

FAMILY MEDICAL LEAVE ACT (FMLA)

The Who, What, Whys and Hows

The Family and Medical Leave Act (FMLA) is a federal law passed in 1993, revised in 2009, and March 8, 2013. The FMLA requires employers to:

Grant leave for: family, military, and medical circumstances.

WHAT IS
FMLA?



WHY WAS THE FMLA CREATED?



The FMLA has served as the cornerstone of the Department's efforts to promote work-life balance since President Clinton signed the legislation in 1993.

- Workers should not have to choose between the job they need and the family members they love and who need their care
- Recognition that workers aren't just contributing to the success of a business, but away from their jobs they are contributing to the health and well-being of their families.
- Potentially boosts productivity, improves morale, and benefits the economy.

WHO IS ELIGIBLE? A TEAM MEMBER WOULD QUALIFY FOR LEAVE UNDER THE FAMILY AND MEDICAL LEAVE ACT IF THEY:

- Have been employed by us for at least **12 months**
- Have worked at least **1,250 hours** during the 12 months preceding start of FMLA leave. (1,000 for Wisconsin FMLA)

AND



NOTE: A team member's hours as a contractor may count towards the hours requirement.

- Birth of a son or daughter and to care for the newborn child.
- Placement with the team member of a son or daughter for adoption or foster care.
- Care for a qualified family member.
- A serious health condition that makes the team member unable to perform the functions of his/her job.
- A qualifying military exigency.

WHAT CIRCUMSTANCES QUALIFY FOR
LEAVE UNDER THE FMLA?

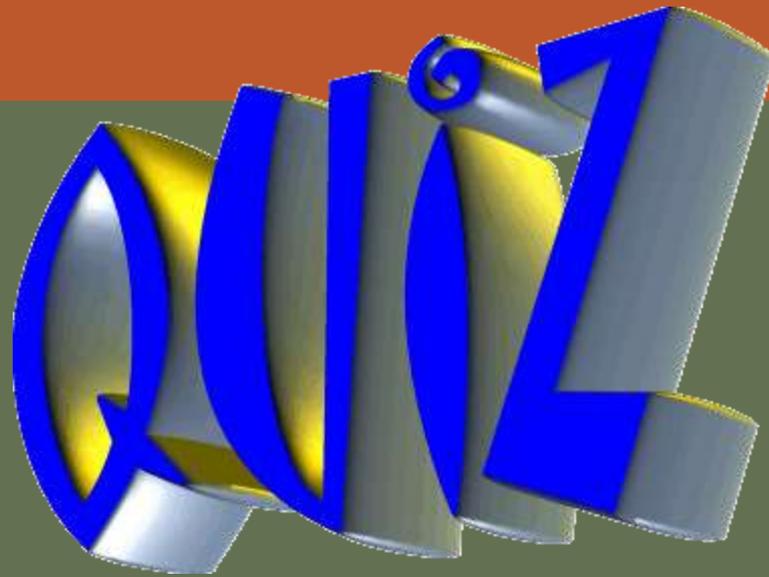
WHAT types of Military Leaves are covered?

Reserves, National Guard, Regular and Retired Armed Forces or Reserves

Exigency Leave: Called to active duty as part of a contingency operation. Can include time before and after duty to get personal affairs in order.

Leave to care for: a covered service member with a serious injury or illness occurred during active duty status. (up to 26 weeks per calendar year)





Serious Medical Conditions

Tyler and his family have a head lice infestation. Tyler purchased over the counter head lice shampoo and has treated himself and his family members. The bottle recommends repeating in 7-10 days. Would this qualify for FMLA?

No. While lice are not something that we would want to spread, the treatment that Tyler has undergone does not meet the requirement for a Serious Medical Condition. However, if he were to see a doctor and receive prescription shampoo, this would qualify.



Sandy suffers from severe headaches once or twice a month. She would like to be excused from work when these headaches come on. Would Sandy be covered under the FMLA?

Likely, yes. These would probably be considered migraine headaches which would fall under intermittent FMLA and Sandy would just need to identify the need for FMLA each time she suffers from a migraine and complete the appropriate paperwork.



Marcia has a bad cold; runny nose, sneezing, coughing, and sore throat. She doesn't like doctors so she hasn't gone to see anyone but she is taking over the counter cold medicine. She feels like it would be best to rest and recuperate at home. She doesn't think she can concentrate here and doesn't feel like she can work safely. Can Marcia qualify for FMLA?

No. So far, Marcia's cold does not meet the conditions of a Serious Medical Condition. While we don't want to spread illness and we want our team members working safely, this would be a PTO event not FMLA.



Shondra has been down in the dumps lately. Her mother passed away a few months back and she took 2 weeks of FMLA time to deal with depression. It's evident that she's still having a hard time dealing with things. She comes to work looking very tired and isn't as focused as she usually is. She calls in one day and leaves a message saying that she needs to take a couple of days to "get her head together". Do you think that Shondra's time off would qualify for FMLA?

Probably. Because we already know that she has a history of depression, we have an obligation to assume that getting her head together means she's still struggling with the same "covered" condition. This should trigger re-certification.



HOW AND FOR HOW LONG?

FMLA provides for up to 12 weeks of leave in a 12-month period.

- Spacesaver tracks FMLA time on a calendar year basis
- FMLA also provides for up to 26 weeks of leave in a single 12-month period to care for a family member who is injured or suffers a serious illness while on active duty.
- Wisconsin FMLA offers lesser amounts of leave. Federal and Wisconsin FMLA run concurrently.



Leave can be taken on a continuous basis or, for chronic conditions, intermittently.

WHO IS A QUALIFYING FAMILY MEMBER?

- **Parent** - A biological, adoptive, step or foster father or mother, or someone who stood *in loco parentis* to the team member when the team member was a son or daughter. Parent, for Federal FMLA purposes does not include in-laws. However, in-laws are covered under Wisconsin FMLA.
- **Spouse** - A husband or wife as defined or recognized under state law for purposes of marriage in the state where the team member resides, including common law marriage, domestic partnerships, and same-sex marriage.
- **Son or Daughter** - *For leave other than military family leave, 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.*



FAMILY MEMBERS

Monica's step-daughter broke her leg during a weekend skiing trip and now requires surgery to repair it. Recovery could take 6-8 weeks. Can Monica take FMLA to care for her?



Joe Smith's girlfriend is pregnant and is on bed rest. Can he take FMLA to care for her?

Yes. Both Federal and Wisconsin FMLA recognize step children as a covered family member.



No, but he can take FMLA for the birth of the child and care of the child after birth.

Wyatt has lived with Amy for 3 years and they own a home together and have children together but are not married.

Amy had some complications after a surgery and Wyatt would like to take FMLA to care for her, would this qualify?

Likely, yes. This might fall under Domestic Partnership for the Wisconsin FMLA. (2 weeks)



Molly Sue's grandmother is very ill and needs help with everyday tasks like bathing, dressing, and eating. Can Molly take FMLA to care for her?

Generally, no. But, if Molly were to have been raised by her Grandmother then she would be considered "in loco parentis".

Your team member, Dave Doe is in a same sex relationship with Steve Smith. Dave and Steve have lived together for 7 1/2 years and did have a Civil Union ceremony last summer while vacationing in Vermont. Steve needs to have surgery on his shoulder; can Dave take FMLA to care for Steve during his recovery?

Maybe. While Wisconsin does not recognize Civil Unions, Domestic Partnerships (registered or unregistered) are recognized. (2 weeks)



Javier just found out that his father in-law is very sick and he needs to go to Mexico to care for him. Would this be covered under FMLA?

Yes, but only under Wisconsin FMLA (2 weeks). Federal FMLA does not recognize parent-in-laws as covered family members.

WHAT ARE THE RESPONSIBILITIES OF TEAM MEMBERS?

- Provide sufficient information to make employer aware of need for FMLA-qualifying leave. Even subtle information may be enough.
- Provide timely notice of the need for leave
- Consult with employer regarding scheduling of planned medical treatment
- Comply with employer's usual and customary procedural requirements for requesting leave.



HOW DO WE VERIFY THAT A LEAVE IS COVERED?

- The Family and Medical Leave Act allows employers to require team members to submit certification of the need for FMLA leave. Human Resources provides the appropriate form to team member who may have a FMLA circumstance and handles all follow-up on medical certifications.
- **Certification may be required for the:**
 - Team member's serious health condition.
 - Family member's serious health condition.
 - Qualifying exigency for military family leave.
 - Serious Injury or illness of covered service member for military family leave



WHAT happens when the FMLA is exhausted?

WHAT CANT EMPLOYERS DO?

- Interfere with, restrain or deny FMLA rights
- Discriminate or retaliate against for having exercised FMLA rights
- Discharge or in any other way discriminate because of involvement in any proceeding related to FMLA
- Use the taking of FMLA leave as a negative factor in employment actions



WHAT DOES AN EQUIVALENT POSITION MEAN?

Same Pay. A team member is entitled to the same salary or hourly compensation, as well as any opportunities to earn extra money, that were previously available.

Same Benefits. The equivalent position must offer the same benefits, at the same levels.

Same Job duties. The job duties must be substantially similar to those of the former job.. Employers get in trouble when the "equivalent "position starts to look more like a demotion.

Same Shift and schedule. Ordinarily, a team member is entitled to be returned to the same shift and to the same or an equivalent schedule.

Same Worksite. A job at a different worksite is not an equivalent position if it significantly increases the team member's commute in time, distance, or both



Sam is a FedEx/UPS coordinator for the Assembly A area. Upon return from leave, he is assigned as a FedEx/UPS coordinator for the Assembly B area. Same rate of pay, same job duties. Different Supervisor.

Yes. This new positions entails the same duties, takes place at the same facility, and offers the same pay.



THANK YOU!