

FAMILY AND MEDICAL LEAVE ACT (FMLA)



Qualifying for FML

1. Most Government employers
2. Private employers with 50 or more employees
3. Eligible employees:
 - Worked 12 months for the County (within last 7 yrs.) and
 - Worked 1,250 hours during the preceding 12 months.

Basic FMLA Rights for Medical Leave

1. Up to 12 weeks of unpaid leave during a rolling 12 month period beginning the first day of the new leave period.
 - Reinstated to job.
 - No retaliation.
- <https://www.dol.gov/agencies/whd/fact-sheets/>
 - Fact sheets #28-28Q

Basic FMLA Rights for Medical Leave

2. Should require the employee to use any accumulated paid leave or comp. time concurrent with FMLA leave, ***but not*** if receiving Workers' Compensation benefits.
3. County will run your FMLA concurrently with your Workers' Compensation leave.
4. Health Benefits:
 - Maintain health benefits, as if employee continued to be actively employed.

Posting and Distribution Notice of FML Rights

- DOL Poster
- FMLA policy included in handbook should be provided to all employees and new hires.
- DOL FMLA Form
 - Employer's Notice of Eligibility and Rights & Responsibilities

Qualifying Events



- The employee's own serious medical condition; OR
- The birth, adoption, or foster care placement of a minor child; OR
- A serious medical condition of the employee's spouse, child, or parent.

Serious Health Condition

1. Inpatient care.
2. 3 days of incapacity and continuing treatment.
 - 2 treatments within 30 days
 - 1 treatment plus ongoing treatment required (prescription)
3. Prenatal incapacity.
 - Do not need to see HCP
 - Any period of incapacity (no 3 day requirement)

Serious Health Condition

4. Chronic condition, with 2 medical visits per year.
 - Examples: asthma, migraines, diabetes.
5. Long term or permanent incapacity.
 - Example: stroke, MVA.
6. Multiple treatments for a serious health condition.
 - Examples: chemotherapy, rehabilitation, dialysis.

Employee's Notice to Employer of Need for FMLA Leave

- Employee must tell you enough to make you aware of need for FMLA leave.
 - Not violation of HIPAA
- Timing of employee's notice:
 - Foreseeable – 30 days or as soon as practicable.
 - Unforeseeable – as soon as practicable.
- Practicable? Case by case basis – Courts usually say within 2 days of employee knowing
- Leave can be delayed but not denied just on employee notice

DOL FMLA FORMS

1. Employers Notice of Eligibility and Rights & Responsibilities WH-381
2. Certification of Healthcare Provider – Employees Own Condition WH-380E
3. Certification of Healthcare Provider – Family Member’s Condition WH-380F
4. Designation Notice WH-382
5. Certification of Qualifying Exigency Leave WH-384
6. Certification of Serious Injury or Illness of a Veteran for Military Caregiver Leave WH-385V
7. Certification for Serious Injury or Illness of a Current Service Member – For Military Family Leave WH-385

Employer's Notice of Eligibility and Rights & Responsibilities

Provide to employee within 5 business days of learning of need for FMLA leave.

- Notes whether County believes they are eligible (12 months of employment and 1,250 hours worked during last 12 months).
- Informs of need for medical certification within 15 days of receiving Notice of Eligibility.

Should be provided to employee even if they do not request FML

Employer's Notice of Eligibility and Rights & Responsibilities

- Explains arrangements to make health insurance payments (employee portion).
- Requirement to use accrued paid time off concurrently.
- Required to provide periodic updates on status and intent to return to work.

Certification of Healthcare Provider

- Includes job description and establishing incapacity.
- Medical provider establishes if condition meets the requirement of a serious health condition.
- Employer has the right to CONFIRM the certification.
 - 2nd Opinion
 - 3rd Opinion

Certification of Healthcare Provider

- If the certification is INCOMPLETE, UNCLEAR or INCONSISTENT – 7 days to cure, after identifying (in writing) the insufficiency.
- Same applies to **Certification for Family Member's Serious Health Condition**

Designation Notice

- Provide to employee within 5 days of receiving adequate medical certification.
- Approval and designate.
- Required use of paid leave during FMLA leave.
- Necessity of a fitness for duty certification to return to work.
- Notice of incomplete or insufficient medical certification.

Disqualifying Events

- Delay in returning completed medical certification (delays FMLA leave)
- Failure or refusal to return certification
 - Without good cause, FMLA is not authorized

2 Types of Military FMLA leave

1. Qualifying Exigency Leave.
2. Military Caregiver Leave.

Qualifying Exigency Leave

- Up to 12 weeks of leave if spouse, child or parent is called to active duty or is on active duty.
- Applicable to families of members of National Guard and Reserves, and active members of regular armed services.
- Military member must have been or will be deployed to a foreign country

Examples of “Qualifying Exigencies”

- Short notice deployment (7 days).
- Military events/ceremonies.
- Urgent child care or school activities.
- Family counseling.
- Arranging legal or financial affairs.
- During deployment: R&R time (5 days per break).
- Includes post-deployment activities.

Military Caregiver Leave

- 26 work weeks in a 12 month period for a spouse, parent, child, or next of kin to care for service member.
- Service member suffering from a serious illness or injury incurred in the line of military duty and who has need of the family caregiver.
- Can include a veteran discharged within the last 5 years if condition relates to service

Facts About Military Caregiver Leave

- The year during which an employee may seek military caregiver leave is different from County's FMLA leave.
 - The military caregiver year begins on the first day the caregiver leave begins.
- An employee can use both FMLA and military caregiver leave in the same year but only up to the 26 week limit.

NEED ADDITIONAL INFORMATION

- dol.gov
- <https://www.dol.gov/agencies/whd/fact-sheets/>
 - Fact Sheets #28-28Q all relate to FMLA
- okacco.com
 - POLICIES AND PROCEDURES
- CONTACT ACCO STAFF
 - DALE FRECH
 - DUSTY BIRDSONG

ANY QUESTIONS?