks afterwards.*

*Martin uses FMLA leave to go to the hospital where his girlfriend has given birth to their child and to bond with the baby for the next two weeks. With his employer's agreement, Martin takes another four weeks of bonding leave three months later when his girlfriend returns to work.*

## LEAVE FOR ADOPTION

Employees may use FMLA leave when a child is first placed with them for adoption or foster care and to bond with their newly placed child. An employee's entitlement to leave for adoption or foster care ends at the end of the 12-month period beginning on the date of the placement. Employees may also use FMLA leave before the actual placement or adoption of a child in situations where, for example, the employee may be required to:

- Attend counseling sessions,
- Appear in court,
- Consult with the attorney or doctor(s) representing the birth parent,
- Submit to a physical examination, or
- Travel to another country to complete an adoption.

Adoption, for FMLA purposes, means legally and permanently assuming the responsibility of raising a child as one's own.

Examples:

*Terrance and his husband are adopting a child through a surrogacy agreement. Terrance uses FMLA leave for bonding when his child is first placed with him and his spouse.*

*Jewell adopts a seven-year-old girl. She uses ten weeks of FMLA bonding leave during her child's first year after placement with her.*

## LEAVE FOR FOSTER CARE

Foster care, for FMLA purposes, is 24-hour care for children in substitution for, and away from, their parents or guardians. Children are placed in foster care by or with the agreement of the State, and foster care involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody. Neither a minimum period for the foster care placement, nor a permanent placement is required for the employee to qualify for FMLA leave for the placement.

Examples:

*Stephen's nephew Cordell is placed with Stephen for temporary foster care. Stephen's wife, Missy, uses FMLA leave to be with Cordell after his placement.*

*Sandra uses FMLA leave several times over a number of years when different children are placed with her as a foster parent through a State social services agency.*

## SCHEDULING CONSIDERATIONS

Generally, to take FMLA leave an employee must notify the employer at least 30-days in advance and follow the employer's policy for requesting leave. If an advance notice is not possible, such as because of a change in events or a medical emergency, notice must be given as soon as practicable. For more information, see [Fact Sheet #28E](#).

### Intermittent or Reduced Schedule Leave

Employees may use FMLA leave for birth, placement, and bonding intermittently or to work a reduced schedule but only if they and their employer agree.

If a child has a serious health condition, a parent is entitled to use FMLA leave intermittently or to work a reduced schedule in order to care for the child even without an agreement with the employer.

Examples:

*Khai uses two weeks of FMLA leave when his child is born, and for the next twenty workweeks he uses FMLA leave half-time and works half-time. Khai and his employer agreed to the reduced leave schedule in advance of his child's birth.*

*Harper's employer did not agree to allow her to work part-time and use FMLA leave part-time to care for her newly adopted child. Instead, Harper uses 12-continuous workweeks of FMLA leave to be with her new child.*

*Qiang uses FMLA leave for three hours a day for two weeks while his newborn baby is in a hospital neonatal intensive care unit (NICU). Qiang does not need his employer's permission to use FMLA leave intermittently or to work a reduced leave schedule for the care of his infant child with a serious health condition.*

### Consecutive FMLA Leave Years

Eligible employees may use FMLA leave for bonding with a new child any time during the first year of the child's birth or placement. In addition, eligible employees are entitled to 12 workweeks of leave during each new FMLA leave year. As a result, depending on the leave year an employer chooses, an employee may be entitled to more than 12 weeks of leave for bonding with their child during consecutive 12-month leave years.

Example:

*Rebekah's employer uses the 12-month period from July 1 through June 30 for its FMLA leave year. Rebekah has a baby on April 29th and uses FMLA leave for 8 weeks from her child's birth through June 30th. During the next leave year that begins July 1st, Rebekah is eligible for FMLA leave and remains on maternity leave for another 8 workweeks of FMLA leave and reaches an agreement with her employer to take another 4 workweeks of reduced schedule leave for bonding with her child before her child's first birthday.*

### Spouses Who Work for the Same Employer

Eligible spouses who work for the same employer are limited to a combined total of 12 workweeks of leave in a 12-month period for, among other reasons, birth, placement, and bonding with a new child. This limit does not apply to unmarried partners who work for the same employer. For more information about FMLA leave and spouses who work for the same employer, see [Fact Sheet #28L](#).

Examples:

*Raven and Miguel are married, FMLA-eligible employees, who work for the same employer. After Raven gives birth to their child, she uses six weeks of FMLA leave for her own serious health condition. Following recovery from childbirth, Raven uses four weeks of FMLA leave for bonding. Miguel uses eight weeks of FMLA leave to bond with their new child. Because they are limited to a combined total of 12 workweeks of FMLA leave for bonding with their new child, they have both exhausted their full entitlement for FMLA bonding leave. Miguel may also use up to four weeks of leave for some other FMLA-qualifying leave reasons, and Raven is entitled to another two weeks of FMLA leave for other FMLA-qualifying leave reasons.*

*Liam and Mateo are unmarried parents of a newly placed foster child. They work for the same employer. Since Liam and Mateo are not married, the FMLA leave limit on spouses who work for the same employer does not apply to them. During the first year that their child is placed with them, they each use FMLA leave to be with their child for 12 workweeks, for a total of 24 workweeks of bonding leave.*

## ADDITIONAL INFORMATION

### Leave Before and After Childbirth

Any period before or after childbirth where an employee is not able to work for medical reasons may be considered FMLA leave for a serious health condition. An eligible employee may take leave for any period of their own or spouse, parent, or child's incapacity due to pregnancy. For example, employees may use FMLA leave for severe morning sickness or complications requiring bed rest, or for prenatal care.

An employee may take leave to recover from childbirth, including to recover from a stillbirth, or may take leave to care for a spouse recovering from childbirth. See [Fact Sheet #28P](#) for more information on serious health conditions.

An employer may require a medical certification when an employee requests leave for their own or a family member's serious health condition, including those related to pregnancy, such as recovery from childbirth. For more information about medical certification requirements, see [Fact Sheet 28G](#).

### Lactation Breaks

In addition, the Fair Labor Standards Act (FLSA) provides covered employees with the right to take breaks at work to pump breast milk as needed. Employers are required to provide eligible employees with a private place to pump, which generally means the space must be shielded from view, free from intrusion, and not a bathroom. Employees who are eligible may use these breaks for up to one year after giving birth to a child. For more information about break time for nursing mothers under the FLSA, see [Fact Sheet #73](#).

### Documentation of Family Relationship

Employers may not request a certification for FMLA leave to bond with a newborn child or a child placed for adoption or foster care. However, employers may require employees to provide reasonable documentation of a family relationship. To satisfy this requirement, an employee may provide the employer with a simple written statement or provide the employer with a copy of an official document, such as a child's birth certificate or a court document, for review and return to the employee.

### Protection from Retaliation

The FMLA prohibits employers 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. Examples include refusing to authorize FMLA leave or discouraging an employee from using FMLA leave. For more information about prohibited employer retaliation under the FMLA, see [Fact Sheet #77B](#) and [Field Assistance Bulletin No. 2022-2](#).

Example:

*When Ethan requests two weeks of FMLA leave to bond with his newborn baby, his supervisor denies the request and tells him that FMLA leave is only for women. Ethan files a complaint with the Wage and Hour Division who contacts his employer, secures the leave for Ethan, and ensures the employer understands the FMLA protections going forward.*

### 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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