



# COMPLIANCE @ WORK

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## Taking Time? An Employee's Guide to the Family and Medical Leave Act of 1993

This year the Office of Compliance (OOC) adopted new regulations for the Family and Medical Leave Act of 1993 (FMLA) that await congressional approval. The FMLA is an important part of maintaining a work-life balance, but it can be difficult to understand at times. This edition of Compliance@Work reviews the FMLA and answers some common FMLA questions.

### So what is the FMLA?

In short, the FMLA allows employees to take up to 12 weeks of unpaid, job-protected leave for family and medical reasons (see below). While the FMLA does not require that leave be paid, it allows employees and employing offices to substitute available paid leave for unpaid FMLA leave and allows employees to take FMLA designated leave without fear of being terminated or otherwise retaliated against because they have taken or requested FMLA leave. Although employees who take FMLA leave may not always return to the same job, they must be returned to a position with equivalent benefits, pay, and other terms and conditions of employment.

### What can the FMLA be used for?

- The birth, adoption, or foster care placement of a child and to care for that child within one year of birth, adoption, or foster care placement;
- To care for a spouse, child, or parent who has a serious health condition, including 26 weeks to care for a spouse, child, parent, or next of kin who is a service member or veteran with a serious service connected injury or illness;
- A serious health condition that makes the employee unable to work; or
- Any qualifying exigency that arises when a spouse, son, daughter, or parent is on covered active duty military service or has been notified of an impending call or order to such covered active duty, such as making family and child care arrangements for deploying military.

### Who is eligible for FMLA leave?

Under the Congressional Accountability Act (CAA), which governs most workplace rights for the legislative branch, employees who have worked for any employing office in the legislative branch for at least 12 months (need not be consecutive or for a single office) and worked 1,250 hours during the preceding 12 months are eligible for FMLA leave.



Recently, the Dept. of Labor and the OOC have updated regulations on the FMLA. These updates include:

- Coverage for same-sex spouses
- Allowing military caregivers to take leave for conditions that were pre-existing and only aggravated by combat
- Extending leave to those caring for certain veterans with serious injuries or illnesses

## What can supervisors request to support an FMLA request?

Employing offices can request and require that employees provide a completed certification form from a health care provider that contains certain specified information about themselves or about their family member with a qualifying serious health condition. If an employee submits a complete certification signed by the health care provider, the employing office may not request additional information from the health care provider, but can, with the employee's permission, contact the health care provider for purposes of clarification and authenticity of the medical certification.

Note: While this may seem invasive to employees, employing offices need enough information to make an informed decision on the application of the FMLA to a particular circumstance. Employees should also remember that they are required in most cases to work with their management in scheduling leave under the FMLA to have the least disruption on their employing office's operations.

## Examples and Common Questions

### Intermittent Leave

John is the father of a two-year old girl who has a serious health condition requiring weekly medical treatments. John asks his boss for four hours of FMLA leave every Wednesday to take his daughter to those treatments. May John split his FMLA leave up into these four-hour blocks?

Answer: Yes. Generally, intermittent leave or reduced schedule leave can be provided when medically necessary for the employee's own serious health condition or for the care of certain family members with such a condition. The FMLA authorizes this intermittent leave but requires notice and certification of leave, and requires employees (where possible) to schedule planned treatments in a manner that does not unduly disrupt an employing office's operations.

### Returning from FMLA Leave

Mary, a legislative branch employee, recently took three months of pregnancy leave under the FMLA. Prior to her leave, she was working on several important projects and was the "go-to" person on multiple issues. While Mary was out, her duties were assumed by another staffer. When Mary returns, her boss places her in a significantly lower-level role with little responsibility but keeps her salary the same. Has management potentially violated the FMLA in the reassignment?

Answer: Yes The FMLA requires that employees

returning from leave be restored to the position they held prior to taking leave or to a position with equivalent benefits, pay, and other terms and conditions of employment, including job duties and responsibilities. While the law recognizes that there may be times when an employing office cannot restore an employee returning from leave to the identical position held prior to taking leave, it nevertheless does require placement into an "equivalent position." Pay is only one of the considerations that determines equivalency. Other terms and conditions of employment must also be equivalent.

### Military Deployments

Shira's husband is deployed overseas with the Army for one year. Prior to the deployment, her husband would pick up the couple's two children from preschool. While Shira has successfully juggled the child care issues, during a recent snowstorm preschool was closed for several days and Shira was forced to stay home. Is this a circumstance potentially covered by the FMLA?

Answer: Yes. The FMLA now provides coverage in certain limited military deployment circumstances. An eligible employee caring for a covered military member's child may use qualifying exigency leave to provide childcare on an urgent, immediate need basis, but not for routine everyday care, when the need to provide the care arises from the active duty or call to active duty status of the military member.