

Family & Medical Leave Laws

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The federal government as well as eleven states plus the District of Columbia have enacted laws providing protection to employees who must be off work due to a medical condition of their own or that of a family member.

It is important to note that the laws do **not** require employers to continue any part of the worker's salary while the employee is not working. Any income would have to come from another source, such as the employer's sick leave and/or Short Term Disability plan, or Worker's Compensation if it's a job-related condition, or from state mandated disability benefits programs in California, Hawaii, New Jersey, New York, or Rhode Island.

Federal Family & Medical Leave Act (FMLA)

The federal FMLA law primarily does only two things. If you are an employee who has to take time off from work due to a serious medical condition, either your own or that of a family member, the law:

- Protects your job while you are off work caring for either yourself or a family member with a serious medical condition so that your job will be available when you return to it;
- Requires employers to continue your employee benefits in the same manner as it did when you were working; and,
- Covers only the first twelve weeks of absence in a 12 month period.
- It does **NOT** provide any financial benefits. That must come from other sources

Here are the main provisions of the federal FMLA:

Who is covered under the law?

Employers engaged in commerce, or an industry or activity affecting commerce, are covered by the law if 50 or more employees are employed in at least 20 or more calendar workweeks in the current or preceding calendar year. The right to take leave applies equally to male and female workers who are employed at or within 75 miles of the work place by an employer of 50 or more workers.

The FMLA also applies to all public agencies, state governments and political subdivisions (including the District of Columbia, U.S. territories and possessions), elementary and secondary school systems, and institutions of higher education. There are special provisions for classroom teachers so as not to disrupt the learning process of students.

Who can take advantage of the law?

An employee is eligible to take FMLA leave if:

- The employee has been employed by the employer for at least 12 months which need not be consecutive;
- The employee has been employed for at least 1,250 hours of service during the 12-month period immediately preceding commencement of the leave;
- The employee is employed at a work site where 50 or more employees are employed by the employer within 75 miles of that work site;
- The employee is not a “key” employee;
- The employee’s position has not been scheduled for elimination.

For what reason may an employee take time off under the law?

The FMLA requires covered employers to grant eligible employees up to 12 weeks of unpaid, job-protected leave in any 12-month period to care for family members or because of their own serious medical condition. FMLA leave may be granted for the following reasons:

- The birth of the employee’s child and care of the infant;
- The placement of a child with the employee for adoption or foster care;
- The care of a spouse, child, or parent of the employee if the spouse, child, or parent has a serious health condition; or
- The employee’s own serious health condition renders him or her unable to perform the essential functions of the job.

A non-chronic, short-term illness or injury that requires an employee to be absent from work a day or two at a time may qualify as part of the employee’s entitlement to job-protected leave under the FMLA as long as the illness or injury is a serious health condition.

What is a “serious health condition” under the law?

The law defines “serious health condition” to include any “illness, injury, impairment, or physical or mental condition that involves” either inpatient care or “continuing treatment” by a “health care provider.” The Department of Labor regulations expand this to include an illness, injury, impairment or physical or mental condition that involves: (1) inpatient care, including any period of incapacity or any subsequent treatment in connection with the inpatient care; **or** (2) continuing treatment from a health care provider.

What happens to employee benefits while out on FMLA?

The employer continues any existing health insurance for the duration of the leave and at the level and under the same conditions coverage was provided before commencement of the leave. Employers can ask the employee to cover his/her share of the premiums that were previously paid through payroll deduction from the paycheck. Employers are not required to continue benefits such as life and disability insurance but they cannot require employees to re-qualify for benefits when the employee returns to work.

Is the position protected?

Yes, the employee must be restored to the original or an equivalent position with equivalent benefits, pay, and all other terms and conditions of employment. The highest

paid 10 percent of salaried employees may be denied job restoration to prevent substantial and grievous economic injury to the employer.

What may the employer require to grant the leave?

An employer may require certification from a health care provider to support a claim for leave. But if an employer asks one employee for proof of a serious illness, the employer must ask all employees for equivalent certification.

Does the law apply to teachers too?

There are special rules that apply to “instructional employees” that are designed to minimize disruption in the classroom while still protecting the rights of the person on disability. The special rules apply to intermittent leaves, reduced leave schedules, and the taking of leave near the end of an academic term. More detailed information can be found in the [Code of Federal Regulations \(29 CFR 825.600 et seq\)](#).

Other provisions of the law

- Leave can be taken intermittently, is subject to employer approval, and does not result in a reduction in the total amount of leave to which the employee is entitled.
- When husband and wife work for the same employer, the total amount of leave that they may take is limited to 12 weeks if they are taking leave for the birth or adoption of a child or to care for a sick parent.
- When the need for leave is foreseeable, an employee is required to provide at least 30 days advance notice.

Does not supersede state laws

The Act does not supersede any state or local law, collective bargaining agreement, or employment benefit plan providing greater medical and family leave rights, nor does it diminish their capacity to adopt more generous family leave policies.

State Family & Medical Leave Laws

Many states have laws that apply to smaller employers or last longer than the twelve weeks of the federal law. Each state’s own law regarding family and medical leaves can vary considerably from the federal FMLA, so it is important that you check your own state’s law as well when contemplating taking time off for medical reasons.

Also, many of the state laws provide time off for employees to participate in their children’s educational activities either as part of their FMLA law or in a separate statute.

Most of the state laws offer benefits equal to or less than the federal FMLA. There are some exceptions where state law is broader:

- California – For maternity leave, offers 12 weeks of unpaid family leave plus 4 months of maternity leave for a total of 28 weeks per year.

- Maine – Law applies to private employers of 15 employees or more and state and local government employees with 25 employees or more, but limits leave to 10 weeks in 2 years.
- New Jersey – Only 1000 hours of service in twelve months are required to be eligible for its benefits.
- Oregon – Employers with 25 or more employees are covered, and employees are eligible after working at least 25 hours per week in the past 180 days.
- Vermont – All employers with 10 or more employees come under the law.
- Washington – All employers come under the law. Employees are eligible after working at least 680 hours during the past year.

Details on the state laws can be found at [here](#):