Certification of Health Care Provider for Employee's Serious Health Condition under the Family and Medical Leave Act

U.S. Department of Labor
Wage and Hour Division

WAGE AND HOUR DIVISION

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR. RETURN TO THE PATIENT.

OMB Control Number: 1235-0003
Expires: 6/30/2023

The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. 29 U.S.C. §§ 2613, 2614(c)(3); 29 C.F.R. § 825.305. The employer must give the employee **at least 15 calendar days** to provide the certification. If the employee fails to provide complete and sufficient medical certification, his or her FMLA leave request may be denied. 29 C.F.R. § 825.313. Information about the FMLA may be found on the WHD website at www.dol.gov/agencies/whd/fmla.

SECTION I – EMPLOYER

Either the employee or the employer may complete Section I. While use of this form is optional, this form asks the health care provider for the information necessary for a complete and sufficient medical certification, which is set out at 29 C.F.R. § 825.306. **You may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308.** Additionally, you **may not** request a certification for FMLA leave to bond with a healthy newborn child or a child placed for adoption or foster care.

Employers must generally maintain records and documents relating to medical information, medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

(1) Employee name: _____
First *Middle* *Last*

(2) Employer name: _____ Date: _____ *(mm/dd/yyyy)*
(List date certification requested)

(3) The medical certification must be returned by _____ *(mm/dd/yyyy)*
(Must allow at least 15 calendar days from the date requested, unless it is not feasible despite the employee's diligent, good faith efforts.)

(4) Employee's job title: _____ Job description (☐ is / ☐ is not) attached.
Employee's regular work schedule: _____
Statement of the employee's essential job functions: _____
_____
(*The essential functions of the employee's position are determined with reference to the position the employee held at the time the employee notified the employer of the need for leave or the leave started, whichever is earlier.)*

SECTION II - HEALTH CARE PROVIDER

Please provide your contact information, complete all relevant parts of this Section, and sign the form. Your patient has requested leave under the FMLA. The FMLA allows an employer to require that the employee submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to the serious health condition of the employee. For FMLA purposes, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves *inpatient care* or *continuing treatment by a health care provider*. For more information about the definitions of a serious health condition under the FMLA, see the chart on page 4.

You may, but are **not required** to, provide other appropriate medical facts including symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment. Please note that some state or local laws may not allow disclosure of private medical information about the patient's serious health condition, such as providing the diagnosis and/or course of treatment.

Employee Name: _____

Health Care Provider's name: *(Print)* _____

Health Care Provider's business address: _____

Type of practice / Medical specialty: _____

Telephone: (___) _____ Fax: (___) _____ E-mail: _____

PART A: Medical Information

Limit your response to the medical condition(s) for which the employee is seeking FMLA leave. Your answers should be your **best estimate** based upon your medical knowledge, experience, and examination of the patient. **After completing Part A, complete Part B to provide information about the amount of leave needed.** Note: For FMLA purposes, "incapacity" means the inability to work, attend school, or perform regular daily activities due to the condition, treatment of the condition, or recovery from the condition. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b).

(1) State the approximate date the condition started or will start: _____ *(mm/dd/yyyy)*

(2) Provide your **best estimate** of how long the condition lasted or will last: _____

(3) Check the box(es) for the questions below, as applicable. For all box(es) checked, the amount of leave needed must be provided in Part B.

- ☐ **Inpatient Care**: The patient (☐ has been / ☐ is expected to be) admitted for an overnight stay in a hospital, hospice, or residential medical care facility on the following date(s): _____

- ☐ **Incapacity plus Treatment**: *(e.g. outpatient surgery, strep throat)*
  Due to the condition, the patient (☐ has been / ☐ is expected to be) incapacitated for *more than* three consecutive, full calendar days from _____ *(mm/dd/yyyy)* to _____ *(mm/dd/yyyy)*.

  The patient (☐ was / ☐ will be) seen on the following date(s): _____
  _____

  The condition (☐ has / ☐ has not) also resulted in a course of continuing treatment under the supervision of a health care provider *(e.g. prescription medication (other than over-the-counter) or therapy requiring special equipment)*

- ☐ **Pregnancy**: The condition is pregnancy. List the expected delivery date: _____ *(mm/dd/yyyy)*.

- ☐ **Chronic Conditions**: *(e.g. asthma, migraine headaches)* Due to the condition, it is medically necessary for the patient to have treatment visits at least twice per year.

- ☐ **Permanent or Long Term Conditions**: *(e.g. Alzheimer's, terminal stages of cancer)* Due to the condition, incapacity is permanent or long term and requires the continuing supervision of a health care provider (even if active treatment is not being provided).

- ☐ **Conditions requiring Multiple Treatments**: (*e.g. chemotherapy treatments, restorative surgery)* Due to the condition, it is medically necessary for the patient to receive multiple treatments.

- ☐ **None of the above**: If none of the above condition(s) were checked, (i.e., inpatient care, pregnancy) no additional information is needed. Go to page 4 to sign and date the form.

Employee Name: _____

(4) If needed, briefly describe other appropriate medical facts related to the condition(s) for which the employee seeks FMLA leave. *(e.g., use of nebulizer, dialysis*) _____

_____

PART B: Amount of Leave Needed

For the medical condition(s) checked in Part A, complete all that apply. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your **best estimate** based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage.

(5) Due to the condition, the patient (☐ had / ☐ will have) **planned medical treatment(s)** (scheduled medical visits) *(e.g. psychotherapy, prenatal appointments)* on the following date(s): _____

_____

(6) Due to the condition, the patient (☐ was / ☐ will be) **referred to other health care provider(s)** for evaluation or treatment(s).

State the nature of such treatments: *(e.g. cardiologist, physical therapy)* _____

Provide your **best estimate** of the beginning date _____ *(mm/dd/yyyy)* and end date _____ *(mm/dd/yyyy)* for the treatment(s).

Provide your **best estimate** of the duration of the treatment(s), including any period(s) of recovery *(e.g. 3 days/week)*

_____

(7) Due to the condition, it is medically necessary for the employee to work a **reduced schedule**.

Provide your **best estimate** of the reduced schedule the employee is able to work. From _____ *(mm/dd/yyyy)* to _____ *(mm/dd/yyyy)* the employee is able to work: *(e.g., 5 hours/day, up to 25 hours a week)*

_____

(8) Due to the condition, the patient (☐ was / ☐ will be) **incapacitated for a continuous period of time**, including any time for treatment(s) and/or recovery.

Provide your **best estimate** of the beginning date _____ *(mm/dd/yyyy)* and end date _____ *(mm/dd/yyyy)* for the period of incapacity.

(9) Due to the condition, it (☐ was / ☐ is / ☐ will be) medically necessary for the employee to be absent from work on an **intermittent basis** (periodically), including for any episodes of incapacity i.e., episodic flare-ups. Provide your **best estimate** of how often (frequency) and how long (duration) the episodes of incapacity will likely last.

Over the next 6 months, episodes of incapacity are estimated to occur _____ times per (☐ day / ☐ week / ☐ month) and are likely to last approximately _____ (☐ hours / ☐ days) per episode.

Employee Name: _____

PART C: Essential Job Functions

If provided, the information in Section I question #4 may be used to answer this question. If the employer fails to provide a statement of the employee's essential functions or a job description, answer these questions based upon the employee's own description of the essential job functions. An employee who must be absent from work to receive medical treatment(s), such as scheduled medical visits, for a serious health condition is considered to be *not able* to perform the essential job functions of the position during the absence for treatment(s).

(10) Due to the condition, the employee (☐ was not able / ☐ is not able / ☐ will not be able) to perform *one or more* of the essential job function(s). Identify at least one essential job function the employee is not able to perform:

_____

_____

Signature of Health Care Provider _____ **Date** _____ *(mm/dd/yyyy)*

Definitions of a Serious Health Condition *(See 29 C.F.R. §§ 825.113-.115)*
Inpatient Care
• An overnight stay in a hospital, hospice, or residential medical care facility. • Inpatient care includes any period of incapacity or any subsequent treatment in connection with the overnight stay.
Continuing Treatment by a Health Care Provider (any one or more of the following)
Incapacity Plus Treatment: A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves either: o Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity; or, o At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider. For example, the health provider might prescribe a course of prescription medication or therapy requiring special equipment.
Pregnancy: Any period of incapacity due to pregnancy or for prenatal care.
Chronic Conditions: Any period of incapacity due to or treatment for a chronic serious health condition, such as diabetes, asthma, migraine headaches. A chronic serious health condition is one which requires visits to a health care provider (or nurse supervised by the provider) at least twice a year and recurs over an extended period of time. A chronic condition may cause episodic rather than a continuing period of incapacity.
Permanent or Long-term Conditions: A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider, such as Alzheimer's disease or the terminal stages of cancer.
Conditions Requiring Multiple Treatments: Restorative surgery after an accident or other injury; or, a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days if the patient did not receive the treatment.

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 15 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR. RETURN TO THE PATIENT.

Designation Notice
under the Family and Medical Leave Act

U.S. Department of Labor
Wage and Hour Division

WAGE AND HOUR DIVISION

DO NOT SEND TO THE DEPARTMENT OF LABOR.
PROVIDE TO EMPLOYEE.

OMB Control Number: 1235-0003
Expires: 6/30/2023

Leave covered under the Family and Medical Leave Act (FMLA) must be designated as FMLA-protected and the employer must inform the employee of the amount of leave that will be counted against the employee's FMLA leave entitlement. In order to determine whether leave is covered under the FMLA, the employer may request that the leave be supported by a certification. If the certification is incomplete or insufficient, the employer must state in writing what additional information is necessary to make the certification complete and sufficient. While use of this form is optional, a fully completed Form WH-382 provides employees with the information required by 29 C.F.R. §§ 825.300(d), 825.301, and 825.305(c), which must be provided within five business days of the employer having enough information to determine whether the leave is for an FMLA-qualifying reason. Information about the FMLA may be found on the WHD website at www.dol.gov/agencies/whd/fmla.

SECTION I - EMPLOYER

The employer is responsible in **all** circumstances for designating leave as FMLA-qualifying and giving notice to the employee. Once an eligible employee communicates a need to take leave for an FMLA-qualifying reason, an employer may not delay designating such leave as FMLA leave, and neither the employee nor the employer may decline FMLA protection for that leave.

Date: _____ *(mm/dd/yyyy)*

From: _____ *(Employer)* To: _____ *(Employee)*

On _____ *(mm/dd/yyyy)* we received your most recent information to support your need for leave due to: *(Select as appropriate)*

- ☐ The birth of a child, or placement of a child with you for adoption or foster care, and to bond with the newborn or newly-placed child
- ☐ Your own serious health condition
- ☐ The serious health condition of your spouse, child, or parent
- ☐ A qualifying exigency arising out of the fact that your spouse, child, or parent is on covered active duty or has been notified of an impending call or order to covered active duty with the Armed Forces
- ☐ A serious injury or illness of a covered servicemember where you are the servicemember's spouse, child, parent, or next of kin *(Military Caregiver Leave)*

We have reviewed information related to your need for leave under the FMLA along with any supporting documentation provided and decided that your FMLA leave request is: *(Select as appropriate)*

- ☐ **Approved.** All leave taken for this reason will be designated as FMLA leave. Go to Section III for more information.
- ☐ **Not Approved**: *(Select as appropriate)*
  - ☐ The FMLA does not apply to your leave request.
  - ☐ As of the date the leave is to start, you do not have any FMLA leave available to use.
  - ☐ Other _____
- ☐ **Additional information** is needed to determine if your leave request qualifies as FMLA leave. *(Go to Section II for the specific information needed. If your FMLA leave request is approved and no additional information is needed, go to Section III.)*

SECTION II – ADDITIONAL INFORMATION NEEDED

We need additional information to determine whether your leave request qualifies under the FMLA. Once we obtain the additional information requested, we will inform you **within 5 business days** if your leave will or will not be designated as FMLA leave and count towards the amount of FMLA leave you have available. **Failure to provide the additional information as requested may result in a denial of your FMLA leave request**.

If you have any questions, please contact: _____ at _____
(Name of employer FMLA representative) *(Contact information)*

Incomplete or Insufficient Certification

The certification you have provided is incomplete and/or insufficient to determine whether the FMLA applies to your leave request. *(Select as applicable)*

- ☐ The certification provided is incomplete and we are unable to determine whether the FMLA applies to your leave request. *"Incomplete" means one or more of the applicable entries on the certification have not been completed.*

Employee Name: _____

☐ The certification provided is insufficient to determine whether the FMLA applies to your leave request. *"Insufficient" means the information provided is vague, unclear, ambiguous or non-responsive.*

Specify the information needed to make the certification complete and/or sufficient: _____

_____

You must provide the requested information no later than *(provide at least 7 calendar days)* _____ *(mm/dd/yyyy),* unless it is not practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied.

Second and Third Opinions

☐ We request that you obtain a (☐ second / ☐ third opinion) medical certification at our expense, and we will provide further details at a later time. *Note: The employee or the employee's family member may be requested to authorize the health care provider to release information pertaining only to the serious health condition at issue.*

SECTION III – FMLA LEAVE APPROVED

As explained in Section I, your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA leave and will count against the amount of FMLA leave you have available to use in the applicable 12-month period. The FMLA requires that you notify us as soon as practicable if the dates of scheduled leave change, are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against the total **amount of FMLA leave** you have available to use in the applicable 12-month period: *(Select as appropriate)*

☐ Provided there is no change from your **anticipated FMLA leave schedule**, the following number of hours, days, or weeks will be counted against your leave entitlement: _____.

☐ Because the leave you will need will be **unscheduled**, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

Please be advised: *(check all that apply)*

☐ **Some or all of your FMLA leave will not be paid.** Any unpaid FMLA leave taken will be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.

☐ **Based on your request, some or all of your available paid leave** *(e.g., sick, vacation, PTO)* **will be used during your FMLA leave.** Any paid leave taken for this reason will also be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.

☐ **We are requiring you to use some or all of your available paid leave** *(e.g., sick, vacation, PTO)* **during your FMLA leave.** Any paid leave taken for this reason will also be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.

☐ **Other:** _____
(e.g., Short- or long-term disability, workers' compensation, state medical leave law, etc.) Any time taken for this reason will also be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.

Return-to-work requirements. To be restored to work after taking FMLA leave, you (☐ will be / ☐ will not be) required to provide a certification from your health care provider (fitness-for-duty certification) that you are able to resume work. This request for a fitness-for-duty certification is *only* with regard to the particular serious health condition that caused your need for FMLA leave. **If such certification is not timely received, your return to work may be delayed until the certification is provided.**

A list of the essential functions of your position (☐ is / ☐ is not) attached. If attached, the fitness-for-duty certification must address your ability to perform the essential job functions.

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

It is mandatory for employers to inform employees in writing whether leave requested under the FMLA has been determined to be covered under the FMLA. 29 U.S.C. § 2617; 29 C.F.R. § 825.300(d), (e). It is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND THE COMPLETED FORM TO THE DEPARTMENT OF LABOR. EMPLOYEE INFORMATION.

Notice of Eligibility & Rights and Responsibilities under the Family and Medical Leave Act

U.S. Department of Labor
Wage and Hour Division

WAGE AND HOUR DIVISION

DO NOT SEND TO THE DEPARTMENT OF LABOR.
PROVIDE TO EMPLOYEE.

OMB Control Number: 1235-0003
Expires: 6/30/2023

In general, to be eligible to take leave under the Family and Medical Leave Act (FMLA), an employee must have worked for an employer for at least 12 months, meet the hours of service requirement in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. §§ 825.300(b), (c) which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Information about the FMLA may be found on the WHD website at www.dol.gov/agencies/whd/fmla.

Date: _____ *(mm/dd/yyyy)*

From: _____ *(Employer)* To: _____ *(Employee)*

On _____ *(mm/dd/yyyy)*, we learned that you need leave *(beginning on)* _____ *(mm/dd/yyyy)* for one of the following reasons: *(Select as appropriate)*

☐ The birth of a child, or placement of a child with you for adoption or foster care, and to bond with the newborn or newly-placed child

☐ Your own serious health condition

☐ You are needed to care for your family member due to a serious health condition. Your family member is your:

☐ Spouse ☐ Parent ☐ Child under age 18 ☐ Child 18 years or older and incapable of self-care because of a mental or physical disability

☐ A qualifying exigency arising out of the fact that your family member is on covered active duty or has been notified of an impending call or order to covered active duty status. Your family member on covered active duty is your:

☐ Spouse ☐ Parent ☐ Child of any age

☐ You are needed to care for your family member who is a covered servicemember with a serious injury or illness. You are the servicemember's:

☐ Spouse ☐ Parent ☐ Child ☐ Next of kin

Spouse means a husband or wife as defined or recognized in the state where the individual was married, including in a common law marriage or same-sex marriage. The terms "child" and "parent" include *in loco parentis* relationships in which a person assumes the obligations of a parent to a child. An employee may take FMLA leave to care for an individual who assumed the obligations of a parent to the employee when the employee was a child. An employee may also take FMLA leave to care for a child for whom the employee has assumed the obligations of a parent. No legal or biological relationship is necessary.

SECTION I – NOTICE OF ELIGIBILITY

This Notice is to inform you that you are:

☐ **Eligible** for FMLA leave. *(See Section II for any Additional Information Needed and Section III for information on your Rights and Responsibilities.)*

☐ **Not eligible** for FMLA leave because: *(Only one reason need be checked)*

☐ You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately: _____ towards this requirement.
(months)

☐ You have not met the FMLA's 1,250 hours of service requirement. As of the first date of requested leave, you will have worked approximately: _____towards this requirement.
(hours of service)

Employee Name: _____

☐ You are an airline flight crew employee and you have not met the special hours of service eligibility requirements for airline flight crew employees as of the first date of requested leave (i.e., worked or been paid for at least 60% of your applicable monthly guarantee, and worked or been paid for at least 504 duty hours.)

☐ You do not work at and/or report to a site with 50 or more employees within 75-miles as of the date of your request.

If you have any questions, please contact: _____ *(Name of employer representative)*

at _____ *(Contact information).*

SECTION II – ADDITIONAL INFORMATION NEEDED

As explained in Section I, you meet the eligibility requirements for taking FMLA leave. Please review the information below to determine if additional information is needed in order for us to determine whether your absence qualifies as FMLA leave. Once we obtain any additional information specified below we will inform you, **within 5 business days**, whether your leave will be designated as FMLA leave and count towards the FMLA leave you have available. **If complete and sufficient information is not provided in a timely manner, your leave may be denied.**

(Select as appropriate)

☐ No additional information requested. If no additional information requested, go to Section III.

☐ We request that the leave be supported by a certification, as identified below.

- ☐ Health Care Provider for the Employee
- ☐ Health Care Provider for the Employee's Family Member
- ☐ Qualifying Exigency
- ☐ Serious Illness or Injury *(Military Caregiver Leave)*

Selected certification form is ☐ attached / ☐ not attached.

If requested, medical certification must be returned by _____ *(mm/dd/yyyy) (Must allow at least 15 calendar days from the date the employer requested the employee to provide certification, unless it is not feasible despite the employee's diligent, good faith efforts.)*

☐ We request that you provide reasonable documentation or a statement to establish the relationship between you and your family member, including *in loco parentis* relationships (as explained on page one). The information requested must be returned to us by _____ *(mm/dd/yyyy).* You may choose to provide a simple statement of the relationship or provide documentation such as a child's birth certificate, a court document, or documents regarding foster care or adoption-related activities. Official documents submitted for this purpose will be returned to you after examination.

☐ Other information needed *(e.g. documentation for military family leave*): _____.

The information requested must be returned to us by _____ *(mm/dd/yyyy).*

If you have any questions, please contact: _____ *(Name of employer representative)*

at _____ *(Contact information).*

SECTION III – NOTICE OF RIGHTS AND RESPONSIBILITIES

Part A: FMLA Leave Entitlement

You have a right under the FMLA to take unpaid, job-protected FMLA leave in a 12-month period for certain family and medical reasons, including up to **12 weeks** of unpaid leave in a 12-month period for the birth of a child or placement of a child for adoption or foster care, for leave related to your own or a family member's serious health condition, or for certain qualifying exigencies related to the deployment of a military member to covered active duty. You also have a right

under the FMLA to take up to **26 weeks** of unpaid, job-protected FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness (*Military Caregiver Leave*).

The 12-month period for FMLA leave is calculated as: *(Select as appropriate)*

- ☐ The calendar year (January 1st - December 31st)
- ☐ A fixed leave year based on _____
  (e.g., a fiscal year beginning on July 1 and ending on June 30)
- ☐ The 12-month period measured forward from the date of your first FMLA leave usage.
- ☐ A "rolling" 12-month period measured backward from the date of any FMLA leave usage. *(Each time an employee takes FMLA leave, the remaining leave is the balance of the 12 weeks not used during the 12 months immediately before the FMLA leave is to start.)*

If applicable, the single 12-month period for *Military Caregiver Leave* started on _____ *(mm/dd/yyyy)*.

You (☐ are / ☐ are not) considered a key employee as defined under the FMLA. Your FMLA leave cannot be denied for this reason; however, we may not restore you to employment following FMLA leave if such restoration will cause substantial and grievous economic injury to us.

We (☐ have / ☐ have not) determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. Additional information will be provided separately concerning your status as key employee and restoration.

Part B: Substitution of Paid Leave – When Paid Leave is Used at the Same Time as FMLA Leave

You have a right under the FMLA to request that your accrued paid leave be substituted for your FMLA leave. This means that you can request that your accrued paid leave run concurrently with some or all of your unpaid FMLA leave, provided you meet any applicable requirements of our leave policy. Concurrent leave use means the absence will count against both the designated paid leave and unpaid FMLA leave at the same time. If you do not meet the requirements for taking paid leave, you remain entitled to take available unpaid FMLA leave in the applicable 12-month period. Even if you do not request it, the FMLA allows us to require you to use your available sick, vacation, or other paid leave during your FMLA absence.

(Check all that apply)

- ☐ **Some or all of your FMLA leave will not be paid.** Any unpaid FMLA leave taken will be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.
- ☐ **You have requested to use some or all of your available paid leave** *(e.g., sick, vacation, PTO)* during your FMLA leave. Any paid leave taken for this reason will also be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.
- ☐ **We are requiring you to use some or all of your available paid leave** *(e.g., sick, vacation, PTO)* during your FMLA leave. Any paid leave taken for this reason will also be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.
- ☐ **Other:** *(e.g., short- or long-term disability, workers' compensation, state medical leave law, etc.)*_____
  Any time taken for this reason will also be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.

The applicable conditions for use of paid leave include: _____.

For more information about conditions applicable to sick/vacation/other paid leave usage please refer to _____

_____ available at: _____.

Employee Name: _____

Part C: Maintain Health Benefits

Your health benefits must be maintained during any period of FMLA leave under the same conditions as if you continued to work. During any paid portion of FMLA leave, your share of any premiums will be paid by the method normally used during any paid leave. During any unpaid portion of FMLA leave, you must continue to make any normal contributions to the cost of the health insurance premiums. To make arrangements to continue to make your share of the premium payments on your health insurance while you are on any unpaid FMLA leave, contact _____ at _____.

You have a minimum grace period of (☐ 30-days or ☐ _____ *indicate longer period, if applicable)* in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.

You may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave if you do not return to work following **unpaid** FMLA leave for a reason other than: the continuation, recurrence, or onset of your or your family member's serious health condition which would entitle you to FMLA leave; or the continuation, recurrence, or onset of a covered servicemember' s serious injury or illness which would entitle you to FMLA leave; or other circumstances beyond your control.

Part D: Other Employee Benefits

Upon your return from FMLA leave, your other employee benefits, such as pensions or life insurance, must be resumed in the same manner and at the same levels as provided when your FMLA leave began. To make arrangements to continue your employee benefits while you are on FMLA leave, contact _____ at _____.

Part E: Return-to-Work Requirements

You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. An equivalent position is one that is virtually identical to your former position in terms of pay, benefits, and working conditions. At the end of your FMLA leave, all benefits must also be resumed in the same manner and at the same level provided when the leave began. You do not have return-to-work rights under the FMLA if you need leave beyond the amount of FMLA leave you have available to use.

Part F: Other Requirements While on FMLA Leave

While on leave you (☐ will be / ☐ will not be) required to furnish us with periodic reports of your status and intent to return to work every _____.

(Indicate interval of periodic reports, as appropriate for the FMLA leave situation).

If the circumstances of your leave change and you are able to return to work earlier than expected, you will be required to notify us at least two workdays prior to the date you intend to report for work.

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

It is mandatory for employers to provide employees with notice of their eligibility for FMLA protection and their rights and responsibilities. 29 U.S.C. § 2617; 29 C.F.R. § 825.300(b), (c). It is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND THE COMPLETED FORM TO THE DEPARTMENT OF LABOR. EMPLOYEE INFORMATION.

FMLA Frequently Asked Questions

Español

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General

(Q) What does the Family and Medical leave act provide?

The Family and Medical Leave Act (FMLA) provides eligible employees up to 12 workweeks of unpaid leave a year, and requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave. Employees are also entitled to return to their same or an equivalent job at the end of their FMLA leave.

The FMLA also provides certain military family leave entitlements. Eligible employees may take FMLA leave for specified reasons related to certain military deployments of their family members. Additionally, they may take up to 26 weeks of FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.

Coverage

(Q) What types of businesses/employers does the FMLA apply to?

The FMLA applies to all:

- public agencies, including local, State, and Federal employers, and local education agencies (schools); and
- private sector employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year – including joint employers and successors of covered employers.

Eligibility

(Q) Who can take FMLA leave?

In order to be eligible to take leave under the FMLA, an employee must:

- work for a covered employer;
- have worked 1,250 hours during the 12 months prior to the start of leave; (special hours of service rules apply to airline flight crew members)

- work at a location where the employer has 50 or more employees within 75 miles; and
- have worked for the employer for 12 months. The 12 months of employment are not required to be consecutive in order for the employee to qualify for FMLA leave. In general, only employment within seven years is counted unless the break in service is (1) due to an employee's fulfillment of military obligations, or (2) governed by a collective bargaining agreement or other written agreement.

Hours of Service Requirement

(Q) Does the time I take off for vacation, sick leave or PTO count toward the 1,250 hours?

The 1,250 hours include only those hours actually worked for the employer. Paid leave and unpaid leave, including FMLA leave, are not included. (Special hours of service rules apply to airline flight crew members.)

Unpaid leave

(Q) Is my employer required to pay me when I take FMLA leave?

The FMLA only requires unpaid leave. However, the law permits an employee to elect, or the employer to require the employee, to use accrued paid vacation leave, paid sick or family leave for some or all of the FMLA leave period. An employee must follow the employer's normal leave rules in order to substitute paid leave. When paid leave is used for an FMLA-covered reason, the leave is FMLA-protected.

Qualifying conditions

(Q) When can an eligible employee use FMLA leave?

A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid, job-protected leave in a 12 month period for one or more of the following reasons:

- for the birth of a son or daughter, and to bond with the newborn child;
- for the placement with the employee of a child for adoption or foster care, and to bond with that child;
- to care for an immediate family member (spouse, child, or parent – but not a parent "in-law") with a serious health condition;
- to take medical leave when the employee is unable to work because of a serious health condition; or
- for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or call to covered active duty status as a member of the National Guard, Reserves, or Regular Armed Forces.

The FMLA also allows eligible employees to take up to 26 workweeks of unpaid, job-protected leave in a "single 12-month period" to care for a covered servicemember with a serious injury or illness.

Birth and bonding

(Q) Are there any restrictions on when an employee can take leave for the birth or adoption of a child?

Leave to bond with a newborn child or for a newly placed adopted or foster child must conclude within 12 months after the birth or placement. The use of intermittent FMLA leave for these purposes is subject to the employer's approval. If the newly born or newly placed child has a serious health condition, the employee has the right to take FMLA leave to care for the child intermittently, if medically necessary and such leave is not subject to the 12-month limitation.

(Q) When can a parent take leave for a newborn?

Mothers and fathers have the same right to take FMLA leave to bond with a newborn child. A mother can also take FMLA leave for prenatal care, incapacity related to pregnancy, and for her own serious health condition following the birth of a child. A father can also use FMLA leave to care for his spouse who is incapacitated due to pregnancy or child birth.

Intermittent/reduced leave schedule

(Q) Does an employee have to take leave all at once or can it be taken periodically or to reduce the employee's schedule?

When it is medically necessary, employees may take FMLA leave intermittently – taking leave in separate blocks of time for a single qualifying reason – or on a reduced leave schedule – reducing the employee's usual weekly or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

Leave to care for or bond with a newborn child or for a newly placed adopted or foster child may only be taken intermittently with the employer's approval and must conclude within 12 months after the birth or placement.

(Q) Can an employer change an employee's job when the employee takes intermittent or reduced schedule leave?

Employees needing intermittent/reduced schedule leave for foreseeable medical treatments must work with their employers to schedule the leave so as not disrupt the employer's operations, subject to the approval of the employee's health care provider. In such cases, the employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodate recurring periods of leave better than the employee's regular job.

Serious health condition

(Q) What is a serious health condition?

The most common serious health conditions that qualify for FMLA leave are:

- conditions requiring an overnight stay in a hospital or other medical care facility;
- conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than three consecutive days and have ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
- chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and
- pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).

(Q) Can I continue to use FMLA for leave due to my chronic serious health condition?

Under the regulations, employees continue to be able to use FMLA leave for any period of incapacity or treatment due to a chronic serious health condition. The regulations continue to define a chronic serious health condition as one that (1) requires "periodic visits" for treatment by a health care provider or nurse under the supervision of the health care provider, (2) continues over an extended period of time, and (3) may cause episodic rather than continuing periods of incapacity. The regulations clarify this definition by defining "periodic visits" as at least twice a year.

(Q) Can I take FMLA leave for reasons related to domestic violence issues?

FMLA leave may be available to address certain health-related issues resulting from domestic violence. An eligible employee may take FMLA leave because of his or her own serious health condition or to care for a qualifying family member with a serious health condition that resulted from domestic violence. For example, an eligible employee may be able to take FMLA leave if he or she is hospitalized overnight or is receiving certain treatment for post-traumatic stress disorder that resulted from domestic violence.

(Q) Can I qualify for FMLA leave when I donate an organ to a non-relative?

Yes, an organ donation can qualify as a serious health condition under the FMLA when it involves either inpatient care or continuing treatment as defined in the regulations. Organ-donation surgery commonly requires overnight hospitalization and that alone suffices for the surgery and the post-surgery recovery to qualify as a serious health condition.

Certification

(Q) Am I required to prove that I have a serious health condition?

An employer may require that the need for leave for a serious health condition of the employee or the employee's immediate family member be supported by a certification issued by a health care provider. The employer must allow the employee at least 15 calendar days to obtain the medical certification.

(Q) What happens if my employer says my medical certification is incomplete?

An employer must advise the employee if it finds the certification is incomplete and allow the employee a reasonable opportunity to cure the deficiency. The employer must state in writing what additional information is necessary to make the certification complete and sufficient and must allow the employee at least seven calendar days to cure the deficiency, unless seven days is not

practicable under particular circumstances despite the employee's diligent good faith efforts.

(Q) Can my employer make me get a second opinion?

An employer may require a second or third medical opinion (at the employer's expense) if he or she has reason to doubt the validity of the medical certification.

(Q) Do I have to give my employer my medical records for leave due to a serious health condition?

No. An employee is not required to give the employer his or her medical records. The employer, however, does have a statutory right to request that an employee provide medical certification containing sufficient medical facts to establish that a serious health condition exists.

(Q) How soon after I request leave does my employer have to request a medical certification of a serious health condition?

Under the regulations, an employer should request medical certification, in most cases, at the time an employee gives notice of the need for leave or within five business days. If the leave is unforeseen, the employer should request medical certification within five days after the leave begins.

An employer may request certification at a later date if he or she has reason to question the appropriateness or duration of the leave.

(Q) May my employer contact my health care provider about my serious health condition?

The regulations clarify that contact between an employer and an employee's health care provider must comply with the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations. Under the regulations, employers may contact an employee's health care provider for authentication or clarification of the medical certification by using a health care provider, a human resource professional, a leave administrator, or a management official. In order to address employee privacy concerns, the regulations makes clear that in no case may the employee's direct supervisor contact the employee's health care provider. In order for an employee's HIPAA-covered health care provider to provide an employer with individually-identifiable health information, the employee will need to provide the health care provider with a written authorization allowing the health care provider to disclose such information to the employer. Employers may not ask the health care provider for additional information beyond that contained on the medical certification form.

(Q) Must I sign a medical release as part of a medical certification?

No. An employer may not require an employee to sign a release or waiver as part of the medical certification process. The regulations specifically state that completing any such authorization is at the employee's discretion. Whenever an employer requests a medical certification, however, it is the employee's responsibility to provide the employer with a complete and sufficient certification. If an employee does not provide either a complete and sufficient certification or an authorization allowing the health care provider to provide a complete and sufficient certification to the employer, the employee's request for FMLA leave may be denied.

(Q) How often may my employer ask for medical certifications for an on-going serious health condition?

The regulations allow recertification no more often than every 30 days in connection with an absence by the employee unless the condition will last for more than 30 days. For conditions that are certified as having a minimum duration of more than 30 days, the employer must wait to request a recertification until the specified period has passed, except that in all cases the employer may request recertification every six months in connection with an absence by the employee. The regulations also allow an employer to request recertification in less than 30 days if the employee requests an extension of leave, the circumstances described in the previous certification have changed significantly, or if the employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

Additionally, employers may request a new medical certification each leave year for medical conditions that last longer than one year. Such new medical certifications are subject to second and third opinions.

Examples:

Janie takes six weeks of FMLA leave for a cancer operation and treatment and gives her employer a medical certification that states that she will be absent for six weeks. Because her certification covers a six-week absence, her employer cannot ask for a recertification during that time. At the end of the six-week period, Janie asks to take two more weeks of FMLA leave; her employer may properly ask Janie for a recertification for the additional two weeks.

Joe takes eight weeks of FMLA leave for a back operation and intensive therapy, and gives his employer a medical certification that states that he will be absent for eight weeks. At the end of the eight-week period, Joe tells his employer that he will need to take three days of FMLA leave per month for an indefinite period for additional therapy; his employer may properly request a recertification at that time. Six months later, and in connection with an absence for therapy, the employer may properly ask Joe for another recertification for his need for FMLA leave.

(Q) Can employers require employees to submit a fitness-for-duty certification before returning to work after being absent due to a serious health condition?

Yes. As a condition of restoring an employee who was absent on FMLA leave due to the employee's own serious health condition, an employer may have a uniformly applied policy or practice that requires all similarly situated employees who take leave for such conditions to submit a certification from the employee's own health care provider that the employee is able to resume work. Under the regulations, an employer may require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the position if the employer has appropriately notified the employee that this information will be required and has provided a list of essential functions. Additionally, an employer may require a fitness-for-duty certification up to once every 30 days for an employee taking intermittent or reduced schedule FMLA leave if reasonable safety concerns exist regarding the employee's ability to perform his or her duties based on the condition for which leave was taken.

(Q) What happens if I do not submit a requested medical or fitness-for-duty certification?

If an employee fails to timely submit a properly requested medical certification (absent sufficient explanation of the delay), FMLA protection for the leave may be delayed or denied. If the employee never provides a medical certification, then the leave is not FMLA leave.

If an employee fails to submit a properly requested fitness-for-duty certification, the employer may delay job restoration until the employee provides the certification. If the employee never provides the certification, he or she may be denied reinstatement.

Mental Health

(Q) May I use FMLA leave when I am unable to work because of severe anxiety? I see a physician monthly for this condition to manage my symptoms.

Yes. Assuming that you work for a covered employer and are eligible for FMLA leave, you may take leave if you are unable to work due to a serious health condition under the FMLA. A chronic condition whether physical or mental (e.g., rheumatoid arthritis, anxiety, dissociative disorders) that may cause occasional periods when an individual is unable to work is a qualifying serious health condition if it requires treatment by a health care provider at least twice a year and recurs over an extended period of time.

(Q) I am under the care of a psychologist and attend psychotherapy sessions regularly for anorexia nervosa. Is my leave for treatment related to this condition protected under the FMLA?

Yes. Assuming that you work for a covered employer and are eligible for FMLA leave, you may take leave for treatment visits and therapy sessions for the condition. Under the FMLA, you may use available leave when you are unable to work, including being unable to perform any one of the essential functions of your position, due to a serious health condition, or when you are receiving treatment for that condition.

(Q) My daughter, who is 24 years old, was recently released from several days of inpatient treatment for a mental health condition. May I use FMLA leave for her care? She is unable to work or go to school and needs help with cooking, cleaning, shopping, and other daily activities.

Yes. Assuming that you work for a covered employer and are eligible for FMLA leave, you may use FMLA leave to care for your child who is 18 years of age or older if the child is incapable of self-care because of a disability as defined by the ADA, has a serious health condition as defined by the FMLA, and needs care because of the serious health condition.

A disability under the ADA is a mental or physical condition that substantially limits one or more of the major life activities of an individual, such as working. Major depressive disorder, bipolar disorder, obsessive compulsive disorder, and schizophrenia are a few examples of mental health conditions that may substantially limit one or more of an individual's major life activities when active. A mental health condition requiring an overnight stay in a hospital or residential medical care facility would be a qualifying serious health condition under the FMLA.

(Q) May I use FMLA leave to attend a family counseling session for my spouse who is in an inpatient treatment program for substance abuse?

Yes. Assuming that you work for a covered employer and are eligible for FMLA leave, you may use FMLA leave to provide care for your spouse who is undergoing inpatient treatment for substance abuse. Care could include participating in your spouse's medical treatment program or attending a care conference with your spouse's health care providers.

(Q) When my father passed away, my mother began to see a doctor for depression and needs assistance with day-to-day self-care because of this condition. Currently, I use FMLA leave to take her to her medical appointments and my sister stays with her during the day. May I also use FMLA leave to help my mother with her day-to-day needs?

Yes. Assuming that you work for a covered employer and are eligible for FMLA leave, you may use FMLA leave to provide physical and psychological care to your mother. You do not need to be the only individual or family member available to help to use FMLA leave for her care. Caring for a family member under the FMLA includes helping with basic medical, hygienic, nutritional or safety needs, and filling in for others who normally provide care.

(Q) My spouse is a veteran who is suffering from post-traumatic stress disorder (PTSD) since his honorable service discharge last year. May I use FMLA leave for his care?

Yes. An eligible employee who works for a covered employer may use military caregiver leave under the FMLA to care for a relative who is a covered veteran undergoing treatment, recuperating, or in therapy for a serious injury or illness. A serious injury or illness is one that was incurred in the line of duty when the veteran was on active duty in the Armed Forces, including any injury or illness that resulted from the aggravation of a condition that existed before the veteran's service in the line of duty on active duty. The condition may manifest itself during active duty or may develop after the servicemember becomes a veteran, as may be the case with PTSD, a traumatic brain injury (TBI), or depression, for example.

(Q) I use FMLA leave once a month for appointments with a mental health therapist. Is my employer required to keep my mental health condition confidential?

Yes. The FMLA requires your employer to keep your medical records confidential and maintain them in separate files from more routine personnel files. Your employer must also maintain your records with confidentiality as required under other laws, such as the Americans with Disabilities Act (ADA) or the Genetic Information Nondiscrimination Act (GINA), where those laws also apply.

However, your supervisor and managers may be informed that you need to be away from work, or if you have work duty restrictions or need accommodations.

The FMLA prohibits your employer from interfering with or restraining your right to take FMLA leave. Your employer is prohibited, for example, from sharing or threatening to share information about your health to discourage you or your coworkers from using FMLA leave.

(Q) My son is in the fourth grade and sees a doctor for attention-deficit/hyperactivity disorder (ADHD). After I used FMLA leave to take my son to a behavioral therapy appointment for this condition my employer sent me an e-mail informing me that I received a negative point on my attendance record. Can my employer punish me for using FMLA leave?

No. Employers are prohibited from discriminating or retaliating against employees for having exercised or attempting to exercise any FMLA right. Examples include using the taking of FMLA leave as a negative factor in employment actions, such as in hiring, promotions, or disciplinary actions or counting FMLA leave against employees in points-based attendance policies.

Job restoration

(Q) Can my employer move me to a different job when I return from FMLA leave?

On return from FMLA leave (whether after a block of leave or an instance of intermittent leave), the FMLA requires that the employer return the employee to the same job, or one that is nearly identical (equivalent).

If not returned to the same job, a nearly identical job must:

- offer the same shift or general work schedule, and be at a geographically proximate worksite (i.e., one that does not involve a significant increase in commuting time or distance);
- involve the same or substantially similar duties, responsibilities, and status;
- include the same general level of skill, effort, responsibility and authority;
- offer identical pay, including equivalent premium pay, overtime and bonus opportunities, profit-sharing, or other payments, and any unconditional pay increases that occurred during FMLA leave; and
- offer identical benefits (such as life insurance, health insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.).

Employee notice

(Q) What and when do I need to tell my employer if I plan to take FMLA leave?

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day. When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the employer's usual and customary notice and procedural requirements for requesting leave.

Employees must provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, and/or that the employee or employee's qualifying family member is under the continuing care of a health care provider.

When an employee seeks leave for a FMLA-qualifying reason for the first time, the employee need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the employer has previously provided the employee FMLA-protected leave, the employee must specifically reference either the qualifying reason for the leave or the need for FMLA leave.

(Q) Is an employee required to follow an employer's normal call-in procedures when taking FMLA leave?

Yes. Under the regulations, an employee must comply with an employer's call-in procedures unless unusual circumstances prevent the employee from doing so (in which case the employee must provide notice as soon as he or she can practicably do so). The regulations make clear that, if the employee fails to provide timely notice, he or she may have the FMLA leave request delayed or denied and may be subject to whatever discipline the employer's rules provide.

Example:

Sam has a medical certification on file with his employer for his chronic serious health condition, migraine headaches. He is unable to report to work at the start of his shift due to a migraine and needs to take unforeseeable FMLA leave. He follows his employer's absence call-in procedure to timely notify his employer about his need for leave. Sam has provided his employer with appropriate notice.

Employer notice

(Q) Are employers required to tell their employees of the existence of FMLA and the employee's right to take FMLA leave?

Every employer covered by the FMLA is required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the FMLA's provisions and providing information concerning the procedures for filing complaints of violations of the FMLA with the Wage and Hour Division. An employer that willfully violates this posting requirement may be subject to a civil money penalty for each separate offense. For current penalty amounts, see www.dol.gov/agencies/whd/fmla/applicable_laws . Additionally, employers must include this general notice in employee handbooks or other written guidance to employees concerning benefits, or, if no such materials exist, must distribute a copy of the notice to each new employee upon hiring.

When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA purpose, the employer must notify the employee of his or her eligibility to take leave, and inform the employee of his or her rights and responsibilities under the FMLA. When the employer has enough information to determine that leave is being taken for a FMLA-qualifying reason, the employer must notify the employee that the leave is designated and will be counted as FMLA leave.

(Q) How soon after an employee provides notice of the need for leave must an employer determine whether someone is eligible for FMLA leave?

Absent extenuating circumstances, the regulations require an employer to notify an employee of whether the employee is eligible to take FMLA leave (and, if not, at least one reason why the employee is ineligible) within five business days of the employee requesting leave or the employer learning that an employee's leave may be for a FMLA-qualifying reason.

(Q) Does an employer have to provide employees with information regarding their specific rights and responsibilities under the FMLA?

At the same time an employer provides an employee notice of the employee's eligibility to take FMLA leave, the employer must also notify the employee of the specific expectations and obligations associated with the leave. Among other information included in this notice, the employer must inform the employee whether the employee will be required to provide certification of the FMLA-qualifying reason for leave and the employee's right to substitute paid leave (including any conditions related to such substitution, and the employee's entitlement to unpaid FMLA leave if those conditions are not met). If the information included in the notice of rights and responsibilities changes, the employer must inform the employee of such changes within five business days of receipt of the employee's first notice of the need for FMLA leave subsequent to any change. Employers are expected to responsively answer questions from employees concerning their rights and responsibilities.

(Q) How soon after an employee provides notice of the need for leave must an employer notify an employee that the leave will be designated and counted as FMLA leave?

Under the regulations, an employer must notify an employee whether leave will be designated as FMLA leave within five business days of learning that the leave is being taken for a FMLA-qualifying reason, absent extenuating circumstances. The designation notice must also state whether paid leave will be substituted for unpaid FMLA leave and whether the employer will require the employee to provide a fitness-for-duty certification to return to work (unless a handbook or other written document clearly provides that such certification will be required in specific circumstances, in which case the employer may provide oral notice of this requirement). Additionally, if the amount of leave needed is known, an employer must inform an employee of the number of hours, days or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice. Where it is not possible to provide the number of hours, days, or weeks that will be counted as FMLA leave in the designation notice (e.g., where the leave will be unscheduled), an employer must provide this information upon request by the employee, but no more often than every 30 days and only if leave was taken during that period.

Military provisions

(Q) What is covered active duty?

For a member of the Regular Armed Forces, *covered active duty or call to covered active duty status* means duty during the deployment of the member with the Armed Forces to a foreign country.

For a member of the Reserve components of the Armed Forces (members of the National Guard and Reserves), *covered active duty or call to covered active duty status* means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation.

(Q) What is the definition of deployment of a member with the Armed Forces to a foreign country?

Deployment to a foreign country means the military member is deployed to an area outside of the United States, the District of Columbia, or any Territory or possession of the United States. Deployment to a foreign country includes deployment to international waters.

Caregiver leave

(Q) Are families of servicemembers in the Regular Armed Forces eligible for military caregiver leave?

Yes. Military caregiver leave extends to those seriously injured or ill members of both the Regular Armed Forces and the National Guard or Reserves.

(Q) Can I take military caregiver leave if I am the stepson or stepdaughter of the covered servicemember or if I am the stepparent of a covered servicemember?

Yes. Under the FMLA for military caregiver leave, a "son or daughter of a covered servicemember" means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, and who is of any age. Under the FMLA for military caregiver leave, a "parent of a covered servicemember" means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law."

(Q) How much leave may I take to care to for a covered servicemember?

An eligible employee is entitled to take up to 26 workweeks of leave during a "single 12-month period" to care for a seriously injured or ill covered servicemember. The "single 12-month period" begins on the first day the eligible employee takes military caregiver leave and ends 12 months after that date, regardless of the method used by the employer to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons.

(Q) May I take FMLA leave to both care for a covered servicemember and for another FMLA qualifying reason during this "single 12-month period?"

Yes. The regulations provide that an eligible employee is entitled to a combined total of 26 workweeks of military caregiver leave and leave for any other FMLA-qualifying reason in this single 12-month period, provided that the employee may not take more than 12 workweeks of leave for any other FMLA-qualifying reason during this period. For example, in the single 12-month period an employee could take 12 weeks of FMLA leave to care for a newborn child and 14 weeks of military caregiver leave, but could not take 16 weeks of leave to care for a newborn child and 10 weeks of military caregiver leave.

(Q) Can I carry-over unused weeks of military caregiver leave from one 12-month period to another?

No. If an employee does not use his or her entire 26-workweek leave entitlement during the single 12-month period of leave, the remaining workweeks of leave are forfeited. After the end of the single 12-month period for military caregiver leave, however, an employee may be entitled to take FMLA leave to care for the covered military member if the member is a qualifying family member under non-military FMLA and he or she has a serious health condition.

(Q) Who is a servicemember's next of kin for purposes of military caregiver leave?

The regulations define a covered servicemember's "next of kin" as the servicemember's nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under FMLA, in which case the designated individual shall be deemed to be the covered servicemember's next of kin. The regulations provide that all family members sharing the closest level of familial relationship to the covered servicemember shall be considered the covered servicemember's next of kin, unless the covered servicemember has specifically designated an individual as his or her next of kin for military caregiver leave purposes. In the absence of a designation, where a covered servicemember has three siblings, for example, all three siblings will be considered the covered servicemember's next of kin.

(Q) Can I take military caregiver leave for more than one seriously injured or ill servicemember, or more than once for the same servicemember if he or she has a subsequent serious injury or illness?

Yes. By regulation, military caregiver leave is a "per-servicemember, per-injury" entitlement. Accordingly, an eligible employee may take 26 workweeks of leave to care for one covered servicemember in a "single 12-month period," and then take another 26 workweeks of leave in a different "single 12-month period" to care for another covered servicemember. An eligible employee may also take 26 workweeks of leave to care for a covered servicemember in a "single 12-month period," and then take another 26 workweeks of leave in a different "single 12-month period" to care for the same servicemember with a subsequent serious injury or illness (e.g., if the servicemember is returned to active duty and suffers another injury).

(Q) Can I care for two seriously injured or ill servicemembers at the same time?

Yes. However, an eligible employee may not take more than 26 workweeks of leave during each single 12-month period.

(Q) What if my covered servicemember receives a catastrophic injury and the military issues me travel orders to immediately fly to Landstuhl Regional Medical Center in Germany to be at his bedside. Do I have to provide a completed certification before flying to Germany?

No. Given the seriousness of the injuries or illnesses incurred by a servicemember whose family receives an invitational travel order (ITO) or invitational travel authorization (ITA), and the immediate need for the family member at the servicemember's bedside, the regulations require an employer to accept the submission of an ITO or ITA, in lieu of the DOL optional certification form or an employer's own form, as sufficient certification of a request for military caregiver leave during the time period specified in the ITO or ITA.

The regulations also permit an eligible employee who is a spouse, parent, son, daughter or next of kin of a covered servicemember to submit an ITO or ITA issued to another family member as sufficient certification for the duration of time specified in the ITO or ITA, even if the employee seeking leave is not the named recipient on the ITO or ITA.

If the covered servicemember's need for care extends beyond the expiration date specified in the ITO or ITA, the regulations permit an employer to require an employee to provide certification for the remainder of the employee's leave period.

(Q) How is leave designated if it qualifies as both military caregiver leave and leave to care for a family member with a serious health condition?

For military caregiver leave that also qualifies as leave taken to care for a family member with a serious health condition, the regulations provide that an employer must designate the leave as military caregiver leave first. The Department believes that applying military caregiver leave first will help to alleviate some of the administrative issues caused by the running of the separate single 12-month period for military caregiver leave.

The regulations also prohibit an employer from counting leave that qualifies as both military caregiver leave and leave to care for a family member with a serious health condition against both an employee's entitlement to 26 workweeks of military caregiver leave and 12 workweeks of leave for other FMLA-qualifying reasons.

(Q) What type of notice must I provide to my employer when taking FMLA leave because of a qualifying exigency?

An employee must provide notice of the need for qualifying exigency leave as soon as practicable. For example, if an employee receives notice of a family support program a week in advance of the event, it should be practicable for the employee to provide notice to his or her employer of the need for qualifying exigency leave the same day or the next business day. When the need for leave is unforeseeable, an employee must comply with an employer's normal call-in procedures absent unusual circumstances.

An employee does not need to specifically assert his or her rights under FMLA, or even mention FMLA, when providing notice. The employee must provide "sufficient information" to make the employer aware of the need for FMLA leave and the anticipated timing and duration of the leave.

(Q) Are the certification procedures (timing, authentication, clarification, second and third opinions, recertification) the same for qualifying exigency leave and leave due to a serious health condition?

The same timing requirements for certification apply to all requests for FMLA leave, including those for military family leave. Thus, an employee must provide the requested certification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

If the qualifying exigency involves a meeting with a third party, employers may verify the schedule and purpose of the meeting with the third party. Additionally, an employer may contact the appropriate unit of the Department of Defense to confirm that the military member is on covered active duty or call to covered active duty status.

Employers are not permitted to require second or third opinions on qualifying exigency certifications. Employers are also not permitted to require recertification for such leave.

(Q) How much FMLA leave may I take for qualifying exigencies?

An employee may take up to 12 workweeks of FMLA leave for qualifying exigencies during the twelve-month period established by the employer for FMLA leave. Qualifying exigency leave may also be taken on an intermittent or reduced leave schedule basis.

(Q) How much leave can I take if I need leave for both a serious health condition and a qualifying exigency?

Qualifying exigency leave, like leave for a serious health condition, is a FMLA-qualifying reason for which an eligible employee may use his or her entitlement for up to 12 workweeks of FMLA leave each year. An eligible employee may take all 12 weeks of his or her FMLA leave entitlement as qualifying exigency leave or the employee may take a combination of 12 weeks of leave for both qualifying exigency leave and leave for a serious health condition.

(Q) Can I take qualifying exigency leave when my military member returns from deployment?

Yes. An eligible employee is entitled to take qualifying exigency leave for certain qualifying post-deployment exigencies, including reintegration activities, for a period of 90 days following the termination of the military member's covered active duty status.

USERRA–FMLA Questions

(Q) What is the Uniformed Services Employment and Reemployment Rights Act (USERRA)?

USERRA is a federal law that provides reemployment rights for veterans and members of the National Guard and Reserve following qualifying military service. It also prohibits employer discrimination against any person on the basis of that person's past USERRA-covered service, current military obligations, or intent to join one of the uniformed services.

(Q) What effect does USERRA have on FMLA-eligibility requirements?

USERRA requires that servicemembers who conclude their tours of duty and who are reemployed by their civilian employers receive all benefits of employment that they would have obtained if they had been continuously employed, except those benefits that are considered a form of short-term compensation, such as accrued paid vacation. If a servicemember had been continuously employed, one such benefit to which he or she might have been entitled is leave under the FMLA. The servicemember's eligibility will depend upon whether the servicemember would have met the employee eligibility requirements outlined above had he or she not performed USERRA-covered service.

(Q) How should the 12-month FMLA requirement be calculated for returning servicemembers?

USERRA requires that a person reemployed under its provisions be given credit for any months of service he or she would have been employed but for the period of absence from work due to or necessitated by USERRA-covered service in determining eligibility for FMLA leave. A person reemployed following USERRA-covered service should be given credit for the period of absence from work due to or necessitated by USERRA-covered service towards the months-of-employment eligibility requirement. Each month served performing USERRA-covered service counts as a month actively employed by the employer. For example, someone who has been employed by an employer for nine months is ordered to active military service for nine months after which he or she is reemployed. Upon reemployment, the person must be considered to have been employed by the employer for more than the required 12 months (nine months actually employed plus nine months of USERRA-covered service) for purposes of FMLA eligibility. It should be noted that the 12 months of employment need not be consecutive to meet this FMLA requirement.

(Q) How should the 1,250 hours-of-service requirement be calculated for returning servicemembers?

An employee returning from USERRA-covered service must be credited with the hours¬ of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining FMLA eligibility. Accordingly, a person reemployed following USERRA-covered service has the hours that would have been worked for the employer added to any hours actually worked during the previous 12-month period to meet the 1,250 hour requirement. In order to determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations. For example, an employee who works 40 hours per week for the employer returns to employment following 20 weeks of USERRA-covered service and requests leave under the FMLA. To determine the person's eligibility, the hours he or she would have worked during the period of USERRA-covered service (20 x 40 = 800 hours) must be added to the hours actually worked during the 12-month period prior to the start of the leave to determine if the 1,250 hour requirement is met. Special hours of service eligibility requirements apply to airline flight crew employees .

(Q) Where can I get more information about USERRA and the FMLA?

The Department of Labor's Veterans' Employment and Training Service (VETS) administers USERRA, provides technical assistance/educational outreach, and investigates complaints. Information about USERRA is available on the VETS website. The address is http://www.dol.gov/vets . There you will find USERRA information as well as a directory of local VETS offices.

Airline flight crew employees

(Q) Who is an airline flight crew employee?

An airline flight crew employee is an airline flight crewmember or flight attendant as those terms are defined in the FAA regulations.

(Q) How do airline flight crew employees qualify to take leave under the FMLA?

In order to be eligible to take leave under the FMLA, an airline flight crew employee must work for a covered employer; be employed at a worksite where the employer has 50 or more employees within 75 miles; have worked for the employer for 12 months; and meet the hours of service requirement.

Due to non-traditional work schedules, airline flight attendants and flight crew members are subject to special hours of service eligibility requirements under the FMLA. These employees meet the hours of service requirement if, during the 12 months prior to the beginning of their leave, they have worked or been paid for at least 60% of their applicable monthly guarantee, and have worked or been paid for at least 504 hours, not including personal commute time or time spent on vacation, medical, or sick leave.

An airline employee who is not an airline flight crewmember or flight attendant as those terms are defined in the FAA regulations is subject to the generally applicable FMLA eligibility requirements.

(Q) How do you determine the worksite for an airline flight crew employee for FMLA eligibility?

The worksite is the terminal to which employees are assigned, report for work, depart, and return after completion of a work assignment. Therefore, in the case of airline flight crew employees, the worksite is their home base, or domicile. For example, an airline pilot may work for an airline with headquarters in New York, but the pilot regularly reports for duty and originates or begins flights from the company's facilities located in an airport in Chicago and returns to Chicago at the completion of one or more flights to go off duty. The pilot's worksite is the facility in Chicago.

(Q) What is the applicable monthly guarantee?

The applicable monthly guarantee for an airline flight crew employee who is not on reserve status (i.e., an employee who is a line holder) is the minimum number of hours for which an employer has agreed to schedule the employee for any given month. For an airline flight crew employee on reserve status, it is the minimum number of hours for which an employer has agreed to pay the employee for any given month.

(Q) How is the number of hours worked determined for an airline flight crew employee?

The number of hours worked is the employee’s duty hours during the previous 12-month period.

(Q) What are an airline flight crew employee’s duty hours?

In contrast to *flight* or *block* hours, duty hours encompass time spent performing a variety of support duties that begin before a plane takes flight and end after it lands. Duty hours are widely recognized and used in the industry.

(Q) How is the number of hours paid determined for an airline flight crew employee?

The number of hours paid is the hours for which the employee received wages during the previous 12-month period. To the extent airline flight crew employees are paid for time spent in training, that time will be counted toward the employee’s hours of service requirement.

(Q) Does an airline flight crew employee’s military service count towards his or her FMLA eligibility?

An airline flight crew employee returning from USERRA-covered service shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining the employee's eligibility for FMLA-qualifying leave. Accordingly, an airline flight crew employee re-employed following USERRA-covered service has the hours that would have been worked for or paid by the employer added to any hours actually worked or paid during the previous 12-month period to meet the hours of service requirement. In order to determine the hours that would have been worked or paid during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations.

(Q) How do collective bargaining agreements (CBAs) affect airline flight crew employees under the FMLA?

As with all employers covered under the FMLA, an employer of an airline flight crew employee must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the FMLA may not be diminished by any employment benefit program or plan. For example, a provision of a CBA which provides for reinstatement to a position that is not equivalent because of seniority (e.g., provides lesser pay) is superseded by FMLA.

(Q) How much FMLA leave may an airline flight crew employee take?

An eligible airline flight crew employee is entitled to 72 days of FMLA leave during any 12-month period for one or more FMLA-qualifying reasons. This entitlement is based on a uniform six-day workweek for all airline flight crew employees, regardless of the time actually worked or paid, multiplied by the statutory 12-workweek entitlement for FMLA leave. For example, if an employee took six weeks of leave for an FMLA-qualifying reason, the employee would use 36 days (6 days x 6 weeks) of the employee’s 72-day entitlement.

An eligible airline flight crew employee is entitled to 156 days of military caregiver leave during a single 12-month period to care for a covered servicemember with a serious injury or illness. This entitlement is based on a six-day workweek multiplied by the statutory 26-workweek entitlement for military caregiver leave.

(Q) How would an employer calculate FMLA leave for an airline flight crew employee who takes less than a day of FMLA leave?

If an airline flight crew employee needs to take FMLA leave for a two-hour doctor’s appointment, the employer may require the employee to use a full day of FMLA leave, during which the employee would not return to work. The entire amount of leave actually taken (here, one day) is designated as FMLA leave and would be deducted from the employee’s entitlement.

However, if an employer chooses to restore an employee to work on the same day during which intermittent or reduced schedule FMLA leave is taken, or if an airline flight crew employee leaves work early for an FMLA qualifying reason, the leave taken by the employee must be FMLA-protected and the employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken.

(Q) Does an employer have to return an airline flight crew employee to work after a period of FMLA leave?

On return from FMLA leave (whether after a block of leave or an instance of intermittent leave), the FMLA requires that, as with all employers covered under the FMLA, an employer of an airline flight crew employee return the employee to the same job or one that is nearly identical (equivalent).

If not returned to the same job, a nearly identical job must:

- offer the same shift or general work schedule, and be at a geographically proximate worksite (i.e., one that does not involve a significant increase in commuting time or distance);
- involve the same or substantially similar duties, responsibilities, and status;
- include the same general level of skill, effort, responsibility and authority;
- offer identical pay, including equivalent premium pay, overtime and bonus opportunities, profit-sharing, or other payments, and any unconditional pay increases that occurred during FMLA leave; and
- offer identical benefits (such as life insurance, health insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.).

Miscellaneous Questions

(Q) I am a caregiver for my brother who is not able to take care of himself. Can I take FMLA leave for his care?

Maybe. FMLA leave to care for a relative is generally limited to caring for a spouse, son, daughter, or parent. An eligible employee standing in loco parentis to a sibling who is under 18, or who is 18 years of age or older and incapable of self-care because of a mental or physical disability, may take leave to care for the sibling, if the sibling has an FMLA-qualifying serious health condition.

(Q) Can my FMLA leave be counted against me for my bonus?

Under the regulations, an employer may deny a bonus that is based upon achieving a goal, such as hours worked, products sold or perfect attendance, to an employee who takes FMLA leave (and thus does not achieve the goal) as long as it treats employees taking FMLA leave the same as employees taking non-FMLA leave. For example, if an employer does not deny a perfect attendance bonus to employees using vacation leave, the employer may not deny the bonus to an employee who used vacation leave for a FMLA-qualifying reason.

Example:

Sasha uses 10 days of FMLA leave during the quarter for surgery. Sasha substitutes paid vacation leave for her entire FMLA absence. Under Sasha's employer's quarterly attendance bonus policy, employees who use vacation leave are not disqualified from the bonus but employees who take unpaid leave are disqualified. Sasha's employer must treat her the same way it would treat an employee using vacation leave for a non-FMLA reason and give Sasha the attendance bonus.

(Q) My medical condition limits me to a 40 hour workweek but my employer has assigned me to work eight hours of overtime in a week. Can I take FMLA leave for the overtime?

Yes. Employees with proper medical certifications may use FMLA leave in lieu of working required overtime hours. The regulations clarify that the hours that an employee would have been required to work but for the taking of FMLA leave can be counted against the employee's FMLA entitlement. Employers must select employees for required overtime in a manner that does not discriminate against workers who need to use FMLA leave.

(Q) Can I use my paid leave as FMLA leave?

Under the regulations, an employee may choose to substitute accrued paid leave for unpaid FMLA leave if the employee complies with the terms and conditions of the employer's applicable paid leave policy. The regulations also clarify that substituting paid leave for unpaid FMLA leave means that the two types of leave run concurrently, with the employee receiving pay pursuant to the paid leave policy and receiving protection for the leave under the FMLA. If the employee does not choose to substitute applicable accrued paid leave, the employer may require the employee to do so.

Example:

Neila needs to take two hours of FMLA leave for a treatment appointment for her serious health condition. Neila would like to substitute paid sick leave for her absence, but her employer's sick policy only permits employees to take sick leave in full days. Neila may either choose to comply with her employer's sick leave policy by taking a full day of sick leave for her doctor's appointment (in which case she will use a full day of FMLA leave), or she may ask her employer to waive the requirement that sick leave be used in full day increments and permit her to use two hours of sick leave for her FMLA absence. Neila can also take unpaid FMLA leave for the two hours.

(Q) How do collective bargaining agreements (CBAs) affect the FMLA Regulations?

An employer must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the FMLA may not be diminished by any employment benefit program or plan. For example, a provision of a CBA which provides for reinstatement to a position that is not equivalent because of seniority (e.g., provides lesser pay) is superseded by FMLA.

Prohibited acts

(Q) What happens if I am mistreated for taking FMLA leave or if I am denied FMLA leave?

Your employer is prohibited from interfering with, restraining, or denying the exercise of FMLA rights, retaliating against you for filing a complaint and cooperating with the Wage and Hour Division (WHD), or bringing private action to court. You should contact the WHD immediately if your employer retaliates against you for engaging in any of the legally protected activities. For additional information, 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).

Additional Information / Complaints

(Q) Who do I contact if I need additional information or I want to file a complaint?

If you have questions, or you think that your rights under the FMLA may have been violated, you can contact the Wage and Hour Division (WHD) at 1-866-487-9243. You will be directed to the WHD office nearest you for assistance. There are over 200 WHD offices throughout the country staffed with trained professionals to help you. To find the one nearest you, go to http://www.dol.gov/agencies/whd/america2 .