

# Federal Family and Medical Leave Act

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The Family and Medical Leave Act is a federal law that allows employees time off for the birth/adoption of a child or for the serious health condition of the employee or a child, spouse or parent.

## **Who must follow this law?**

“Covered employers” are employers with 50+ employees for each workday for 20+ weeks of the year. Public agencies and private elementary and secondary schools are covered regardless of the number of employees.

## **Who is protected by this law?**

This law protects employees of “covered employers” who have worked at least 12 months and 1,250 hours during the prior 12 months. Excluded employees include those at a worksite of fewer than 50 employees if the employer employs less than 50 workers in a 75-mile radius.

## **Length of Leave**

12 weeks unpaid leave in a 12-month period. Spouses with the same employer are limited to 12 total weeks for birth/adoption/placement in foster care of a child or care of a sick parent.

## **Notice to the Employer**

30 days notice if the leave is foreseeable. Otherwise, the employee shall provide notice as soon as is practicable.

## **Certification of Illness**

The employer may require the employee’s doctor to verify that the condition renders the employee unfit to perform his job duties. Recertification may be required for extended or additional leave.

The employer is entitled to seek a second medical opinion to determine if the condition is a “serious medical condition” under the FMLA. A third opinion, by a doctor mutually agreed upon, is available if the second opinion conflicts with the opinion of the employee’s doctor. There are innumerable circumstances that can constitute a serious health condition. When it is the employee’s condition, the condition must render the employee unable to perform his job duties.

## **Restoration to the Same or Equivalent Position**

After leave the employee is entitled to restoration to the same or an equivalent position unless the employee is highly paid and doing so would cause the employer grievous economic harm.

## **Prohibition Employer Action**

The employer may not interfere with an employee's right to leave. The employer may not discharge or otherwise discriminate against an employee for taking leave. The employer may not discharge or discriminate against an employee for opposing an unlawful act under the FMLA or for participating in any proceeding relating to rights under the FMLA.

## **What remedies are available?**

- Reinstatement
- Lost Wages, benefits or other compensation plus interest at the prevailing rate
- Promotion
- Attorneys' fees and costs
- Liquidated Damages of twice the amount of lost wages if the employer "willfully" violated the statute.

## **How and when do I file a charge?**

Typically, an employee files a civil action in state or federal court. The action must be filed within 2 years after the violation, or three years for a willful violation. The Department of Labor also may initiate an investigation and civil action.

## **Additional Resources**

- The Family and Medical Leave Act of 1993, 29 U.S.C.A. §§2601, et seq.
- 29 CFR Part 825
- <http://www.dol.gov/esa/whd/fmla/>
- **U.S. Department of Labor**  
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200 Constitution Avenue, NW  
Washington, DC 20210  
**1-866-4-USWAGE**