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Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act (FMLA) of 1993 helps employees balance work and family needs by allowing certain employees to take reasonable unpaid leave for certain family and medical reasons.

Disclaimer: The American Cancer Society does not offer legal advice. This information is intended to provide general background in this area of the law.

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Who can take FMLA?

You can take up to 12 weeks of unpaid, protected leave per year if you:

- Worked for your employer for at least 12 months
- Worked at least 1,250 hours over the past 12 months (about 25 hours per week),
and
- Work at a location with 50 or more employees within 75 miles.

When can you use FMLA?

Eligible employees can use FMLA for:

- Childbirth and care of a newborn child
- Placement with the employee of a child for adoption or foster care
- Caring for an immediate family member (spouse, child, or parent) with a serious health condition
- Your own serious health condition

Some states have family and medical leave laws with broader rights (including wage replacement) than FMLA. The [US Department of Labor](#)¹ can help you get information about your state.

Special FMLA rules

There are [fact sheets](#)² available that explain special FMLA rules, such as those for:

- Military families
- Airlines and school employees
- Certification of a serious health condition

What about employers with fewer than 50 employees?

Some states may have their own laws. Contact the [US Department of Labor](#)³ for state-specific information.

Do federal government employees get FMLA?

Most United States government employees are covered by FMLA or similar rules. Policies are managed by the US Office of Personnel Management (OPM).

Taking FMLA leave

You can take FMLA leave all at once or in shorter blocks. You can also reduce your

daily hours or work a part-time schedule for a while. Remember, worker's compensation and maternity leave may count as FMLA. You'll need a doctor's note confirming a serious health condition and the need for leave.

What counts as a serious health condition?

A serious condition includes any illness, injury, or condition requiring inpatient care. This means at least one overnight stay in a hospital, hospice, or similar facility, and any period of incapacity afterward.

But it is not just hospital stays. It can also be a condition with ongoing treatment or any period of incapacity due to any of the following:

- A health condition lasting more than 3 days in a row, and any treatment after that. It includes any period of incapacity related to the condition and involves: being treated 2 or more times under the supervision of a health care provider, or being treated once by a health care provider with an ongoing regimen of treatment.
- A permanent or long-term condition for which treatment may not be effective (for instance, a severe stroke, terminal cancer). Only supervision by a health care provider is needed, not active treatment.
- Surgery or treatments for a condition which would likely result in a period of incapacity if not treated (such as chemotherapy or radiation treatments for cancer).

Who counts as immediate family?

Under FMLA, immediate family includes the employee's:

- Spouse
- Child under the age of 18
- Child over the age of 18 if they are unable to care for themselves due to a health condition and meet [certain requirements under the Americans with Disabilities Act \(ADA\)](#).⁴

For military families in certain situations, the child, parent, or next of kin of an armed forces member can take FMLA to provide care for up to 26 work weeks.

How is the FMLA 12-month period calculated?

Your employer can choose various methods, including:

- Calendar year (January through December)
- A fixed 12-month “leave year” such as their fiscal year, or a year required by state law
- A year that starts on your anniversary date (counted from the date you were hired)
- The 12-month period starting the date your first FMLA leave
- A rolling 12-month period starting backward from when you last used FMLA leave

Can you use paid leave?

FMLA only requires unpaid leave. You can choose to use accrued paid leave like vacation or sick leave. Your employer is also allowed to require it.

How do I request FMLA leave?

Give your employer 30 days’ notice if possible, especially for planned treatments. In emergencies, notify within 1 to 2 business days of when you know you’ll need leave.

Can my employer deny my request for FMLA leave?

If you are an eligible employee and meet the FMLA notice and certification requirements and haven’t used your FMLA leave for the 12-month period, you cannot be denied FMLA leave.

Any employee who lies or uses fraud to get FMLA leave loses their FMLA rights.

Will I lose my job if I take FMLA leave?

Employers cannot use FMLA leave to negatively affect your employment, promotions, or other actions. It can’t be counted in “no fault” attendance policies.

Employers are not required to continue FMLA benefits or give jobs back to employees who would have been laid off or otherwise would have lost their jobs due to a general layoff.

Employees who say they aren’t returning to work lose their FMLA rights. Employees who cannot return to work and have used up their 12 weeks of FMLA leave in the 12-month period lose FMLA protections of leave or getting their jobs back.

If an employer requires a medical statement that the employee is fit to return to work and the employee doesn't get one, the employer can delay the employee's return until they submit the required documentation.

Do I have to pay for my health insurance while I'm on FMLA leave?

Your employer must keep your health insurance coverage on the same terms while you're on FMLA leave. You'll need to make plans if you pay part of the premiums.

Your employer can make you repay premiums they paid while you were on FMLA if you don't return to work after FMLA leave. But they can't do this if your reason for not going back to work was your or your family member's serious health condition.

Your employer does **not** have to continue your other benefits during FMLA.

Can my employer make me come back to work before I run out of FMLA time?

Your employer can deny your continuing FMLA leave if you don't provide the required medical certification (written information signed by your doctor). But the employer cannot require you return to work early by offering you a light duty assignment.

Need more information?

Other sources of information include:

United States Department of Labor, Wage and Hour Division Toll-free number: 1-866-487-9243 (1-866-4-USWAGE) TTY: 1-877-889-5627
Website: www.dol.gov/agencies/whd⁵

[Wage and Hour Division](#)⁶

[FMLA fact Sheets](#)⁷

This site includes subsections with pages that explain more about FMLA, including how it impacts state law, employer policy variations, links to airline crew rules, specific changes for military families, and more.

Cancer and Careers Telephone: 646-929-8032 Website: www.cancerandcareers.org⁸

A resource for working people with cancer and their employers; offers articles, news, charts, check lists, tips, and a community of experts, patients, and survivors.

Cancer Legal Resource Center (CLRC) Toll-free number: 1-866-843-2572 (1-866-THE-CLRC) TTY: 213-736-8310 Website: www.cancerlegalresources.org⁹

A non-profit program that gives free and confidential information and resources on cancer-related legal issues to cancer survivors, their families, friends, employers, health care professionals, and others coping with cancer.

**Inclusion on this list does not imply endorsement by the American Cancer Society*

[Search for resources](#) ¹⁰

Find free or low-cost resources from ACS and other organizations.

Hyperlinks

1. www.dol.gov/agencies/whd/fmla
2. www.dol.gov/whd/fmla/fact_sheets.htm
3. www.dol.gov/
4. www.ada.gov/topics/intro-to-ada/
5. www.dol.gov/agencies/whd
6. www.dol.gov/agencies/whd
7. www.dol.gov/agencies/whd/fact-sheets/28-fmla
8. www.cancerandcareers.org/
9. www.cancerlegalresources.org/
10. www.cancer.org/support-programs-and-services/resource-search.html

References

Family and medical leave act (FMLA). US Department of Labor. Updated February 2023. Accessed September 14th, 2023. <https://www.dol.gov/general/topic/benefits-leave/fmla>.

FMLA frequently asked questions. Labor Wage and Hour Division. US Department of Labor. Accessed September 14th, 2023. <https://www.dol.gov/whd/fmla/fmla-faqs.htm>.

Labor Wage and Hour Division. U.S. Department of Labor. The Employer's Guide to The Family and Medical Leave Act. 2022. Accessed September 14, 2023. <https://www.dol.gov/agencies/whd/fmla/employer-guide>.

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