

The Family and Medical Leave Act of 1993

The Family and Medical Leave Act of 1993

What is the Family and Medical Leave Act of 1993?

The Family and Medical Leave Act of 1993 (FMLA) was enacted to help employees who need to take leave for certain family responsibilities, but who are afraid of losing their jobs. Under the FMLA, you are entitled to take up to 12 weeks of unpaid leave for the birth and care of a new child (your natural child or an adopted or foster child) or to care for yourself or an immediate family member who has a serious health condition. You must work for a covered employer and meet certain eligibility criteria.

Tip: For more detailed information on the FMLA, visit the [U.S. Department of Labor's](https://www.dhs.gov/eis-offices/eis-100) website.

Who is covered by the FMLA?

Employees of private companies that have 50 or more employees

You may be covered by the FMLA if:

1. You work for a private company that is engaged in commerce or in any industry or activity affecting commerce and
2. The company has employed 50 or more people in total at your worksite (plus all worksites within 75 miles) each working day during at least 20 calendar weeks (not necessarily consecutive weeks) in the current or preceding calendar year.

Employees of all public agencies

If you work for a state or local government or a public or private elementary or secondary school, then you are covered under the FMLA, even if your employer does not employ 50 or more individuals. Most federal civil service and Congressional employees are also covered by the FMLA, subject to regulations issued by the Office of Personnel Management. Military families and airline flight crews also have access to FMLA benefits, and special rules apply.

When will you be eligible for leave?

You may be eligible for leave if you work for a covered employer, as mentioned. You also must have worked at least 12 months (not necessarily consecutively) for that employer, and you must have worked at least 1,250 hours during the 12 months immediately preceding the starting date of your FMLA leave. In addition, you must be taking leave for one of the following reasons:

- For incapacity due to pregnancy, prenatal medical care, or child birth
- For the care of your child after birth, or for the adoption of a child or placement of a foster child
- For the care of an immediate family member (spouse, child, or parent) who has a serious health condition
- For your own serious health condition that makes you unable to perform the functions of your job

Caution: Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status have special leave entitlements under the FMLA (see below).

How does the FMLA protect you?

Allows you to take unpaid leave

If you are eligible for leave under the FMLA, you can take up to 12 weeks of unpaid leave during any 12 months.

Tip: Some states have rules regarding leave time that are more generous than federal rules. Check the laws of your state. See Questions & Answers below.

Protects your job

When you return from leave under the FMLA, your employer must return you to your former position or to an equivalent job. An

equivalent job is one that has equivalent pay, benefits, and terms and conditions of employment as the job you had before taking leave under the FMLA.

Example(s): *When her son was born, Jane, a reporter, took 12 weeks of unpaid FMLA leave. When she returned to work, her former job had been filled by another employee; however, Jane was given another reporting job at the same pay and with the same benefits as her former job.*

Protects your health benefits

Your employer must maintain your group health benefits while you are on leave. This means that your health insurance won't be canceled and your employer will continue paying your health insurance premiums, if the employer normally pays them.

Example(s): *Jessica was nine months pregnant. Her doctor ordered her to take time off from work because she was developing severe high blood pressure. But Jessica didn't want to leave because she feared losing her group health insurance benefits at the time she needed them most. Her employer assured her that under the FMLA, she could take up to 12 weeks of unpaid leave without losing any group health benefits to which she was already entitled.*

Tip: *If you don't return from FMLA leave your employer can recover all premiums he or she paid for your health insurance during your leave, unless you didn't return for a reason beyond your control, such as the continued serious health condition of you or your family member.*

Protects employee benefits that are accrued

If you receive other accrued employee benefits besides health, such as sick leave or vacation days, your employer must protect those benefits as well. You won't be able to accrue any benefits while you're on leave, but when you return, your employer must give you the same benefits at the same levels as before. Your employer, however, may require you to use any accrued paid leave (vacation, sick, or personal days) for periods of unpaid FMLA leave. Unaccrued benefits (life insurance benefits, for instance) are not protected under the FMLA.

Example(s): *Kenneth took 12 weeks of unpaid leave under the FMLA to care for his newly adopted daughter. Since he had accrued 8 days of vacation time and 3 sick days before his leave time, his employer required that he use this time in place of 11 days of unpaid FMLA leave.*

Special leave entitlements for military families

The National Defense Authorization Act for FY 2008, signed by President Bush on January 28, 2008, included two provisions that expanded the benefits of the FMLA to assist servicemembers and their families. One provision requires employers with 50 or more employees to provide up to 12 weeks of unpaid leave a year for a "qualifying exigency" connected to the active duty status of an employee's spouse, son, daughter, or parent ("active duty leave"). The other provision entitles eligible family members to take up to 26 weeks of unpaid leave to care for a wounded or ill servicemember ("caregiver leave").

The active duty leave creates an additional basis for an employee to take FMLA leave. Specifically, this reason for FMLA leave is for a "qualifying exigency" that arises from the fact that the employee's spouse, son, daughter, or parent is on active duty or has been notified of an impending call or order to active duty. Qualifying exigencies include issues arising from short notice deployments, military events, and related activities, certain childcare and related activities related to a servicemember's active duty or deployment status, making financial and legal arrangements, attending certain counseling sessions, and other events.

The other provision is a FMLA servicemember family leave program. It provides that an eligible employee may take up to 26 weeks of FMLA leave to care for a spouse, son, daughter, parent, or next of kin ("nearest blood relative") who is a covered servicemember. The servicemember must have a "serious illness or injury" incurred while on active duty that may render the member unable to perform the duties of his or her office, grade, rank, or rating and for which the member is (1) undergoing medical treatment, recuperation, or therapy, (2) an outpatient, or (3) on a temporary disability retired list. The FMLA caregiver leave is available only during a single 12-month period. Covered servicemembers also include veterans of the Armed Forces, so military caregiver leave may also be available to families of veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

How do you take FMLA leave?

Give your employer advance notice

If you know you will need to take FMLA leave in the future for an expected birth, adoption or foster care placement or scheduled medical treatment, you must give your employer at least 30 days notice of your need for leave. If the need for leave suddenly arises or if 30 days notice is not practicable, you must give your employer as much notice as possible. Your employer may also require that you give notice of your intent to return to work.

Comply with your employer's instructions

Your employer may require you to provide certification that leave is necessary because of a serious medical condition affecting you or a family member. Your employer may also ask you to provide a certification of fitness from a health care provider, saying that you are medically fit to return to your job (based on the health condition that caused your absence) if you take FMLA leave for health reasons. Although you may take intermittent leave (leave taken off and on for less than the full 12 weeks), your employer must approve this type of leave unless your leave is to care for someone (including yourself) with a serious health condition.

Know your rights

Your employer must tell employees who are requesting leave whether they are eligible for FMLA. Your employer is required to post a notice that outlines the basic provisions of the FMLA and is prohibited from discriminating against or interfering with an employee who takes FMLA leave. If you feel your employer has violated your rights under the FMLA, you can file a complaint with the Employment Standards Administration, U.S. Department of Labor. You can also try to recover damages through the courts on your own.

Questions & Answers

Do you have to take all 12 weeks of leave?

No. Twelve weeks is the maximum leave you can take in one year. There is no minimum, so you can take as little leave as you need, assuming you are eligible for leave. Be aware, though, that your employer may ask you to take any accrued vacation time or sick days before you take FMLA leave.

If you can't afford to take unpaid leave, what are your other options?

Under the FMLA, none. The law was set up to protect employees from losing their jobs, not to ensure income in the event that you need to take time off from work to care for your family. You may need to use accrued sick days or vacation time. In addition, if you are sick, you may be eligible for disability insurance benefits through an employer-sponsored plan. Check with your employer.

What do you do if you need more than 12 weeks off from work?

Ask your employer if he or she will allow you to take more than 12 weeks off. Some employers will grant the time under special circumstances. In addition, check your state's laws. Some states have rules regarding leave time that are more generous and encompassing than the federal FMLA rules.

IMPORTANT DISCLOSURES

Broadridge Investor Communication Solutions, Inc. does not provide investment, tax, legal, or retirement advice or recommendations. The information presented here is not specific to any individual's personal circumstances.

To the extent that this material concerns tax matters, it is not intended or written to be used, and cannot be used, by a taxpayer for the purpose of avoiding penalties that may be imposed by law. Each taxpayer should seek independent advice from a tax professional based on his or her individual circumstances.

These materials are provided for general information and educational purposes based upon publicly available information from sources believed to be reliable — we cannot assure the accuracy or completeness of these materials. The information in these materials may change at any time and without notice.