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# Family and Medical Leave Act

Presented by  
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## The Federal Mediation and Conciliation Service

- Independent Agency
- Established 1947
- 159 Mediators
- 60 Offices





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## FMCS Mission

- Promote sound, stable L-M relations
- Prevent, minimize work stoppages
- Advocate collective bargaining, mediation & voluntary arbitration
- Develop methods of conflict resolution
- Improve employment security & organizational effectiveness



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# Program Agenda

- History of FMLA Legislation
- Eligibility
- Covered Conditions/Events



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## Program Agenda cont.

- Continuous Use vs. Intermittent Use
- Certification and Utilization



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# Program Reminders

- Participate...this is your program.
- Ask questions...when in doubt.



## Disclaimer

The information contained in this presentation is intended for educational and discussion purposes only. It is general information not tailored to the law of any particular jurisdiction and may or may not be applicable to any specific situation. This information is not intended to and does not constitute legal advice or substitute for legal advice.

Any specific questions should be directed to appropriate legal counsel.



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Basic Skills

# **FAMILY AND MEDICAL LEAVE ACT**





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## FMLA History

- The Family Medical Leave Act (FMLA) was introduced and signed into law in 1993.
- The offered purposes of the legislation was to promote healthy work-life balance.
- The best available evidence suggests that adopting flexible practices in the workplace potentially boosts productivity, improves morale, and benefits the economy.



## FMLA History

### Purpose

- Balance work and family life
- Promote economic security of families and serve national interest in preserving family integrity

§ 825.101



## FMLA Coverage

### Covered Employers

- Private sector employers with 50 or more employees
- Public Agencies
- Public and private elementary and secondary schools

**§ 825.104**



## FMLA Coverage

### Eligible Employees

- Employed by covered employer
- Worked at least 12 months
- Have at least 1,250 hours of service during the 12 months before leave begins
- Employed at a work site with 50 employees within 75 miles

**§ 825.110**



## FMLA Entitlement

- The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.



## FMLA Entitlement

Eligible Employees are entitled to:

- Twelve workweeks of leave in a 12-month period for:
  - The birth of a child and to care for the newborn child within one year of birth;
  - The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
  - To care for the employee's spouse, child, or parent who has a serious health condition;



## FMLA Entitlement

Eligible Employees are entitled to:

- Twelve workweeks of leave in a 12-month period for (continued):
  - A serious health condition that makes the employee unable to perform the essential functions of his or her job;
  - Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" or



## FMLA Entitlement

Eligible Employees are entitled to:

- Twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

**§ 825.200, 825.205 & 825.802**





## FMLA Entitlement

### Amount of Leave

- Employee's workweek is basis for entitlement.
  - Example: Dan's regular work week is 32 hours per week. If eligible, Dan would be entitled to 12 weeks of unpaid leave at 32 hours per week.



## FMLA Entitlement

### Substitution of Paid Leave

- “Substitution” means paid leave provided by the employer runs concurrently with unpaid FMLA leave and normal terms and conditions of paid leave policy apply
- Employees may choose, or employers may require, the substitution of accrued paid leave for unpaid FMLA leave
- Employee remains entitled to unpaid FMLA if procedural requirements for employer’s paid leave are not met

**§ 825.207**



## FMLA Use

### Continuous Use

- This type of leave is taken up by employees for a continuous period of time. Such leave is not broken up by a period of work and is continuous when the employee is absent for three consecutive working days or more. He can take the leave for an immediate family member or own self for serious health issues.



## FMLA Use

### Intermittent Use

- it is the more flexible way of taking leave. In such type of leave, the employee can take leave for a few hours or a few days. The intermittent leave allows the employee to take short leaves without going for long break
- Example: An employee who is suffering from migraine can take leave for a few hours during the excessive pain period. The employee can also use intermittent leave to attend a doctor's appointment for a few hours.

**§ 825.202**



## FMLA Use

### Intermittent Leave Administration

- In calculating the amount of leave, employer must use the shortest increment the employer uses to account for other types of leave, provided it is not greater than one hour \*
- Shortest increment may vary during different times of day or shift
- Required overtime not worked may count against an employee's FMLA entitlement

**§ 825.205**



## FMLA Use

12-month Period Method Determine by Employer:

- Calendar year
- Any fixed 12-month leave year
- A 12-month period measured forward
- A rolling 12-month period measured backward

**§ 825.200**



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# 12- Month Period

## Calendar Year

- The twelve (12) month period that runs from January 1<sup>st</sup> through December 31<sup>st</sup> each year.



## 12- Month Period

### Any Fixed 12-month Leave Year

- 12-month period such as a fiscal year
  - Example: October 1st through September 30<sup>th</sup>
- One year starting on an employee's anniversary
  - Example: September 22nd through September 21<sup>st</sup>





## 12- Month Period

### A 12-month Period Measured Forward

- 12-month period measured forward from the first date an employee takes FMLA leave.
  - Example: Dan's FMLA leave begins on April 7, 2021 so his 12-month period is April 7, 2021 through April 6, 2022.



## 12- Month Period

A rolling 12-month period measured backward

- 12-month period measured backward from the date an employee uses any FMLA leave. Under the “rolling” 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.



## 12- Month Period

A rolling 12-month period measured backward

- Example: Dan requests two weeks of FMLA leave to begin on November 1<sup>st</sup>. The employer looks back 12 months (from November 1<sup>st</sup> back to the previous November 2<sup>nd</sup>) and sees that Dan had taken four weeks of FMLA leave beginning January 1<sup>st</sup>, four weeks beginning March 1<sup>st</sup>, and three weeks beginning June 1<sup>st</sup>. Dan has taken 11 weeks of FMLA leave in the 12-month period and only has one week of FMLA-protected leave available. After Dan takes the one week in November, he can next take FMLA leave beginning January 1<sup>st</sup> as the days of his previous January leave “roll off” the leave year.



## FMLA – Employer Responsibilities

### Employer Responsibilities

- Provide notice
- Maintain group health insurance
- Restore the employee to same or equivalent job and benefits
- Maintain records



## FMLA – Employer Responsibilities

### Provide Notice:

- General Notice - To inform employees of FMLA through posting (physical or electronic)
- Eligibility Notice – To inform specific employee(s) of their eligibility for protected leave once requested or when employer is aware that leave may be qualifying.
  - Also must provide reason if employee determined to not be eligible.

**§ 825.300**



## FMLA – Employer Responsibilities

### Maintain Group Health Plan Benefits

- Group health plan benefits must be maintained throughout the leave period
- Same terms and conditions as if employee were continuously employed
  - Employee must pay his/her share of the premium
  - Even if employee chooses not to retain coverage during leave, employer obligated to restore same coverage upon reinstatement

**§ 825.209**



## FMLA – Employer Responsibilities

Restore Employee to same or equivalent Job and Benefits

- Same or equivalent job
  - equivalent pay
  - equivalent benefits
  - equivalent terms and conditions
- Employee has no greater right to reinstatement than had the employee continued to work
- Bonuses predicated on specified goal may be denied if goal not met

**§ 825.214 - .219**



## FMLA – Employer Responsibilities

### Maintain Records

- Basic payroll information
- Dates FMLA leave is taken
- Hours of leave if leave is taken in less than one full day
- Copies of leave notices
- Documents describing benefits/policies
- Premium payments
- Records of disputes

**§ 825.500**





## FMLA – Employee Responsibilities

- Provide sufficient and timely notice of the need for leave
- If requested by the employer:
  - Provide certification to support the need for leave
  - Provide periodic status reports
  - Provide fitness-for-duty certification



## FMLA – Employee Responsibilities

### Notice

- Provide sufficient information to make employer aware of need for FMLA-qualifying leave
- Specifically reference the qualifying reason or the need for FMLA leave for subsequent requests for same reason
- Consult with employer regarding scheduling of planned medical treatment
- Comply with employer's usual and customary procedural requirements for requesting leave absent unusual circumstances

**§ 825.302 - .303**



## FMLA – Employee Responsibilities

### Notice: Timing

- Foreseeable Leave - 30 days notice, or as soon as practicable
- Unforeseeable Leave - as soon as practicable

**§ 825.302 § 825.303**



## FMLA – Employee Responsibilities

### Provide Certification

- Medical Certification for serious health condition
  - Submit within fifteen calendar days
  - Employer must identify any deficiency in writing and provide seven days to cure
  - Annual certification may be required
  - Employee responsible for any cost

**§ 825.305**



## FMLA – Employee Responsibilities

### Provide Certification

- Employer (**not** employee's direct supervisor) may contact health care provider to:
  - **Authenticate**
  - **Clarify**
- Second and third opinions (at employer's cost)
  - If employer questions the validity of the complete certification, the employer may require a second opinion
  - If the first and second opinions differ, employer may require a third opinion that is final and binding
- Consequences of failing to provide certification
  - Employer may deny FMLA until certification is received

§ 825.307



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# FMLA – Employee Responsibilities

## Provide Periodic Status Reports

- Employee must respond to employer's request for information about status and intent to return to work

**§ 825.311**



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