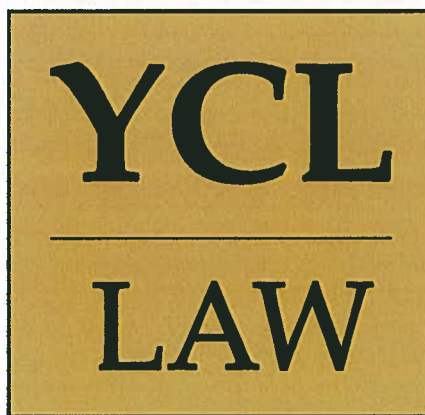


**LEGAL "EASE"**

Simplifying Legal Issues



**YABLONSKI, COSTELLO, & LECKIE PC**

Attorneys at Law Since 1961

# **FMLA:**

## **The Family and Medical Leave Act**

**Washington, PA – Washington Trust Building – 724-225-9130**

Other Offices in:

**California, PA – 310 Third St. • Erie, PA – 3923 Main St. • Cranberry, PA – 910 Sheraton Dr.**

**Online at: [www.ycllawfirm.com](http://www.ycllawfirm.com)**

### **What is the Family and Medical Leave Act?**

The FMLA entitles an eligible employee of a covered employer to take unpaid, job-protected leave, with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. When the employee returns to work from FMLA leave, the employer must restore the employee to the same job or a similar job with virtually identical pay, benefits, and other conditions of employment.

### **What types of businesses or employers does the FMLA apply to?**

The FMLA applies to all:

- Public agencies, including Local, State and Federal Employers,
- Local education agencies (schools), and
- Private sector employers who:
  - Employ 50 or more employees
  - For at least 20 work weeks in the current or preceding calendar year, including joint employers and successors of covered employers.

### **Who is eligible for FMLA leave?**

In order for an employee to be eligible to take leave under the FMLA, the employee must:

- Work for a covered employer,
- Have worked at least 1,250 hours during the 12 months prior to the start of leave,
- Work at a location where the employer has 50 or more employees within 75 miles, and
- Have worked for the employer for at least 12 months. (The 12 months of employment do not need to be consecutive in order to qualify for FMLA. In general, only employment within seven years is counted unless the break in service is (1) due to an employee's fulfillment of military obligations, or (2) governed by a collective bargaining agreement or other written agreement.

### **What benefits are available to an employee entitled to FMLA?**

The FMLA provides eligible employees up to 12 work weeks of unpaid leave in a 12 month period, and requires group health benefits to be maintained during the leave as if the employee continued to work instead of taking leave. Employees are also entitled to return to their same or an equivalent job at the end of their FMLA leave.

Leave is available for the following reasons:

- Birth of a child, and to care for the newborn child;
- For the placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
- For the care of an immediate family member—spouse, child, or parent (not parent-in-law)—with a serious health condition; or
- When the employee is unable to work because of a serious health condition.

### **What and when do I need to tell my employer if I plan to take FMLA leave?**

When you are seeking FMLA leave, you generally are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, you must provide notice as soon as it is practical—generally the same, or next, business day.

When the need for leave is not foreseeable, you must provide notice to your employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances you must comply with your employer's usual and customary notice and procedure requirements for requesting leave.

Any time you are requesting FMLA leave, you must provide sufficient information for your employer to reasonably determine whether the FMLA may apply to your leave request. Depending on the situation, such information may include that you are incapacitated due to pregnancy, have been hospitalized overnight, or are unable to perform the functions of the job, and/or that you or a qualifying family member is under the care of a healthcare provider for a serious health condition.

When you are seeking leave for a FMLA-qualifying reason for the first time, you do not need to expressly assert FMLA rights or even mention the FMLA. However, if you are seeking leave for an FMLA-qualifying reason where your employer has previously provided you with FMLA-protected leave, you must specifically reference either the qualifying reason for the leave or the need for FMLA leave.

**How soon after I notify my employer of the need for FMLA leave must my employer determine whether I am eligible for FMLA leave?**

Absent extenuating circumstances, your employer is required to notify you of whether you are eligible to take FMLA leave (and, if not, at least one reason why you are ineligible) within five business days of your leave request, or your employer learning that your leave may be for a FMLA-qualifying reason.

**How soon after I notify my employer of the need for FMLA leave must my employer notify me that my leave will be designated or counted as FMLA leave?**

Your employer must notify you of whether leave will be designated as FMLA leave within five business days of learning that the leave is being taken for a FMLA-qualifying reason, absent extenuating circumstances. The designation notice must also state whether paid leave will be substituted for unpaid FMLA leave and whether your employer will require you to provide a fitness-for-duty certification to return to work (unless a handbook or other written document clearly provides that such certification will be required in specific circumstances, in which case the employer may provide oral notice of this requirement). Additionally, if the amount of leave needed is known, your employer must inform you of the number of hours, days or weeks that will be counted against your FMLA leave entitlement in the designation notice. Where it is not possible to provide the number of hours, days, or weeks that will be counted as FMLA leave in the designation notice (e.g., where the leave will be unscheduled), your employer must provide this information upon your request, but no more often than every 30 days and only if leave was taken during that period.

**Is my employer required to pay me when I take FMLA leave?**

The FMLA only requires unpaid leave. However, you may elect to, or your employer may require that you, use accrued paid vacation leave, paid sick or family leave for some or all of the FMLA leave period. You must follow your employer's normal leave rules in order to substitute paid leave. When paid leave is used for an FMLA-covered reason, the leave is FMLA-protected.

**What proof is my employer entitled to have in order to determine whether I am suffering from a serious health condition?**

Your employer may require that your need for leave due to serious health condition be supported by a certification issued by a healthcare provider. Your employer must give you at least fifteen (15) calendar days to obtain the medical certification.

**Do I have to give my employer my medical records for FMLA leave due to a serious health condition?**

No. You are not required to give your employer your medical records. Your employer may, however, request that you provide medical certification containing sufficient medical facts to establish that a serious health condition exists.

**Do I have to sign a medical release as part of a medical certification?**

No. Your employer may not require you to sign a release or waiver as part of the medical certification process. Completing a medical release or authorization is done at your own discretion. If your employer requests a medical certification, however, it is your responsibility to provide the employer with a complete and sufficient certification. If you do not provide either a complete and sufficient certification or an authorization allowing the healthcare provider to provide a complete and sufficient certification to your employer, your request for FMLA leave may be denied.

### **May my employer contact my healthcare provider about my serious health condition?**

Any contact between your employer and your healthcare provider must comply with the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations. Your employer may contact your healthcare provider for authentication or clarification of the medical certification by using a healthcare provider, a human resource professional, a leave administrator, or a management official. In order to address employee privacy concerns, in no case may your direct supervisor contact your healthcare provider. In order for your HIPAA-covered healthcare provider to provide your employer with individually-identifiable health information, you will need to provide the healthcare provider with a written authorization allowing the healthcare provider to disclose such information to your employer. Your employer may not ask the healthcare provider for additional information beyond that contained on the medical certification form.

### **Can my employer require me to submit to a fitness-for-duty examination before I can return to work after being absent due to a serious health condition?**

Yes. As a condition of returning an employee to work who was absent on FMLA leave due to the employee's own serious health condition, your employer may have a uniformly applied policy or practice that requires all similarly situated employees who take leave for such conditions to submit a certification from the employee's own healthcare provider that the employee is able to resume work. Your employer may require that the fitness-for-duty certification address your ability to perform the essential functions of the position if your employer has appropriately notified you that this information will be required and has provided a list of essential functions. Additionally, your employer may require a fitness-for-duty certification up to once every 30 days if you are taking intermittent or reduced schedule FMLA leave if reasonable safety concerns exist regarding your ability to perform your duties based on the condition for which leave was taken.

### **How do Collective Bargaining Agreements (CBAs) affect the FMLA regulations?**

Your employer must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the FMLA may not be diminished by any employment benefit program or plan.

### **What should I do if my employer denies my request for leave under the FMLA?**

First, make sure that you have complied with your obligations under the FMLA:

- Did you give your employer clear and timely notice?
- Did you provide your employer any required or requested medical certification?

Second, make sure that your employer knows that you are requesting leave under FMLA.

If this still does not affect your employer's decision, and you believe you are entitled to leave, you may consider hiring a lawyer who is familiar with FMLA to help you. You may also contact your regional office of the U.S. Department of Labor's Wage and Hour Division to file a complaint. You may file a complaint by phone, by mail or in person. If the problem is not solved by a phone call from the U.S. Department of Labor to your employer, the Department will investigate your complaint and take appropriate action to resolve the complaint.

### **What happens if I am mistreated by my employer for taking FMLA leave?**

Your employer is prohibited from interfering with, restraining, or denying the exercise of FMLA rights, retaliating against you for filing a complaint and cooperating with the Wage and Hour Division (WHD), or bringing private action to court. You should contact the WHD immediately if your employer retaliates against you for engaging in any of the legally protected activities. For additional information, call the toll-free information and helpline, available 8 a.m. to 5 p.m. at 1-866-487-9243.

### **For additional information consult the following sources:**

The US Dept. of Labor, Wages and Hours Division:

<http://www.dol.gov/whd/fmla/>

The National Partnership for Women and Families:

<http://www.nationalpartnership.org/research-library/work-family/fmla/guide-to-fmla.pdf>