

Understanding the Family and Medical Leave Act



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What Is the FMLA?

Law enacted by Congress in 1993. Provides 12 weeks of **unpaid leave** per year for family and medical reasons.

Revised and amended 2008-2010.



FMLA Leave is for:

Five main categories:

- ❑ Pregnancy or birth of a child
- ❑ Adoption or placement of a child in foster care
- ❑ Employee's serious health condition
- ❑ Employee's need to care for a family member with a serious health condition
- ❑ Qualifying military exigency



12 Weeks in 12 Months

Employers can define the 12-month leave period in any of four ways.

- ❑ The calendar year
- ❑ A fixed 12-month period, e.g., a fiscal or academic year
- ❑ A 12-month period measured forward from the date the FMLA leave begins
- ❑ A “rolling” 12-month period measured backward from the date an employee uses any FMLA leave



Other Leave Entitlements

Family and medical leave benefits may also be provided by:

- ❑ state law,
- ❑ local/municipal law,
- ❑ faculty handbooks/university policies,
- ❑ collective bargaining agreements, or
- ❑ appointment letters.

Covered Employers

- ❑ All public colleges and universities are eligible.
- ❑ Private institutions are eligible if they have 50 or more employees within a 75-mile radius.





Covered Employees

To be eligible, an employee must have

- worked at the institution for at least 12 months AND
- worked 1250 hours in the 12 preceding months.

Full-time salaries employees meet the 1250-hour standard.



FMLA and Part-Time Appointments

Employees on part-time appointments must calculate whether they worked 1250 hours in the past 12 months.

- All time performing work related to the position counts—not only paid time.
- The work must benefit your institution & they must know you are doing it.



FMLA Leave Schedules

- ❑ Leave can be taken as a continuous block of twelve weeks (or less).
- ❑ For a medical reason or with administrative approval, can be taken intermittently or part time.
- ❑ If there are different qualifying reasons, you can take leave intermittently, but you still only get twelve weeks in a year.
- ❑ You cannot be required to take more leave than you need.



Alternative Positions

- ❑ The administration can give you an alternative work assignment if it deems your leave too disruptive.
- ❑ An alternative assignment does not have to have equivalent duties, but must have equivalent compensation.
- ❑ The administration may not assign you to an alternative position for which you are not qualified.
- ❑ An alternative position can't be designed to discourage you from taking leave or retaliate against you.

Pregnancy or the Birth of a Child

Biological mothers may take FMLA leave for:

- prenatal care
- pregnancy-related serious health condition, and
- postpartum leave to recover from childbirth.



Pregnancy or Birth of a Child

The **spouse** of a pregnant woman can take FMLA leave

- ❑ to accompany his/her wife on prenatal visits,
- ❑ to care for his/her wife who has a serious health condition, or
- ❑ to care for his/her wife after the birth.

The federal FMLA applies to same-sex spouses in the following states: CA, CT, DC, DE, IA, ME, MD, MA, MN, NH, NY, RI, VT, and WA.

Pregnancy or Birth of a Child

- **Either parent** can take leave to bond with a newborn.
- “Parent” = biological parent, stepparent, foster parent, legal guardian, or anyone who stands in *loco parentis*.
- Parent is entitled to a continuous leave; can take it intermittently or part-time with administration approval.





Adoption or Foster-care Placement

Can be taken:

- Before the placement or adoption for necessary part of the process
- After adoption to bond with the child

Applies to any child under 18.



Your Own Serious Health Condition

Defined as an illness, injury, impairment, or physical or mental condition that involves:

- ❑ treatment connected with inpatient care,
- ❑ a period of incapacitation longer than three days requiring medical treatment/care,
- ❑ a period of incapacity due to pregnancy,
- ❑ prenatal care, or
- ❑ medical treatment required to avoid incapacitation.

Family Member's Health Condition



Family member = spouse; biological, adopted, or foster child under eighteen; disabled child over eighteen; parents.

“Spouse” includes common-law marriages, but not domestic partners.

Spouses with the same employer may be limited to a combined total of twelve weeks to care for either of their parents.

Qualifying Exigency Leave

Applicable when a spouse, son, daughter, or parent of the covered employee is notified of a call to active duty or
or
for certain “exigencies.”



Qualifying Exigency Leave



Covered exigencies are those that arise

- during the covered service member's active duty, or
- related to the service member's return from an active-duty assignment in a foreign country.



Military-caregiver Leave

- ❑ Up to 26 weeks to care for a current service member with serious injury or illness or who is disabled & on the Temporary Disability Retired List
- ❑ Injury/illness must be incurred in the line of duty while on active duty
- ❑ Must have occurred as part of a foreign deployment
- ❑ In some cases, can be used to care for a veteran
- ❑ Spouses with same employer get 26 weeks collectively



When is FMLA Leave Paid?

When you can take it concurrent with paid leave. E.g.:

- Unpaid FMLA leave may run concurrent with paid sick or annual leave.
- Your institution can **require** you use paid sick leave concurrent with FMLA leave for your health issue.

Whether you can use paid sick leave to care for another person depends on your institution.



FMLA Leave and Furloughs

Specifics depend on the institution.

- ❑ Employers can **allow** you to take unpaid FMLA leave concurrent with furlough days or **require** you to.
- ❑ Employers can require you to take the furlough days after returning from paid FMLA leave.
- ❑ Employers do not have to count furlough time toward the 1250 work hours required for FMLA eligibility.
- ❑ All policies must be applied consistently.



FMLA-notice Obligations

- ❑ If possible, give notice at least 30 days in advance of the need for leave—even if exact dates could change.
- ❑ Otherwise, “as soon as practicable”—usually within one business day after the need for leave emerges.
- ❑ A third-party may provide notice if you cannot.
- ❑ Follow employer’s usual procedures for leave requests.
- ❑ Notice should include enough info for the employer to determine whether the FMLA applies.
- ❑ Notice should include expected duration of leave.



The First Time

The first time you give notice for a qualifying reason, you need not expressly request FMLA leave (but you do need to mention the reason).



Subsequent Leaves

For subsequent leaves for the same reason, you must specify the qualifying reason or request FMLA leave.



If You Want To Come Back Early

If you want to come back early from a leave, your employer may require notification within two business days of the changed circumstance. You may return to work as soon as you are able.



The Administration's Obligations

- ❑ FMLA info must be included in materials describing benefit policies and must be conspicuously posted.
- ❑ Leave requests must be answered within five work days after all required info has been submitted.
- ❑ Employers must keep your information confidential.



If Leave is Granted

The employer must provide in writing:

- expectations and obligations,
- info on any required medical certification,
- how you should pay health-insurance premiums, and
- whether you can substitute accrued paid leave for unpaid FMLA leave.



Medical-certification Requirements

An employer may require the following.

- ❑ A medical certification before approving FMLA leave for a health condition.
- ❑ A second opinion at the employer's expense.
- ❑ Medical specifics to support the need for leave.
- ❑ Additional info if you seek to take leave intermittently or part-time (to establish why).
- ❑ Under some circumstances, medical certification that you are fit to return.

Job Protection

- FMLA requires that employees be returned to their previous position after leave, or to an equivalent position.
- **Except: key employees**, defined as top 10% of earners. Not guaranteed job protection but can be denied only if *restoring* the employee would cause “substantial and grievous economic injury.”
- The FMLA provides no greater right to reemployment because of the leave.



What Is an Equivalent Position?

- ❑ Virtually identical to the former position in pay, benefits, working conditions, privileges, & status.
- ❑ Involves the same or substantially similar duties and responsibilities, equivalent skill, effort, & authority.
- ❑ Same or nearby work site; no increase in commute
- ❑ Same work schedule, same type of office.



FMLA and Workplace Benefits

- ❑ Employees on leave are entitled to keep group health-insurance benefits under the same conditions as if they were working.
- ❑ Across-the-board changes in coverage, premiums, or deductibles **do** affect those on FMLA leave.
- ❑ Entitlement to other benefits such as retirement contributions, tuition benefits, and leave accrual depends on state law, employer policies, and, if applicable, collective-bargaining agreements.

FMLA and the Tenure Clock



The FMLA neither requires nor prohibits counting FMLA leave as time on your tenure clock.

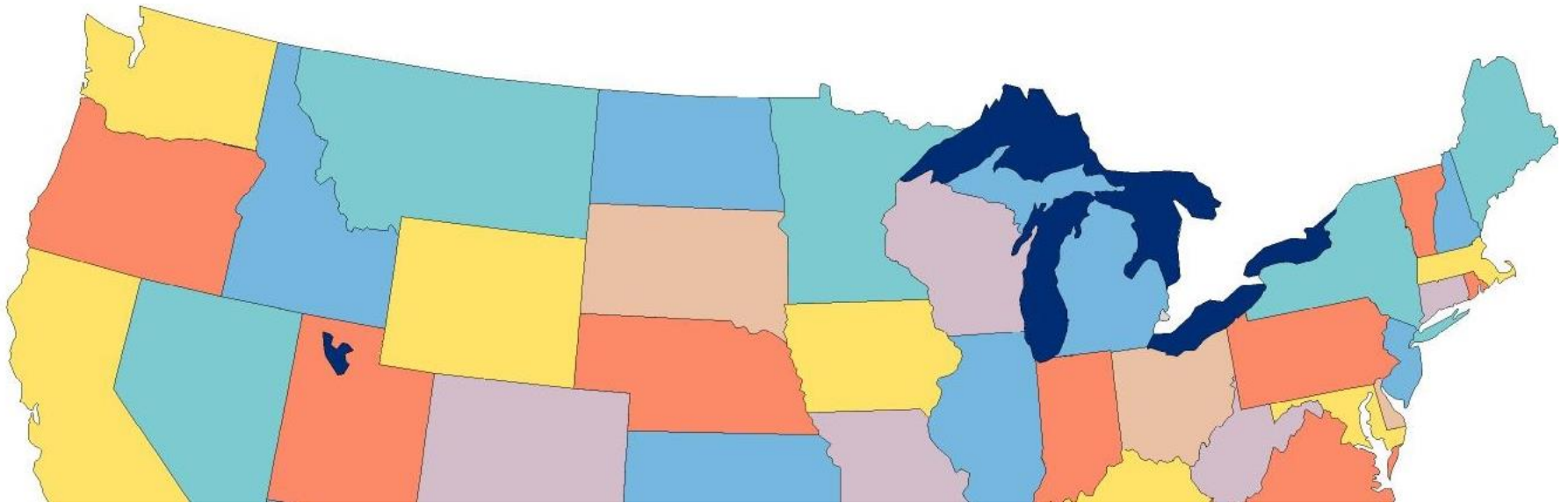
Depends on institutional policy, CBA, or individual arrangements.



Other Institutional Entitlements

- ❑ Better protections may be offered by employer policies, letters of appointment, or CBAs.
- ❑ Employers must observe all of their policies or practices that provide greater rights than the FMLA.
- ❑ **AND** they may not diminish any of your rights under the FMLA by offering a different benefit.
- ❑ Employees are not allowed to waive FMLA rights.

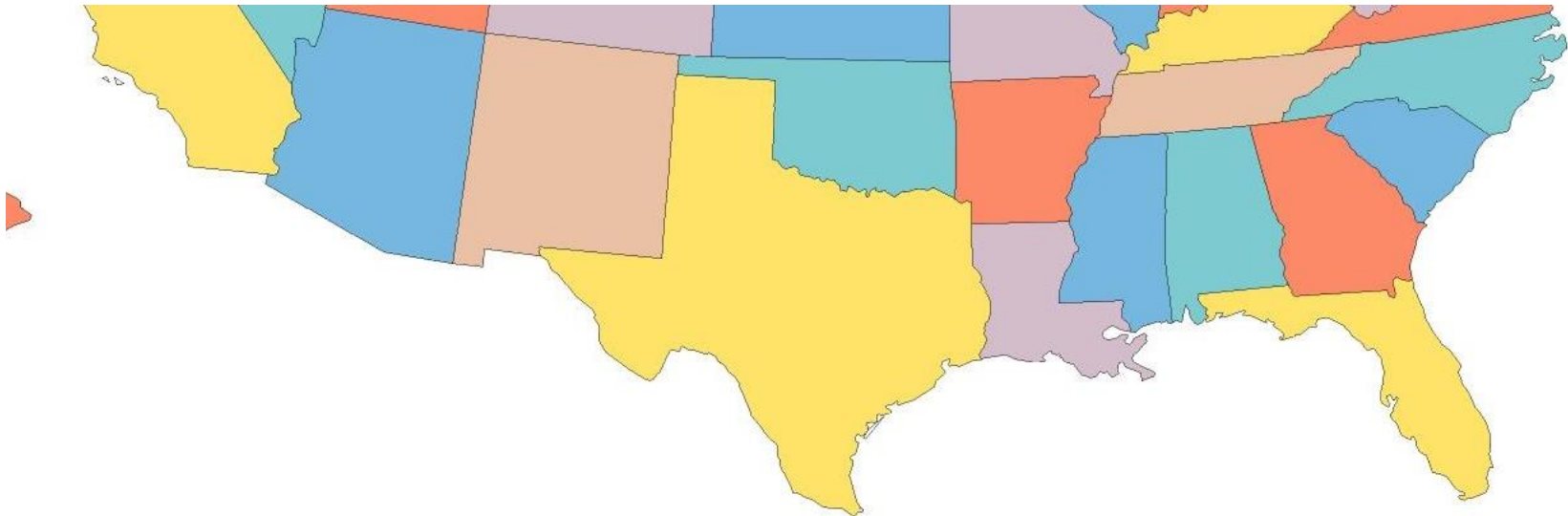
State Laws



Many states have laws increasing benefits available under the federal FMLA.

State Laws

Some apply only to state employees—not faculty at private institutions. Some cover both private & public sector.





FMLA and the ADA

The ADA prohibits discrimination against individuals who have, had, or are perceived as having a disability.

A “serious health condition” under the FMLA isn’t necessarily a “disability” under ADA (e.g., pregnancy).

An employer must make reasonable accommodations to allow a person w/an ADA disability to do their job.



FMLA and the PDA

The PDA prohibits discrimination based on pregnancy.

Employers that offer short-term medical, sick, or disability leave must give at least the same type of leave to pregnant women available to others.



If Your Rights Are Violated

If you believe your rights to FMLA leave are being violated, you can:

- ❑ Talk to your HR office & pursue other internal grievance procedures.
- ❑ File a complaint with the local office of the Wage and Hour Division of the US DOL (no attorney needed).
- ❑ File a private lawsuit in federal court. Talk to an attorney!



You May Need a Lawyer

The application of the FMLA to academic workplaces can be complicated and this presentation does not constitute specific legal advice.

If you have questions about the particulars of your own situation, you may benefit from conferring with a local lawyer who has experience in the practice of FMLA and in the world of academe.



□ www.aaup.org

□ Follow up questions?
Contact
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