



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #28E: Requesting Leave under the Family and Medical Leave Act

January 2024

The Family and Medical Leave Act (FMLA) provides job-protected leave from work for family and medical reasons. This fact sheet explains how employees request FMLA leave.

ABOUT THE FMLA

The FMLA provides eligible employees of covered employers with job-protected leave for qualifying family and medical reasons and requires continuation of their group health benefits under the same conditions as if they had not taken leave. FMLA leave may be unpaid or used at the same time as employer-provided paid leave. Employees must be restored to the same or virtually identical position when they return to work after FMLA leave.

Eligible employees: Employees are eligible if they:

- Work for a covered employer for at least 12 months,
- Have at least 1,250 hours of service with the employer during the 12 months before their FMLA leave starts, and
- Work at a location where the employer has at least 50 employees within 75 miles.

Covered employers: Covered employers under the FMLA include:

- Private-sector employers who employ 50 or more employees in 20 or more workweeks in either the current calendar year or previous calendar year,
- Public agencies, including Federal, State, and local government employers, regardless of the number of employees, and
- Local educational agencies, including public school boards, public elementary and secondary schools, and private elementary and secondary schools, regardless of the number of employees.

The FMLA protects leave for:

- The birth of a child or placement of a child with the employee for adoption or foster care,
- The care for a child, spouse, or parent who has a serious health condition,
- A serious health condition that makes the employee unable to work, and
- Reasons related to a family member's service in the military, including:
 - Qualifying exigency leave -- leave for certain reasons related to a family member's foreign deployment, and
 - Military caregiver leave – leave when a family member is a current servicemember or recent veteran with a serious injury or illness.

For more information about the FMLA generally, see [Fact Sheet #28](#).

PUTTING AN EMPLOYER ON NOTICE THAT YOU NEED FMLA LEAVE

To take FMLA leave, an employee must provide their employer with appropriate notice. The first time an employee requests leave for an FMLA reason, the employee does not have to mention the FMLA to be protected under the law. However, an employee does have to provide enough information for the employer to know that the leave may be covered by the FMLA.

Example:

- LaTarsha's spouse, who has previously been healthy, develops a serious health condition. LaTarsha tells her employer that she needs leave to care for her spouse who has been hospitalized overnight, and that she anticipates being out for the rest of the week. This is enough information for the employer to know that LaTarsha's leave may be covered by the FMLA. If LaTarsha had stated only that her spouse was "sick"—without any other details—she may not have provided enough information for an employer to recognize that the leave request may be covered under the FMLA.

Follow-up requests. When an employee has approval to use FMLA leave for a qualifying reason, they may continue to use FMLA leave for that reason at different times during the same leave year. When the employee needs leave again in that leave year for the same reason, they must specifically reference the need for FMLA leave or the qualifying reason for the leave.

Established procedures for requesting leave. To request FMLA leave, employees should follow the usual and customary procedures at their workplace for requesting leave, unless they are unable to because of unusual circumstances.

Example:

- An employer's policy and practice requires that employees make all leave requests in writing to their department supervisor. When Kathleen wishes to take a personal day, she makes the request in writing to the department supervisor. When Jim needs FMLA leave for an appointment for his parent's serious health condition, he makes the request in writing to the department supervisor. However, when McKenzie is rushed to the hospital, she is unable to notify the department supervisor and request leave in writing. McKenzie's spouse contacts McKenzie's workplace by phone to explain that McKenzie needs leave from work because of a medical emergency.

WHEN TO LET YOUR EMPLOYER KNOW YOU NEED LEAVE

When leave is foreseeable. In general, when an employee **knows about the need for the leave in advance**, they must give at least 30 days advance notice if it is possible and practical to do so. For example, if an employee is scheduled for surgery in two months, their need for leave is foreseeable and they should give at least 30 days advance notice.

If 30 days advance notice is not possible because the situation has changed or the employee does not know exactly when leave will be required, the employee must provide notice of the need for leave as soon as possible and practical.

In the case of FMLA leave for a qualifying exigency arising out of a military deployment, the employee must give notice of the need for such leave as soon as possible and practical, regardless of how far in advance the leave is needed.

For **planned medical treatment**, the employee must consult with the employer and try to schedule the treatment at a time that minimizes disruptions. The employee should consult with the employer prior to scheduling the treatment in order to arrange a schedule that best suits the needs of both the employee and employer. Of course, any schedule of treatment is subject to the approval of the treating health care provider.

When leave is unforeseeable. When an employee **needs leave unexpectedly**, the employee must provide notice to the employer as soon as possible and practical. Even when the need for leave is unforeseeable, it should generally be possible and practical for the employee to provide notice of leave within the time required by the employer's usual and customary notice requirements.

Example:

- Derrick's child has a severe asthma attack, and Derrick takes the child to the emergency room. In this case, Derrick is not required to leave the child to report the absence while the child is receiving emergency treatment. Once it is possible and practical for Derrick to do so, Derrick is expected to call his employer.

While you are out on FMLA leave. If the employee's need for FMLA leave changes while they are out on FMLA leave, the employer may require that the employee provide reasonable notice to the employer. For example, the employer may require that the employee notify the employer if the employee's doctor determines that they can return to work earlier than expected or if their return to work will be delayed. The employer may also require that the employee provide periodic updates on their status and intent to return to the job.

FAILURE TO PROVIDE PROPER NOTICE

When an employee does not give their employer timely or sufficient notice of the need for FMLA leave and does not have a reasonable excuse, the employer may delay, or in some cases, deny the employee's FMLA leave. The employer also can choose to waive the employee's notice requirements.

The extent of an employer's ability to delay FMLA coverage for leave depends on the facts of the particular case. For example, if it was possible for the employee to give notice of the need for leave the same day it was needed, but the employee instead gave notice two days after the leave began, then the employer may delay FMLA coverage of the leave by two days.

In all cases, an employer can delay or deny the leave only if it is clear that the employer actually informed the employee about the employee's obligation to provide notice under the FMLA. For more information about the notices an employer must provide its employees about the FMLA, see [Fact Sheet #28D](#).

Examples:

- Talon knows in July her serious health condition will require in-patient treatment beginning September 30th. She notifies her employer September 15th. In this case, the employer may delay Talon's FMLA leave by 30 days until October 15th, because Talon could have, but did not, provide 30 days advance notice.
- Bill takes unforeseeable leave for a flare-up of his chronic serious health condition. Although it was possible to notify his employer on the first day of his leave, he notifies the employer two days after the leave begins that the absence is for an FMLA-covered reason. In this case, the employer may delay the FMLA leave by two days.

ADDITIONAL PROTECTIONS

State Laws

Some States have their own family and medical leave laws. Nothing in the FMLA prevents employees from receiving protections under other laws. Workers have the right to benefit from all the laws that apply.

Protection from Retaliation

The FMLA is a federal worker protection law. Employers are prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right. Any violations of the FMLA or the FMLA regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA. For more information about prohibited employer retaliation under the FMLA, see [Fact Sheet #77B](#) and [Field Assistance Bulletin 2022-2](#).

Enforcement

The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court. State employees may be subject to certain limitations in pursuit of direct lawsuits regarding leave for their own serious health conditions. Most Federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress.

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Where to Obtain Additional Information

For additional information scan the QR Code, visit the Wage and Hour Division FMLA website <https://www.dol.gov/agencies/whd/fmla>, and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243)

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