



Family and Medical Leave Handbook

**Employee and Employer
Rights and Responsibilities
Under the**

**Family and Medical Leave Act
&
Oregon Family Leave Act**

**Prepared by the
Office of Human Resources
Employee Relations**

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Leave Laws

The Family and Medical Leave Act (FMLA), enacted by Congress in 1993, requires employers to provide job protection, job restoration, and continuation of medical and dental benefits in the event the employee or the employee's covered family member has a qualifying serious health condition or the employee takes leave to care for a newborn. FMLA is regulated by the U.S. Department of Labor, Wage and Hour Division.

The Oregon Family Leave Act (OFLA), enacted by the State Legislature in 1991, requires employers to provide job protection and job restoration in the event the employee or employee's covered family member has a qualifying serious health condition or the employee takes leave to care for a newborn. OFLA does not require an employer to continue an employee's medical and dental benefits during the qualified leave period. OFLA is enforced by the State of Oregon, Bureau of Labor and Industries (BOLI).

Both FMLA and OFLA require an employer to provide up to 12 workweeks of unpaid, job-protected leave for certain qualifying situations during a defined leave year. FMLA and OFLA were enacted to assist employees and employers in balancing the demands of the workplace with needs of employees and their family when leave is needed for serious health conditions or births of a newborn.

This document provides general information regarding the University's administration of the FMLA and OFLA and is not intended to be the sole source of information regarding FMLA or OFLA. Due to the complexities of FMLA and OFLA and their inter-relationship with the University's other leave policies, individuals are encouraged to consult with the Office of Human Resources (OHR) regarding employee and employer rights and responsibilities pertaining to FMLA and OFLA.

Covered Employer

The University qualifies under the law as a covered employer for FMLA and OFLA. University employee eligibility under FMLA and OFLA is determined as follows:

FMLA: An employee must have worked for a total of 1250 hours for a period of 12 months immediately preceding the date leave begins.

OFLA: An employee must have worked for a period of 180 calendar days immediately preceding the date leave begins, and must have worked an average of 25 hours per week during the 180 day period, *unless the leave is to care for a newborn child or newly placed adoptive or foster child.*

Leave Year Designation and Leave Availability

Under both FMLA and OFLA, an employer must designate its 12-month "leave year" by choosing one of four methods provided by the laws. ***Oregon State University has designated the "rolling backward" method to determine the leave year for University employees.***

The 12-month leave year is measured backward 12 months from the date an employee's FMLA or OFLA leave begins. An employee is entitled to use any balance (or number of hours) of the 12 workweek FMLA/OFLA leave period that has not been used during the preceding 12 months.

A qualifying employee working at 1.0 FTE (full-time equivalent) is entitled to 480 hours of leave in a "rolling backward" year. A part-time employee's FMLA/OFLA available hours will be pro-rated based on their FTE. For example, an employee working at .50 FTE is eligible for 240 hours in a "rolling backward" year.

Type and Length of Qualifying Leave

FMLA: Employees are entitled to FMLA leave for any one or more of the following reasons:

- Birth of a child; *and/or*
- Placement of a child under 18 (or incapable of self-care) for adoption or foster care; *and/or*
- To care for a spouse, child, or parent with a serious health condition; *and/or*
- The employee's own serious health condition; *and/or*
- To care for an injured service person (Armed Forces personnel)

OFLA: Employees are entitled to OFLA leave for any one or more of the following reasons:

- Birth of a child; *and/or*
- Placement of a child under 18 (or incapable of self-care) for adoption or foster care; *and/or*
- To care for a spouse, child, parent, or parent-in-law, same sex domestic partner and the domestic partner's parent or child with a serious health condition; *and/or*
- The employee's own serious health condition; *and/or*
- A non-serious health condition of a child requiring home care ("sick child leave")

Note: For a more information about serious health conditions, refer to the Resource section of this handbook.

Concurrent Application of FMLA and OFLA

An employee has 12 workweeks of leave available, during the leave year, under FMLA and OFLA. If the reason for the leave is qualifying under **both** FMLA and OFLA, then leave taken by the employee is counted concurrently under FMLA and OFLA entitlements.

Spousal Limitations: FMLA makes available to a husband and wife who are both employed by the University a combined total of 12 workweeks of leave during the 12-month period if the leave is taken:

- For the birth of their child;
- Placement of a child under 18 (or incapable of self-care) for adoption or foster care;

- To care for a child during the 12 months following birth or placement ("bonding" with the child); or
- To care for a parent (but not parent-in-law) of one of the employees, because of the parent's serious health condition.

Leave taken under OFLA limits a husband and wife who are both employed by the University from taking concurrent family leave unless:

- One spouse needs to care for the other who is suffering from a serious health condition; or
- One spouse needs to care for a child who has a serious health condition while the other spouse is also suffering from a serious health condition.

Invoking FMLA and OFLA and Medical Certification Requirements

Invoking FMLA

An employee is required to request FMLA/OFLA leave in writing by submitting an Employee Leave Request form to his/her supervisor or to the Office of Human Resources (OHR). FMLA/OFLA leave will be provisionally invoked when OHR receives the Employee Leave Request form. The employee will then be required to provide completed medical certification, specifically a Certification of Health Care Provider form, in order for FMLA/OFLA to be approved.

Note: Please refer to the Forms section of this handbook for information about accessing these forms.

If the need for FMLA/OFLA leave is foreseeable due to a planned medical treatment, an employee must make a reasonable effort to schedule the leave by consulting with his/her supervisor regarding scheduling the leave, so as not to disrupt the University's operations. In such cases, the employee shall give his/her supervisor at least 30 days advance notice of the need for leave. If 30 days advance notice is not possible, the employee will provide notice to his/her supervisor as soon as practicable, ordinarily within two business days after the need for leave becomes known to the employee. The employee may designate a personal representative to act on his/her behalf, if necessary.

An employee is expected to follow leave reporting guidelines established by the supervisor and the University. It is the employee's responsibility to ensure his/her use of leave is authorized by their supervisor.

If an employee is unable to submit an Employee Leave Request form due to the nature of their condition or emergency, he/she can request that their supervisor submit the form on their behalf. If an employee is not able to contact their supervisor in a timely manner, the employee is encouraged to have his/her personal representative call the supervisor.

At any time, given sufficient information, the University can invoke FMLA/OFLA. The University will give notice to the employee when FMLA/OFLA leave is invoked,

specifying the reasons for such actions. The employee will be given the opportunity to provide explanation and information that may reverse the University's decision to invoke the FMLA/OFLA leave.

Medical Certification Requirements

The University requires medical certification, through the employee's submission of the Certification of Health Care Provider form, to determine if leave qualifies under FMLA or OFLA, to designate qualifying leave, and to notify the employee of the leave designation. Medical certification also provides OHR with information to determine if the leave is for the employee's own serious health condition or that of a member of his/her family.

If leave is not foreseeable, the certification form is due within 15 days of the University's request. If circumstances do not permit the employee to obtain and provide the certification form, the employee may request an extension from OHR.

For pregnancy-related leave or chronic or long-term health conditions, recertification may be requested by the University no more often than every 30 days unless:

- An employee requests an extension of leave;
- The duration or nature of the condition has changed significantly; or
- The University receives information casting doubt on the employee's reason for the absences.

Under OFLA, the University may not request certification for sick child leave on the first three occasions during the leave year, but may do so beginning with the fourth incident, day, or occurrence and every subsequent occasion thereafter during the leave year. A doctor's note serves as medical certification.

Note: Academic staff may be asked for a medical certification for the purposes of authorizing FMLA/OFLA leave. This provision does not apply to stipulations in OAR 580-021-0040. Questions relating to the OAR should be directed to OHR.

Leave Usage – Continuous or Intermittent

Leave may be taken on a continuous basis or, if medically necessary, on an intermittent basis.

Continuous leave occurs when the employee is required to be off from work for a continuous block of time, without a break in leave.

Intermittent leave occurs when the employee takes leave in blocks of time, or he/she reduces their normal weekly or daily work schedule.

Definitions:

- If FMLA and OFLA leave is for birth and care or placement for adoption or foster care, ***use of intermittent leave is at the discretion of the employer's supervisor.***

- FMLA and OFLA leave may be taken intermittently whenever **medically necessary** to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Planned Intermittent Leave

When intermittent leave is needed to care for an immediate family member, the employee's own illness, or is for planned medical treatment, the employee is encouraged to schedule treatment so as not to unduly disrupt the department/unit's operation.

Unplanned Intermittent Leave

It is not always possible for a department/unit to accommodate an employee's use of unscheduled, unplanned leave. In those cases, the use of intermittent leave requires an employee and his/her supervisor to work together to balance work and family. Conversation and exploring alternatives is the best way to resolve conflicts that might occur. If a situation arises that is not easily resolved between the employee and his/her supervisor, contact OHR before any action is taken.

In all cases of intermittent leave, an employee is expected to perform the requirements of the position and the full job responsibilities while at work. If modifications to the job duties are requested, the employee or the supervisor is to contact OHR before any action is taken.

Continuous and Intermittent Leave Options under FMLA and OFLA

Reason for Leave	FMLA	OFLA
Parental Leave	An employee must take parental leave in one continuous block, unless the supervisor chooses to permit intermittent leave or a reduced work schedule.	Same as FMLA
Serious Health Condition of Employee or Family Member	Intermittent leave or a reduced schedule for serious health conditions is permitted when medically necessary.	Same as FMLA
Pregnancy disability or prenatal care	Intermittent leave or reduced schedules is permitted as necessary for pregnancy disability or prenatal care.	Same as FMLA
Sick Child Leave (non-serious health condition)	FMLA does not provide for sick child leave.	The nature of sick child leave allows usage of leave as needed (intermittently) rather than in a continuous block of time.

Coordination of FMLA and OFLA with Other University Leaves

An employee may use accrued paid leave during an FMLA/OFLA qualifying event. The use of paid leave does not increase, in whole or in part, the amount of FMLA and OFLA leave available to an employee. All FMLA/OFLA leave runs concurrently with University provided paid leave the employee may be entitled to.

- **Paid Sick Leave:** An employee must first use available accrued sick leave during FMLA/OFLA leave.

- **Paid Vacation Leave:** Upon exhausting all accrued sick leave, an unclassified employee (academic, research, and professional faculty) may use accrued vacation leave during an FMLA/OFLA qualifying leave before going on Leave Without Pay (LWOP).

A classified employee, upon exhausting all accrued sick leave, must use all accrued vacation leave during a FMLA/OFLA qualifying leave before being placed on LWOP. *Note: See the OUS/SEIU Collective Bargaining Agreement, Article 49-Vacation Leave, Section 14, regarding an employee's option to retain up to 40 hours of accrued vacation leave.*

- **Paid Personal Leave Day (classified employees only):** Upon exhausting all accrued sick leave, a classified employee has the right to use his/her unused paid personal leave days during FMLA/OFLA leave.
- **Compensatory Time (classified employees only):** In compliance with regulations, 29 CFR 553.25, compensatory time may not be counted against an employee's FMLA/OFLA leave entitlement. Therefore, a classified employee must use other forms of paid leave while on FMLA/OFLA.
- **Holidays and University Closures:** Holidays and University closures count toward FMLA and OFLA leave hours taken. Under FMLA, if an employee takes a week of FMLA leave in the same week that the employer shuts down for a holiday (such as Christmas), the period of absence still counts as one week of statutory leave.
- **FMLA/OFLA attendance form:** Oregon State University has the right to assume leave taken if the FMLA/OFLA attendance form(s) are not received in OHR.
- **Supplement Employment:** Oregon State University prohibits unauthorized work for another employer while on FMLA or OFLA from employment at Oregon State University. Oregon State University may not reinstate an employee to his/her position following leave covered by FMLA or OFLA if the employee had violated this applied policy.
- **Worker's Compensation:** A worker's compensation injury is considered an FMLA qualifying event. An employee can choose to use their accrued leave to supplement their worker's compensation payment. On-the-job disabling injury will not reduce the amount of OFLA time the employee may take in the year, but will still reduce the employee's FMLA leave bank. If the disabled employee refuses a genuine offer for light duty or modified work but is eligible to take family leave time, OFLA leave for the employee automatically begins upon refusal.
- **Short and Long Term Disability:** If the employee has short and/or long term disability coverage, he/she is encouraged to contact the Employee Benefits unit of OHR to discuss coordination of benefits.

Leave Reporting

An employee is required to submit an Employee Leave Request form for all planned FMLA/OFLA absences (paid or unpaid) 30 days in advance. Should an employee be unable to request leave due to an emergency, the employee's supervisor/department contact will be responsible for completing the Employee Leave Request form on the employee's behalf, for FMLA/OFLA to be provisionally invoked.

Note: Please refer to the Forms section of this handbook for information about accessing the Employee Leave Request form.

All requested and approved FMLA/OFLA leave will be counted toward the employee's FMLA/OFLA leave entitlement regardless of the employee's pay status.

Unclassified and classified employees are required to exhaust their paid sick leave accrual before leave without pay will be authorized. For classified employees, the University may also change the employee's pay period from salaried to hourly for the following reasons;

- The employee is working an intermittent or otherwise modified schedule due to medical necessity; *or*
- The employee exhausts all forms of paid leave and is anticipated to have intermittent leave without pay; *or*
- The employee requests a change in his/her work schedule that would result in the number of hours worked fluctuating from one month to the next.

Benefits Coverage

The University will continue to pay the same employer contribution toward the employee's group medical, dental, and basic life insurance that it paid prior to the start of the family leave while the employee is on approved FMLA leave. An employee who is on leave without pay during FMLA leave and who has paid any portion of the medical, dental, and basic life insurance premiums, will continue to be responsible to pay their portion. Employee-paid optional benefit premiums may be continued, without a break in coverage, when self-paid by the employee. All insurance related payments are to be made directly to the University Payroll Office.

When an employee returns to work the first work day immediately following the day FMLA ends, medical, dental, and basic life insurance coverage will continue, with no break in coverage, through the end of the month in which the employee returns. The employee is not required to work at least half time in the month in which he/she returns for coverage to continue through the end of the following month. Optional benefits (excluding Flexible Spending Accounts and Long Term Care) reinstate retroactive to the first of the month in which the employee returns. The employee must re-enroll in Flexible Spending Accounts and Long Term Care upon his/her return. If the employee returns on the second workday or thereafter following the end of his/her authorized leave period, the employee will be considered to be returning from leave without pay. All benefits previously in place, (excluding Flexible Spending Accounts and Long Term Care) are reinstated, effective the first of the month following the month in which the employee returns to work and works a minimum of half-time (80 hours for classified employees or 0.50 FTE for unclassified employees).

If the employee does not return to work following FMLA leave, the University may recover from the employee, the full premium cost of medical and dental coverage paid on his/her behalf during the entire leave period.

Additional information regarding benefits coverage is available at <http://oregonstate.edu/admin/hr/benefits/>, or you may contact the Employee Benefits unit in OHR.

Release to Return to Work

A Release to Return to Work (Fitness for Duty) certification form is required from the employee before he/she can return to work. The University may require a Release to Return to Work certification form when:

- The employer gave the employee advance notice that medical certification would be a condition of reinstatement; *and*
- The employee took FMLA/OFLA for his/her own serious medical condition.

Note: Please refer to the Forms section of this handbook for information about accessing the Release to Return to Work form.

A return-to-work certification will not be required upon an employee's return to his/her regular work schedule from intermittent leave.

Reinstatement upon Return from Leave

Upon returning from leave, an employee has reinstatement rights under FMLA and OFLA.

FMLA: An employee must be reinstated to either the same position held when leave began or to an equivalent position. An equivalent position is one that is virtually the same as the employee's former position in terms of pay, benefits, and working conditions and must involve the same or substantially similar duties and responsibilities.

OFLA: An employee must be reinstated to the position held when his/her leave began.

Other considerations under FMLA and OFLA:

The University's obligation to restore the employee to the same or an equivalent position ceases:

- If and when the employment relationship would have terminated (either through a termination or layoff action) if the employee had not taken leave;
- The employee informs the University of his/her intent not to return to work at the expiration of the leave;
- The employee fails to return to work at the expiration of the leave; or
- The employee continues on leave after exhausting his/her leave entitlement in the 12-month period.

An employee who exceeds his/her FMLA/OFLA leave and remains off work under a non-FMLA/OFLA leave is not entitled to reinstatement to the same or an equivalent position under the FMLA/OFLA. The employee's right to reinstatement will be controlled by the non-FMLA/OFLA leave policy, or other applicable laws, such as those relating to worker's compensation for workplace injuries.

An employee who loses reinstatement rights under injured worker rules may still retain FMLA/OFLA reinstatement rights at the conclusion of 12 workweeks. Conversely, an employee who exhausts family leave while on a worker's compensation absence may still have reinstatement rights under ORS 659A.043 or 659A.046. In either case, the employee will be notified of their entitlement and will be given the greater benefit.

Once the employee has been reinstated, the University may not be required to continue the employee's employment if the employee would have otherwise been laid off or terminated. The reinstated employee may be held to the same standards for performance, termination or layoff as other employees.

Restricted Access to Medical Information

Medical information relating to FMLA and OFLA leaves, whether verbal or written, will be kept confidential to the extent possible. Information will be shared on a need-to-know basis only. All medical documents including, but not limited to, medical certifications will be maintained in restricted access files separate from personnel files within the OHR.

The employee's supervisor is not to have any contact with the employee's health care provider regarding the employee's leave or medical condition while the employee is on FMLA/OFLA authorized leave.

Should OHR question the adequacy or the completeness of a medical certification provided by an employee's health care provider, a health care provider representing the University may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical certification. If the employee declines to give OHR permission to inquire, through the University's health care provider, with the employee's health care provider, the employee's absence may not qualify as FMLA/OFLA leave.

Contacts for Information/Questions in the Office of Human Resources

Human Resources Coordinator
Tracey Coats
122 Kerr Administration Building
Corvallis Campus
Phone: (541) 737-5946
Fax: (541) 737-7771
tracey.coats@oregonstate.edu

Associate Director
Jeri Hemmer
122 Kerr Administration Building
Corvallis Campus
Phone: (541) 737-0547
Fax: (541) 737-7771
jeri.hemmer@oregonstate.edu

Forms

The following forms are used by University employees, supervisors and OHR in administering FMLA and OFLA. Questions about the use of these forms should be directed to the Human Resources Coordinator in OHR.

Employee Leave Request Form: This form must be completed and returned by the employee to the supervisor thirty (30) days prior to leave or as soon as the employee or supervisor is aware of the need for leave. For intermittent leave, this form must be

completed each time the employee takes FMLA/OFLA covered time off from work. This form is to be submitted to OHR after it has been completed and signed by the employee and supervisor.

The form is available at <https://oscar.oregonstate.edu/>

FMLA/OFLA OSU Attendance Form: This form is to be completed in addition to the regular University Employee Leave Request Form (both forms must reflect the same information). This form is to be completed at the end of each month and signed by the employee and supervisor. If there were no leave hours taken by the employee, a “0” is to be entered, and the form submitted to OHR.

The form is available at <http://oregonstate.edu/admin/hr/osuattendance.pdf>

Certification of Health Care Provider Form: This four page medical certification form is to be completed by the employee’s medical care provider and sent directly to OHR.

This form is available at <http://oregonstate.edu/admin/hr/certification.pdf>

Release to Return to Work Form: An employee who is out on a continuous block of time for his/her own serious health condition is required to obtain a Release to Return to Work from their physician in order to begin work. The employee will immediately notify OHR and their supervisor when he/she is authorized to return.

This form is available at <http://oregonstate.edu/admin/hr/return%20to%20work.pdf>

Resources - Definition of a Serious Medical Condition

The following are examples of illnesses that generally **do not** qualify as “Serious Health Conditions”:

The common cold	Minor ulcers
Flu	Treatment for acne
Earaches	Routine headaches
Upset stomach	Routine medical or dental visits
Sore throat	Plastic surgery for cosmetic purposes

A “**Serious Health Condition**” is defined as an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. **Hospital Care** - Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
2. **Absence Plus Treatment** - A period of incapacity of more than three consecutive calendar days including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
 - Treatment two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

3. **Pregnancy** - Any period of incapacity due to pregnancy related disabilities, or for prenatal care.
4. **Chronic Conditions Requiring Treatments** - A chronic condition exists when the condition:
 - Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).
5. **Permanent/Long-term Conditions Requiring Supervision** - A permanent or long-term condition(s) requiring supervision is defined as a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
6. **Multiple Treatments (Non-Chronic Conditions)** - Any period of absence to receive multiple treatments (including any period of recovery time) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

Other Resources

Family and Medical Leave Act (Federal Act)

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

Oregon Family Leave Act Oregon Act

http://egov.oregon.gov/BOLI/CRD/C_Oflfacts.shtml

Short Term Disability

<http://egov.oregon.gov/DAS/PEBB/docs/PDF/Carriers/StandardSTDCert.pdf>

Worker's Compensation Resources

<http://oregonstate.edu/admin/hr/benefits/wc.html>

OUS/SEIU Collective Bargaining Agreement

<http://www.ous.edu/hr/labor/ousopeu/Collective%20Bargaining%20Agreement%2005-07.pdf>

Authorized Use of Sick Leave Plan for Academic Personnel OAR 580-021-0040

http://arcweb.sos.state.or.us/rules/OARS_500/OAR_580/580_021.html

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies 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.

FMLA also includes 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. A covered servicemember is 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.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

