



# *Help Desk FAQ:* Family Medical Leave Act (FMLA)



## *How to determine if your employee can be covered under FMLA*

The Family and Medical Leave Act (FMLA) provides certain employees up to 12 workweeks of unpaid, job-protected leave a year. It is also required that health benefits be maintained while the employee is on leave.

However, how do you know if FMLA coverage is an option for your employee? Here's the steps and guidelines to consider when deciding if your employee would qualify for coverage under FMLA.

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## *Determine if an employee is eligible*

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**Here are some guidelines to follow to determine if an employee is eligible for FMLA coverage. And remember, all must apply.**

- Employees must work for a covered employer (50 or more employees)
- Have worked for that employer for at least 12 months
- Have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave
- Work at a location where at least 50 employees are employed at the location or within 75 miles of the location

## *Determine unpaid leave*

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A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid leave in a 12 month period.

**For this to happen, one or more of the following reasons must apply:**

- The birth of a son or daughter, and to care for the newborn child
- The placement with the employee of a child for adoption or foster care and to bond with the newly placed child within one year of placement
- To care for an immediate family member (spouse, child, or parent) with a serious health condition
- When the employee is unable to work because of a serious health condition

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## Serious medical conditions

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Many employers struggle with the question of whether an employee's request for medical leave is covered under FMLA as a serious health condition.

The term "serious" is intended to exclude minor ailments, like colds, earaches, flus, and headaches. However, whether a health condition is serious depends on its origin or effects. For example, a cold is typically not a serious health condition, but it could become one if it leads to pneumonia. The health care provider will make the determination of whether a condition is serious; it is not at the discretion of the employer.

So what counts as a serious health condition – and how can you tell whether an employee qualifies for this type of leave?

### Types of Serious Health Conditions

Under the FMLA, a serious health condition must fall into one of the following categories:

- Inpatient care
- Incapacity for more than three days with continuing treatment by a health care provider
- Incapacity relating to pregnancy or prenatal care
- Chronic serious health conditions
- Permanent or long term conditions
- Conditions requiring multiple treatments

### Pregnancy or Prenatal Care

An employee who is unable to work or perform other regular, daily activities due to pregnancy, has a serious health condition. An employee incapacitated because of pregnancy, perhaps morning sickness, can take FMLA leave for the condition even if she doesn't see a doctor and isn't incapacitated for more than three consecutive calendar days. The employee doesn't have to be incapacitated or suffering from medical complications to qualify; leave can be used even for regular check-ups.

### Inpatient Care

Conditions requiring an overnight stay at a hospital facility (e.g, hospice, or residential care facility) are automatically considered a serious health condition under the FMLA. An employee can use FMLA leave for the time spent receiving inpatient care and for any period of incapacity or subsequent treatment connected to that care.

### Permanent or Long Term Conditions

The FMLA covers a period of incapacity that is permanent or long term because of a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal disease).

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## *Medical conditions*

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### **Incapacity for More Than Three Days Plus Continuing Treatment**

This is the category of serious health condition that has proven to be the most confusing – and perhaps the most likely to lead to legal claims. Someone who is incapacitated (unable to perform regular daily activities, such as going to school or working) for more than three days also has a serious health condition, but only if the person requires continuing treatment from a healthcare provider. The three days must be consecutive, but they can include weekends and holidays; they do not need to be business days.

#### **Continuing treatment from a health care provider means either of the following:**

- At least two treatments by a health care provider. These treatments must both take place within 30 days of the first day of incapacity, and the first treatment must take place within seven days of the first day of incapacity, absent unusual circumstances.
- At least one treatment by a health care provider, followed by a regimen of continuing treatment under the provider's supervision. This treatment must take place within seven days of the first day of incapacity.

The person's treatment must fit into one of these two definitions in order to qualify as "continuing." In other words, an employee who simply takes a week off due to illness without seeking treatment does not have this type of serious health condition.

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### **Chronic Serious Health Conditions**

Certain long-term or otherwise chronic impairments require time off, but the employee isn't always incapacitated or being seen by a doctor. These chronic conditions qualify as serious health conditions covered by the FMLA if:

- The employee requires periodic visits for treatment, defined as at least two visits per year with a health care provider or nurse acting under a provider's supervision
- The condition continues over an extended period of time
- The condition may cause episodic, rather than continuing, incapacity

Conditions that may qualify in this category include diabetes, epilepsy, or asthma.

### **Permanent or Long Term Conditions**

The FMLA covers a period of incapacity that is permanent or long term because of a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal disease).



## *Military Leave*

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The Family and Medical Leave Act was amended to provide two important leave entitlements that benefit military families.

The following is a brief summary of these provisions. Additional eligibility requirements may apply.

- A “qualifying exigency” arising out of a covered family member’s active duty or call or order to active duty in the National Guard or Reserves (or from retirement from certain military service) in support of a contingency operation. A qualified exigency may include attending military events, arranging for alternative childcare, addressing financial and legal arrangements, seeking counseling, attending post-deployment activities, and other similar circumstances.

A leave of absence of up to 26 weeks in any single 12-month period and will be granted to eligible employees for the following purpose:

- To care for an injured or ill covered family member or next-of-kin (nearest blood relative) who is injured or recovering from an injury or illness suffered in the line of duty while on active duty as a current member of the Armed Forces, including the National Guard or Reserves, provided that such injury or illness renders the covered service member unfit to perform his/her duties and for which the member is (1) undergoing medical treatment, recuperation or therapy; (2) in outpatient status; or (3) on the temporary disability retired list.

*Note: Leave to care for an injured or ill service member, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in any single 12-month period.*

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## *Other conditions*

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### **Conditions Requiring Multiple Treatments**

An employee has protected absences to receive multiple treatments by healthcare providers and also to recover from the treatment, (e.g. chemotherapy). This would include reconstructive surgery after an accident or injury or a condition that would likely have an outcome of incapacity of more than three consecutive full calendar days if left untreated.

To find out whether a particular condition is protected by the FMLA, employers need employees to complete a medical certification: a form to be completed by the employee and the doctor, which provides details about the employee's situation. It's not up to the employer to diagnose or to provide medical opinions about an employee's health. Instead, by using a certification form the medical professionals will make this judgment, and the company can meet its legal obligations to employees who are protected under the FMLA.

## *Additional Questions?*

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If you have any additional questions or resources regarding Family Medical Leave Act (FMLA), and are an ERC Member, contact our HR Help Desk or log into myERC.

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