



Family and Medical Leave: Understanding Your Rights

Am I eligible?

If you work for a company with 50 or more local employees, have been on the job at least 12 months and worked at least 1,250 hours (24 hours a week on average), you are eligible. All state, local, and federal employees are covered, as well as anyone who works for Congress.

Companies don't have to provide leave to employees in an area where there are less than 50 employees in a 75-mile radius. This means small regional offices of large companies may be exempt. Many companies will want to have uniform policies for all employees, so check with your human resources department if this is your situation.

Some state laws and union contracts are *more generous* than the FMLA, so check with your state elected official's office or your union steward, or call 9to5's Job Survival Helpline at 1-800-522-0925.

The law allows companies to exempt "key employees". These must be among the highest-paid 10% of company employees in a 75-mile radius, and the employer must be able to show that reinstatement after leave would cause "substantial and grievous economic injury".

When can I take this leave?

When you have a new child by birth, adoption, or foster care; when you have a "serious health condition" or you need to care for a spouse, child or parent who has a "serious health condition" (defined below).

A person who takes on day-to-day responsibilities of caring for or financially supporting a child, even without legally adopting her or him, qualifies for FMLA leave. A grandparent, spouse or partner of a biological parent or other relative, may qualify.

If you have a chronic condition that requires regular treatment from a health care provider, such as pregnancy, cancer treatments or asthma, you can take *intermittent leave*. This allows you to take a day (or less) or a week off when needed or reduce your workweek or workday, when this need is documented by a medical care provider. Pregnancy and chronic conditions are covered even if the absence is less than 3 days.

How sick does someone have to be to qualify for this leave?

The law defines "serious health conditions" as an illness, injury, physical or mental condition that requires an overnight stay in a hospital; or an absence of **more than 3 consecutive days** of work, school or other regular activities. Your employer may require certification of the need for medical leave for yourself or a family member.

How long a leave can I take?

Twelve weeks per year. For a new child, you have to take the leave all at once unless your employer agrees to a different schedule. If you and your spouse work for the same employer and have a new child, the law allows your employer to limit you both to 12 weeks leave, to split between the two of you as you choose. This split does not apply to leave to care for a sick family member or a personal illness.

9to5 does not provide legal advice. As a membership and advocacy non-profit organization, we offer information on workplace rights and how to handle workplace issues.

*For more information about your rights on the job, call the 9to5 Job Survival Helpline
1-800-522-0925 or helpline@9to5.org*

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Family and Medical Leave: Understanding Your Rights (cont'd)

Do I get any pay during leave or qualify for unemployment?

The leave is unpaid, so your paycheck will stop. However, if the FMLA absence qualifies under the employer's sick leave policy, you may use any paid sick leave you've accrued for that absence. Use of accrued vacation time for FMLA leave depends on your employer's policy. Five states and Puerto Rico have Temporary Disability Insurance, which provides partial income during your own medical leave: Rhode Island, New

York, California, New Jersey, and Hawaii. California and New Jersey also have Paid Family Leave programs.

Your employer must continue to pay your health care premiums while you're on leave. If you have a co-pay system, each party continues to pay their part. Employers can opt to continue group life insurance, accrued vacation and other benefits, but are not required to do so.

If my company gives 2 weeks sick leave, do I get this in addition to my 12 weeks?

No. Your employer can count your sick leave toward the 12 weeks of FMLA leave, but they must notify you of this within two days of your request for leave. Your employer can also count your accrued paid vacation and personal leave days as FMLA leave, with the same notification rule. If you use 3 weeks vacation leave and another week sick leave, you're left with only 8 weeks of job-protected family leave.

What happens if I decide not to come back to work after having a baby or being ill?

Your employer can require you to reimburse them for the health insurance premiums they paid during the time you were on leave unless a serious medical problem or other circumstances beyond your control prevents you from returning to work. However, they must notify you of such a requirement within 2 business days of your request for leave.

What if my state also has a family leave law?

You may use whichever law offers you the greatest benefit. For example, Vermont requires companies with as few as 10 employees to give up to 12 weeks for serious illness. Connecticut offers 16 weeks every 24 months. If you have a baby in 2012, you may use the 16-week leave under state law. If you become ill during 2013, you may be able to take leave under federal law. You'll need to know your rights to get the best arrangement.

Can my employer count my FMLA absence as an "occurrence" under an attendance policy?

No. You cannot be warned, suspended, fired, disciplined or denied overtime or advancement because of FMLA absence.

Where do I call if my employer denies me leave or a job to come back to?

When you are ready to return from leave, your employer is required to give you the same or an equivalent position, in terms of pay, conditions of employment and benefits. If you are denied leave or return to employment, contact the nearest office of the Wage and Hour Division of the US Dept. of Labor. Go to <http://www.dol.gov/whd/>. You also have the right to bring a civil case against your employer in state court to get reinstatement of lost wages and attorney's fees.

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