

# Family and Medical Leave Act

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CLE - October 2015  
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## Topics of Discussion

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- Overview
- Eligibility
- Leave Entitlement
- Definitions - discussion regarding: *in loco parentis*, adult children, serious health condition
- Substitution of Paid Leave
- Notice/Certification/Recertification
- Designation of Leave
- Overview of Military Family Leave under the FMLA
- Maintenance of Health Benefits/Job Restoration
- Enforcement of Rights



## Introduction

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The Family and Medical Leave Act (FMLA) is a federal statute that was enacted in 1993. 29 U.S.C. 2601, et seq.

Purpose - the FMLA is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity.

United States Department of Labor ("DOL"), Wage and Hour Division, is charged with promulgating regulations to implement the statute. 29 C.F.R. Part 825. The DOL also provides interpretive guidance by way of opinion letters and administrator interpretations.



## Intro (cont'd)


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**In a nutshell, the FMLA requires covered employers to:**

Grant eligible employees unpaid leave for specified family and medical circumstances, including specified qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty" (qualifying exigency leave), and to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave);

➤ Upon return from FMLA leave, restore employees to their original job or to a job with equivalent pay, benefits and other terms and conditions of employment;

➤ Maintain health benefits throughout the leave period.



## Employer Coverage

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- Private sector employers with 50 or more employees.
- Public Agencies.
- Public and private elementary and secondary schools.



## Employee Eligibility

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Employee must have:

1. Worked for covered employer for at least 12 months

AND

2. Completed at least 1,250 hours of paid service during the 12 months prior to the start of the FMLA leave.



## Leave Entitlement/Qualifying Reasons For Leave (non-military provisions)

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Eligible employees are entitled to up to a total of 12 weeks of leave during any 12-month period (court system uses calendar year) for one or more of the following reasons:

- Birth of a child and to care for the newborn child;
- Placement of a child for adoption or foster care, and to care for the newly-placed child;
- Care for a spouse, child or parent (but not a parent-in-law) with a serious health condition;
- An employee's own serious health condition (incl. work-related injury/illness).



## Leave Entitlement (cont'd)

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- Leave may be taken intermittently or on a reduced schedule.
- Where intermittent or reduced schedule leave is for foreseeable medical treatment, an employee is obligated to work with his/her employer to schedule the leave so as to not unduly disrupt operations, subject to approval of his/her health care provider.
- Employees are also eligible to take FMLA whenever "*necessary to care for*" a family member with a Serious Health Condition ("SHC").





## Leave Entitlement - Both Spouses Work for Same Employer

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- Limited to 12 combined weeks of leave to care for the employee's parent (does not include parent-in-law) with a SHC, birth or placement of a child for adoption or foster care and to care for the child.
- Amount of Leave for "other purposes"- each spouse is entitled to the difference between the amount he or she has taken individually and 12 weeks of FMLA for other purposes.
  - For Example: If each spouse used 6 weeks of leave to care for their respective parent, they would have used their combined 12 weeks - but each would be entitled to 6 weeks of leave for their own SHC or to care for their child with a SHC or to care for each other's SHC.



## Definitions

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➤ Parent

*(In Loco Parentis)*

➤ Spouse

*(Domestic Partners not covered)*

➤ Son of Daughter

*(Adult Child with a disability)*

➤ "Necessary to Care for" a Family Member




## Definitions (cont'd)

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Serious Health Condition:

- Legislative History
- SHC - (Six Categories)

Illness, injury, impairment or physical or mental condition that involves one of the following:

1. Inpatient Care.
2. A period of incapacity of more than three consecutive calendar days that also involves continuing treatment by or under supervision of a health care provider.
3. Any period of incapacity due to pregnancy or prenatal care.
4. Chronic Conditions.
5. Period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective.
6. Conditions requiring multiple treatments. 

## General Rules-Birth/Adoption/Foster Care

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- Mother/Father - leave for birth and to bond.
- Mother - leave for incapacity, including morning sickness or for her own SHC following the birth of the child. Note: Only a spouse is entitled to FMLA leave to care for the expectant mother who is incapacitated . Prenatal visits are covered.
- Adoption/Foster Care - leave before the actual placement where absence from work is required for the placement for adoption or foster care. (e.g. required to attend counseling sessions, appeal in court, submit to a physical examination, etc.)
- Leave to care for newborn or newly-placed child must conclude within 12 months after the birth or placement and must be taken in a continuous block of leave, unless the employer agrees to allow intermittent or reduced scheduled leave.



## **Substitution of Paid Leave**

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- FMLA does not require paid leave.
- Substitution of paid leave - determined by the terms and conditions of an employer's normal leave policy.
- Court System employees are not required to substitute their accruals (i.e., can elect to take unpaid FMLA leave).



## Notice of Need for Leave

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Employees are required to provide timely notice of the need for FMLA leave.

- Timing (Foreseeable/Unforeseeable)
- Notice - sufficient to make employer aware of need for FMLA leave.
- Once FMLA leave approved (e.g. intermittent leave for asthma) employees must specifically reference the reason or need for leave and are required to comply with employer's usual and customary call-in procedures.



## Certification

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- Employer may require certification of the need for FMLA leave (DOL promulgated leave forms).
- Upon an employer's request, employee has 15 calendar days to provide a complete and sufficient certification.
- Content of Certification.
- Incomplete or Insufficient Certification.
- Authentication / Clarification.
- Consequences for failing to provide Certification.



## Recertification

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- Generally, no more often than 30 days.
- If minimum duration on the certification is greater than 30 days, employer must generally wait until the minimum duration expires.
- All instances- employer can request recertification every six months and less than 30 days if:
  - the employee requests an extension of leave, or
  - the circumstances described by the previous certification have changed, or
  - the employer receives information that causes it to doubt the employee's stated reason for the absence or the continuing validity of the existing medical certification.





## **Designation of FMLA Leave**

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- Employers are responsible in all circumstances for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee.
- As soon as the leave of absence qualifies as FMLA leave, it must be designated as such, regardless of whether the employee wants FMLA to apply.



## **Overview of Military Family Leave under the FMLA**

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The FMLA military family leave provisions provide leave for:

- Qualifying Exigencies
- Military Caregiver Leave



## Qualifying Exigencies

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Eligible employees may take up to 12 weeks of FMLA leave because of a qualifying reason (exigency) that arises out of the fact that the employee's spouse, son, daughter, or parent is on, or has been notified of an impending call to, "covered active duty" in the Armed Forces.



## Qualifying Exigencies (cont'd)

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### Covered Active Duty:


- Regular Armed Forces - duty during deployment of the family member with the Armed Forces to a foreign country.
- Reserve Components of the Armed Forces (National Guard and Reserves) - duty during deployment of the family member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation



## Qualifying Exigencies (cont'd)

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*Qualifying exigencies* must involve one of the following:

- Short-notice deployment
- Military events and activities
- Child care and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation
- Post deployment activities
- Parental care
- Additional activities that arise out of the military member's covered active duty or call to covered active duty. 

## Qualifying Exigencies (cont'd)

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Generally an eligible employee is entitled to 12 weeks of leave for qualifying exigencies, except for:

- Short notice deployment - (deployment within 7 days or less of notice) - limited to a period of seven days from the date the member receives notice of deployment.
- Rest and Recuperation - maximum of 15 days for each instance of R&R.

QE Leave counts against an EE's normal FMLA entitlement for other leave reasons within the 12 month FMLA calendar year.



## Military Caregiver Leave

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➤ Eligible employees may take up to 26 weeks of FMLA leave in a single 12-month period to care for their spouse, son, daughter, parent or *next of kin* who is a covered servicemember with serious illness or injury.

➤ 26 weeks of FMLA in a single-12 month period.

➤ Son/Daughter - any age

➤ Covered Service member - current member of the armed forces, including the reserves and Veterans who are undergoing treatment and discharged within 5 years before the leave begins.

Note - MCL leave counts against an EE's normal FMLA entitlement for other leave reasons.



## Health Benefits/Job Restoration

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- Maintenance of group insurance coverage.
  - When does an employer's obligation cease?
  
- Job Restoration - return to original job or to a job with equivalent pay, benefits and other terms and conditions of employment.
  
- Note - FMLA leave cannot extend employment beyond the time it would otherwise terminate pursuant to law, rule or regulation.





## Enforcement of Rights

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➤ Employers may not deny or interfere with employees' rights guaranteed under the FMLA, and are prohibited from discharging or discriminating against employees who exercise their rights.

➤ Employees may enforce their rights under the FMLA by filing a complaint with the United States Department of Labor ("DOL") or by filing a civil action.

Two basic types of claims:

- Interference - employer burdens or outright denies an employee's substantive statutory rights; and
- Retaliation - employer takes an adverse employment action against an employee for exercising his or her FMLA rights.



# Questions

