


FAMILY MEDICAL LEAVE ACT

I'm counting the days until I can apply for another FMLA leave.



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THE BASICS

Eligible employees can take job-protected, unpaid leave for up to 12 work weeks in any 12 months for:

- Birth of a child and care of the newborn child
- Placement of a child for adoption or foster care.
- Employee's need to care for family member with a serious health condition
- Employee's own serious health condition

825.100

THE BASICS

- Not addressing military
- Substitution of paid leave is allowed (required)
- May be taken intermittently
- Health benefits remain in place while on leave
- Employee has right to return to same/equivalent position
- Employer has right to advance notice

825.100

PURPOSE OF THE ACT

Intended to allow employees to balance work and family life

Predicated on two fundamental concerns:

1. Needs of American workforce
2. Development of high-performance organizations

FMLA intended and expected to benefit employers as well as employees.

825.101

ELIGIBILITY FOR FMLA (FEDERAL)

- Employed by employer for at least 12 months in last 7 years AND
- At least 1,250 hours of service during the 12-month period immediately preceding commencement of leave

If employer does not maintain accurate record, employer has burden of showing employee has not worked the required hours.

825.110

ELIGIBILITY FOR FMLA (WISCONSIN)

- Employed at least 52 consecutive weeks
- Worked at least 1,000 during the preceding 52 weeks.

MAXIMUM LENGTH OF LEAVE

Federal
Up to 12 weeks of medical and/or qualifying occurrence of FMLA leave in a 12 month period.

State
6 weeks for birth or placement for adoption
2 weeks to care for seriously ill child, spouse, domestic partner, parent, parent-in-law, or domestic partner's parent
2 weeks for an employee's own serious health condition

825.200

MAXIMUM LENGTH OF LEAVE

Employers choice of:

- Calendar Year
- Fixed 12-month leave year (such as fiscal year or starting on an anniversary date)
- 12-month period measured forward from employees first FMLA leave
- Rolling 12-month period measured back from date an employee first uses FMLA

12-Month Period

- Employer choice and must be consistent and uniform
- Any changes require 60 day notice
- If employer does not choose, term will be that which is most beneficial to the employee

825.200

INTERACTION WITH STATE LAW

- Nothing in FMLA supersedes and provision of state or local law that provides greater family or medical leave rights.
- Employees are not required to designate whether leave is federal or state and employer must comply with both.
- Each stands alone, but eligibility runs concurrently.

COVERED EMPLOYER

Public agencies are covered employers without regard to number of employees.

825.104; 825.108

QUALIFYING REASONS FOR LEAVE

Birth of a child and to care for newborn

- Both mother/father entitled for birth/bonding
- Mother for incapacity due to pregnancy, prenatal care, own serious health condition
- Husband if needed to care for pregnant spouse (serious health condition)
- Mother/father if newborn with serious health condition.
- Intermittent and reduced schedule leave (only if employer agrees).

825.122

QUALIFYING REASONS FOR LEAVE

Placement of a child for adoption or foster care

- May take before actual placement/adoption if required to proceed with process (i.e., counseling, court, attorney consultation, etc.)
- Expires at end of the 12-month period
- Husband/wife with same employer may be limited to combined total of 12 weeks.
- If adopted or foster child has serious health condition, husband an wife may each take 12 weeks
- Intermittent and reduced schedule allowed (if employer agrees)

825.121

QUALIFYING REASONS FOR LEAVE

Care of employee’s spouse, son, daughter or parent with a serious health condition.

Serious health condition that makes the employee unable to perform the functions of the employee’s job.

SERIOUS HEALTH CONDITION

Illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

Incapacity means inability to work, attend school or perform other regular daily activities

Treatment includes (but not limited to) examinations, evaluations. Not routine exams.

Cosmetic treatments are not “serious health conditions”

Cold, flu, ear aches, upset stomach, minor ulcers, etc. normally do not meet definition.

825.113

INPATIENT CARE

Means an overnight stay in a hospital, hospice, or residential medical care facility, or any subsequent treatment in connection with such inpatient care.

825.114

LEAVE FOR TREATMENT OF SUBSTANCE ABUSE

- May be a serious health condition
- Only taken for treatment for substance abuse by a health care provider or referral from health care provider
- Absence because of substance use does not qualify
- Treatment for substance abuse does not prevent employer from taking employment action against.

825.119

CONTINUING TREATMENT

Incapacity and treatment

- More than 3 consecutive, full calendar days AND subsequent treatment or incapacity relating to same condition, that also involves:
 - Treatment 2 or more times within 30 days of the first day of incapacity
 - Treatment by a health care provider on at least one occasion, resulting in a regimen of continuing treatment
 - Must be in-person visit to a health care provider
 - First in-person treatment must be within 7 days of incapacity

825.115

CONDITIONS NEEDING MULTIPLE TREATMENTS

- Restorative surgery after accident or injury
- Condition that would likely result in period of incapacity of more than 3 full days in absence of treatment.
- Absences attributed to incapacity qualify for FMLA.

825.115

CHRONIC CONDITIONS

Any period of incapacity for treatment

- Requires periodic visits (twice a year or more)
- Continues over a period of time
- May cause episodic rather than continuing period of incapacity

825.115

REQUIRED POSTING

- Provisions of Act posted where prominent and easy to read
- General notice to each employee (handbook)
- DO NOT BUY THE POSTERS

825.300

NOTICE OF ELIGIBILITY

- 5 business days from when employee requests leave or employer knowledge.
- Must state whether employee is eligible and in not, why not.

NOTICE OF RIGHTS AND RESPONSIBILITIES

- Provides specific expectations and obligations of employee
- Provide at same time as the eligibility notice
- Includes
 - Employee need to furnish certificate
 - Whether employee can substitute paid leave (required)
 - Premium payments
 - Right to restore to same or equivalent job
 - Requirement for status reports
 - Intent to return to work

CERTIFICATION

- Can require written support by health care provider
- Employee needs to provide within 16 calendar days
- Employee needs to provide complete and sufficient information
- New certification can be required in each subsequent year

825.305

CONTENT OF MEDICAL CERTIFICATION

- Name, address, phone, fax of health care provider
- Date of occurrence, possible duration
- Statement of facts
- Establish that employee cannot perform essential duties
- Other work restrictions
- Employees response to provide complete and sufficient information

825.306

INTERMITTENT OR REDUCED LEAVE

Scheduling of Intermittent or reduced leave
(825.203)

Increments of Intermittent or reduced leave
(825.205)

SUBSTITUTION OF PAID LEAVE

- Generally unpaid
- FMLA permits substitution
- Employer can require paid leave to be used before unpaid

825.207

FAILURE TO PROVIDE CERTIFICATION

Foreseeable leave
Employer may deny FMLA coverage until required certification is provided.

Unforeseeable leave
Employer may deny FMLA coverage for requested leave if not provided within 15 calendar days from receipt of the request (unless extenuating circumstances).

FITNESS-FOR-DUTY CERTIFICATION

- Employer may require
- Cost, if any, borne by the employee
- Can only be required for the serious health condition for which FMLA leave was taken
- Cannot be required for each absence taken on an intermittent or reduced leave schedule

RECORDKEEPING REQUIREMENTS

- Basic payroll and identifying employee data (name, address, occupation, rate of pay, etc)
- Dates FMLA leave is taken. Must be designated as FMLA leave.
- If taken in increments – the hours of the leave
- Copies of employee notices provided
- Documents describing employee benefits or policies and practices regarding the taking of paid and unpaid leave

MAINTENANCE OF EMPLOYEE BENEFITS

- Employer must maintain group health coverage as if employee continuously employed
- Same group health plan provided (i.e., family)
- If a new health plan takes effect, the employee is entitled to the new or changed plan/benefits.
- Other benefits are determined by employer's established policy for such benefits (paid or unpaid leave, etc.)

RIGHT TO REINSTATEMENT

General rule is the, on return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

QUESTIONS?

For more information:

United State Department of Labor

<http://www.dol.gov/dol/topic/benefits-leave/fmla.htm>

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