

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division



Sus Derechos

bajo

La Ley de Ausencia Familiar y Médica de 1993

La Ley de Ausencia Familiar y Médica de 1993 (LAFM) requiere que patrones sujetos a la ley provean a sus empleados 12 semanas de ausencia del trabajo sin paga por ciertas razones familiares médicas, con protección del empleo a empleados

"elegibles." Se consideran elegibles a los empleados de dicho patrón quienes hayan trabajado un año, y trabajado 1,250 horas o más en los últimos 12 meses, y trabajan dentro de un área de 75 millas donde se ocupan a 50 empleados o más del mismo patrón.

Razones Para Solicitar Ausencia

Tiene derecho un empleado de tomar ausencia del trabajo sin paga por cualquiera de las siguientes razones:

- para cuidar a un niño recién nacido, o llevar a cabo una adopción o crianza, de un niño del empleado;
- para cuidar a un cónyuge (esposo/a), hijo/a, o *cualquiera* de los padres, quién padezca de un estado de salud grave; o
- por un estado de salud grave que le impide a un empleado desempeñar su trabajo.

Se puede elegir por parte del empleado o el patrón substituir una ausencia sin paga por una ausencia *pagada* si el empleado tiene el tiempo pagado acumulado.

Notificación por Adelantado y Certificado Médico

Se le puede exigir a un empleado que notifique por adelantado la necesidad de estar ausente, y además exigirle que provea certificado medico. Se puede negar el permiso si el empleado no cumple con estos requisitos.

- Por lo general se requiere que el empleado notifique al patrón con 30 días por adelantado cuando la ausencia es "anticipada."
- El patrón puede exigirle un certificado médico al empleado que pide tomar ausencia por motivo de un estado de salud grave, y puede exigir una segunda o tercera opinión médica (a cuenta del patrón), y además puede exigir un certificado médico de la salud, estado físico y capacidad del empleado para regresar al trabajo.

Beneficios y Protección del Empleo

- Durante una ausencia, el patrón tendrá que mantener en vigor el seguro de salud del empleado bajo cualquier "plan de salud de grupo" en existencia.

- Al regresar de una ausencia los empleados tienen el derecho a su trabajo original o a un trabajo equivalente con sueldo, beneficios, y otras condiciones de empleo equivalentes.
- Una ausencia no puede resultar en la pérdida de ningún beneficio acumulado antes de que el empleado comenzara la ausencia del trabajo.

Actos Ilegales Por Parte del Patrón

La LAFM le prohíbe al patrón lo siguiente:

- que interfiera, restrinja, o niegue que se ejercite cualquier derecho estipulado por la LAFM;
- que se despidan o se discrimine en contra de cualquier persona que se oponga a una práctica prohibida por la LAFM, o se involucre en cualquier procedimiento relacionado a esta ley.

Ejecución

- El "Department of Labor" tiene la autoridad de investigar y resolver quejas de infracciones de la LAFM.
- El empleado elegible puede demandar a un patrón por medio de acción civil por infracciones de la LAFM.

La LAFM no afecta ninguna ley federal o estatal que prohíba la discriminación, ni reemplaza ninguna ley estatal o local, o convenio sindical que provea más amplios derechos de ausencia familiar o médica.

Para Más Información

Si tiene acceso al internet, visite la pagina de la LAFM: <http://www.dol.gov/esa/whd/fmla>. Para localizar la oficina de horarios y salarios más cercana, llame a nuestra línea gratis de información y ayuda al 1-866-4USWAGE (1-866-487-9243). Representantes están disponibles para asistir con información desde 8am a 5pm **en su zona horaria**; o visite nuestra pagina de internet <http://www.wagehour.dol.gov>.



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