

Family Medical Leave Act (FMLA) - Frequently Asked Questions

What is FMLA?

The Family and Medical Leave Act (FMLA) provides eligible employees with up to 12 work weeks of unpaid, job-protected leave in a 12-month period for specified family, medical, and military reasons.

Does the law guarantee paid time off?

No. 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 or, subject to certain restrictions, sick or family leave, for some or all of the FMLA leave period. In AZ state service, when paid leave is substituted for unpaid FMLA leave, it is counted against the employee's FMLA leave entitlement.

What must an employee do to be eligible for FMLA benefits?

Employees are eligible to take FMLA if they have been employed by the State of Arizona for at least 12 months, and have worked 1,250 hours over the previous 12 months, immediately preceding the commencement of leave.

Do the 1,250 hours include paid leave time or other absences from work?

No. The 1,250 hours include only those hours actually worked for the employer. Paid leave and unpaid leave, including FMLA leave, are not included.

Do the 12 months of service with the employer have to be continuous or consecutive?

No. The 12 months do not have to be continuous or consecutive; all time worked for employment periods prior to a break in service of seven years or more need not be counted unless the break is occasioned by the employee's fulfillment of his or her National Guard or Reserve military obligation.

How is the 12-month period calculated under FMLA?

The State of Arizona calculates FMLA by using a "rolling" 12-month period measured backward from the date an employee uses FMLA leave.

What types of leave are considered "FMLA qualifying"?

An "eligible" employee, is entitled to up to 12 work weeks of leave during a 12-month period, for the following reasons: the birth and care of a newborn child; placement with the employee of a son or daughter for adoption or foster care; to care for an immediate family member (spouse, child or parent) 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 active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation.

In addition, the National Defense Authorization Act (NDAA) for FY 2008 amended the FMLA to provide for (military) service member caregiver leave which allows eligible employees to take up to 26 workweeks of job protected leave in a "single" 12 month period to care for a covered service member with a serious injury or illness.

What is a “qualifying exigency”?

An eligible employee who is a family member of a covered military member may take FMLA to address a wide range of the most common issues that arise when a military member is deployed, such as attending military sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare.

What is “military caregiver leave”?

Section 585 of the NDAA amends the FMLA of 1993 to permit an eligible employee who is the “spouse, son, daughter, parent, or next of kin” of a service member to take up to 26 workweeks of job protected leave to care for a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is on the temporary disability retired list for a serious injury or illness.

A serious injury or illness (as it pertains to military caregiver leave) means an injury or illness incurred by the service member in the line of duty, on active duty in the Armed Forces, that may render the member medically unfit to perform the duties of his/her office, grade, rank or rating.

Would a husband and wife, working for the same employer, each be entitled to 12 workweeks of FMLA leave for the birth and care of a newborn child, placement with the employee of a son or daughter for adoption or foster care, to care for an immediate family member with a serious health condition, when the employee is unable to work because of a serious health condition or for qualifying exigencies in support of a contingency operation?

No. A husband and wife who are eligible for FMLA leave for the reasons noted above, are limited to a combined total of 12 workweeks of FMLA leave during the designated 12 month period.

An “eligible” employee, is entitled to up to 12 work weeks of leave during a 12-month period, for the following reasons: the birth and care of a newborn child; placement with the employee of a son or daughter for adoption or foster care; to care for an immediate family member (spouse, child or parent) 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 active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation.

Would a husband and wife, working for the same employer, each be entitled to 26 workweeks of FMLA leave to care for a member of the Armed Forces who is undergoing medical treatment?

No. A husband and wife who are eligible for FMLA leave to care for a member of the Armed Forces who is undergoing medical treatment would be limited to a combined total of 26 workweeks of FMLA leave during the designated 12 month period.

May I take FMLA leave for visits to a physical therapist, if my doctor prescribes the therapy?

Yes. FMLA permits you to take leave to receive “continuing treatment by a health care provider,” which can include recurring absences for therapy treatments such as those ordered by a doctor for physical therapy.

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

No. You do not have to provide medical records. However, the employer may request that, for any leave taken due to a serious health condition, you provide a medical certification from a health care provider confirming that a serious health condition exists.

Can my employer require me to return to work before I exhaust my leave?

Subject to certain limitations, your employer may deny the continuation of FMLA leave due to a serious health condition if you fail to fulfill any obligations to provide supporting medical certification. The employer may not, however, require you to return to work early by offering you a light duty assignment.

Can my employer make inquiries about my leave during my absence?

Yes. Your employer may ask you questions to confirm whether the leave needed or being taken qualifies for FMLA purposes, and may require periodic reports on your status and intent to return to work after leave. Also, if the employer wishes to obtain another opinion, you may be required to obtain additional medical certification at the employer's expense, or recertification during a period of FMLA leave. The employer may use a health care provider, a human resources professional, a leave administrator, or a management official (but not the employee's direct supervisor) to authenticate or clarify a medical certification of a serious health condition.

Can my employer refuse to grant me FMLA leave?

If you are an "eligible" employee who has met FMLA's notice and certification requirements (and you have not exhausted your FMLA leave entitlement for the designated 12 month period), you may not be denied FMLA leave.

Will I lose my job if I take FMLA leave?

Generally, no. It is unlawful for any employer to interfere with or restrain or deny the exercise of any right provided under this law. Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies. Under limited circumstances, an employer may deny reinstatement to work - but not the use of FMLA leave - to certain highly-paid, salaried ("key") employees.

Can FMLA leave be taken intermittently?

Eligible employees may take FMLA leave on an intermittent or reduced schedule basis when medically necessary due to the serious health condition of a covered family member or the employee or the serious injury or illness of a covered servicemember. Eligible employees may also take FMLA leave on an intermittent or reduced schedule basis when necessary because of a qualifying exigency. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations.

Are there other circumstances in which my employer can deny me FMLA leave or reinstatement to my job?

In addition to denying restoration in certain circumstances to "key" employees, employers are not required to continue FMLA benefits or restore employees who would have been laid off or otherwise had their employment terminated had they continued to work during the FMLA leave period as, for example, due to a general layoff.

Employees who give unequivocal notice that they do not intend to return to work lose their entitlement to FMLA leave.

Employees who are unable to return to work and have exhausted their available FMLA leave in the designated "12 month period" no longer have FMLA protections of leave or job restoration.

Under certain circumstances, employers who advise employees experiencing a serious health condition that they will require a medical certificate of fitness for duty to return to work may deny restoration to an employee who fails to provide the certification, or may delay restoration until the certification is submitted.

Can my employer fire me for complaining about a violation of FMLA?

No. Nor can the employer take any other adverse employment action on this basis. It is unlawful for any employer to discharge or otherwise discriminate against an employee for opposing a practice made unlawful under FMLA.

How do I learn more about the Family Medical Leave Act?

Contact your agency Human Resources office for more information.