



# Family & Medical Leave Act (FMLA) Overview

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## Introduction to the Family & Medical Leave Act (FMLA)

The Family and Medical Leave Act (FMLA) is federal law initially enacted in 1993. The FMLA entitles eligible employees of covered employers to unpaid job protected leave for specified family and medical reasons including military exigencies and military caregiver leave, along with continuation of group health insurance coverage as if the employee were still working.

# FMLA Eligible Employee

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- Employed by a covered employer at least 12 months in the preceding 7-year period
  - Tip!** All Minnesota counties are FMLA-covered employers.
  - Tip!** The 12 months do not need to be *consecutive* months of employment.
- Worked at least 1250 hours during the preceding 12-month period
  - Tip!** These are hours *actually worked* – paid leave, unpaid leave, and FMLA do not count toward the 1250 hours worked
- Works at a location where the employer has 50 or more employees within a 75-mile radius

# Eligible Employee Rights Under the FMLA

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- Up to 12 weeks of FMLA protected leave during a 12-month period
  - 26 weeks to care for covered service member
  - 12 weeks for qualifying exigency related to military member
- Continuation of group health insurance coverage
- Job protection under the law, including reinstatement to same or equivalent position following leave

# Eligible Employee Rights Under the FMLA

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- **Intermittent or reduced work schedule leave** may be covered under the FMLA when medically necessary. Leave need not be for a consecutive block of time.

# Return to Work & Reinstatement Following Leave

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- Employees returning from FMLA are generally entitled to:
  - reinstatement in the same position held prior to taking FMLA leave; or
  - to a position equivalent in pay, benefits, and other terms and conditions of employment.
- A fitness for duty (FFD) certification may be required by the County prior to return to work.

**Tip!** The FFD requirement must be communicated as part of the FMLA Designation Notice during the certification process.

# FMLA Qualifying Leave

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- Any period of incapacity due to pregnancy or prenatal care, the birth of a child, and to care for the newborn child within one year of birth;
- Placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- To care for the employee's spouse, child, or parent who has a serious health condition;
- A serious health condition that makes the employee unable to perform the essential functions of his or her job;

# FMLA Qualifying Leave continued

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- 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;"
- To care for a covered service member with a serious injury or illness if the employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).



# Employer Responsibilities

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- Post FMLA General Notice at worksites!
- Provide General Notice of FMLA to employees
  - This may include provision of FMLA information in County handbook or policy manual;
  - And distribution of FMLA general notice to new employees upon hire.

# Employer Responsibilities continued

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## When Notified of Possible Need for FMLA Leave:

- Notice of Eligibility and Rights and Responsibilities
- Certification of Healthcare Provider / Certification for Serious Injury or Illness of Covered Service Member or Veteran / Certification of Qualifying Exigency
- Designation Notice
- Recertification (if applicable)

**Tip!** The Employer must follow specific timelines. Be sure to respond timely!

# Supervisor's Role

- It is critical that Supervisors be prepared to recognize potential FMLA qualifying situations.
- Keep in mind that for the employer's obligations under FMLA to apply, the employee does NOT need to specifically make a request "for FMLA leave."
- Once the employer (including any representative of management) is on notice regarding an employee's potentially qualifying need for leave, the employer must respond.
- Therefore, it is imperative that supervisors promptly notify HR upon learning of a potential need for FMLA protected leave, so that the County can meet required response timelines.

# Supervisor's Role continued

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- Following the supervisor's timely communication to HR...
- Within 5 business days of the employee providing notice, the County must provide the Notice of Eligibility and Rights and Responsibilities.
- Employee notice to the supervisor of possible FMLA qualifying situation starts the clock ticking!

# Supervisors: Consider as Possible FMLA Qualifying Events

- Birth or adoption, placement for foster care, caregiver for newborn
- Employee needed to care for spouse, son, daughter, parent with serious health condition
- Employee's own serious health condition
- Absence + treatment
- Chronic, permanent, or long-term condition
- Qualifying exigency
- Leave to care for covered service member or veteran with serious illness or injury

**Tip!** Supervisors need not determine FMLA eligibility. All potential FMLA situations should be referred to the Human Resources Department for a determination.

# FMLA Leave Year

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Employer – Define your 12-month FMLA period in policy!

[COUNTY NAME] defines its FMLA leave year as follows: *[select one:]*

- The calendar year
- Any fixed 12-month leave year *[such as a fiscal year or year starting on employee's anniversary date – define]*
- The 12-month period measured forward from the date an employee's first FMLA leave begins
- A rolling 12-month period measured backward from the date an employee uses any FMLA leave

**Tip!** If an employer decides to utilize a different 12-month period the employer must provide 60 days' notice of the intended change to all employees. During the transition, employees retain the full benefit of the 12 workweeks of leave under whichever method provides the most benefit to the employee.

# Serious Health Condition

**Serious health condition** is an illness, injury, impairment, or physical or mental condition that involves:

- Inpatient care
- Incapacity due to pregnancy, prenatal care, or childbirth
- Treatment due to a chronic serious health condition
- Absence plus treatment – inability to work more than 3 consecutive calendar days involving ongoing medical treatment (includes single appointment + follow-up care such as prescription medication)
- Chronic conditions requiring treatments – May require periodic visits to health care provider, and may cause episodic rather than continuing periods of incapacity
- Permanent or long-term conditions requiring medical supervision
- Conditions requiring multiple treatments

# Child – Son or Daughter

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**A child - son or daughter** – For leave other than military family leave, includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is either under 18 years of age, or 18 or older and incapable of self-care because of a mental or physical disability.



# Parent

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**A parent** includes a biological parent or a person who stood in place of a parent.

# Need to Care For

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Keep in mind that the **need to care for** a covered family member:

- Includes both physical and psychological care
- May also include making arrangements for appropriate care, substituting or sharing care duties

# Qualifying Exigency

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An eligible employee whose spouse, son, daughter, or parent has been notified of impending call to order to covered active military duty, or who is on covered active duty status, may take FMLA for qualifying exigency.

**Qualifying exigencies** may include leave related to the following situations:

- Short-notice deployment
- Military events and activities
- Child care and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation
- Post-deployment activities
- Additional activities arising out of active duty



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# Military Caregiver Leave

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An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member or covered veteran may take up to 26 weeks of **military caregiver leave** in a 12-month period to care for:

- A covered service member who is receiving medical treatment, recuperation or therapy, is in outpatient status, or on the temporary disability retired list for serious injury or illness;
- A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness

# Consider Leave Beyond FMLA

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What if the employee is not eligible for FMLA or has exhausted their FMLA leave?

- Keep in mind that employees may have additional protections under the law, including rights to take leave, even if they are not eligible for FMLA or have exhausted their FMLA leave entitlement.
- Additional areas to review include, but are not limited to:
  - Minnesota leave rights
  - Americans with Disabilities Act (ADA)
  - Women's Economic Security Act (WESA)
  - Workers compensation provisions

**Tip!** The County may wish to consult with legal counsel to determine if additional rights and responsibilities apply in a particular situation.

# Questions?

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# Want to learn more?

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## FMLA Resources:

- Visit **dol.gov** / Topics / Leave Benefits / Family and Medical Leave Act

**Tip!** Mandatory FMLA Notice is available for free on United States Department of Labor (DOL) website. Ensure this is posted at your worksite!