



Managerial Reference Guide

FMFLA

Family Medical Leave Act

2003



FFFLA

Family Friendly Leave Act



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THE FAMILY & MEDICAL LEAVE ACT (FMLA)

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THE FAMILY FRIENDLY LEAVE ACT (FFLA)

MANAGERIAL REFERENCE GUIDE

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THE FAMILY & MEDICAL LEAVE ACT (FMLA) OF 1993

EFFECTIVE AUGUST 5, 1993

INTRODUCTION

Some of the most common difficulties management faces in the work place are leave and attendance problems. These leave issues at their worst may result in charges of AWOL or removal and invariably cause other major problems.

Many employees with leave problems have complex medical, psychological or other personal issues which only professional medical assistance or other outside support can begin to address.

Management officials should have a good working knowledge of the family medical/family friendly leave policies in the federal workplace.

PURPOSE

Title II of the Family and Medical Leave Act (FMLA) of 1993 covers federal civil service employees who have completed at least twelve (12) months of service.

Covered Federal employees are entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for the following purposes:

- the birth of a son or daughter and care of the newborn;
- the placement of a son or daughter with the employee for adoption or foster care;
- the care of a spouse, son, daughter, or parent with a serious health condition; **or**
- a serious health condition of the employee that makes the employee unable to perform the duties of his/her position.

LEAVE ENTITLEMENTS

In response to concerns that employees are not fully informed of the provisions of the FMLA, the regulations have been clarified to require agencies to inform employees of their entitlements and responsibilities under the FMLA. Under the guidelines of the FMLA, qualified Federal employees are afforded the following specific leave entitlements:

- Full-time federal employees may receive up to 12 weeks of Leave Without Pay (LWOP) during any 12-month period. Certain types of paid leave such as sick or annual may be substituted for all or part of the unpaid leave, but federal employees covered under Title II may NOT be required to substitute paid leave for any of the twelve weeks of unpaid leave authorized by this law.
- Part-time, seasonal, and employees with uncommon tours of duty are also covered, and the amount of sick leave permitted is prorated in proportion to the average number of hours worked in the employee's scheduled tour of duty each week.
- An employee may qualify for advanced sick/annual leave based on IRS policies. Sick leave can only be advanced for use by the employee.
- Leave may also be made available to an employee under the Volunteer Leave Transfer Program or the Voluntary Leave Bank Program as is consistent with agency policy.
- An employee shall notify the agency of his or her intent to substitute paid leave for the period of leave without pay to be taken prior to the date such paid leave commences. An employee may not retroactively substitute paid leave for leave without pay previously taken.
- Leave may be taken intermittently or on a reduced leave schedule only when medically necessary. Intermittent leave for birth or adoption requires employee/employer agreement.
- Compensatory time or credit hours may NOT be substituted for LWOP under FMLA. However, an employee may use earned compensatory time off and credit hours in addition to the period of FMLA.
- FMLA leave is in addition to other paid time off available to employees.

NOTE: The Office of Personnel Management (OPM) regulations clarify that an employee must invoke his or her entitlements and responsibilities under the FMLA leave, subject to the notification and medical certification requirements. An employee may not invoke entitlement to FMLA leave retroactively for any previous absence from work.

INTERMITTENT & REDUCED LEAVE

Following are the circumstances under which federal employees may utilize intermittent and/or reduced leave under the FMLA guidelines:

- Leave shall not be taken intermittently or on a reduced leave schedule unless the employee and the agency agree to do so.
- Leave may be taken intermittently or on a reduced leave schedule when medically necessary.
- If an employee takes leave intermittently or on a reduced leave schedule that is foreseeable based on planned medical treatment or recovery from a serious health condition, the agency may place the employee temporarily in an available alternative position for which the employee is qualified and that can better accommodate recurring periods of leave. Upon returning from leave, the employee shall be entitled to be returned to his or her permanent position or an equivalent position.
- For the purpose of applying the above, an alternative position need not consist of equivalent duties, but must be in the same commuting area and must provide:
 - 1) An equivalent grade or pay level, including any applicable locality-based comparability payment; special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers, respectively; continued rate of pay, special salary rate or similar provision of law.
 - 2) The same type of appointment, work schedule, status and tenure;
and
 - 3) The same employment benefits made available to the employee in his or her previous position (e.g., life insurance, health benefits, retirement coverage and leave accrual).
- The agency shall determine the available alternative position that has equivalent pay and benefits consistent with Federal laws, including the Rehabilitation Act of 1973 and the Pregnancy Discrimination Act of 1978.
- Only the amount of leave taken intermittently or on a reduced leave schedule, as these terms defined shall be subtracted from the total amount of leave available to the employee.

SUBSTITUTION OF PAID LEAVE

The regulations no longer permit compensatory time off and credit hours earned under a flexible work schedule to be substituted for leave without pay under the Family and Medical Leave Act (FMLA). An employee may use earned compensatory time off and credit hours in addition to the period of FMLA leave. Paid leave may be substituted for leave without pay, as follows:

- Except as provided in the following paragraph, leave taken shall be leave without pay (LWOP).
- An employee may elect to substitute the following paid leave for any or all of the period of leave without pay taken:
 - 1) Accrued or accumulated **annual** or **sick** leave consistent with current law and regulations governing the granting and use of annual or sick leave;
 - 2) Advanced annual or sick leave approved under the same terms and conditions that apply to any other agency employee who requests advance annual or sick leave; **and**
 - 3) Leave made available to an employee under the Voluntary Leave Transfer Program or the Voluntary Leave Bank Program.

NOTICE OF LEAVE

As per the requirement of the FMLA, qualified federal employees must provide the agency notice of the leave to be taken, further explained as follows:

Foreseeable

If leave is foreseeable, the employee shall:

- Provide notice to the agency of his or her intention to take leave not less than 30 days before the date the leave is to begin.
- Consult with the agency and make a reasonable effort to schedule medical treatment so as not to disrupt the operations of the agency, subject to the approval of the health care provider. The agency may, for justifiable cause, request that an employee reschedule medical treatment, subject to the approval of the health care provider.

If the employee fails to give 30 days' notice with no reasonable excuse for the delay of notification, the agency may delay the taking of leave until at least 30 days after the date the employee provides notice of his or her need for family and medical leave.

Not Foreseeable

If the leave is not foreseeable, and the employee cannot provide 30 days' notice, the employee shall provide notice within a reasonable period of time appropriate to the circumstances involved.

Notice of leave may be given by a family member or personal representative if the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the leave may not be delayed or denied.

For a family member

When an employee requests FMLA leave in order to care for a family member or for his or her own serious health condition, the agency may grant FMLA leave based on the employee's explanation of the situation.

The agency also can require written medical certification from the health care provider. The employee is allowed 15 days to provide the certification or up to 30 days if it is not practicable after a good faith effort.

MEDICAL CERTIFICATION

An agency may require that a request for leave be supported by written medical certification issued by the health care provider of the employee or of the spouse, son, daughter, or parent of the employee, as appropriate.

An employee shall provide the written medical certification to the agency in a timely manner. An agency may waive the requirement for an initial medical certificate in a subsequent 12-month period for the same chronic or continuing condition.

The written medical certification shall include:

- 1) The date the serious health condition commenced;
- 2) The probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition with an unknown duration;
- 3) Whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity;
- 4) The appropriate medical facts with the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider;
- 5) A statement from the health care provider that the spouse, son, daughter, or parent of the employee requires:
 - a. psychological comfort and/or physical care;
 - b. assistance for basic medical, hygienic, nutritional, safety, or transportation needs, or in making arrangements to meet such needs and would benefit from the employee's care or their presence, **and**
 - c. a statement from the employee on the care he or she will provide and an estimate of the of time needed to care for his or her spouse, son, daughter, or parent.

MEDICAL CERTIFICATION, *CONTINUED*

- 6) A statement that the employee:
- a. is unable to perform one or more of the essential functions of his or her position, **or**
 - b. requires medical treatment for a serious health condition, based on written or verbal information provided by the agency on the essential functions of the employee's position, **or, if not provided**
 - c. has had a discussion with the Manager about the essential functions of his or her position.

Medical certification for **intermittent leave or leave on a reduced leave schedule** for planned medical treatment dates (actual or estimates) on which such treatment is expected to be given, requires that **the written medical certification includes the following:**

- 1) The duration of such treatment and the period of recovery if any; **or**
- 2) Specify that the serious health condition is a chronic or continuing condition with an unknown duration; **and**
- 3) Whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

The information on the medical certification (for any type of leave requested) shall relate only to the serious health condition for which the current need for family and medical leave exists.

The agency may not require any personal or confidential information in the written medical certification other than that requirement previously stated.

If an employee submits a completed medical certification signed by the health care provider the agency may not request new information from the health care provider.

However, a health care provider representing the agency including a health care provider employed by the agency or under administrative oversight of the agency may contact the health care provider who completed the medical certification **with the employee's permission** for purposes of clarifying the medical certification.

MEDICAL CERTIFICATION, *CONTINUED*

If the agency doubts the validity of the original certification provided, the agency may require, at the agency's expense, that the employee obtain the opinion of a second health care provider designated or approved by the agency concerning the information certified.

Any health care provider designated or approved by the agency shall not be employed by the agency on a regular basis unless the agency is located an area where access to health care is extremely limited.

If the opinion of the second health care provider differs from the original certification provided, the agency may require, at the agency's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the agency and the employee concerning the information certified. The opinion of the third health care provider shall be binding on the agency and the employee.

To remain entitled to family and medical leave, an employee or the employee's spouse, son, daughter, or parent must comply with any requirement from an agency that he or she submit to examination to obtain a second or third medical certification from a health care provider other than the individual's health care provider.

If the employee is unable to provide the requested medical certification before leave begins or if the agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the agency shall grant provisional leave pending final written medical certification.

If after the leave has commenced the employee fails to provide the requested medical certification within the 15 or 30 days allowed, the agency may charge the employee as absent without leave (AWOL) or allow the employee to request that the provisional leave be charged as leave without pay or charge to the employee's annual and /or sick leave account as appropriate.

For leave taken for the purposes of pregnancy, chronic conditions, or long-term conditions under the continuing supervision of a health care provider, the agency may require, at the agency's expense, subsequent medical desertification from the health care provider on a periodic basis, but not more than every 30 calendar days.

MEDICAL CERTIFICATION, *CONTINUED*

For leave taken for all other serious health conditions, including leave taken on a intermittent or reduced leave schedule, if the health care provider has specified on the medical certification a minimum duration of the period of incapacity, the agency may not require subsequent medical recertification more frequently than every 30 calendar days, or more frequently than the minimum duration of the period of incapacity specified in the medical certification.

If the employee requests that the original leave period be extended, or the circumstances described in the original medical certification have changed significantly or the agency receives information that casts doubt upon the continuing validity of the medical certification, specific steps must be followed. To ensure the security and confidentiality of any written medical certification, the medical certification shall be subject to the same provisions for safeguarding information about individuals.

PROTECTION OF EMPLOYMENT & BENEFITS

The regulations have been revised to permit agencies to establish a uniformly applied practice or policy that requires all similarly situated employees (i.e., same occupation, same serious health condition) who take FMLA leave for a serious health condition to provide medical certification to return to work. The information on the medical certification to return to work must relate only to the serious health condition for which FMLA leave was taken.

Employees who opt for Family and Medical Leave shall be entitled upon return to the agency to be returned to the same position held by the employee when the leave commenced or an equivalent position.

This includes:

- Equivalent benefits, pay status and other terms and conditions of employment;
- The same type of appointment, work schedule, status and tenure;
- The same employment benefits made available to the employee in his or her previous position (e.g., life insurance, health benefits, retirement coverage, and leave accrual);
- The same or equivalent opportunity for a within-grade increase, performance award, incentive award, or other similar discretionary and non-discretionary payments, consistent with applicable laws and regulations;
- However the entitlement to be returned to an equivalent position does not extend to intangible or immeasurable aspects of the job;
- The same or equivalent opportunity for premium pay consistent with applicable law and regulations;
- The same or equivalent opportunity for training or education benefits consistent with applicable laws and regulations, including any training that an employee may be required to complete to qualify for his or her previous position;
- As a result of taking leave an employee shall not suffer the loss of any employment benefit accrued prior to the date on which the leave commenced.

PROTECTION OF EMPLOYMENT & BENEFITS, *CONT.*

Except as otherwise provided by or under law, a restored employee shall not be entitled to the accrual of any employment benefits during any period of leave or any right, benefit or position to which the employee would have been entitled had the employee not taken the leave.

An employee is not entitled to be returned to the same or equivalent position if the employee would not otherwise have been employed in that position at the time the employee returns from leave.

An agency may not return an employee to an equivalent position where written notification has been provided that the equivalent position will be affected by a reduction in force if the employee's previous position is not affected by a reduction in force.

HEALTH BENEFITS

An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program (FEHB) who is placed in a leave without pay status as a result of entitlement to leave under FMLA may continue his or her health benefits enrollment while in the leave without pay status. They may arrange to pay the appropriate employee contributions in the Employees Health Benefits Fund. The employee shall make such contributions consistent with 5 CFR 890.502.

RECORDS AND REPORTS

So that OPM can evaluate the use of family and medical leave by Federal employees and provide the Congress and others with information about the use of this entitlement, each agency shall maintain records on employees who take leave under this subpart and submit to OPM such records and reports as OPM may require.

At a minimum, each agency shall maintain the following information concerning each employee who takes leave under this subpart:

- 1) The employee's rate of basic pay;
- 2) The occupational series for the employee's position;
- 3) The number of hours of leave taken, including any paid leave substituted for leave without pay; **and**
- 4) Whether leave was taken.

When an employee transfers to a different agency, the losing agency shall provide the gaining agency with information on leave taken by the employee during the 12 months prior to the date of transfer. The losing agency shall provide the following information:

- 1) The beginning and ending dates of the employee's 12-month period, as determined; **and**
- 2) The numbers of hours of leave taken during the employee's 12-month period.

FMLA DEFINITIONS

ADOPTION refers to a legal process in which an individual becomes the legal parent of another's child. The source of an adopted child—e.g., whether from a licensed placement agency or otherwise—is not a factor in determining eligibility for leave.

FAMILY MEMBER is defined as a spouse, son, daughter, or parent.

FOSTER CARE means 24-hour care for children in substitution for, and away from, their parents or guardian.

HEALTH CARE PROVIDER means:

- A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this subpart;
- Any health care provider recognized by the Federal Employees Health Benefits Program (FEHB) or who is licensed or certified under Federal or State law to provide the service in question;
- A health care provider as defined in paragraph (2) of this definition who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his or her practice as defined under such law;
- A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; **or**
- A native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders and who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with Public Law 95-314, August 11, 1978 (92 Stat. 469), as amended by Public Law 103-344, October 6, 1994 (108 Stat. 3125).

INCAPACITY means the inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

INTERMITTENT LEAVE OR LEAVE TAKEN INTERMITTENTLY means leave taken in separate blocks of time, rather than for one continuous period of time, and may include leave periods of 1 hour to several weeks.

FMLA DEFINITIONS, *CONTINUED*

PARENT means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a son or daughter.

SERIOUS HEALTH CONDITION means an illness, injury, impairment, or physical or mental condition that involves:

- Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; **or**
- Continuing treatment by a health care provider that includes (but is not limited to) examinations to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists.
- Continuing treatment by a health care provider may include one or more of the following:
 - 1) 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:
 - a. Treatment two or more times by a health care provider, by a health care provider under the direct supervision of the affected individual's health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; **or**
 - b. 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 (e.g., a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).
 - 2) Any period of incapacity due to pregnancy, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than three consecutive calendar days.
 - 3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that:
 - a. Requires periodic visits for treatment by a health care provider or by a health care provider under the direct supervision of the affected individual's health care provider;

FMLA DEFINITIONS, *CONTINUED*

Serious Health Condition, *continued*

- b. Continues over an extended period of time (including recurring episodes of single underlying condition); **and**
 - c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). The condition is covered even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.
- 4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's, severe stroke, or terminal stages of a disease).
- 5) Any period of absence to receive multiple treatments (including any period of recovery) 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 3 consecutive calendar days in the absence of medical intervention or treatment (e.g. chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease).

Serious Health Condition does NOT include:

- Routine physical, eye, or dental examinations;
- A regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider;
- A condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop; **or**
- An absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider.

FMLA DEFINITIONS, *CONTINUED*

Serious Health Condition does **NOT** include:, *continued*

Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are **not serious health conditions**.

Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress **may** be serious health conditions **only** if such conditions require inpatient care or continuing treatment by a health care provider.

SON or DAUGHTER means a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis who is:

- 1) Under 18 years of age; **or**
- 2) 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADL’s) or “instrumental activities of daily living” (IADL’s). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc. A “physical or mental disability” refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2(h), (I), and (j).

SPOUSE: The definition of “spouse” has been revised to comply with the definition of “spouse” in the Defense of Marriage Act (Public Law 104-199, September 21, 1996). “Spouse” means an individual who is a husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in States where it is recognized.

CASE STUDIES

CASE 1

Cindy has 4 years of service with the Federal Government. On February 2, 1996, Cindy had twins. Prior to the birth, Cindy notified her supervisor that she would be taking 8 weeks of FMLA leave continuously from the date of birth (sick leave and FMLA leave without pay) and then work only 4 days a week under a reduced leave schedule for the next 3 months. Cindy's supervisor approved her reduced leave schedule. What is the 12-month period of entitlement to FMLA leave? How much leave is Cindy entitled to under the FMLA?

The 12-month period begins on the date of birth, February 2, 1996, and ends on February 1, 1997. Employees are entitled to a total of 12 workweeks of leave under the FMLA. Employees are not entitled to additional FMLA leave as a result of multiple births or illnesses.

Two weeks after Cindy returns to work under a reduced leave schedule (April 15, 1996) Cindy requests, and the supervisor approves, 2 weeks of leave without pay to care for Cindy's father-in-law. On April 29, Cindy returns to work under the reduced leave schedule. Does the 2-week period that Cindy took leave without pay to care for her father-in-law count toward the 12-week entitlement to FMLA leave?

No. The supervisor cannot subtract any leave from the 12-week entitlement to FMLA leave unless he or she obtains confirmation from the employee that the employee is invoking entitlement to FMLA leave. Cindy did not invoke entitlement to FMLA to care for her father-in-law. Cindy is not entitled to FMLA leave to care for her father-in-law.

Note: An agency may provide greater entitlements than the entitlements provided under the FMLA and permit employees to take leave to care for other family members not specifically covered under the FMLA.

Can Cindy continue to work under a reduced leave schedule?

Yes. Cindy has taken 8 weeks and 2 days of FMLA leave. She is entitled to an additional 18 days of FMLA leave.

CASE STUDIES, *CONTINUED*

CASE 2

Carol and Joe are both Federal employees and have lived together for over 11 years. Carol was diagnosed with breast cancer and needs surgery and chemotherapy. Joe has requested FMLA leave to care for Carol while she recuperates. Is he entitled to FMLA?

Carol does not fit the definition of spouse provided by the Defense of Marriage Act and incorporated into the final regulations for FMLA. However, if Carol and Joe live in a state that recognizes common law marriages, Carol would qualify as Joe's spouse, and he would be entitled to FMLA leave.

CASE 3

Ellen has a 23-year old autistic son. The son is dropped off from his school every day at 3:30 and waits in the office until Ellen finishes her workday at 4:30. A new supervisor has informed Ellen that he does not feel it is professional for Ellen to have her son in the office for an hour each day. Ellen has requested LWOP under the FMLA to care for her son at home for this hour each day. Is she entitled to this FMLA leave?

Yes. Autism qualifies as a "Serious Health Condition." In addition, although the son is over 18, he is incapable of self-care because he requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADL's) or "instrumental activities of daily living"(IADL's)

FAMILY FRIENDLY LEAVE ACT (FFLA) OF 1994

EFFECTIVE AUGUST 5, 1993

PURPOSE

The Federal Employees Family Friendly Leave act (FFLA) of 1994 was established by congress to expand the purpose for which sick leave may be used to care for a family member and bereavement. Federal employees may use up to a total of 104 hours of sick leave each leave year for the following purposes:

- Provide care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth;
- Provide care for a family member as a result of medical, dental, or optical examination or treatment; **or**
- Make arrangements necessitated by the death of a family member or attend the funeral of a family member.

FFLA DEFINITIONS

FAMILY MEMBER is defined as a spouse, and parents thereof; children, including adopted children, and spouses thereof; parents; brothers and sisters, and spouses thereof; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

FAMILY FRIENDLY LEAVE ACT (FFLA) OF 1994

INFORMATION

The Federal employees Family Friendly Leave Act (FFLA) of 1994 made a very positive impact on employees, managers, and the ability of Federal agencies to accomplish their mission. The enactment of the Federal employees FFLA has allowed the Federal government to be viewed as a flexible and caring employer. The Federal Employees FFLA also has helped to bridge the gap in income protection for employees who have little or no available paid annual leave, but who need paid time off from work for family care or bereavement purposes. Allowing an employee to use his or her sick leave precludes the need for extended periods of leave without pay, which has a negative effect on an employee's pay and benefits, such as within-grade increases and health benefits. In addition, the employee is better able to deal with the financial and personal strain caused by a family member's medical needs or death.

Federal agencies believe the use of sick leave for family care or bereavement purposes had a very positive impact on employees, managers, and the ability of agencies to accomplish their agency mission. The entitlements provided by the Federal employees FFLA show that the Federal government recognizes the importance of family responsibilities and is committed to assisting Federal employees in balancing the demands of work and family.

Federal agencies believe the Federal Employees FFLA allows for better planning for office coverage during employee absences when it is known in advance that an employee will be absent from work.

QUESTIONS & ANSWERS

1. What are employees' appeal rights under the Family and Medical Leave Act (FMLA)?

If an employee believes an agency has not fully complied with the rights and requirements provided by the Title II of FMLA and the OPM's implementing regulation at 5 CFR 630.1201, the employee may file a grievance under applicable agency administrative procedures or negotiated grievance procedures. The Office of Personnel Management's Office of Merit Systems Oversight and Effectiveness (OMSOE) has authority to settle claims involving Federal employees compensation and leave. OPM's authority does not apply to claims concerning matters that are subject to negotiated grievance procedures under collective bargaining agreements. If policies concerning FMLA leave were not addressed in a collective bargaining agreement or the employee was not covered under the bargaining agreement, the employee may file a claim with OPM's OSOIE regarding his or her entitlements and obligations under the FMLA.

2. Does the invocation of FMLA delay the processing of an adverse action?

No. As long as the action taken (or proposed to be taken) by the agency is based on a particular set of circumstances and charges unrelated to FMLA, the agency can proceed with the action.

3. In a situation involving a long-term absence that prompted the agency to propose removal for medical inability or inability to maintain a regular schedule, would an employee's invoking entitlement to FMLA prevent the agency from proceeding with the removal?

No. The invocation and granting of FMLA leave would not alter the agency's charges. However, if an agency delays proposed removal of an employee for medical inability or inability to maintain a work schedule until after the employee invokes his or her entitlement to FMLA, the employee may not be terminated until he or she has exhausted his or her entitlement to 12 weeks of leave under the FMLA.

4. Can an agency require an employee to take a medical exam upon returning to duty after being absent on FMLA leave?

Yes. An agency may require medical certification when employee returns to work after using FMLA leave for a serious health condition. An agency that implements a policy that requires medical documentation upon return to work is cautioned to apply the policy consistently among its workforce.

QUESTIONS & ANSWERS, *CONTINUED*

5. What is the relationship between an agency's duty to offer reasonable accommodation to a qualified handicapped employee and the employee's entitlement to leave under FMLA?

Nothing in FMLA modifies an agency's duty to offer accommodation to an employee under the Rehabilitation Act. An agency must comply with whichever statute provides the greater rights to the employee. More specifically, an agency may not offer accommodation, which would result in the employee foregoing his or her entitlement to FMLA.

6. My supervisor placed me on leave restriction 3 months ago and said I must call him at least 2 hours before the beginning of my shift if I cannot be at work that day. In addition, I must provide medical documentation for each unscheduled absence. Earlier this month I hurt my back, and my doctor certified that my condition qualifies as a chronic serious health condition under the Family and Medical Leave Act. My agency agreed to give me intermittent leave under the FMLA but my supervisor says I must still follow the conditions of the letter of restriction. Is this legal?

When the need for leave is foreseeable, an employee must give 30 days notice of his or her intent to take FMLA. When the need for leave is not foreseeable, an employee must provide notice as soon as is practicable. In addition, an agency may require an employee on leave for a serious health condition to provide initial medical certification and recertification every 30-calendar days. If the health care provider has specified on the initial medical certification a minimum duration of the period of incapacity, the agency may not request recertification more frequently.

An agency's policies or procedures for notification of FMLA leave or medical certification may not be more stringent than required by OPM's regulations. If an employee who has been placed on leave restriction invokes his or her entitlement to FMLA leave, the agency must follow OPM's rules for notification and medical certification of FMLA leave.

EXPANDED SICK LEAVE

Expanded Family & Medical Leave Policies (Non-mandatory)

In 1998, the president issued a directive which recommends that workplaces approve up to 24 hours of LWOP a year for family purposes. It is suggested that managers approve up to 24 hours LWOP each year so that their employees may:

- Participate in school activities related to educational advancement of a child;
- Accompany a child to routine medical and dental appointments (when no additional sick leave is available to employee);
- Accompany an elderly relative by blood or marriage, to routine medical, dental or other professional appointments related to care of the elderly relative; e.g. housing, meals, utilities, banking and other similar services.

TIME CODES FOR FMLA & FFLA

- FMLA Annual leave: 990-59521
- FMLA Sick leave: 990-59522
- FMLA LWOP: 990-59812
- FFLA Family Care: 990-59528
- FFLA Bereavement: 990-59527

EXPANDED SICK LEAVE DEFINITIONS

| | FMLA |
|-----------------------|--|
| Family Member | Spouse, parent or child, under the age of 18. A child 18 years old or older who is incapable of self-care due to a mental or physical disability and requires active assistance or supervision in several activities of daily living. |
| Entitlement | 12 weeks LWOP in a 12-month period. Paid leave may be substituted for LWOP where appropriate. |
| Employees covered | Employees must have worked for at least 12 months. Employees on temporary appointments with a time limit over one year are eligible after 12 months. |
| Situations covered | <ul style="list-style-type: none"> - Serious health condition of employee that prevents the performance of essential duties. - Serious health condition of spouse, child or parent of an employee who provides care for the relative. - Both parents may use FMLA related to birth, adoption or foster care for a child |
| Medical certification | Agency may require administratively acceptable evidence to satisfy the statutory minimal requirements under 5 USC 6373(b) |
| Intermittent leave | Intermittent leave may be granted for a serious health condition if medically necessary. Intermittent leave for new baby/child purposes is at discretion of the supervisor. |
| Special Notes | Intermittent employees are excluded. |

| FFLA Sick Leave | Sick Leave for Family Care (FMLA) |
|--|--|
| Employee's spouse, in-laws, child and their spouse, parent, brother and sister and their spouses, and others related by blood or affinity whose association is equivalent to family member. | Employee's spouse, in-laws, child and their spouse, parent, brother and sister and their spouses, and others related by blood or affinity whose association is equivalent to family member |
| 5 days of sick leave per leave year. Additional 8 days SL (13 days total SL) may be granted if employee maintains 80-hour SL balance. | Up to 12 weeks of sick leave in a leave year. Must have an 80 hour sick leave balance at all times to use 2-12 weeks of sick leave. |
| Most employees are eligible for FFLA with the exception of intermittent and presidential appointees. | Most employees are eligible for this entitlement with the exception of intermittent and presidential appointees. |
| To qualify for FFLA leave, an employee must be providing care for a family member due to sickness that would support sick leave if suffered by the employee, or for bereavement. It is not necessary for there to be a "serious health condition." | Employee is providing care for a family member with a serious health condition |
| Doctor's note, funeral card, newspaper clipping, other forms. | Agency may require administratively acceptable evidence to satisfy the statutory minimal requirements |
| Sick leave for this purpose is often intermittent or sporadic in nature. | Intermittent leave may be granted for the care of a family member with a serious health condition if medically necessary. |
| If an employee has already used 12 weeks of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 13 days in the same year for general family care purposes. | If an employee has used any portion of the 13 days of sick leave for general family care or bereavement purposes in a year, that amount must be subtracted from the 12-week entitlement |

REFERENCES

Thompson Publishing Group. *Family and Medical Leave Handbook*

OPM Leave Workshop. *Understanding Federal Leave Systems Guide*

NTEU Leadership Track Guide. *Family and Medical Leave Policies*

OPM's Leave Policies. *Family and Medical Leave Act*

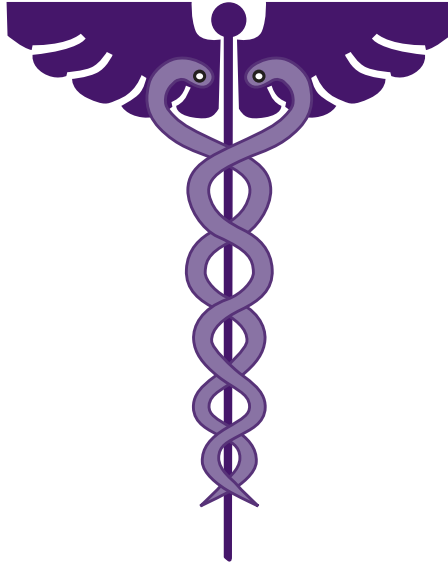
OPM's Leave Policies. *Family Friendly Leave Act*

AWSS, Personnel Services, Ops C, Easy Guide. *Expanded Sick Leave Definition*

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The NTEU Mission

To Organize Federal Employees
To Work Together
To Ensure That Every Federal
Employee Is Treated With
Dignity and Respect.



