

# The Basics of Family and Medical Leave

## Protected Reasons for Taking FMLA Leave

The FMLA allows eligible employees to take a job-protected, unpaid leave for up to twelve workweeks per twelve month period for the following reasons:

- Birth of a child
- Care for a newborn child
- Placement of a child for adoption or foster care
- The employee is needed to care for a child, spouse or parent suffering from a serious health condition
- The employee's own serious health condition makes him or her unable to perform the functions of the job

## How FMLA Leave May Be Taken

Leave may be taken in:

- A single twelve week period
- On an intermittent (hourly) basis
- In the form of a part-time work schedule substituted for either of the above.
- A leave of less than twelve weeks

FMLA QUESTIONS & ANSWERS from DOL	Answers
<p>1. Complying with the Family and Medical Leave Act will cost your organization a considerable amount of money.</p> <p>ANS: In the 1998 <i>Business-Work Life Study</i> of 1,057 employers nationwide, the vast majority of organizations (84%) find that the benefits of providing FMLA leave offset or outweigh the costs. In fact, 42% of employers reported positive returns on their investments in leave programs. Only 16% reported a negative return.</p>	<p><b>FALSE</b></p>
<p>2. FMLA leave has to be taken in a lump sum of twelve weeks.</p> <p>ANS: Leave may be taken in a lump sum of twelve weeks, but also on an intermittent (hourly) basis or through a part-time work schedule.</p>	<p><b>FALSE</b></p>
<p>3. If an employee fails to notify you of a need for FMLA leave within 30-days of the leave commencing, your organization can delay the requested leave by the same period.</p> <p>ANS: The employer has a right to 30 days advance notice from an employee requesting leave whenever <i>practicable</i> If the leave was foreseeable and 30 days notice was not given, the employer may delay the requested leave for 30 days from the date it was notified of the need for leave.</p>	<p><b>IT DEPENDS</b></p>

<p>4. Your organization may require an employee to provide medical certification to show that the leave is due to a serious health condition.</p> <p><b>ANS:</b> An employer may require an employee to provide medical certification from a health care provider to substantiate that the leave is due to a serious health condition of the employee or the employee's immediate family member (spouse, child, parent)</p>	<p><b>TRUE</b></p>
<p>5. Managers and supervisors can be held personally liable for FMLA violations.</p> <p><b>ANS:</b> The FMLA defines an employer as any person who acts directly or indirectly in the interest of the employer to its employees. Individuals such as corporate officers, when acting in the interest of the employer, are individually liable for any violation of FMLA requirements.</p>	<p><b>IT DEPENDS</b></p>
<p>6. An employee still accrues time towards their FMLA entitlement even when on vacation.</p> <p><b>ANS:</b> Maintenance on the payroll for any part of a week (even paid or unpaid leave) counts as a week of employment.</p>	<p><b>TRUE</b></p>
<p>7. An employee can claim FMLA leave for the illness of a grandparent.</p> <p><b>ANS:</b> Covered family members include spouses, biological parents, individuals standing in loco parentis, adopted children, foster children, step children, legal wards, or children of persons standing in loco parentis under age 18, or age 18 or older and "incapable of self-care" because of a mental or physical disability.</p>	<p><b>FALSE</b></p>
<p>8. The FMLA is designed to protect the employee and offers few protections against abuse by these employees for employers.</p> <p><b>ANS:</b> An employer has several rights under the FMLA including a right to reasonable notice and medical certification, amongst others designed to protect an employer and the viability of its business.</p>	<p><b>FALSE</b></p>
<p>9. The FMLA guarantees reinstatement to the "same or equivalent" job position for all employees after a leave of absence has been taken.</p> <p><b>ANS:</b> An employee is generally guaranteed reinstatement to his or her old or similar position. However, reinstatement can be denied if the employee is terminated and an employer can justify such a move, if the employee's shift is eliminated, if the person on leave is a project or term employee, if concurrent workers' comp leave is in action, or if the employee is classified as a "key employee".</p>	<p><b>IT DEPENDS</b></p>
<p>10. Responsibility for designating leave as qualifying under the FMLA rests solely with your organization.</p> <p><b>ANS:</b> The employee need not specify that the leave being requested is FMLA leave. It is the employer's responsibility to designate the appropriate leave.</p>	<p><b>TRUE</b></p>
<p>11. FMLA leave covers the placement of a child for adoption or foster care.</p> <p><b>ANS:</b> The FMLA explicitly covers events incident to the adoption process in addition to the bonding period following a placement. Although the regulations are not specific, an employer should assume that the same circumstances governing adoption also govern foster care.</p>	<p><b>TRUE</b></p>

<p>12. A couple adopts a baby. Because the child is adopted, under the FMLA only the woman is allowed to take up to 12 weeks off from work to care for the child.</p> <p>ANS: The right to take leave under the FMLA applies equally to male and female employees. Thus, a father as well as a mother can take family leave for the birth, placement for adoption or foster care of a child.</p>	<p><b>FALSE</b></p>
<p>13. Cases of the common cold, the flu or an upset stomach are deemed "serious health conditions".</p> <p>ANS: Department of Labor decisions appear to allow for FMLA-qualifying leave where the "continuing treatment" consisted of health care provider treatment that occurred on only one occasion, but which "results in a regimen of continuing treatment under the supervision of a health care provider," as long as the illness incapacitated the employee for more than three days.</p> <p>Under such an interpretation, a single examination by a physician that results in a prescribed medication regimen of antibiotics could constitute a "serious health condition" warranting FMLA leave regardless of whether there are complications. This includes such conditions as colds, flu and stomach upsets.</p>	<p><b>TRUE</b></p>
<p>All of the above was obtained from the Department of Labor web site</p>	

**What is a serious health condition?** A serious health condition under the FMLA is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care (an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with the inpatient care or continuing care by a health care provider that includes one or more of the following:

1. A period of incapacity of more than three consecutive days.
2. Any period of incapacity due to pregnancy or for prenatal care.
3. Any period of incapacity or treatment due to a chronic serious health condition.
4. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective.
5. Any period of absence to receive multiple treatments by a health care provider, including conditions that are not currently incapacitating but would be if left untreated.

The FMLA also requires that after the 12 weeks of unpaid leave, you must reinstate the employee in the same job or an equivalent one. Note that the leave does not have to be taken all at once; in some instances family leave can be taken one day at a time.