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## **FMLA Update: New Poster Available and Reminder About Intermittent Leave and Interaction with the ADA**

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May 2023

### **New Poster Available:**

In April the US Department of Labor updated the poster which summarizes employee leave entitlements under the Family and Medical Leave Act. Employers are required to display the poster in a conspicuous place where employees and applicants are able to see it. All “covered” employers must post the poster in all locations the employer maintains, even if no employee is eligible for FMLA leave at that location. An employer is covered if it has “50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.” Therefore, an employer with two locations, one with 30 employees and another with 40 employees, the employer is a “covered employer” and must fulfill the posting requirement even if the locations are more than 75 miles apart and no individual employee would be eligible for FMLA leave. Failure to post the required poster may result in a monetary penalty. Electronic posting is permitted so long as it meets all other posting requirements. The poster is available at: <https://www.dol.gov/agencies/whd/posters/fmla>.

In its release, the DOL noted the prior versions of the poster published in February 2013 and April 2016 may be used to fulfill the posting requirement. The DOL further suggested that, if an employer uses an “all-in-one” poster, the employer may want to wait to purchase a new poster because the Equal Employment Opportunity Commission is preparing a new “Know Your Rights” poster to cover the Pregnant

Workers Fairness Act that goes into effect on June 27, 2023.

### **Opinion Letter Clarifies Interaction between the FMLA and ADA:**

In a February 9, 2023 opinion letter, FMLA2023-01-A, the DOL provided clarification regarding the use of FMLA intermittent leave when an employee has limitations on the number of hours the employee is able to work in a day or week. In the opinion letter, the employer inquired about a situation where an employee has restrictions of working no more than 8 hours in a day. The employer suggested that the appropriate response was a reasonable accommodation under the Americans with Disabilities Act rather than FMLA leave entitlement. The DOL concluded that employee rights under the FMLA and ADA are not mutually exclusive and that an employee may invoke rights under both the FMLA and ADA at the same time. Therefore, so long as the employee has FMLA leave available to cover the missed time, the employee should be granted FMLA for all time the employee is scheduled beyond than the 8-hour restriction.

The DOL also reminded employers that the FMLA does not define a week as 40 hours. Therefore, to the extent an employee regularly works 50 hours in a week, that employee’s 12-week FMLA entitlement is 600 hours, not 480 hours. Employers navigating tricky FMLA/ADA issues like this should seek assistance from their labor and employment counsel.

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# Your Employee Rights Under the Family and Medical Leave Act

## What is FMLA leave?

The Family and Medical Leave Act (FMLA) is a federal law that provides eligible employees with **job-protected leave** for qualifying family and medical reasons. The U.S. Department of Labor's Wage and Hour Division (WHD) enforces the FMLA for most employees.

Eligible employees can take **up to 12 workweeks** of FMLA leave in a 12-month period for:

- The birth, adoption or foster placement of a child with you,
- Your serious mental or physical health condition that makes you unable to work,
- To care for your spouse, child or parent with a serious mental or physical health condition, and
- Certain qualifying reasons related to the foreign deployment of your spouse, child or parent who is a military servicemember.

An eligible employee who is the spouse, child, parent or next of kin of a covered servicemember with a serious injury or illness **may take up to 26 workweeks** of FMLA leave in a single 12-month period to care for the servicemember.

You have the right to use FMLA leave in **one block of time**. When it is medically necessary or otherwise permitted, you may take FMLA leave **intermittently in separate blocks of time, or on a reduced schedule** by working less hours each day or week. Read Fact Sheet #28M(c) for more information.

FMLA leave is **not paid leave**, but you may choose, or be required by your employer, to use any employer-provided paid leave if your employer's paid leave policy covers the reason for which you need FMLA leave.

## Am I eligible to take FMLA leave?

You are an **eligible employee** if **all** of the following apply:

- You work for a covered employer,
- You have worked for your employer at least 12 months,
- You have at least 1,250 hours of service for your employer during the 12 months before your leave, and
- Your employer has at least 50 employees within 75 miles of your work location.

Airline flight crew employees have different "hours of service" requirements.

You work for a **covered employer** if **one** of the following applies:

- You work for a private employer that had at least 50 employees during at least 20 workweeks in the current or previous calendar year,
- You work for an elementary or public or private secondary school, or
- You work for a public agency, such as a local, state or federal government agency. Most federal employees are covered by Title II of the FMLA, administered by the Office of Personnel Management.

## How do I request FMLA leave?

Generally, to **request FMLA leave you must**:

- Follow your employer's normal policies for requesting leave,
- Give notice at least 30 days before your need for FMLA leave, or
- If advance notice is not possible, give notice as soon as possible.

You **do not have to share a medical diagnosis** but must provide enough information to your employer so they can determine whether the leave qualifies for FMLA protection. You **must also inform your employer if FMLA leave was previously taken** or approved for the same reason when requesting additional leave.

Your **employer may request certification** from a health care provider to verify medical leave and may request certification of a qualifying exigency.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

State employees may be subject to certain limitations in pursuit of direct lawsuits regarding leave for their own serious health conditions. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress.

## What does my employer need to do?

If you are eligible for FMLA leave, your **employer must**:

- Allow you to take job-protected time off work for a qualifying reason,
- Continue your group health plan coverage while you are on leave on the same basis as if you had not taken leave, and
- Allow you to return to the same job, or a virtually identical job with the same pay, benefits and other working conditions, including shift and location, at the end of your leave.

Your **employer cannot interfere with your FMLA rights** or threaten or punish you for exercising your rights under the law. For example, your employer cannot retaliate against you for requesting FMLA leave or cooperating with a WHD investigation.

After becoming aware that your need for leave is for a reason that may qualify under the FMLA, your **employer must confirm whether you are eligible** or not eligible for FMLA leave. If your employer determines that you are eligible, your **employer must notify you in writing**:

- About your FMLA rights and responsibilities, and
- How much of your requested leave, if any, will be FMLA-protected leave.

## Where can I find more information?

Call **1-866-487-9243** or visit **dol.gov/fmla** to learn more.

If you believe your rights under the FMLA have been violated, you may file a complaint with WHD or file a private lawsuit against your employer in court. **Scan the QR code to learn about our WHD complaint process.**



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