

Family and Medical Leave Act Summary

The 12-month period is based on the fiscal year (July-June)

Employee Eligibility Criteria

- A. Employed at least 12 months prior to the commencement of the leave.
- B. Worked at least 1,250 hours during the 12-month period prior to the commencement of the leave.

Types of Leave

Family Leave

- A. Leave can be taken for
 1. Birth of child
 2. Placement of a child for adoption
 3. Placement of a child for foster care (must be a formal foster arrangement)
- B. Leave must be completed within 12 months of birth, adoption or foster placement.

Medical Leave

- A. Leave can be taken to care for employee's spouse, child or parent with a serious health condition.
 1. "Spouse" defined:
 - a. Legally married spouse as defined by state law
 - b. Common-law spouse where recognized
 2. "Child" defined:
 - a. Any child under 18 for whom the employee is acting as a parent
 - b. Children 18 and older if:
Incapable of self-care, because of a mental or physical disability as defined by the Americans with Disability Act
 3. "Parent" defined:
 - a. Biological parent
 - b. Individual who acted in the place of a parent ("in loco parentis") when the employee was a son or daughter as defined above
 - c. Parents-in-law are **not** part of this definition
- B. Leave due to employee's own serious health condition that makes the employee unable to perform the function of his/her position because he/she is:
 1. Unable to work at all due to the serious health conditions, or
 2. Unable to perform any one of the essential functions of the position within the meaning of the Americans with Disabilities Act, due to a serious health condition

Military Leave

- A. Leave taken when an employee's spouse, son, daughter, or parent is on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation can use their 12-week entitlement to address certain qualifying exigencies. These 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.

B. 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.

1. "Covered servicemember" defined:

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.

Serious Medical Condition

A. Definition:

1. Inpatient Care

2. Absence plus treatment

a. Absence

"A period of incapacity of more than three consecutive calendar days

b. Treatment

".....treatment two or more times by a healthcare provider (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity), or

".....one treatment by a healthcare provider (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing regiment of treatment (e.g., prescription medication, physical therapy)."

3. Any period of incapacity due to pregnancy, or prenatal care

4. Chronic conditions requiring treatment (at least two times a year)

5. Permanent/long term conditions requiring supervision

6. Multiple treatments for non-chronic conditions

B. Short-term Illnesses

DOL regulations indicate that these conditions ordinarily would not meet the definition of "serious health condition," unless complications arise

Common Cold

Upset Stomach

Headaches other than migraine

Flu

Ear Aches

Ulcers

Routine dental or orthodontic problems

including periodontal disease

Health conditions generally not considered serious

1. Cosmetic treatments

2. Routine physical examinations

Coordination With Employer Policy

- A. Concurrency of company leave and FMLA
 - 1. Employer may require an employee to use any company paid leave benefits concurrently with FMLA
 - 2. The employee may choose to use paid leave benefits concurrently with FMLA if the employer does not require it

Reduced Schedule/Intermittent FMLA Leave

- A. Family Leave
 - 1. Can be taken intermittently or on a reduced leave schedule only with the employer's approval
- B. Medical leave
 - 1. Must be medically necessary
 - 2. Employer may require a medical certification
- C. Alternative position
 - 1. If an employee needs intermittent or reduced schedule leave, the employer may require the employee to transfer temporarily to an alternative position "which better accommodates the recurring periods of leave"
 - 2. The alternative position must have equivalent pay and benefits, but does not have to have equivalent duties