

FMLA— *from the Department of Labor*

The FMLA (Family Medical Leave Act of 1993) entitles eligible employees of covered employers to take **unpaid**, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

Twelve workweeks of leave in a 12-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- to care for the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" or

Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

ELIGIBLE EMPLOYEES

Only eligible employees are entitled to take FMLA leave. An eligible employee is one who:

- Works for a covered employer;
- Has worked for the employer for at least 12 months;
- Has at least 1,250 hours of service for the employer during the 12 month period immediately preceding the leave*; and
- Works at a location where the employer has at least 50 employees within 75 miles.
- Special hours of service eligibility requirements apply to airline flight crew employees.

The 12 months of employment do not have to be consecutive. That means any time previously worked for the same employer (including seasonal work) could, in most cases, be used to meet the 12-month requirement. If the employee has a break in service that lasted seven years or more, the time worked prior to the break will not count unless the break is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement, including a collective bargaining agreement, outlining the employer's intention to rehire the employee after the break in service. See "FMLA Special Rules for Returning Reservists".



Under some circumstances, employees may take FMLA leave on an intermittent or reduced schedule basis. That means an employee may take leave in separate blocks of time or by reducing the time he or she works each day or week for a single qualifying reason. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations. If FMLA leave is for the birth, adoption, or foster placement of a child, use of intermittent or reduced schedule leave requires the employer's approval.

Under certain conditions, employees may choose, or employers may require employees, to "substitute" (run concurrently) accrued paid leave, such as sick or vacation leave, to cover some or all of the FMLA leave period. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

NOTICE

Employees must comply with their employer's usual and customary requirements for requesting leave and provide enough information for their employer to reasonably determine whether the FMLA may apply to the leave request. Employees generally must request leave 30 days in advance when the need for leave is foreseeable. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances.

When an employee seeks leave for a FMLA-qualifying reason for the first time, the employee need not expressly assert FMLA rights or even mention the FMLA. If an employee later requests additional leave for the same qualifying condition, the employee must specifically reference either the qualifying reason for leave or the need for FMLA Leave. See Fact Sheet 28E: Employee Notice Requirements under the FMLA .

JOB RESTORATION AND HEALTH BENEFITS

Upon return from FMLA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot be counted against the employee under a "no-fault" attendance policy. Employers are also required to continue group health insurance coverage for an employee on FMLA leave under the same terms and conditions as if the employee had not taken leave. See Fact Sheet 28A: Employee Protections under the Family and Medical Leave Act .

A "son or daughter" is defined by the FMLA regulations as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age or is 18 years of age or older and "incapable of self-care because of a mental or physical disability" at the time FMLA leave is to commence. The FMLA regulations provide separate definitions of "son or daughter" for its military family leave provisions that are not restricted by age.

FREQUENTLY ASKED QUESTIONS

[How does the FMLA define a "son or daughter?" Must my child have been disabled since birth in order to meet the FMLA definition of a "son or daughter"?](#)

No. The age of the child at the onset of a disability is irrelevant in determining whether the child is a "son or daughter" under the FMLA. An eligible employee is entitled to take FMLA leave to care for a son or daughter with a serious health condition who is 18 years of age or older and incapable of self-care because of a disability regardless of when the disability commenced.

[What counts as a disability for FMLA leave purposes?](#)

The FMLA regulations adopt the Americans with Disabilities Act (ADA) definition of disability as a physical or mental impairment that substantially limits a major life activity, as interpreted by the Equal Employment Opportunity Commission (EEOC), to define "physical or mental disability." If an adult son or daughter is "incapable of self-care" due to a disability, he or she will meet the FMLA definition of a son or daughter for whom an eligible employee may take leave.

Community Voices by CBR
12567W Cedar Dr Ste 210
Lakewood, CO 80228
303-733-3000
FAX: 303-733-3344

