

NC Family to Family Health Information Center

"A beacon for families of children with special health care needs."

NC Family to Family Health Information Center
ECAC
907 Barra Row, Suites 102/103
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Health Consumer Rights and Related Laws FMLA

The Family and Medical Leave Act (FMLA) of 1993, entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specific family and medical reasons. The employer may elect to use the calendar year, a fixed 12-month fiscal year, or a 12-month period prior to or after the commencement of leave as the 12-month period.

The law contains provisions on employer coverage; employee eligibility for the law's benefit; entitlement to leave; maintenance of health benefits during leave; and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request to take FMLA leave. The law does require employers to keep certain records.

FMLA applies to all:

- Public agencies, including state, local and federal employees, local education agencies (schools), and
- Private-sector employers who employed 50 or more employees in 20 or more work weeks in the current or preceding calendar year and who are engaged in commerce or in any industry or activity affecting commerce-including joint employers and successors of covered employers.

Employee Eligibility

To be eligible for FMLA benefits, an employee must:

- Work for a covered employer.
- Have worked for the employer for a total of 12 months.
- Have worked at least 1,250 hours over the previous 12 months (24 hours a week average).
- Work at a location in the United States or in any territory or possession of the U.S. where at least 50 employees are employed by the employer within 75 miles.

Leave Entitlement

A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- For the birth and care of the newborn child of the employee.
- For placement with the employee of a son or daughter through adoption or foster care.
- To care for an immediate family member (spouse, child, or parent) with a serious health condition.

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To take medical leave when the employee is unable to work due to a serious health condition. Under some circumstances, employees may take FMLA leave **intermittently**—which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

- If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.
- FMLA leave may be taken intermittently whenever medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Subject to certain conditions, employees or employers may choose to use accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave. The employer is responsible for designating if an employee's use of paid leave counts as FMLA leave, based on information from the employee.

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves either:

Any period of incapacity or treatment connected with inpatient care (such as an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care or

Continuing treatment by a health care provider which includes any period of incapacity (inability to work, attend school or perform other regular daily activities) due to:

1. A health condition (including treatment therefore, or recovery) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:
 - Treatment two or more times by or under the supervision of a health care provider or
 - One treatment by a health care provider with a continuing regimen of treatment or
2. Pregnancy or prenatal care. (A visit to the health care provider is not necessary for each absence) or
3. A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence or
4. A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment or
5. Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

Maintenance of Health Benefits

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same

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terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some cases, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

Job Restoration

Upon return from FMLA leave, an employee must be restored to employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

An employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave, nor be counted against the employee under a "no fault" attendance policy.

Notice

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable.

Employers may require employees to provide:

- Medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member.
- Second or third medical opinions (at the employer's expense) and periodic recertification.
- Periodic reports during FMLA leave regarding the employee's status and intent to return to work.

For more information:

U.S. Department of Labor
ESA Wage and Hour Division
800 Briar Creek Road
Suite CC-412
Charlotte, NC 28205-6903
1-866-4 US WAGE
(1-866-487-9243)
<http://www.dol.gov/esa>

or

U.S. Department of Labor
ESA Wage and Hour Division
Somerset Bank Building
4407 Bland Road
Suite 260
Raleigh, NC 27609-6296
1-866-4 US WAGE

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