



## **FAMILY AND MEDICAL LEAVE ACT**

Congress enacted the Family and Medical Leave Act (FMLA) in 1993 to protect workers who need to take limited leaves of absence from their jobs for certain family and medical reasons. This fact sheet presents some general information about the FMLA and its implementing regulations, including regulatory changes that went into effect in January 2009.

### **Does the FMLA apply to me?**

You are protected by the FMLA if you meet the following requirements: (1) you work at a location where at least 50 employees are employed by your employer within 75 miles of that location; (2) you have worked for your employer for at least one year; and (3) you have worked at least 1,250 hours over the last twelve months (equivalent to about 31 weeks of 40-hour weeks or 52 weeks of 24-hour weeks).

### **For what reasons can I take leave under the FMLA?**

You can take leave under the FMLA for any of the following reasons: (1) to care for your child after birth or adoption or a foster placement; or (2) to care for one of the following if s/he has a serious health condition -- your spouse, your parent, your child under 18, your child of any age if s/he has a

disability that makes him or her "incapable of self-care"; or (3) you are unable to perform your job due to a serious health condition.

### **How much leave can I take under the FMLA?**

You are entitled to a maximum of 12 weeks per year of leave under the FMLA.

### **Do I have to take all my leave at once?**

No. The FMLA permits you to take intermittent leave or to work a reduced schedule for planned medical treatment for a serious health condition.

### **Does my employer have to pay me when I am on leave under the FMLA?**

No. The FMLA only requires unpaid leave. However, you may elect or your employer may require that you use available accrued paid leave (such as personal days, sick time, or vacation time) during your FMLA leave. This paid leave can be counted against your 12 weeks of FMLA leave if the employer properly notifies you when your leave begins.

### **Are there other job protections or benefits provided by the FMLA?**

Yes. First, for the duration of your FMLA leave, your employer must maintain, at the cost of the employer, any health coverage you have under a group health plan. Second, most employees must be restored to their original or equivalent positions when they return from FMLA leave, with equivalent pay, benefits and other employment terms (often called the "right to restoration").

Third, the use of FMLA leave cannot result in the loss of any employment benefit that was accrued prior to the start of an FMLA leave. Finally, the FMLA prohibits your employer from interfering with or denying your rights under the FMLA or from discharging or discriminating against any person who opposes any action by an employer that is unlawful under the FMLA or who is involved in any proceeding under the FMLA.

### **Do I have to give notice before taking FMLA leave?**

Ordinarily, you have to give 30-days advance notice before taking FMLA leave if the need for leave is "foreseeable." If you cannot give 30 days' notice, you should give as much notice as possible. At minimum, though, you must follow whatever customary call-in procedures are used to report absences in your workplace, absent extraordinary circumstances.

### **Do I have to provide medical records to document the need for leave?**

An employer cannot require that you submit medical records to support your need for FMLA leave. The employer, however, can require you to provide a medical certification to support a request for leave based upon a serious health condition. A representative of the employer other than your direct supervisor (such as a human resources professional, management official, or health care provider retained by the employer) is permitted to speak directly to your health care provider to clarify any issues about the certification, but the representative cannot ask for additional information beyond that required by the certification. If the employer determines that the certification is incomplete or insufficient, it must specify, in writing, what information is lacking and give you at least 7 calendar days to cure the problem. The employer may also require you to go to another doctor of its

choosing for a second opinion, though it must pay for the examination and cannot see your medical records.

Generally, an employer can request re-certification of an ongoing condition no more often than every 30 days in connection with the continued absence of an employee. If the medical certification indicates that the condition is expected to last more than 30 days, the employer must wait the minimum duration of the condition before requesting a re-certification, but in all cases the employer may request a re-certification at least every six months.

### **Can my employer request a “fitness-for-duty” certification before I return to work?**

If you took FMLA leave due to your own serious health condition that made you unable to perform her job, the employer can require you to present a certification from your doctor that you are able to resume your job, including certification that you can perform the essential functions of your job, as long as this policy is applied to all similarly-situated employees who take leave.

If you are taking intermittent leave or working a reduced leave schedule under the FMLA due to your own serious health condition, the employer can require a certification of fitness to return to duty up to once every 30 days if reasonable safety concerns exist regarding your ability to perform your duties.

### **What is the impact on FMLA leave if I return to a light duty position?**

Time spent performing light duty work does not count against your FMLA leave entitlement. In addition, your right to be restored to your position following FMLA leave generally will not be affected during the period you are performing light duty work (or until the end of the applicable 12-month FMLA leave year).

### **What can I do if I think my FMLA rights have been violated?**

You can file a complaint with the Wage and Hour Division of the United States Department of Labor.

Alternatively, you can file a lawsuit to challenge violations of the FMLA. Among other things, you can recover lost wages and benefits and compensation for any monetary losses (although you may not be able to recover any money damages if you are employed by a state government). You need not file a complaint with the Department of Labor before you file a lawsuit.

### **Who can I contact for more information?**

You can call the United States Department of Labor's Wage-Hour toll-free information and help line at 1-866-4USWAGE (1-866-487-9243) or visit its website at <http://www.dol.gov/dol/topic/benefits-leave/fmla.htm> for more information about the FMLA or filing a complaint with the Department of Labor.

You also can contact Disability Rights Pennsylvania at 800-692-7443 (voice) or 877-375-7139 (TTY).

## **Contact Information**

If you need more information or need help, please contact Disability Rights Pennsylvania (DRP) at 800-692-7443 (voice) or 877-375-7139 (TDD). The email address is: [intake@disabilityrightspa.org](mailto:intake@disabilityrightspa.org).

The mission of Disability Rights Pennsylvania is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, Disability Rights Pennsylvania cannot provide individual services to every person with advocacy and legal issues. Disability Rights Pennsylvania prioritizes cases that have the potential to result in widespread, systemic changes to benefit persons with disabilities. While we cannot provide assistance to everyone, we do seek to provide every individual with information and referral options.

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**PLEASE NOTE: For information in alternative formats or a language other than English, contact Disability Rights Pennsylvania at 800-692-7443 Ext. 400, TDD: 877-375-7139 or [intake@disabilityrightspa.org](mailto:intake@disabilityrightspa.org).**