

FMLA Overview

The FMLA or the Family Medical Leave Act is a federal law passed in 1993 entitling eligible employees to increased job security when dealing with their own serious health condition or a serious health condition of their child, spouse, or parent. The FMLA *requires* employers to provide eligible employees time-off from work for FMLA qualifying reasons and prohibits employers from interfering with employee rights.

The FMLA requires an employer to:

- provide time-off *totaling* 12-weeks per year due to a serious health condition of a child, spouse or parent or for their own serious health condition. For example an eligible employee working 5 days a week could get 60 FMLA days per year;
- continue group health benefits, including optical and dental benefits, over the FMLA leave period (employees would only be responsible for the co-pay on the premium they would have paid if they were still working);
- return employees taking FMLA leave to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave (provided the employee comes back to work before the 12 weeks is exhausted).

The FMLA prohibits an employer from:

- using FMLA covered absences as a basis for imposing a warning, suspension, discharge or other discipline, issuing a negative evaluation, denying advancement, making an adverse assignment, or taking other negative action against you;
- interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the Act.

Who is eligible?

At LCC, employees are eligible if they:

- have been employed for at least 12 months (these need not be consecutive); and
- worked at least 1,250 hours during the 12-months immediately preceding the first day of leave* (this averages to about 25 hours per week over 12 months). Hours counted towards the 1,250 do not include leave time.

** LCC uses a rolling 12 month period for purposes of determining FMLA eligibility.*

What absences are FMLA qualifying?

The FMLA entitles employees to time-off for both unforeseen emergencies and planned absences involving:

- (1) a serious health condition that makes the employee unable to perform their job;
- (2) care for a spouse, son, daughter, or parent with a serious health condition;
- (3) the birth of a son or daughter, and to care for the newborn child;
- (4) the placement of a son or daughter for adoption or foster care in the home.

What is a "Serious Health Condition?"

The FMLA regulations define qualifying serious health conditions as an illness, injury, or condition (physical or mental) that involves one or more of the following:

- a hospital stay of at least one night;
- incapacity for more than three consecutive calendar days (not necessarily workdays) and continuing treatment by a health care provider;
- incapacity due to a serious chronic disorder (for example asthma, chronic back condition, multiple sclerosis);
- incapacity due to pregnancy or for prenatal care;
- long term or permanent disability;
- an absence to receive multiple treatments for restorative surgery after an injury or to prevent a period of incapacity of more than three consecutive days.

Examples of qualifying FMLA absences:

- to care for a child who is unable to attend school due to asthma;
- to care for a parent recovering from a stroke;
- for treatment of a chronic serious back condition;
- to provide psychological comfort to a spouse during medical testing for cancer;
- incapacity due to severe morning sickness during pregnancy;
- to care for an adult son who suffers from a serious mental condition and is unable to care for himself.

What does "to care for..." mean?

The provision that an employee is "needed to care for" a family member encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc. The term *also* includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

The employee will be required to have the family member's health care provider certify that the employee is needed to provide assistance or that the employee's presence would provide beneficial psychological comfort.

"Son", "daughter," and "parent" is defined broadly:

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability."

Persons who are "in loco parentis" include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

I missed a few days because of the flu. Is that a serious health condition?

That depends. Generally the flu is not covered unless it becomes serious enough to:

- 1) make you incapacitated (unable to perform one essential function of your job or perform regular daily activities) for more than 3 *calendar* days; and
- 2) require *continuing medical treatment* from a "healthcare provider."

"Continuing medical treatment" requires treatment on two or more occasions by a health care provider, or treatment on a single occasion which results in a "regimen of supervised treatment." This treatment includes:

- evaluations of your condition;
- treatment to resolve or alleviate the condition such as prescription medicine (for example an antibiotic), or special therapeutic equipment (for example oxygen).

Over the counter medicines, exercise, or rest would *not* be considered covered treatment.

So if you are sick in bed with the flu for more than 3 consecutive days, and you have seen your doctor who then prescribes you an antibiotic, you should be protected by the FMLA.

Does a healthcare provider have to be a licensed physician?

No. The FMLA regulations define "health care provider" fairly broadly. The term not only includes physicians but also optometrists, osteopaths, chiropractors, podiatrists, dentists, clinical psychologists, Christian Science practitioners, nurse practitioners, nurse midwives, and clinical social employees (if authorized under state law to diagnose and treat serious health conditions without supervision), and other providers recognized by the employer or group health plan.

Also, treatment by a nurse or physician's assistant under the direct supervision of a health care provider or treatment by a physical therapist on referral by a health care provider qualifies as treatment by a health care provider.

Is time-off for "testing" for a serious health condition covered by the FMLA?

A serious health condition must be treated or supervised by a health care provider. Treatment includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

Is substance abuse a serious health condition?

Yes. Substance abuse can qualify as a "chronic serious health condition." However, FMLA leave may only be taken for treatment for substance abuse. Absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

Can I use my FMLA time-off for periods shorter than a week or a day?

Yes. The law provides eligible employees with time off *totaling* 12 weeks a year. FMLA leave can be taken on a continuous basis or, if a health care provider determines it is medically necessary, in intervals of as short as a day or part of a day. Leave may not be denied because of production needs, a busy schedule, or because the employer considers you too important to take time off.

FMLA leave may be taken intermittently or as a reduced schedule under certain circumstances.

Intermittent leave:

Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. It can be used to protect employees from discipline for a variety of absences related to a serious health condition including:

- incapacity due to a chronic serious health condition that flares-up sporadically;

- inpatient care in a hospital (involving an overnight stay);
- incapacity due to pregnancy (such as severe morning sickness);
- treatment or testing for a serious health condition, prenatal care; or
- care for a child, parent or spouse with a serious health condition.

The FMLA protects eligible employees who may be absent for one day, come in late, leave work for a couple hours, or depart work early if such time-off is for an FMLA qualifying reason and a healthcare provider certifies that it is medically necessary. Employees must still comply with policies related to notifying the supervisor, reporting time, etc.

Reduced schedule leave:

A reduced schedule leave is a leave that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced schedule leave is a change in the employee's schedule for a period of time, normally from full-time to part-time, but may also include declining overtime. It can be used if a health care provider certifies that it is medically necessary for the employee's own serious health condition or to care for a child, parent or spouse with a serious health condition.

Example: If your doctor restricts you to 20 hours a week for 24 weeks following surgery, your employer must place you on this schedule (twenty-four weeks at half time equals 12 weeks).

Can I be refused FMLA time-off because I could get treatment outside of work hours?

An employer may require that you try to schedule time-off outside of working hours so as not to "disrupt unduly" the employer's operations. It is usually a good idea to consult with your supervisor prior to making appointments to try to arrange a mutually agreeable treatment schedule, otherwise the employer could require that you try to reschedule so as not to "disrupt unduly." This does not mean the employer can deny you the time off for appointments, only that they can require that you *attempt* to reschedule so as not to "disrupt unduly." If your health care provider can only provide you (or your covered family member) necessary treatment during the workday, time off must be given.

How do I initiate FMLA protections?

FMLA protections are triggered once you provide sufficient and timely notice to management that you are unable to work because of your own serious health condition, or your spouse's, child's or parent's serious health condition or for some other qualifying reason such as an adoption or a foster care placement. You do not have to mention the FMLA by name, although it is a good idea to do so. This notification can be verbal, given to anyone in management.

It is the employer's legal responsibility to designate paid or unpaid time-off as FMLA. They are expected to investigate and ask questions to determine if your leave or absence qualifies for FMLA protection. If your employer asks, you must provide further details about your condition or that of your family member.

Do I still have to follow LCC rules on absenteeism and leaves?

As mentioned above, the FMLA does not forbid employers from establishing certain attendance rules such as calling in before start time, filling out FMLA paperwork, reporting periodically on the status of your condition - provided these rules are enforced in a reasonable manner. LCC does require employees to provide evidence of incapacity in order to use sick leave pay to cover the absence.

Where do I find the forms to apply for FMLA?

Forms for applying for FMLA for yourself or your family member can be found at:
<http://www.lcc.edu/hr/employee-forms/>