# AFGE's Guide to

# FAMILY FRIENDLY/ FAMILY MEDICAL LEAVE

The American Federation of Government Employees (AFGE) is a labor organization affiliated with the AFL-CIO that represents approximately 700,000 employees of the United States federal government and the government of the District of Columbia.

Under the leadership of the National Vice President for Women's and Fair Practices, the Women's and Fair Practices Departments are devoted to promoting the civil, human, women's and workers' rights of federal and D.C. government workers.

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# TABLE OF CONTENTS

# INTRODUCTION

Everyone will experience an illness or health condition that will require taking time off work. Whether it is your own experience or that of a loved one, no employee should have to worry about choosing between taking care oneself or a loved one and taking time off work.

The Family and Medical Leave Act of 1993 (FMLA) provides leave for family and medical-related purposes. DC government employees may use either the FMLA or the District of Columbia Family Medical Leave Act of 1990 (DCFMLA) to request leave for family or medical-related purposes.

FMLA and DCFMLA benefit workers, but the eligibility requirements are strict and differ based on Department of Labor (DOL), Office of Personnel Management (OPM) and DC government regulations. This guide provides an overview of the different laws and regulations governing AFGE members.

More detailed information can be obtained directly from DOL, OPM and DC Office of Human Rights (OHR) for private, federal, and DC government employees, respectively.

This book is divided into three sections:

(1) FMLA;

(2) DCFMLA; and

(3) Family Friendly Leave.

# FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

Recognizing national interests in family stability and economic security, Congress passed the FMLA to help employees balance their work and family lives while accommodating agencies' legitimate business interests.

Under the FMLA, eligible employees may take unpaid leave for medical reasons; birth or adoption of a child; care of a child, spouse, or parent who has a serious health condition; care of a covered servicemember with a serious injury or illness; or for a qualifying exigency based on an employee's spouse, son, daughter, or parent's status as a military member on covered active duty or call to covered active duty status. Although the leave is unpaid, FMLA protects eligible employees' job positions and employees may continue using their agency-provided group health insurance coverage under the same terms and conditions as they would if they had not taken FMLA leave.

Congress requires agencies to follow the FMLA in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment. Therefore, agencies (1) may not treat employees differently because of their sex and (2) should promote equal employment opportunity regardless of sex. *See* 29 CFR § 825.101.

## FMLA Terms and Definitions[1]

- *Adoption* means a legal process in which an individual becomes the legal parent of another's child. Importantly, "[t]he source of an adopted child—e.g., whether from a licensed placement agency or otherwise—is not a factor in determining eligibility for leave under this subpart."

- *Covered active duty* or *call to covered active duty status* means:

  **(1)** In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty); and

  **(2)** In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation pursuant to any of the following sections of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

- *Covered military member* means the employee's spouse, son, daughter, or parent on covered active duty or call to covered active duty status.

- *Covered Service Member* means a current 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 otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty. *See also* 29 CFR § 825.127(a).

[1] These definitions apply to employees who are covered under Title II of FMLA. This is not a comprehensive list of definitions. For a complete list, see 5 CFR § 630.1202 (last accessed Dec. 3, 2021).

- *Employee* means an individual to whom this subpart applies.

- *Essential functions* means the fundamental job duties of the employee's position, as defined in 29 CFR § 1630.2(n). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

- *Family and medical leave* means an employee's entitlement to 12 administrative workweeks of unpaid leave for certain family and medical needs, as prescribed under sections 6381 through 6387 of title 5, United States Code.

- *Foster care* means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family to take the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

- *Health care provider* means:

  **(1)** A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this subpart;

  **(2)** Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question;

  **(3)** A health care provider as defined in paragraph (2) of this definition who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his or her practice as defined under such law;

  **(4)** A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or

  **(5)** A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with Public Law 95-314, August 11, 1978 (92 Stat. 469), as amended by Public Law 103-344, October 6, 1994 (108 Stat. 3125).

- *In loco parentis* refers to the situation of an individual who has day-to-day responsibility for the care and financial support of 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.[2]

- *Incapacity* means the inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

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[2] An eligible employee is entitled to FMLA leave to care for a person who stood *in loco parentis* to that employee when the employee was a child. For more information about the determination of *in loco parentis* status for eligible employees, visit https://www.dol.gov/agencies/whd/fact-sheets/28C-fmla-eldercare/(last accessed Dec. 3, 2021).

- *Intermittent leave or leave taken intermittently* means leave taken in separate blocks of time, rather than for one continuous period of time, and may include leave periods of 1 hour to several weeks. Leave may be taken for a period of less than 1 hour if agency policy provides for a minimum charge for leave of less than 1 hour under 5 CFR § 630.206(a).

- *Leave without pay* means an absence from duty in a nonpay status. Leave without pay may be taken only for those hours of duty comprising an employee's basic workweek.

- *Parent* means a biological, adoptive, step, or foster father or mother, or an individual who stands or stood *in loco parentis* to an employee meeting the definition of a son or daughter below. This term does not include parents-in-law.

- *Reduced leave schedule* means a work schedule under which the employee's usual number of hours of regularly scheduled work per workday or workweek is reduced as a result of the increased use of leave. The number of hours by which the daily or weekly tour of duty is reduced are counted as leave for the purpose of this subpart.

- *Regularly scheduled* means the same as that term in § 610.102.

- *Regularly scheduled administrative workweek* means the same as that term in § 610.102.

- *Serious health condition* means an illness, injury, impairment, or physical or mental condition that involves:
  **(i)** Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

  **(ii)** Continuing treatment by a health care provider that includes (but is not limited to) examinations to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists. Continuing treatment by a health care provider may include one or more of the following -

    **(A)** A period of incapacity of more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves -

      **(1)** Treatment two or more times by a health care provider, by a health care provider under the direct supervision of the affected individual's health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

      **(2)** Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).

    **(B)** Any period of incapacity due to pregnancy or childbirth, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the

period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

**(C)** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that -

**(1)** Requires periodic visits for treatment by a health care provider or by a health care provider under the direct supervision of the affected individual's health care provider,

**(2)** Continues over an extended period of time (including recurring episodes of a single underlying condition); and

**(3)** May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). The condition is covered even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

**(D)** A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's, severe stroke, or terminal stages of a disease).

**(E)** Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity or more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease).

**(2)** Serious health condition does not include routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop; or an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions. Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.

■ *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 -

**(1)** Under 18 years of age; or

**(2)** 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc. A "physical or mental disability" refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR § 1630.2(h)-(j).

- *Son or daughter on covered active duty or call to covered active duty status* means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood *in loco parentis*, who is on covered active duty or call to covered active duty status, and who is of any age.

- *Spouse* means a husband or wife as defined or recognized under state law for purposes of marriage where the employee resides, including common law marriage and same-sex marriage.[3]

- *Qualifying exigency:* Eligible employees may take FMLA leave for a "qualifying exigency" when the employee's spouse, son, daughter, or parent is a military member while the military member is on covered active duty, call to covered active duty status, or has been notified of an impending call or order to covered active duty. *See* 29 CFR § 825.126. The following general categories are qualifying exigencies for eligible employees:[4]

    (1) Short-notice deployment (notice of seven or less calendar days);

    (2) Military events and related activities;

    (3) Childcare and school activities;

    (4) Financial and legal arrangements;

    (5) Counseling provided by someone other than a health care provider;

    (6) Rest and recuperation for up to 15 calendar days;

    (7) Post-deployment activities;

    (8) Parental care; and

[3] DOL follows the "place of celebration" rule, not the "state of residence" rule, to define the meaning of spouse under the FMLA. Under 29 CFR §§ 825.102 and 825.122(b), Congress relies on the law of the place in which the marriage was entered into, as opposed to the law of the state in which the employee resides. A place of celebration rule allows all legally married couples, whether opposite-sex or same-sex, or married under common law, to have consistent federal family leave rights regardless of where they live. The definition of spouse under 29 CFR § 825.102 expressly includes individuals in lawfully recognized same-sex and common law marriages and marriages that were validly entered into outside of the United States if they could have been entered into in at least one state.

[4] Members should carefully review 29 CFR § 825.126 for more details on qualifying exigencies.

(9) Additional activities, such as other events which arise out of the military member's covered active duty or call to covered active duty status, based on an agreement between the employee and employer.

## FMLA Protections

Under the FMLA, eligible employees are entitled to **12 workweeks** of job-protected, unpaid leave in a 12-month period for any of the following circumstances:

(1) the birth and care of a newborn child of the employee;

(2) the placement with the employee of a son or daughter for adoption or foster care;

(3) care for the employee's spouse, child, or parent who has a serious health condition;

(4) a serious health condition that makes the employee unable to perform the essential functions of his or her job; and/or

(5) 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." [5]

Eligible employees are entitled to **26 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. (This is often called, "military caregiver leave.").

**Note**: If the employee is an eligible employee who has met FMLA's notice and certification requirements (and he or she has not exhausted their FMLA leave entitlement for the year), the agency **cannot** deny the employee's request for FMLA leave.

Neither agency policies nor collective bargaining agreements can take away employees' FMLA rights, but they can provide more generous leave polices than those set forth under the FMLA.

## FMLA Breakdown

The FMLA consists of 5 Titles which cover the following subjects:

- Title I covers private employees and certain federal employees not covered by Title II. This includes employees at USPS, the DC government, and individual employees on a temporary (one year or less) or intermittent appointment. (Nonappropriated Fund employees of the Department of Defense and Coast Guard, DOD teachers, and Title 38 employees of the Department of Veterans Affairs are covered by agency regulations which mirror Department of Labor regulations. *See* 29 CFR Part 825).
- Title II covers most federal employees covered by the annual and sick leave system established under Title 5 USC, Chapter 63. (OPM regulations published in 5 CFR § 630).

[5] The National Defense Authorization Act for Fiscal Year 2010 (2010 NDAA) was enacted in 2009. The 2010 NDAA amends the FMLA to expand military family leave provisions that were added to the FMLA in 2008.

- Title III establishes the Commission on Leave.
- Title IV contains miscellaneous provisions, including rules governing the FMLA's effect on employers' leave policies that are more generous than the FMLA, other laws, and existing employment benefits.
- Title V covers family medical leave entitlement for some US Senate and House of Representatives employees.

# FMLA Eligibility

Eligibility and requirements for FMLA coverage depend on whether the employee works in either (1) the private sector or (2) the federal or District of Columbia governments.

## Employees covered under Title I

You are eligible for FMLA leave under Title I if you meet the definition below:

> An "eligible employee" is an employee of a covered employer who:
>
> (1) has been employed by the employer for at least 12 months, and
>
> (2) has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, and
>
> (3) is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite. 29 CFR § 825.110; *see* 29 CFR § 825.105(b) regarding employees who work outside the U.S.

Generally, the 12-months of work requirement does not require consecutive months. However, employers are only required to count time worked within seven years, *unless* the break in employment is (1) due to an employee's fulfillment of military obligations or (2) governed by a collective bargaining agreement or other written agreement. Employees should carefully review 29 CFR § 825.110(b) for more details.

- To determine whether an employee has worked 1,250 hours in the 12 months immediately preceding the beginning of FMLA leave, employers must only count hours in which the employee actually performs work, excluding holidays, vacations, etc. However, any time the employee would have worked but did not because of National Guard or Reserve military service counts toward the 1,250 hours. 29 CFR § 825.110.

**Note:** Generally, the employee has the burden of proving entitlement.

## Employees Covered under Title II

You are eligible for FMLA leave under Title II of the FMLA if you meet the definition below:

- An "employee" means an employee as defined by 5 USC § 6301, included on page 3 of this manual.
- Employees must have worked as a civil servant for 12 months. 5 CFR § 630.1201(b).
- The 12 months do not have to be consecutive or recent.
- All time worked for the employer counts towards the 12-month requirement.

**Note**: It is critically **IMPORTANT** for employees to comply with FMLA's notice and medical certification requirements. **If an employee does not comply with the notification requirements set forth under 5 CFR § 630.1207 or does not provide medical certification signed by a health care provider in accordance with 5 CFR § 630.1208, then the employee is NOT entitled to FMLA leave**. This handbook discusses the employee's obligations in further detail on pages 13-18.

## Special Considerations for Pregnancy and New Parents

A new mother or father may use paid sick leave for the period of recovery following childbirth as certified by a medical professional. (Generally, the recovery period lasts no longer than 6 weeks, unless complications arise.). The new parent's caregiver is also entitled to use paid sick leave during the parent's recovery. *See* 5 CFR § 630.1203, 630.1206.

Pregnancy leave or disability leave for the birth of a child qualifies as FMLA leave for a serious health condition and generally counts towards the FMLA's12-week limit.

Unlike when employees take FMLA leave for other qualifying reasons, if an employee takes FMLA leave to care for a newly born or newly placed son or daughter, the agency MAY NOT request medical certification.

## Administration of FMLA

The Department of Labor (DOL) and the Office of Personnel Management (OPM) administer the FMLA.

Under Title I of the FMLA, the DOL issues regulations for private employees and certain federal employees who are not covered under Title II, like U.S. Postal Service employees and some civilian Department of Defense employees. For more information on the DOL's FMLA regulations, visit https://www.dol.gov/agencies/whd/fmla.

Under Title II of the FMLA, OPM issues regulations for most federal and DC government employees. For more information on the OPM's FMLA regulations, visit https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/family-and-medical-leave/.

## Employee Benefits and Protections During FMLA Leave

An employee is entitled to protections while the employee is on FMLA leave, such as group health insurance benefits, paid leave substitution, and other benefits.

### Group Health Insurance Benefits

If an agency provides group health insurance to an employee, then the employee is entitled to continue group health insurance coverage while taking FMLA leave. The coverage must continue as if the employee did not take FMLA leave. For example, if the agency provided family member coverage to the employee before the employee took FMLA leave, then the agency must maintain family member coverage for the duration of the FMLA leave. Similarly, the employee must continue to make regular contributions towards health insurance premiums if the employee did so before they took FMLA leave.

### Substitution of Paid Leave

FMLA entitles eligible employees to take unpaid leave. Under certain conditions, employees may "substitute," or run at the same time as their unpaid FMLA leave, accrued paid leave, such as sick or vacation leave, to cover some or all of the period of unpaid FMLA leave. An agency may require employees to substitute accrued paid leave for unpaid leave even when the employee has not chosen to do so. Paid leave

taken for reasons that do not qualify for FMLA leave does not count against the employee's FMLA leave entitlement.

**Note:** To substitute accrued paid leave, employees must follow the agency's normal policies for using that type of leave, such as submitting a leave form or providing advance notice.

## Other Benefits

Other than group health insurance, an employee's rights to benefits while taking FMLA leave depend on the agency's established policies. Any benefits that continue while the employee takes other forms of leave must continue while the employee is on FMLA leave. This includes paid leave if the employee substitutes accrued leave paid for FMLA leave.

## Protection from Adverse Employment Actions

- Agencies MAY NOT take any adverse employment action against employees for complaining about FMLA violations.
- Agencies MAY NOT discharge or otherwise discriminate against employees for opposing employment practices prohibited by the FMLA.
- Agencies MAY NOT interfere with, restrain, or deny employees the exercise of any right provided under the FMLA.
- Agencies MAY NOT consider whether employees took FMLA leave when determining employment actions, such as hiring, promotions, or discipline. Agencies MAY NOT count FMLA leave as an absence under "no fault" attendance policies.

# Limitations to FMLA Protections

FMLA does not protect an employee from employment actions that would have taken place if the employee was not on FMLA leave. For example, if an agency eliminated a shift or decreased overtime, an employee on FMLA leave could not return to work the eliminated shift or the original overtime hours. If an employee is laid off during the period of FMLA leave, the agency must be able to show that the employee would not have been employed at the time of the reinstatement.

# Requesting FMLA Leave

Generally, federal employees must specifically invoke their rights under FMLA. It is the employee's responsibility to know, understand, and invoke his or her rights to leave under FMLA.

If an employee needs to request or use FMLA leave, the employee must comply with three requirements before they can take FMLA leave.

The **three requirements** are: **Notice**, **Medical Certification**, and **Recertification**.

## 1. Notice

### Title I Employees[6]

An employee must provide the agency with at least 30 days' notice before FMLA leave is to begin if the need for leave is foreseeable. If 30 days' notice is not practicable under the circumstances, then the employee must provide notice as soon as practicable. In a situation where 30 days' notice of foreseeable leave is required, an employee must explain why they did not provide 30 days' notice if the agency asks them. *See* 29 CFR §§ 825.302(a)-(c).

**Note:** "As soon as practicable" means as soon as both possible and practical, considering all of the specific facts and circumstances. *See* 29 CFR § 825.302(b).
An agency may require an employee taking FMLA leave to follow the agency's usual and customary procedural requirements for requesting leave, absent unusual circumstances. *See* 29 CFR § 825.302(d).

### Title II Employees[7]

Employees must specifically invoke FMLA when they request leave, and they must comply with the FMLA's notification and medical certification requirements. *See* 5 CFR § 630.1203(b) (employees must invoke FMLA), 5 CFR 630.1207 (notice requirements), 5 CFR §§ 630.1208-1209 (certification), 5 USC § 6382 (leave requirements generally).

**Note:** Carefully review your collective bargaining agreement for any additional notice requirements.

An employee must provide the agency with at least 30 days' notice before FMLA leave is to begin if the need for leave is foreseeable. If 30 days' notice is not practicable under the circumstances, then the employee must provide notice as soon as practicable. *See* 5 CFR §§ 630.1207 (a), (c)-(d).

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[6] *See* 29 CFR § 825.302 for more details.
[7] S*ee* 5 CFR § 630.127 for more details.

**Note:** "As soon as practicable" means as soon as both possible and practical, considering all of the specific facts and circumstances. *See* 29 CFR § 825.302(b).

If the need for FMLA leave is foreseeable, and the employee fails to give 30 days' notice and cannot give a reasonable excuse for the delay, then the agency is allowed to delay the taking of leave until at least 30 days after the date the employee provides notice of the need for leave. *See* 5 CFR § 630.1207(e).

An agency may waive the notice requirements under 29 CFR § 630.1207 and instead impose its usual and customary policies or procedures for providing notification of other types of leave. However, the agency's policy for notification of leave must not be more stringent than the requirements under 29 CFR § 630.1207, and an agency may not deny an employee's entitlement to FMLA leave if the employee does not follow its policy but does comply with 29 CFR § 630.1207. *See* 29 CFR § 630.1207(f).

## 2. Medical Certification

## Certification Requirements for Both Title I and Title II Employees

For any leave taken due to a serious health condition, an agency may request that an employee provide a medical certification confirming that the employee has a serious health condition. If requested, the employee **MUST** provide a medical certification signed by the health care provider **within 15 calendar days of the agency's request**. For more details, Title I employees should carefully review 5 USC § 6383 and DOL Fact Sheet #28G, https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs28g.pdf. Title II employees should carefully review 5 CFR § 630.128.

If, despite good faith efforts, the employee cannot provide the medical certification within 15 days, the employee **MUST** provide it within 30 calendar days of the agency's request to submit medical certification.

Employees may choose to use forms offered by the DOL, WH-380-E or WH-380-F, to meet the medical certification requirements, or the agency may use its own forms. If the agency uses its own forms, it cannot ask for more information than what is required under 5 USC § 6383.

**Note**: An agency **may deny an employee's request to continue FMLA leave** if the employee fails to fulfill their obligations to provide a medical certification that meets the requirements of 5 USC § 6383 (Title I employees) or 5 CFR § 630.1208 (Title II employees).

Generally, medical certification regarding a serious health condition should include:

1) the date the serious health condition began;

2) either:

    a. the likely duration of the condition; or
    b. a specific description stating that the condition is chronic and continuing in nature; and
    c. whether the patient is currently incapacitated; and
    d. the likely duration and frequency of such episodes; and

3) appropriate medical facts regarding incapacitation and treatment.

To ensure the medical certification meets all requirements, employees should carefully review 5 USC § 6383 (Title I employees) or 5 CFR § 630.1208 (Title II employees).

If an employee submits a complete and sufficient certification signed by the health care provider, an agency may not request additional information from the health care provider. However, if an agency has reason to doubt the validity of a medical certification, it may require the employee to obtain a second opinion at the agency's expense. A third opinion is permitted if there is a conflict between the two previous opinions. The third opinion is final and binding. *See* 5 USC § 6383 (Title I employees) or 5 CFR § 630.1208 (Title II employees).

The employee's direct supervisor may not contact the employee's health care provider regarding the medical certification. However, **with the employee's permission and after the agency has given the employee the opportunity to fix any deficiencies in the certification,**[8] the following people may contact the employee's health care provider to **clarify or authenticate** information in the medical certification:

For Title I employees:[9]

a) Human resources professional;
b) Leave administrator;
c) Another health care provider; or
d) A management official.

For Title II employees:[10]

a) Health care provider representing the agency;
b) Health care provider employed by the agency; or
c) Health care provider under administrative oversight of the agency.

**Note:** Carefully review your collective bargaining agreement for any additional certification requirements.

**An employee who does not comply with the notification requirements in § 630.1207 and does not provide medical certification signed by the health care provider that includes all of the information required in § 630.1208(b) is NOT entitled to FMLA leave. 5 CFR § 630.1210(l).**

## Recertification

### Title I Employees[11]

Generally, an agency may request an employee to provide a recertification **no more often than every 30 days and only in connection with an absence by the employee.** If the initial certification indicates that the condition lasts longer than 30 days, then the agency usually must wait until that minimum duration expires before requesting a recertification. In all cases, even when the condition lasts longer than 30 days, **an agency may request recertification every six months**.

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[8] *See* 29 CFR § 825.307.
[9] *See* 5 USC § 6383; DOL Fact Sheet #28G, https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs28g.pdf.
[10] *See* 5 CFR § 630.1208.
[11] *See* DOL Fact Sheet #28G, https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs28g.pdf.

The agency may request recertification in less than 30 days ONLY IF:

(1) The employee requests an extension of leave;

(2) The circumstances described in the previous certification have changed significantly; or

(3) The agency receives information that causes it to doubt the employee's stated reason for the absence or the continuing validity of the existing medical certification.

An agency may provide the employee's health care provider with a record of absences and ask whether the serious health condition and need for leave is consistent with the leave pattern.

The agency MUST pay for the cost of the recertification.

The agency MAY NOT request a second or third opinion of a recertification.

## Title II Employees

Medical certification requirements for Title II employees closely track those for Title I employees and are established under 5 CFR § 630.1208.

For leave taken for purposes related to pregnancy, chronic conditions, or long-term conditions, an agency may require medical recertification on a periodic basis at its own expense. For leave taken for all other serious health conditions, including leave taken on an intermittent or reduced leave schedule, if a health care provider has specified on the medical certification a minimum duration of the period of incapacity, the agency may not request recertification until that period of time has passed.

An agency may request recertification more frequently than every 30 calendar days, or more frequently than the minimum duration of the period of incapacity specified on the medical certification under the following circumstances:

- The employee requests an extension of the original leave period;
- The circumstances described in the original medical certification have changed significantly; or
- The agency receives information that casts doubt upon the continuing validity of the medical certification.

*See* 5 CFR § 630.1208(j).

At its own expense, an agency may require subsequent medical recertification on a periodic basis. If an employee does not provide the requested medical certification after the FMLA leave period has begun, the agency may:

- Charge the employee as absent without leave (AWOL); or
- Allow the employee to request that the provisional leave be charged as leave

without pay or charged to the employee's annual and/or sick leave account, as appropriate.

*See* 5 CFR § 630.1208(i).

**Note:** Carefully review your collective bargaining agreement for any additional recertification requirements.

# Using FMLA Leave

Once an employee has been approved to take FMLA leave, the employee may take a total of 12 administrative workweeks of unpaid leave (leave without pay) during any 12-month period. The 12-month period begins on the first day that the employee takes FMLA leave and does not carry over.

An employee may request to use only part of the 12 weeks available to them under FMLA.

In certain situations, an employee may take FMLA leave intermittently, not consecutively, or the employee's work schedule may be reduced by hours taken as FMLA leave.

## Key Reminders for Title I Employees:

- The agency has an obligation to designate an employee's request for leave as paid or unpaid and as FMLA-qualifying, and to give notice of the designation to the employee.

- Once a Title I employee requests FMLA leave, or when the agency learns that an employee's request for leave may be for an FMLA-qualifying reason, the agency must notify the employee of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances. *See* 29 CFR §§ 825.300 (employer notice requirements generally), 825.300(b) (five-day requirement).

- If the employee does not choose to substitute unpaid FMLA leave with accrued paid leave, then the agency may require that the employee substitute accrued paid leave for unpaid FMLA leave. *See* 29 CFR § 825.207(a).

## Key Reminders for Title II Employees:

- Title II employees **must specifically invoke FMLA** to give the agency permission to deduct FMLA leave from an employee's 12-week FMLA leave entitlement. *See* 5 CFR § 630.1203(b), (h).

- An agency MAY NOT deny FMLA to eligible employees covered under Title II. *See* 5 CFR § 630.1203(a).

- An agency MAY NOT require an employee to substitute paid leave for unpaid FMLA leave. *See* 5 CFR § 630.1206(b)-(e).

## Can I Substitute FMLA Leave for Compensatory Time, Annual Leave, or Sick Leave?

Title I and II federal employees may not substitute compensatory or credit time for family leave under FMLA. However, a federal employee may use earned compensatory time off and credit hours in addition to the period of FMLA leave.

Title I and II employees may substitute annual leave for unpaid FMLA leave.

Title I and II employees may substitute paid sick leave for unpaid FMLA leave in certain situations in which the use of sick leave is permitted.

## Can I Use My Leave Retroactively?

### Title I Employees

If previously taken leave would have qualified as FMLA leave, a Title I employee and their employing agency can mutually agree to retroactively designate leave as FMLA leave, as long as the agency's failure to timely designate the leave as FMLA leave does not harm the employee. *See* 29 CFR § 825.301(d).

### Title II Employees

In most cases, Title II employees **may not** retroactively invoke entitlement to FMLA leave for any previous absence from work, but some exceptions exist:

- The agency and employee mutually agree to retroactively designate the previous leave as FMLA leave because both the employee and the employee's personal representative were incapacitated and unable to invoke entitlement for the duration of the employee's absence. In this situation, the employee must notify the agency that the leave should be designated as FMLA leave within five workdays of returning to work. 5 CFR §§ 630.1206(f)(2), 630.1203(b).

- Donated or transferred annual leave may be retroactively substituted for unpaid leave if the leave began on or after a date that was the beginning of a medical emergency. 5 CFR §§ 630.1206(f)(3), 630.909(d).

- Paid parental leave may be retroactively substituted for unpaid leave used for the care of a newly born or newly placed son or daughter. 5 CFR § 630.1206(f)(4).

**Note:** Carefully review your collective bargaining agreement for relevant information.

# Returning to Work After FMLA

Employees who cannot perform the essential functions of their position and have exhausted their 12 weeks of FMLA leave in the designated 12-month period are not entitled to additional FMLA leave or job restoration. *See* 29 CFR §825.216(c), 5 CFR § 630.1210(h).

## Title I Employees

A Title I employee is entitled to return to the same position that the employee held before taking FMLA leave or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. An employee is entitled to an equivalent reinstatement even if the employee has been replaced or the position was restructured to accommodate the employee's absence. *See* 29 CFR § 825.214, 825.204(e). Please refer to 29 CFR § 825.215 for definitions of equivalent pay, benefits, and terms and conditions of employment.

Under Title I, if an employee gives unequivocal notice that they do not intend to return to work, the agency is no longer obligated to maintain the employee's health benefits or reinstate the employee. *See* 29 CFR § 825.311(b).

## Title II Employees

A Title II employee is usually entitled to return to the same position that the employee held before taking FMLA leave or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. *See* 5 CFR § 630.1210(a). Please refer to 5 CFR § 630.1210(b) for definitions of equivalent pay, benefits, and terms and conditions of employment.
However, an employee is not entitled to return to the same or equivalent position if the employee would not otherwise have been employed in that position at the time the employee returns from leave. *See* 5 CFR § 630.1210(f).

An agency may choose not to return an employee to an equivalent position if it provided written notification that the equivalent position will be affected by a reduction in force if the employee's previous position is not affected by a reduction in force. *See* 5 CFR § 630.1210(g).

Unless otherwise provided by law, an employee who returns from FMLA leave is <u>not</u> entitled to:

1) The accrual of any employment benefits during any period of leave; or

2) Any right, benefit, or position of employment that the employee would not have been entitled to if the employee had not taken FMLA leave. *See* 5 CFR § 1210(d).

Most agencies uniformly apply an established practice or policy that requires all employees who take FMLA leave to provide medical certification to return to work. **An agency may delay the return of an employee until the medical certification is provided.** 5 CFR § 630.1210(h).

**Note:** Carefully review your collective bargaining agreement for additional information.

## Are My Medical Records Confidential?

An agency may request medical information about the serious health condition in accordance with the medical certification requirements.

Agencies may ask employees to clarify information in the medical certification, but they may not ask for additional information beyond what is required by the certification. *See* 29 CFR § 825.307, 5 CFR § 630.1208.

Any medical records or documents related to certifications, recertifications, or medical histories of employees for purposes of FMLA must be maintained as **confidential** medical records in separate files from personnel records. Only people with a "need to know" may see these types of records. People with a "need to know" may include supervisors, managers, and timekeepers if appropriate. *See* 29 CFR § 825.500(g); 5 CFR 630.1208(k).

Medical information in the medical records is protected by the Privacy Act (HIPAA).

Agencies may ask employees questions to clarify whether the leave qualifies as FMLA leave.

Agencies may request periodic reports on your status and whether and when you intend to return to work. 5 USC § 6384(e); 5 CFR §§ 630.1208(j), 630.1210(j).

For more information regarding the medical certification process, review the medical certification section of this manual on pages 14-18.


**Note:** Review your collective bargaining agreement and the agency's internal procedures regarding releasing, maintaining, and destroying employee medical records.

# Enforcing FMLA

"It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for any employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA."[12]

Employees covered under Title I of FMLA may file a complaint with DOL. Most employees choose to do this first as it costs nothing and the DOL may be able to persuade the agency to quickly remedy the situation if the DOL believes the agency is not in compliance with FMLA.

Employees covered under Title I of FMLA may sue for civil monetary damages for lost benefits or compensation. If the violations are willful, damages may be doubled, and employees may also recover attorney's fees, reasonable expert witness fees, and other costs are also available. *See* 29 USC § 2617(a)(3); 29 CFR § 825.400(c).

A federal employee under Title II of FMLA may file a grievance under the collective bargaining agreement or the agency's administrative grievance process. If the local collective bargaining agreement does not address FMLA leave, an employee may file a claim with OPM's Office of General Counsel.

**For more information about initiating a grievance in your agency, contact your union representative.**

**Note:** The EEOC does not have the authority to enforce the FMLA. However, the EEOC does have authority to ensure that agencies treat all employees equitably under the FMLA.

# DISTRICT OF COLUMBIA FAMILY AND MEDICAL LEAVE ACT OF 1990 (DCFMLA)

## DCFMLA Terms and Definitions[13]

- *Child* means: (a) a person under twenty-one (21) years of age; (b) a person, regardless of age, who is substantially dependent upon the employee by reason of physical or mental disability; and (c) a person

[12] DOL Fact Sheet #28: *The Family and Medical Leave Act*, available at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs28.pdf.
[13] This is not a comprehensive list of definitions. For a complete list, see 4 DCMR § 1699.1 (2017) (last accessed Jan. 28, 2022).

who is under twenty-three (23) years of age who is a full-time student at an accredited college or university.

- *Committed relationship* means a domestic partnership, as defined in section 2(4) of the Health Care Expansion Act of 1992; DC Official Code § 32-701(4), or a familial relationship between two individuals demonstrated by such factors as, but not limited to, mutual economic interdependence, including joint bank accounts, joint tenancy, shared lease, and joint and mutual financial obligations such as loans; domestic interdependence, including close association, public presentment of the relationship, and exclusiveness of the relationship; length of the relationship; and the intent of the relationship, as evidenced by a will or life insurance.

- *Director* means the Director of the Office of Human Rights.

- *Employee employed in an instructional capacity* means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, or auxiliary personnel, such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

- *Employer* means an individual, firm, association, or corporation, a receiver or trustee of any individual firm, association, or corporation, or the legal representative of a deceased employer, including the District of Columbia government, who employs the services of another individual for pay in the District.

- *Employment benefit* means a benefit, other than salary or wages, provided or made available to an employee by an employer, including, but not limited to, group life, health, and disability insurance; sick and annual leave; and educational and pension benefits, regardless of whether the benefit is provided by a policy or practice of an employer or by an employee welfare benefit plan as defined in title 1, subtitle A, section 3(3) of the Employee Retirement Income Security Act of 1974, effective September 2, 1974 (88 Stat. 833; 29 USC § 1002(1)).

- *Family member* means: (a) a person related by blood, legal custody, or marriage; (b) a foster child; (c) a child who lives with an eligible employee and for whom the eligible employee permanently assumes and discharges parental responsibility; or (d) a person with whom the eligible employee shares or has shared, within the last year, a mutual residence and with whom the eligible employee maintains a committed relationship.

- *Health care provider* means a person licensed under federal, state, or District law to provide healthcare services.

- *Intermittent leave* means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time. Intermittent leave may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six (6) months, such as for chemotherapy.

- *Reduced leave schedule* means leave that is scheduled for a fewer number of hours than the employee is officially scheduled to work each workweek or workday. A reduced leave schedule is one that includes less than forty (40) hours or five (5) days in a given week. Examples of reduced schedule leave includes where an employee who typically works a full-time schedule works less than full-time due to the fatigue, pain, or anxiety caused by the employee's normal schedule or due to a serious health condition, or where an employee works a reduced schedule in order to provide care or psychological comfort to a family member with a serious health condition who does not require full-time care.

- *Workweek* means a period of not more than forty (40) hours over seven (7) consecutive days, beginning on a day designated by the employer.

## DCFMLA Overview

The DC Office of Human Rights administers the DC Family and Medical Leave Act (DCFMLA) for DC employees. (DC Code § 32-516(2)). DCFMLA applies to any employer, including any federal agency, that employs 20 or more employees in the District of Columbia. The DC government is one employer. DCFMLA provides unpaid medical and family leave to covered employees.

DC government employees are covered by both the DCFMLA and the FMLA. An eligible employee must choose either the DCFMLA or FMLA.

To qualify for DCFMLA, an employee must have: (1) been employed by the employer for at least 12 consecutive or non-consecutive months, inclusive of holiday, sick, or personal leave granted by the employer as part of its regular benefits, in the 7 years immediately preceding the date on which the period of family or medical leave is to begin, **and** (2) worked for at least 1,000 hours during the 12-month period referenced above preceding the date on which the requested family or medical leave is to begin. DC Code § 32-501(1).

Under DCFMLA, during any **24-month period**:

- Covered agencies must grant an eligible employee 16 workweeks of paid parental leave or **"family" leave** for the birth, foster care placement, or adoption of a child, or to care for the serious health condition of a family member (DC Code § 32-502); **and**

- 16 workweeks of **"medical" leave** where the employee may take continuous or intermittent medical leave for his/her own serious medical condition. (DC Code § 32-503).

- DCFMLA also requires agencies to provide 24 hours of **parental leave** during any 12-month period to allow employees to attend school-related events. Agencies must give notice ten days in advance, unless such notice is not possible. DC Code § 32-1202.

- Unlike the FMLA, the DCFMLA does not have a special provision regarding family and medical leave for qualifying military servicemembers or their caretakers. If you need to request this type of leave, you should follow the FMLA instead of the DCFMLA.

- DCFMLA requires agencies to reinstate eligible employees to the **same or an equivalent position** when the employee returns from DCFMLA leave. An equivalent position must provide equivalent

employment benefits, pay, seniority, and other terms and conditions of employment. DC Code § 32-505(d).

- The requirements to obtain DCFMLA are very similar to those of FMLA: employees must meet notification and medical certification requirements.

# Using DCFMLA Leave

DCFMLA provides **unpaid, job-protected** leave. No matter how much paid leave the employee has accrued, the employee cannot take more than 16 weeks of job-protected DCFMLA leave during any 24-month period.

An employee may take accrued paid medical or sick leave while taking **medical** leave under DCFMLA, but the paid leave runs concurrently, or at the same time, as the DCFMLA leave. DC Code § 32-503(b)(2) (regarding **medical** leave under THE DCFMLA).

If an employee and employer agree that an employee may use accrued paid vacation, compensatory, or annual leave as **medical** or **family** leave under DCFMLA, then the accrued paid vacation, compensatory, or annual leave will run at the same time as the DCFMLA leave. DC Code §§ 32-502(2)(2) (family leave), 32-503(b)(3) (medical leave). DC Code § 36-1303(b)(2); *Harrison v. Children's Nat. Med. Ctr.*, 672 A.2d 572 (1996).

## Notice

Employees must notify their agencies of their need for DCFMLA leave either:

1) 30 days prior to the commencement of the leave, or

2) as soon as possible before the date the leave begins if the leave is not foreseeable.

4 DCMR § 1608.2.

If, because of an emergency, the employee cannot notify the agency until the first day of absence, then the employee must notify the agency no later than two (2) business days after the absence begins. 4 DCMR § 1608.3.

## Medical Certification

An agency may require that a request for family or medical leave under the DCFMLA be supported by a certification issued by an employee or family member's health care provider. Like the FMLA's medical certification requirements, when requested, employees must provide a complete and accurate copy of the medical certification. Please review DC Code § 32-504 for more details about certification requirements.

Agencies must keep any medical information obtained from a certification request confidential. DC Code § 32-504(g)(1).

## Employment and Benefit Protections

- The DCFMLA provides the same rights to health insurance and reinstatement as the FMLA. *See* DC Code § 32-505.

- If an employee has a complaint regarding DCFMLA, they must file it **within one (1) year of the violation**, via the DC Human Rights Commission.

## Helpful resources regarding DCFMLA:

- *The DC Family & Medical Leave Act of 1990 (DCFMLA): Selected Topics, OHR Enforcement Guidance 18-03*, available at https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/OHR%20Enforcement%20Guidance%20Final%20-%2018-03%20-DCFMLA_092818.pdf.

- *Understanding Leave Stacking Under the DCFMLA, OHR Enforcement Guidance 19-002*, available at https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/OHR%20Enforcement%20Guidance%20-%20UnderstandingLeaveStackingunderDCFMLA_092719.pdf.

- *District of Columbia Family & Medical Leave Act Frequently Asked Questions*, available at https://ohr.dc.gov/sites/default/files/dc/sites/ohr/release_content/attachments/20373/DCFMLA-Website_Facts_Questions_Answers.pdf.

# FAMILY FRIENDLY LAWS AND REGULATIONS FOR FEDERAL AND DC GOVERNMENT EMPLOYEES

## OPM Definitions Related to Annual and Sick Leave[14]

- *Accrued leave* means the leave earned by an employee during the current leave year that is unused at any given time in that year.

- *Accumulated leave* means the unused leave remaining to the credit of an employee at the beginning of the leave year.

- *Agency* means an Executive agency, as defined in 5 USC 105, and any other entity of the Federal Government that employs officers and employees to whom subchapter I of chapter 63 of title 5, United States Code, applies.

- *Committed relationship* means one in which the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

[14] A complete list of definitions is located at 5 CFR § 630.201 (last accessed Jan. 28, 2022).

- *Domestic partner* means an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships.

- *Employee* means an employee to whom subchapter I of chapter 63 of title 5, United States Code, applies.

- *Family member* means an individual with any of the following relationships to the employee:

  (1) Spouse, and parents thereof;

  (2) Sons and daughters, and spouses thereof;

  (3) Parents, and spouses thereof;

  (4) Brothers and sisters, and spouses thereof;

  (5) Grandparents and grandchildren, and spouses thereof;

  (6) Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and

  (7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

- *Health care provider* means the same as that term in 5 CFR § 630.1202, which is provided in the FMLA definition section on pages 3-4 of this guide.

- *Leave year* means the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.

- *Medical certificate* means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.

- *Parent* means—

  (1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;

  (2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian;

  (3) A person who stands *in loco parentis*[15] to the employee or stood *in loco parentis* to the employee when the employee was a minor or required someone to stand *in loco parentis;* or

[15] *In loco parentis* means someone who stands in the role of a parent to a minor or stood in that role to an adult when the adult was a minor, even if that person is not considered the parent on legal or biological bases. According to 5 CFR § 630.1202, *in loco parentis* "refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child, or,

(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

- *Serious health condition* has the meaning given that term in 5 CFR § 630.1202, which is provided in the FMLA definition section on pages 4-5 of this guide.

- *Son or daughter* means—

  (1) A biological, adopted, step, or foster son or daughter of the employee;

  (2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

  (3) A person for whom the employee stands *in loco parentis* or stood *in loco parentis* when that individual was a minor or required someone to stand *in loco parentis;* or

  (4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

- *Uncommon tour of duty* means an established tour of duty that exceeds 80 hours of work in a biweekly pay period, provided the tour—

  (1) Includes hours for which the employee is compensated by standby duty pay under 5 USC 5545(c)(1) and § 550.141 of this chapter;

  (2) Is a regular tour of duty (as defined in § 550.1302 of this chapter) established for firefighters compensated under 5 USC 5545b and part 550, subpart M, of this chapter; or

  (3) Is authorized for a category of employees by the Office of Personnel Management.

- *United States* means the several States and the District of Columbia.

## Sick Leave for Family Care and Bereavement

Federal employees may use sick leave for family care or bereavement purposes in some circumstances. *See* 5 CFR, subpart D (§§ 630.401-630.408).

The Federal Employees Family Friendly Leave Act (FEFFLA), enacted in December 1994, authorized federal employees to use their sick leave for family care and bereavement purposes. Although FEFFLA was a test program that lasted three years and is no longer in effect, the Office of Personnel Management (OPM) made the program permanent, revising its regulations accordingly.

Several types of leave exist for federal and DC government employees to care for themselves and their families, including:

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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."

- Sick Leave (General)
- Sick Leave for Personal Medical Needs
- Sick Leave for Family Care and Bereavement (SLFCB)
- Sick Leave to Care for a Family Member with a Serious Health Condition
- Sick Leave for Adoption
- Family and Medical Leave
- Military Family Leave
- Annual Leave
- Donated Leave under the Voluntary Leave Transfer and Leave Bank Programs

Under OPM regulations, covered full-time employees may use **sick leave** each year for:

(1) Personal medical needs;

(2) Care for a family member who is incapacitated, receiving medical examination or treatment, has a serious medical condition or would, as determined by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease;

(3) Death of a family member, including attending a funeral or making funeral arrangements;

(4) Adoption-related purposes, including, appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

*See* 5 CFR § 630.401.

OPM regulations regarding sick leave for family care or bereavement (SLFCB) allow leave for one of two types of purposes: **general health** or **serious medical condition**.

1. **General Health**

Under the **general health** provision, most federal employees may use up to **13 workdays** paid sick leave each leave year for the following reasons:

- Provide care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth;
- Provide care for a family member receiving medical, dental, or optical examination or treatment; or
- Make arrangements necessitated by the death of a family member or attend the funeral of a family member.

*See* 5 CFR §§ 630.401(a)(3)(i), 630.401(a)(3)(iii), 630.401 (a)(4), 630.401(b).

**2. Serious Medical Condition**

Under the **serious medical condition** provision, most federal employees may use up to **12 administrative workweeks** of sick leave to care for a family member with a serious health condition. *See* 5 CFR §§ 630.401(a)(3)(ii), 630.401(c).

**IMPORTANT NOTE:** If, at the time an employee uses sick leave to care for a family member with a serious health condition under § 630.401(c), he or she has used any portion of the hours allowed for general health reasons during the same leave year, then the agency must subtract that amount from the hours authorized for serious medical condition purposes to determine the total amount of sick leave the employee may use during the remainder of the leave year to care for a family member with a serious health condition. If an employee has previously used all hours permitted in a leave year, they are not entitled to use the additional hours of sick leave allotted towards general health conditions. *See* 5 CFR § 630.401(d).

# Requesting and Granting Sick Leave for Family Care or Bereavement (SLFCB)

## Notice

If leave taken for general health purposes (§ 630.1203(a)(1)-(2)) is foreseeable and based on an **expected birth, adoption or foster care placement, or planned medical treatment**, employees must provide notice to the agency no less than **30 calendar days** before the date the leave is to begin. If such leave will begin within 30 calendar days, then the employee must provide notice as soon as practicable. 5 CFR § 630.1207(a).

If leave taken for serious medical conditions (§ 630.1203(a)(3)-(4)) is foreseeable based on planned medical treatment, then the employee must consult with the agency and make a reasonable effort to schedule medical treatment so as not to unduly disrupt agency operations, subject to the health care provider's approval. The agency may, for justifiable cause, request that the employee reschedule medical treatment, subject to the health care provider's approval. 5 CFR § 630.1207(b).

If leave taken for a qualifying exigency related to a family servicemember (§ 630.1203(a)(5)) is foreseeable, the employee must provide notice as soon as practicable, no matter how far in advance the leave is being requested. 5 CFR § 630.1207(c).

If the need for leave is not foreseeable (e.g., medical emergency or unexpected availability of a child for adoption or foster care), and the employee cannot provide 30 calendar days' notice, the employee must provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, an employee's personal representative (e.g., a family member or other responsible party), may provide notice. If the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, then the leave may not be delayed or denied. 5 CFR § 630.1207(d).

**IMPORTANT**: If the need for leave is foreseeable, and the employee fails to give 30 calendar days' notice with no reasonable excuse for the delay of notification, the agency may delay the taking of leave under § 630.1203(a) until at least 30 calendar days after the date that the employee provides notice.

An agency may waive the notice requirements under § 630.1207(a) and instead impose its own usual and customary policies or procedures regarding notice. The agency's policies or procedures must not be more stringent than the requirements in OPM's regulations. However, an agency may not deny an employee's entitlement to leave under § 630.1203(a) if the employee fails to follow such agency policies or procedures.

## "Administratively Acceptable" Evidence

An agency may require that a request for leave under § 630.1203(a)(1) and (a)(2) be supported by evidence that is administratively acceptable to the agency. 5 CFR § 630.1207(g).

An agency may grant sick leave only when the need for sick leave is supported by administratively acceptable evidence. An agency may consider an employee's self-certification as to the reason for his or her absence as administratively acceptable evidence, regardless of the duration of the absence. An agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any purposes described in § 630.401(a) for an absence longer than 3 workdays, or for a time period less than 3 days when the agency determines it is necessary. 5 CFR § 630.405(a).

An employee must provide administratively acceptable evidence or medical certification for a request for sick leave no later than **15 calendar days** after the date the agency requests it. If it is not practicable to provide the requested evidence or certification within 15 calendar days despite the employee's diligent, good faith efforts, the employee must provide it within a reasonable period of time under the circumstances, but no later than **30 calendar days** after the date the agency requested the information**. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.** *See* 5 CFR § 630.405(b).

An agency may require an employee requesting sick leave to care for a family member with a serious health condition to provide an additional written statement from the health care provider concerning the family member's need for psychological comfort and/or physical care. The statement must certify that:

(1) The family member requires psychological comfort and/or physical care;

(2) The family member would benefit from the employee's care or presence; **and**

(3) The employee is needed to care for the family member for a specified period of time.

*See* 5 CFR § 630.405(c).

**Employees' medical certifications are confidential**. *See* 5 CFR §§ 630.1208(c),630.1208(k).

**Note:** Carefully review your collective bargaining agreement regarding this topic.

# Appendix A

**e-CFR data is current as of April 7, 2022**

**TITLE 29—Labor**

**Subtitle B—REGULATIONS RELATING TO LABOR (CONTINUED)**

**CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF**

**LABOR SUBCHAPTER C—OTHER LAWS**

**PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993**

**Subpart A—COVERAGE UNDER THE FAMILY AND MEDICAL LEAVE ACT**

Subpart C—EMPLOYEE AND EMPLOYER RIGHTS AND OBLIGATIONS UNDER THE ACT

Subpart F—SPECIAL RULES APPLICABLE TO EMPLOYEES OF SCHOOLS



Subpart G—EFFECT OF OTHER LAWS, EMPLOYER PRACTICES, AND COLLECTIVE BARGAINING AGREEMENTS ON EMPLOYEE RIGHTS UNDER FMLA



Subpart H—SPECIAL RULES APPLICABLE TO AIRLINE FLIGHT CREW EMPLOYEES

# Appendix B

# D.C. Municipal Regulations and D.C. Register

District of Columbia Family and Medical Leave Act

Title 4: Human Rights and Relations

| Section Number | Section Heading | Effective Date |
|---|---|---|
| 4-1600 | AUTHORITY AND PURPOSE | 11/19/2010 |
| 4-1601 | APPLICABILITY – COVERED EMPLOYERS – IN GENERAL | 11/19/2010 |
| 4-1602 | APPLICABILITY – COVERED EMPLOYERS – JOINT EMPLOYMENT | 11/19/2010 |
| 4-1603 | APPLICABILITY – ELIGIBLE EMPLOYEES | 11/19/2010 |
| 4-1604 | ENTITLEMENTS – GENERALLY | 11/19/2010 |
| 4-1605 | ENTITLEMENTS – MEDICAL LEAVE | 11/19/2010 |
| 4-1606 | ENTITLEMENTS – FAMILY LEAVE | 11/19/2010 |
| 4-1607 | CUMULATIVE NATURE OF FAMILY AND MEDICAL LEAVE | 11/19/2010 |
| 4-1608 | INTERACTION WITH THE FAIR LABOR STANDARDS ACT | 11/19/2010 |
| 4-1609 | EMPLOYMENT AND BENEFITS PROTECTION | 11/19/2010 |
| 4-1610 | COMPLAINT PROCEDURE | 11/19/2010 |
| 4-1611 | THE ROLE OF THE OFFICE OF HUMAN RIGHTS – DISTRICT GOVERNMENT ONLY | 11/19/2010 |
| 4-1612 | NOTICE TO BE PROVIDED BY OHR TO EMPLOYERS AND EMPLOYEES | 11/19/2010 |
| 4-1613 | NOTICE TO BE PROVIDED BY EMPLOYERS | 11/19/2010 |
| 4-1614 | REASONABLE NOTICE BY EMPLOYEE TO BE PROVIDED TO EMPLOYER | 11/19/2010 |

| | | |
|---|---|---|
| 4-1615 | CLAIMS FOR LEAVE – MEDICAL CERTIFICATION | 11/19/2010 |
| 4-1616 | CALCULATION OF LEAVE | 11/19/2010 |
| 4-1617 | ADMINISTRATION AND EMPLOYER RECORDKEEPING | 11/19/2010 |
| 4-1618 | EXCEPTION TO ELIGIBILITY – SCHOOL EMPLOYEES | 11/19/2010 |
| 4-1619 | EXCEPTION TO ELIGIBILITY – UNIFORMED EMPLOYEES | 11/19/2010 |
| 4-1620 | INTERACTION WITH FEDERAL LAW | 11/19/2010 |
| 4-1621 | PROHIBITED ACTS | 11/19/2010 |
| 4-1622 | INVESTIGATION | 11/19/2010 |
| 4-1623 | HEARINGS | 11/19/2010 |
| 4-1624 | FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER | 11/19/2010 |
| 4-1625 | FINAL DECISION OF THE DIRECTOR AFTER THE HEARING | 11/19/2010 |
| 4-1699 | DEFINITIONS | 11/19/2010 |

# Appendix C

**e-CFR data is current as of April 7, 2022**

## PART 630—ABSENCE AND LEAVE

### Subpart L—Family and Medical Leave

# Appendix D

**Certification of Health Care Provider for Employee's Serious Health Condition under the Family and Medical Leave Act**

**U.S. Department of Labor**
**Wage and Hour Division**

WAGE AND HOUR DIVISION

**DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR. RETURN TO THE PATIENT.**

OMB Control Number: 1235-0003
Expires: 6/30/2023

The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. 29 U.S.C. §§ 2613, 2614(c)(3); 29 C.F.R. § 825.305. The employer must give the employee **at least 15 calendar days** to provide the certification. If the employee fails to provide complete and sufficient medical certification, his or her FMLA leave request may be denied. 29 C.F.R. § 825.313. Information about the FMLA may be found on the WHD website at www.dol.gov/agencies/whd/fmla.

## SECTION I – EMPLOYER

Either the employee or the employer may complete Section I. While use of this form is optional, this form asks the health care provider for the information necessary for a complete and sufficient medical certification, which is set out at 29 C.F.R. § 825.306. **You may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308.** Additionally, you **may not** request a certification for FMLA leave to bond with a healthy newborn child or a child placed for adoption or foster care.

Employers must generally maintain records and documents relating to medical information, medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

(1) Employee name: _____
*First* *Middle* *Last*

(2) Employer name: _____ Date: _____ *(mm/dd/yyyy)*
*(List date certification requested)*

(3) The medical certification must be returned by _____ *(mm/dd/yyyy)*
*(Must allow at least 15 calendar days from the date requested, unless it is not feasible despite the employee's diligent, good faith efforts.)*

(4) Employee's job title: _____ Job description (☐ is / ☐ is not) attached.
Employee's regular work schedule: _____
Statement of the employee's essential job functions: _____
_____
(*The essential functions of the employee's position are determined with reference to the position the employee held at the time the employee notified the employer of the need for leave or the leave started, whichever is earlier.)*

## SECTION II - HEALTH CARE PROVIDER

Please provide your contact information, complete all relevant parts of this Section, and sign the form. Your patient has requested leave under the FMLA. The FMLA allows an employer to require that the employee submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to the serious health condition of the employee. For FMLA purposes, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves *inpatient care* or *continuing treatment by a health care provider*. For more information about the definitions of a serious health condition under the FMLA, see the chart on page 4.

You may, but are **not required** to, provide other appropriate medical facts including symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment. Please note that some state or local laws may not allow disclosure of private medical information about the patient's serious health condition, such as providing the diagnosis and/or course of treatment.

**Employee Name:** _____

Health Care Provider's name: *(Print)* _____

Health Care Provider's business address: _____

Type of practice / Medical specialty: _____

Telephone: (___) _____ Fax: (___) _____ E-mail: _____

## PART A: Medical Information

Limit your response to the medical condition(s) for which the employee is seeking FMLA leave. Your answers should be your **best estimate** based upon your medical knowledge, experience, and examination of the patient. **After completing Part A, complete Part B to provide information about the amount of leave needed.** Note: For FMLA purposes, "incapacity" means the inability to work, attend school, or perform regular daily activities due to the condition, treatment of the condition, or recovery from the condition. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b).

(1) State the approximate date the condition started or will start: _____ *(mm/dd/yyyy)*

(2) Provide your **best estimate** of how long the condition lasted or will last: _____

(3) Check the box(es) for the questions below, as applicable. For all box(es) checked, the amount of leave needed must be provided in Part B.

☐ **Inpatient Care**: The patient (☐ has been / ☐ is expected to be) admitted for an overnight stay in a hospital, hospice, or residential medical care facility on the following date(s): _____

☐ **Incapacity plus Treatment**: *(e.g. outpatient surgery, strep throat)*
Due to the condition, the patient (☐ has been / ☐ is expected to be) incapacitated for *more than* three consecutive, full calendar days from _____ *(mm/dd/yyyy)* to _____ *(mm/dd/yyyy)*.

The patient (☐ was / ☐ will be) seen on the following date(s): _____
_____

The condition (☐ has / ☐ has not) also resulted in a course of continuing treatment under the supervision of a health care provider *(e.g. prescription medication (other than over-the-counter) or therapy requiring special equipment)*

☐ **Pregnancy**: The condition is pregnancy. List the expected delivery date: _____ *(mm/dd/yyyy)*.

☐ **Chronic Conditions**: *(e.g. asthma, migraine headaches)* Due to the condition, it is medically necessary for the patient to have treatment visits at least twice per year.

☐ **Permanent or Long Term Conditions**: *(e.g. Alzheimer's, terminal stages of cancer)* Due to the condition, incapacity is permanent or long term and requires the continuing supervision of a health care provider (even if active treatment is not being provided).

☐ **Conditions requiring Multiple Treatments**: (*e.g. chemotherapy treatments, restorative surgery)* Due to the condition, it is medically necessary for the patient to receive multiple treatments.

☐ **None of the above**: If none of the above condition(s) were checked, (i.e., inpatient care, pregnancy) no additional information is needed. Go to page 4 to sign and date the form.

**Employee Name:** _____

(4) If needed, briefly describe other appropriate medical facts related to the condition(s) for which the employee seeks FMLA leave. *(e.g., use of nebulizer, dialysis*) _____

_____

## PART B: Amount of Leave Needed

For the medical condition(s) checked in Part A, complete all that apply. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your **best estimate** based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage.

(5) Due to the condition, the patient (☐ had / ☐ will have) **planned medical treatment(s)** (scheduled medical visits) *(e.g. psychotherapy, prenatal appointments)* on the following date(s): _____

_____

(6) Due to the condition, the patient (☐ was / ☐ will be) **referred to other health care provider(s)** for evaluation or treatment(s).

State the nature of such treatments: *(e.g. cardiologist, physical therapy)* _____

Provide your **best estimate** of the beginning date _____ *(mm/dd/yyyy)* and end date _____ *(mm/dd/yyyy)* for the treatment(s).

Provide your **best estimate** of the duration of the treatment(s), including any period(s) of recovery *(e.g. 3 days/week)*

_____

(7) Due to the condition, it is medically necessary for the employee to work a **reduced schedule**.

Provide your **best estimate** of the reduced schedule the employee is able to work. From _____ *(mm/dd/yyyy)* to _____ *(mm/dd/yyyy)* the employee is able to work: *(e.g., 5 hours/day, up to 25 hours a week)*

_____

(8) Due to the condition, the patient (☐ was / ☐ will be) **incapacitated for a continuous period of time**, including any time for treatment(s) and/or recovery.

Provide your **best estimate** of the beginning date _____ *(mm/dd/yyyy)* and end date _____ *(mm/dd/yyyy)* for the period of incapacity.

(9) Due to the condition, it (☐ was / ☐ is / ☐ will be) medically necessary for the employee to be absent from work on an **intermittent basis** (periodically), including for any episodes of incapacity i.e., episodic flare-ups. Provide your **best estimate** of how often (frequency) and how long (duration) the episodes of incapacity will likely last.

Over the next 6 months, episodes of incapacity are estimated to occur _____ times per (☐ day / ☐ week / ☐ month) and are likely to last approximately _____ (☐ hours / ☐ days) per episode.

**Employee Name:** _____

## PART C: Essential Job Functions

If provided, the information in Section I question #4 may be used to answer this question. If the employer fails to provide a statement of the employee's essential functions or a job description, answer these questions based upon the employee's own description of the essential job functions. An employee who must be absent from work to receive medical treatment(s), such as scheduled medical visits, for a serious health condition is considered to be *not able* to perform the essential job functions of the position during the absence for treatment(s).

(10) Due to the condition, the employee (☐ was not able / ☐ is not able / ☐ will not be able) to perform *one or more* of the essential job function(s). Identify at least one essential job function the employee is not able to perform:

_____

_____

**Signature of Health Care Provider** _____ **Date** _____ *(mm/dd/yyyy)*

| **Definitions of a Serious Health Condition** *(See 29 C.F.R. §§ 825.113-.115)* |
|---|
| **Inpatient Care** |
| • An overnight stay in a hospital, hospice, or residential medical care facility.<br>• Inpatient care includes any period of incapacity or any subsequent treatment in connection with the overnight stay. |
| **Continuing Treatment by a Health Care Provider (any one or more of the following)** |
| **Incapacity Plus Treatment:** A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves either:<br>o Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity; or,<br>o At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider. For example, the health provider might prescribe a course of prescription medication or therapy requiring special equipment. |
| **Pregnancy:** Any period of incapacity due to pregnancy or for prenatal care. |
| **Chronic Conditions:** Any period of incapacity due to or treatment for a chronic serious health condition, such as diabetes, asthma, migraine headaches. A chronic serious health condition is one which requires visits to a health care provider (or nurse supervised by the provider) at least twice a year and recurs over an extended period of time. A chronic condition may cause episodic rather than a continuing period of incapacity. |
| **Permanent or Long-term Conditions:** A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider, such as Alzheimer's disease or the terminal stages of cancer. |
| **Conditions Requiring Multiple Treatments:** Restorative surgery after an accident or other injury; or, a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days if the patient did not receive the treatment. |



**DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR. RETURN TO THE PATIENT.**

# dchr DISTRICT OF COLUMBIA GOVERNMENT

## FAMILY AND MEDICAL LEAVE APPLICATION FORM FML-01

Before you begin your application, to the extent possible, please ensure that you have the required supporting documents completed and readily available for submission. A list of the required documents is provided at the end of this application. Please print, scan, or take a clear photograph of the front and back of your completed documents and submit them as an attachment at the end of this application. Except for COVID Sick Leave, please note that you will not be able to submit your application if you do not have the required supporting documents. COVID Sick Leave supporting documentation is required as soon as practicable.

### 1. EMPLOYMENT INFO

| Agency |
|---|
| Employee ID Number |

### 2. PERSONAL INFO

| Last Name | Middle Name | First Name | | |
|---|---|---|---|---|
| Street Address | Apt # | City | State | Zip |
| Email Address | | | | |

### 3. REASON FOR LEAVE REQUEST

**a. Select <u>one</u> option.**

☐ To care for myself

☐ To provide care for a family member (non-military)

☐ I require military leave

☐ I require leave due to COVID-19

**b. If you selected military leave in (a), please specify the type of military leave you require.**

☐ Exigency Military Leave

☐ Military Caregiver Leave

**c. If you selected "I require leave due to COVID-19" in (a), please specify the qualifying event.**

☐ I have been ordered to quarantine, or isolate pursuant to a Federal, State, or local quarantine or isolation order.

☐ I have been ordered to quarantine pursuant to advisement from a health care provider.

☐ I have symptoms of COVID-19 and am seeking a diagnosis.

☐ I am caring for an individual who is subject to quarantine or isolation order or advised to self-quarantine by a health care provider.

☐ I need to care for my child because his/her school or childcare provider is unavailable.

**d. If you are requesting COVID Sick Leave:**
**Are you capable of teleworking?**

☐ Yes

☐ No (Briefly explain why you are unable to telework below.)

**If you are requesting COVID Sick Leave because you or a family member are subject to a District, federal, or state COVID-19 related order or advised to self-quarantine by a health care provider:**

Name of the applicable government entity or healthcare provider:

**If you are requesting COVID Sick Leave for childcare, please provide:**

Name(s) of your child(ren):

Name of the school or childcare provider that has become unavailable:

☐ I certify that no other suitable person will be caring for my child(ren) for the period I am requesting leave.

## 4. LEAVE DETAILS

| a. What type of leave are you requesting? (Select all that apply.) | b. Denote the number of hours that you wish to use for each leave program. | c. Estimate the beginning and end date of your leave period. |
|---|---|---|
| ☐ Paid Family Leave (PFL)<br>☐ DC FMLA<br>☐ COVID-19 Leave (DC FMLA)<br>☐ COVID Sick Leave<br>☐ Federal FMLA | PFL: _____ FMLA: _____<br>COVID Sick Leave: _____ COVID-19 Leave (DC FMLA): _____ | Start Date: _____ End Date: _____ |

## 5. REQUIRED SUPPORTING DOCUMENTS

| CIRCUMSTANCE | MUST PROVIDE |
|---|---|
| **Medical leave for a personal health condition** | Certificate of Health Care Provider for Employee's Serious Health Condition (DOH-WH-380-E) |
| **Caring for an ill family member (non-military)** | Certificate of Health Care Provider for Family Member's Serious Health Condition (DOL-WH-380-F) |
| **Caring for an ill family member who is a current service member or a veteran** | Certification of Serious Injury or Illness of Current Service Member – Military Family Leave (DOH-WH-385) or Certification of Serious Injury or Illness of a Veteran for Military Caregiver Leave (DOH-WH-385-V) |
| **Birth of your child** | Medical certification of anticipated birth or birth certificate |
| **Adoption of a child or other legal placement** | Certified court order(s) of placement |
| **Assumption of parental duties for a child** | Official records of parental responsibilities |
| **Exigency Military Leave** | Certification of Qualifying Exigency for Military Family Leave (DOL-WH-384) |
| **Military Caregiver Leave** | Certification of Serious Injury or Illness of Current Service member – Military Family Leave (DOL-WH-385) or Certification of Serious Injury or Illness of a Veteran for Military Caregiver Leave (DOL-WH-385-V) |
| **COVID Sick Leave** | 1) For employees in quarantine or isolation due to a District, federal, or state COVID-19 related order, or the recommendation of a health care provider:<br>a) The name of the applicable government entity or healthcare provider; and<br>b) Documentation by the health care provider or certification by the employee of his or her inability to telework to due to COVID-19 related symptoms.<br>2) For employees caring for a person who is subject to a District, federal, or state COVID-19 related order or advised to self-quarantine by a health care provider:<br>a) The name of the applicable government entity or healthcare provider; and<br>b) Documentation by the health care provider or certification by the employee of his or her inability to telework to due to COVID-19 related symptoms.<br>3) For an employee caring for a child whose school or childcare provider is unavailable because of COVID-19:<br>a) The name(s) of the employee's child(ren);<br>b) The name of the school or childcare provider that has become unavailable;<br>c) Certification by the employee that no other suitable person will be caring for the employee's child(ren) for the period the employee takes leave; and<br>d) Certification by the employee that they are unable to telework and why.<br>4) For an employee seeking a medical diagnosis related to symptoms consistent to COVID-19:<br>a) Medical documentation showing the employee was seen by a health care provider. This documentation must be submitted as soon as practicable after seeing the provider. Until such documentation is provided, employees who are absent because they are seeking a medical diagnosis related to symptoms of COVID-19 must inform their supervisor on a daily basis of their efforts to obtain a medical diagnosis; and<br>b) Certification by the employee that he or she is unable to telework and the reason. |
| **COVID-19 Leave (DCFMLA)** | 1) For COVID-19 Leave related to an employee or an employee's family member or an individual who resides with the employee:<br>• Certification may include a signed, dated letter from a healthcare provider including how long the employee needs leave.<br>2) For COVID-19 Leave related to childcare:<br>• A statement by the head of the school, place of care, company, or childcare provider stating such closure or unavailability. These statements may include a printed statement obtained from the organization or provider's website. |

## 6. EMPLOYEE CERTIFICATION

**I certify that the information provided in this document is true and accurate and that I am eligible for leave programs for which I have applied. In addition, I understand that the making of a false statement on this document is a violation of law and subject to criminal penalties. I also understand that if I am applying for COVID Sick Leave, that paid leave provided, or whatever balance remaining for purposes of COVID-19 relief, will immediately expire upon the end of December 31, 2020. I also understand that if I am applying for COVID-19 Leave under DCFMLA, the leave provided or whatever balance remaining will expire upon the end of the public health emergency. By signing this form, I certify that I understand and agree to all the terms described, and that I agree to have all notifications regarding my application and eligibility for leave programs sent to the email address provided on this form.**

| Sign | Date |
|---|---|

## 7. AGENCY ACKNOWLEDGEMENT

**Your agency FMLA Coordinator must sign below acknowledging your request for Family and Medical Leave. Their signature does not constitute an approval of this application. By signing below, your agency FMLA Coordinator agrees to send you notifications regarding your application and eligibility for leave programs using the email address provided below.**

| Sign | Date | Email |
|---|---|---|

# Appendix E

# DOL Wage & Hour Division

## *Frequently Asked Questions: Family and Medical Leave Act*

The following are answers to commonly asked questions about the new Family and Medical Leave Act (FMLA) regulations. The effective date of the revised FMLA regulations is January 16, 2009.

A separate guide relating to the FMLA military family leave entitlements is available at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FMLA_Military_Guide_ENGLISH.pdf .

### Qualifying Reasons for FMLA Leave

*Q. Can I still use FMLA leave during pregnancy or after the birth of a child?*

A. Yes. An employee's ability to use FMLA leave during pregnancy or after the birth of a child has not changed. Under the regulations, a mother can use 12 weeks of FMLA leave for the birth of a child, for prenatal care and incapacity related to pregnancy, and for her own serious health condition following the birth of a child. A father can use FMLA leave for the birth of a child and to care for his spouse who is incapacitated (due to pregnancy or childbirth).

*Q. Can I continue to use FMLA for leave due to my chronic serious health condition?*

A. Yes. Employees may use FMLA leave for any period of incapacity or treatment due to a chronic serious health condition. The regulations continue to define a chronic serious health condition as a condition that (1) requires "periodic visits" for treatment by a health care provider or nurse under the supervision of the health care provider, (2) continues over an extended period of time, and (3) may cause episodic rather than continuing periods of incapacity. The regulations clarify this definition by defining "periodic visits" as at least twice a year.

*Q. Are there any changes to the definition of a serious health condition under the regulations?*

A. A "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. The "continuing treatment" test for a serious health condition under the regulations may be met through (1) a period of incapacity of more than three consecutive, full calendar days plus treatment by a health care provider twice, or once with a continuing regimen of treatment, (2) any period of incapacity related to pregnancy or for prenatal care, (3) any period of incapacity or treatment for a chronic serious health condition, (4) any period of incapacity for permanent or long-term conditions for which treatment may not be effective, or (5) any period of incapacity to receive multiple treatments (including recovery from those treatments) for restorative surgery or for a condition which would likely result in an incapacity of more than three consecutive, full calendar days absent medical

treatment.
If an employee asserts a serious health condition in the form of a "period of incapacity of more than three consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition," the employee's first treatment visit (or only visit, if coupled with a regimen of continuing treatment) must take place within seven days of the first day of incapacity. If an employee asserts that the condition involves "treatment two or more times," the two visits to a health care provider must occur within 30 days of the first day of incapacity. "Periodic visits" for treatment of a chronic serious health condition means at least twice a year.

## Eligibility for FMLA Leave

*Q. If I have to miss work due to National Guard or Reserve duty, will it affect my eligibility for FMLA leave?*

A. No. A break in service due to an employee's fulfillment of military obligations must be taken into consideration when determining whether an employee has been employed for 12 months or has accrued 1,250 hours of service.

Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), hours that an employee would have worked if not for their military service are credited toward the employee's required 1,250 hours worked for FMLA eligibility. The time in military service also must be counted in determining whether the employee has been employed at least 12 months by the agency.

Example:

Dean worked for his agency for six months in 2008, then was called to active duty status with the Reserves and deployed to Iraq. In 2009, Dean returned to his agency, requesting to be reinstated under USERRA. Both the hours and the months that Dean would have worked but for his military status must be counted in determining his FMLA eligibility.

## Agency Notice Requirements

*Q. What are an agency's posting and general notice obligations?*

A. Agencies must post a general notice explaining the FMLA's provisions and providing information on procedures for filing a claim under the FMLA in a conspicuous place where it can be seen by employees and applicants. The posted notice should include information about the definition of a serious health condition, military family leave entitlements, and agency and employee responsibilities. Agencies must also include this information in any employee handbook or other written policy or manual describing employee benefits and leave provisions. An agency without a handbook or written guidance must provide this general notice to new employees upon hiring.

*Q. Is there a penalty if an agency fails to post the required FMLA notice?*

A. An agency that willfully fails to post the required FMLA notice may be subject to a civil monetary penalty. The maximum civil monetary penalty on or after January 16, 2022, is $189.

*Q. Does an agency have to provide employees with information regarding their specific rights and responsibilities under the FMLA?*

A. At the same time an agency provides an employee notice of the employee's eligibility to take FMLA leave, the agency must also notify the employee of the specific expectations and obligations associated with the leave. Among other information included in this notice, the agency must inform the employee whether the employee will be required to provide certification of the FMLA-qualifying reason for leave and the employee's right to substitute paid leave (including any conditions related to such substitute, and the employee's entitlement to unpaid FMLA leave if those conditions are not met). If the information included in the notice of rights and responsibilities changes, the agency must inform the employee of such changes within five business days of receipt of the employee's first notice of the need for FMLA leave after any change. Agencies are expected to responsively answer employees' questions about their rights and responsibilities.

*Q. How soon after an employee provides notice of the need for leave must an agency notify an employee that the leave will be designated and counted as FMLA leave?*

A. An agency must notify an employee whether leave will be designated as FMLA leave within five business days of learning that the leave is being taken for an FMLA-qualifying reason, absent extenuating circumstances. The designation notice must also state whether paid leave will be substituted for unpaid FMLA leave and whether the agency will require the employee to provide a fitness-for-duty certification to return to work (unless a handbook or other written document clearly provides that such certification will be required in specific circumstances, in which case the agency may provide oral notice of this requirement). If the amount of leave needed is known, an agency must inform an employee of the number of hours, days or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice. If it is not possible to provide the number of hours, days, or weeks that will be counted as FMLA leave in the designation notice (e.g., if the leave will be unscheduled), an agency must provide this information upon request by the employee, but no more often than every 30 days and only if leave was taken during that period.

## **Employee Notice Requirements**

*Q. How much notice must an employee give before taking FMLA leave?*

A. When the need for leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, an employee must give at least 30 days' notice. If 30 days' notice is not possible, an employee must provide notice "as soon as practicable." Employees must also provide notice as soon as practicable for foreseeable leave due to a qualifying exigency, regardless of how far in advance such leave is foreseeable (see FAQ for military family leave for additional information. In all cases, the determination of when an employee could practicably provide notice must account for the individual facts and circumstances.

When the need for leave is unforeseeable, employees must provide notice as soon as practicable under the facts and circumstances of the particular situation, which is usually determined based on the required timelines under the agency's leave policies.

Example:

When Mandy goes to her Monday physical therapy appointment for her serious health condition, she finds out that the appointment she had previously scheduled for Thursday was changed to Friday. Mandy tells the Agency that she will need to take leave for physical therapy on Friday instead of Thursday this week. Mandy provided notice of her need for foreseeable leave as soon as practicable.

*Q. Is an employee required to follow an agency's normal call-in procedures* when taking FMLA leave?

A. Yes. An employee must comply with an agency's call-in procedures unless unusual circumstances prevent the employee from doing so (in which case the employee must provide notice as soon as practicable). If the employee fails to provide timely notice, the agency may delay or deny the employee's FMLA leave request or discipline the employee subject to the agency's policies.

Example:

Sam has a medical certification on file with his agency for his chronic serious health condition, migraine headaches. At the start of his shift one morning, Sam cannot report to work due to a migraine and needs to take unforeseeable FMLA leave. He follows his agency's absence call-in procedure to timely notify his agency that he needs to take leave. Sam provided his agency with adequate notice.

## Certification of Need for FMLA Leave

*Q. Do I have to give the agency my medical records for leave due to a serious health condition?*

A. No. An employee is not required to give their medical records to the agency. However, the agency may request that an employee provide medical certification containing sufficient medical facts to establish that a serious health condition exists.

*Q. What if I do not want the agency to know about my medical condition?*

A. An employee must provide a complete and sufficient medical certification in order to take FMLA-protected leave due to a serious health condition.

*Q. How soon after I request leave must the agency request a medical certification of a serious health condition?*

A. Generally, an agency should request medical certification at the time an employee gives notice of the need for leave or within five business days of the employee's notice. If the leave is unforeseeable, then the agency should request medical certification within five days after the leave begins.

An agency may request medical certification at a later date if it has a reason to question the appropriateness or duration of the FMLA leave.

*Q. What happens if the agency says my medical certification is incomplete?*

A. If an agency determines that the medical certification is incomplete, then it must tell the employee why the medical certification is incomplete and give the employee a reasonable opportunity to fix the deficiency. The agency must state in writing what additional information is necessary to make the certification complete. The employee has at least seven calendar days to fix the deficiency, unless seven days is not practicable under the particular circumstances despite the employee's diligent, good faith efforts.

*Q. May the agency contact my health care provider about my serious health condition?*

A. Contact between an agency and an employee's health care provider must comply with the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations. A healthcare provider, human resources professional, leave administrator, or management official may contact an employee's health care provider for the limited purposes of authentication or clarification of the medical certification. An employee's direct supervisor may not contact the employee's health care provider. Under HIPAA, an employee must give their healthcare provider written permission to share individually-identifiable health information with the agency before the provider can release it. Agencies may not ask the health care provider for additional information beyond what is already included in the medical certification form.

*Q. Must I sign a medical release as part of a medical certification?*

A. No. An agency may not require an employee to sign a release or waiver as part of the medical certification process. Completing any such authorization is within the employee's discretion. However, when an agency requests a medical certification, the employee has an obligation to provide the agency with a complete and sufficient certification. If an employee does not provide a complete and sufficient certification, the agency may deny the employee's request for FMLA leave.

*Q. Can agencies require employees to submit a fitness-for-duty certification before returning to work after being absent due to a serious health condition?*

A. Yes. An agency may have a uniformly applied policy or practice that requires all similarly situated employees who take leave for health conditions to submit a certification from the employee's health care provider that the employee is able to resume work. The agency may require an employee who was absent on FMLA leave due to a serious health condition to follow the policy. If the agency appropriately notified the employee, then it may require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the position. In limited circumstances, when an employee takes intermittent or reduced-schedule FMLA leave and the agency has reasonable safety concerns regarding the employee's ability to perform the job, the agency may require a fitness-for-duty certification no more than once every 30 days.

*Q. What happens if I do not submit a requested medical or fitness-for-duty certification?*

A. If an employee fails to timely submit a properly requested medical certification by the deadline and cannot sufficiently explain a reason for the delay, then the agency may deny or delay the employee's request for FMLA leave. If the employee never provides a medical certification, then the leave is not FMLA leave.

If an employee does not submit a properly requested fitness-for-duty certification, the agency may

delay job restoration until the employee provides the certification. If the employee never provides the certification, the agency may deny reinstatement.

## Miscellaneous Questions

*Q. Can my FMLA leave be counted against me for my bonus?*

A. An agency may deny a bonus that is based upon achieving a goal, such as hours worked, products sold or perfect attendance, to an employee who takes FMLA leave (and thus does not achieve the goal) as long as it treats employees taking FMLA leave the same as employees taking non-FMLA leave. For example, if an agency does not deny a perfect attendance bonus to employees using vacation leave, the agency may not deny the bonus to an employee who used vacation leave for an FMLA-qualifying reason.

Example:

Sasha uses ten days of FMLA leave during the quarter for surgery. Sasha substitutes paid vacation leave for her entire FMLA absence. Under Sasha's agency's quarterly attendance bonus policy, employees who use vacation leave are not disqualified from the bonus but employees who take unpaid leave are disqualified. Sasha's agency must treat her the same way it would treat an employee using vacation leave for a non-FMLA reason and give Sasha the attendance bonus.

*Q. My medical condition limits me to a 40-hour workweek but my agency has assigned me to work eight hours of overtime in a week. Can I take FMLA leave for the overtime?*

A. Yes. Employees with proper medical certifications may use FMLA leave in lieu of working required overtime hours. The regulations clarify that the hours that an employee would have been required to work but for the taking of FMLA leave can be counted against the employee's FMLA entitlement. Agencies must select employees for required overtime in a manner that does not discriminate against workers who need to use FMLA leave.

***Q. Can I take FMLA leave for reasons related to domestic violence issues?***

A. FMLA leave may be available to address certain health-related issues resulting from domestic violence. An eligible employee may take FMLA leave because of theirfem own serious health condition or to care for a qualifying family member with a serious health condition that resulted from domestic violence. For example, an eligible employee may be able to take FMLA leave if they are hospitalized overnight or is receiving certain treatment for post-traumatic stress disorder that resulted from domestic violence.

**Note: If you have any other questions, please review the DOL's entire FMLA FAQ page at https://www.dol.gov/agencies/whd/fmla/faq.**