



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

The Family and Medical Leave Act



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Presentation Topics

- Introduction to the FMLA
- Family Relationships under the FMLA
- FMLA-Protected Leave Reasons
- Taking FMLA Leave
- Administering FMLA Leave
- Employee Rights
- Helpful Resources



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Introduction to the FMLA



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Employee Benefits and Protections

- Up to 12 workweeks of leave each leave year for family and medical reasons
- Up to 26 workweeks of leave in a single leave year to care for a covered military member with a serious injury or illness
- Continuation of group health benefits under the same conditions as if the employee did not use leave
- Return to work at the same or virtually identical job at the end of the leave period
- Protection from interference and retaliation



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[See Fact Sheet #28A](#)

Qualifying Reasons for FMLA Leave

- For the birth or placement of a child
- To care for a spouse, child, or parent with a serious health condition
- Because of the employee's serious health condition
- For military family leave reasons:
 - Qualifying exigencies
 - Military caregiver leave



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Employer Coverage

The FMLA applies to:

- Private sector employers with 50 or more employees
- All public agencies
- All public and private elementary and secondary schools



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Employee Eligibility

At the time FMLA leave will start, the employee:

1

Works for a covered employer

2

Works at a worksite where the employer employs at least 50 employees within 75 miles

3

Has worked for the employer in total at least 12 months

4

During the previous 12 months, worked at least 1,250 hours



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Eligibility - Airline Flight Crew Employees

During the previous 12 months, the employee must have:

- Worked or been paid for not less than 60 percent of the applicable monthly guarantee and
- Worked or been paid for not less than 504 hours



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[See Fact Sheet #28J](#)



Family Relationships under the FMLA



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Son or Daughter

- A biological, adopted, or foster child, stepchild, or legal ward
- Employee may be “in loco parentis” (in the role of a parent)
- Employee’s child must be:
 - under age 18 or
 - 18 or over and incapable of self-care because of a mental or physical disability
- Son or daughter may be any age for military family leave reasons



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See Fact Sheet #28K

Parent



A biological, adoptive, step or foster parent, or someone who stood “in loco parentis” (in the role of a parent) to the employee when the employee was a child

Does not include a parent-in-law



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See Fact Sheet #28C

Standing in the Role of a Parent

- Standing “in loco parentis” means a person has day-to-day responsibilities to care for or financially support a child
- Grandparents or other relatives, such as siblings, may stand in the role of a parent
- A Biological or legal relationship to the child is not required



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[See Fact Sheet #28B](#)

Spouse

A “husband or wife” as defined or recognized in the state where the employee was married

Includes married same-sex couples

Includes common-law marriages

Does not include civil unions or domestic partnerships



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Next of Kin

- An employee may use military caregiver leave to care for a servicemember or veteran when the employee is the servicemember's or veteran's next of kin
- If the servicemember designates in writing a next of kin, that relative is the only next of kin for FMLA leave purposes.

“Next of kin” means the servicemember's nearest blood relative, other than the servicemember's spouse, parent, son, or daughter, in order of priority:

All blood relatives who have been granted legal custody of the servicemember

All brothers and sisters

All grandparents

All aunts and uncles

All first cousins



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Documentation of Family Relationships

- Employers may request reasonable documentation of a family relationship
- An employee may respond to a request to document a family relationship by providing a simple statement or copy of an official document for the employer to review and return



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FMLA-protected Leave Reasons



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Birth, Adoption, or Foster Care Placement



Leave due to a child's birth or adoption or foster care placement



Must be used during 12-month period following birth or placement



May be used before adoption or foster care placement in some situations



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See Fact Sheet #28Q

FMLA Definition of a Serious Health Condition

- Eligible employees may use FMLA leave because of their own serious health condition or to care for a family member with a serious health condition
- Under the FMLA, serious health condition means:
 - An illness, injury, impairment or physical or mental condition involving:
 - Inpatient Care, or
 - Continuing Treatment by a Health Care Provider



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See Fact Sheet #28P

Inpatient Care

- An overnight stay in a hospital, hospice, or residential medical facility
- Includes elective surgery that necessitates an overnight stay
- Includes any related incapacity or subsequent treatment



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Continuing Treatment by a Health Care Provider

- Incapacity Plus Treatment
- Pregnancy
- Chronic Conditions
- Permanent/Long-term Conditions
- Absence to Receive Multiple Treatments



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Mental Health and the FMLA

Mental health conditions are serious health conditions under the FMLA if they require inpatient care or continuing treatment by a health care provider

- **Examples:**
 - An overnight stay in a treatment center for addiction or eating disorders
 - Chronic conditions such as anxiety, depression, or dissociative disorders



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[See Fact Sheet #280](#)

Incapacity



- Inability to work, attend school, or perform other regular daily activities due to a serious health condition
- Inability to work means unable to perform one or more essential job functions
- Includes treatment or recovery from the serious health condition



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Physical or Psychological Care

- Leave to care for a family member includes providing physical care and psychological comfort
- The employee need not be the only individual or family member able to provide care



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Health Care Provider

- Licensed M.D.s and osteopaths
- Podiatrists, dentists, clinical psychologists, optometrists, chiropractors - with limitations
- Clinical social workers, nurse practitioners, nurse-midwives, and physician assistants
- Christian Science Practitioners
- Any health care provider from whom the employer's group health plan will accept certification
- Health care providers authorized to practice in a country other than the United States



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Military Family Leave



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Qualifying Exigency Leave

- Employee's spouse, child, or parent
- In the Regular Armed Forces
- Deployed to a foreign country
- In the Reserve components of the Armed Forces (National Guard and Reserves)
- Deployed to a foreign country under a call or order to active duty in support of a contingency operation



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[See Fact Sheet #28M\(c\)](#)

Qualifying Exigencies

- Short-notice deployment - up to seven days
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Non-medical counseling
- Care of the military member's parent
- Rest and recuperation - up to fifteen days
- Post-deployment activities - 90-day period
- Additional activities by agreement



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Military Caregiver Leave

Current Servicemember

- A current member of the Armed Forces, including members of the National Guard or Reserves
- Undergoing medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list,
- For a serious injury or illness

Veteran

- A veteran of the Armed Forces, including of the National Guard or Reserves,
- Discharged within 5 years of when the employee needs the FMLA leave,
- Undergoing medical treatment, recuperation, or therapy for a serious injury or illness



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Serious Injury or Illness – Current Servicemember

- Incurred in the line of duty on active duty, or
- A pre-existing condition that was aggravated by service in the line of duty on active duty
- May render servicemember medically unfit to perform duties
- May be mental health condition, for example:
 - Post traumatic stress disorder (PTSD)
 - Traumatic brain injury (TBI)
 - Depression



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See Fact Sheet #28M(a)

Serious Injury or Illness - Veteran

- An injury or illness that was incurred or aggravated by service in the line of duty on active duty in the Armed Forces, that manifested before or after the servicemember became a veteran, in addition to other criteria
- May be mental health condition such as PTSD, TBI, or depression



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See Fact Sheet #28M(b)



Taking FMLA Leave



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Amount of Leave

- Eligible employees may use up to 12 workweeks of FMLA leave in a 12-month period for all FMLA leave reasons other than military caregiver leave
- Eligible employees may use up to 26 workweeks of FMLA leave in a “single 12-month period” for military caregiver leave



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[See Fact Sheet #28!](#)

Leave for Airline Flight Crew Employees

Airline Flight Crew Employees May Use:

- Up to 72 days of FMLA leave in a 12-month period for most FMLA leave reasons, and
- Up to 156 days of FMLA leave in a “single 12-month period” for military caregiver leave
- Entitlement is based on a uniform 6-day workweek



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[See Fact Sheet #28J](#)

12-Month Period or Leave Year

Employers may select from:

Calendar Year

Any fixed 12-month leave year

A 12-month period measured forward

A rolling 12-month period measured backward



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See Fact Sheet #28H

Workweeks under the FMLA

- An employee's entitlement to FMLA leave is measured in workweeks
- The employee's actual workweek is the basis for determining the employee's leave entitlement
- Conversion of an employee's FMLA entitlement to an hourly equivalent must be based on the employee's normally scheduled hours



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Holidays and Closings

- When a holiday falls during a week an employee is taking a full workweek of FMLA leave, the entire week is counted as FMLA leave
- When an employee works part of a week that includes a holiday, the employee does not have to use FMLA leave for the holiday unless he or she would be required to work that day
- If an employer stops business activities for one or more weeks, the time is not counted as leave



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Intermittent or Reduced Schedule Leave

- Must be permitted if it is medically necessary for military caregiver leave or due to a serious health condition of the employee or the employee's family member
- Not required for birth or placement of a child unless the employer and employee agree or the child has a serious health condition



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Planned Medical Treatment

- **Employee** must make a reasonable effort to schedule planned medical treatments to minimize disruption to employer operations
- **Employer** may temporarily transfer employee to an alternative position that better accommodates recurring periods of leave



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Calculation of Intermittent / Reduced Schedule Leave

Employees generally may use FMLA leave in the smallest increments of time the employer uses to account for other types of leave



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FMLA Special Rules for Schools



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Special Rules for Schools

Special FMLA leave use rules apply to:



Public and private elementary and secondary schools, and



Public school boards



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See Fact Sheet #28S

Instructional Employees

- Instructional employees are those whose main job is to teach and instruct students in a class, small group or individual setting
 - For example: teachers, coaches, and special education assistants
 - Does not include aides, counselors, or curriculum specialists



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Intermittent / Reduced Schedule Leave Limitation

Instructional employee may be required to choose between leave of a particular duration or transferring temporarily to an alternative position

- Applies only:
 - when leave is foreseeable,
 - based on planned medical treatment, and
 - needed for more than 20% of the number of days the employee would work during the employee's requested period of leave



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Leave Near the End of Academic Term

- Under certain circumstances, an instructional employee starting leave near the end of an academic term may be required to continue taking leave until the end of the term
- Extended leave period does not count against the number of weeks the employee has available to use FMLA leave, but the FMLA protections apply



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Special Rule Circumstances

- If leave begins more than 5 weeks before the end of a term
- If leave begins during the 5-week period before the end of a term
- If leave begins during the 3-week period before the end of a term
- Employer may not extend leave if state law prohibits requiring leave beyond the actual period of pregnancy disability



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Administering FMLA Leave



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Requesting FMLA Leave

- Employer's usual procedures for requesting leave generally apply
- Employee is not required to specifically mention the FMLA the first time he or she requests leave for a qualifying reason
- Once approved for a particular FMLA leave reason, the employee may be required to reference that reason or the FMLA if additional leave is needed

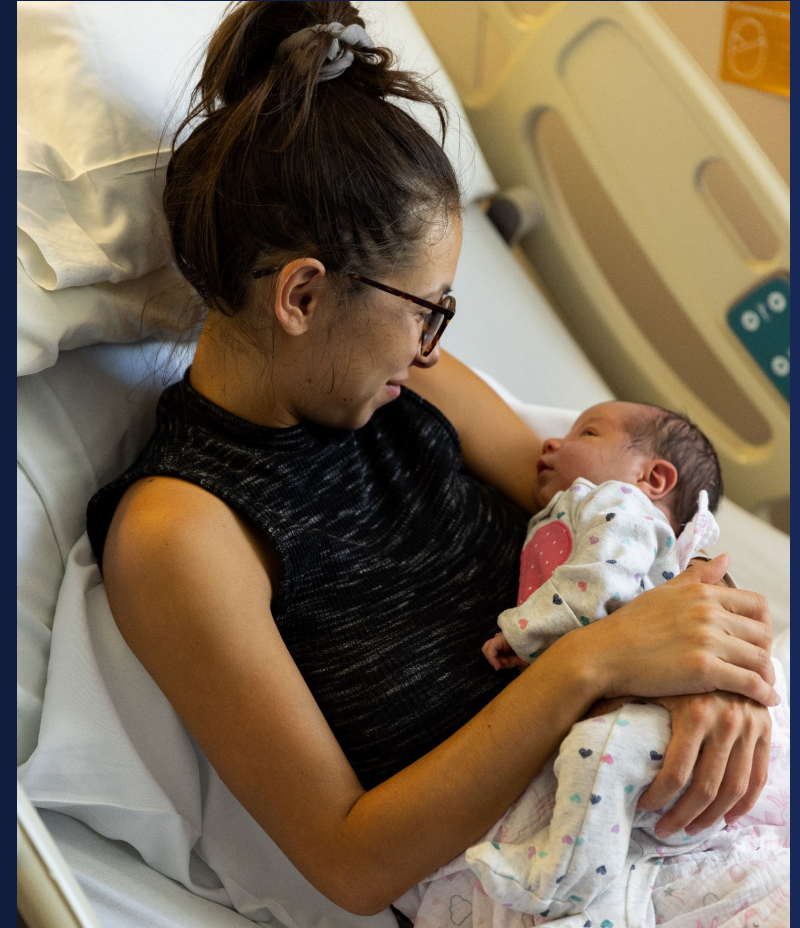


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[See Fact Sheet #28E](#)

Timing

- If FMLA leave is foreseeable
 - 30 days notice or,
 - If 30 days is not possible or practical, as soon as practicable
- If FMLA leave is not foreseeable
 - As soon as practicable



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Employer Notice Requirements

- Post a general notice
 - Electronic posting and distribution permitted
 - Civil money penalty possible for willful posting violation
- Provide general notice in employee handbook or other written guidance
- Individual Notices
 - Eligibility Notice
 - Rights and Responsibilities Notice
 - Designation Notice
- Translate notices where appropriate



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See Fact Sheet #28D

Eligibility Notice

- Informs employee whether they are eligible for FMLA leave
- May be oral or in writing
- Provide a reason if employee is not eligible



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Rights and Responsibilities Notice

- **Must be provided in writing within 5 days of leave request**
- **Must include:**
 1. Period of leave counted as FMLA leave
 2. 12-month period used to track FMLA leave use
 3. Certification requirements, if any
 4. Substitution of paid leave information
 5. Requirements on health insurance premiums and consequences of failure to make payments
 6. “Key employee” status
 7. Right to job restoration and maintenance of benefits



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See Optional WH-381

Designation Notice

- Must be provided in writing within 5 days of having enough information to determine whether the FMLA applies to the leave request
- Must include:
 - Amount of leave that will count against the employee's FMLA leave entitlement, if known
 - Substitution of paid leave information
 - If a fitness for duty certification will be required
- If the leave is not qualifying, the notice may be a simple written statement



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Substitution of Paid Leave

**Employees may choose, or
employers may require,**
employees to use accrued paid
leave at the same time FMLA
leave is used.



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Other Paid Leaves

- Because leave taken under a disability benefit plan, workers' compensation program, or under a state or local paid family or medical leave program is not unpaid, the provision for substitution of accrued paid leave does not apply
- Employers and employees may agree, where state law permits, to have accrued paid leave supplement the paid plan benefits



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Record Keeping Requirements

- Basic payroll information
- Copies of leave notices
- Documents describing benefits/leave policies
- Premium payments of employee benefits
- Dates / hours FMLA leave is taken
- Records of disputes
- Documents related to health conditions must be maintained as confidential medical records



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Certification of a Need for FMLA Leave

- Employer may request certification of a serious health condition, qualifying exigency, or serious injury or illness of a covered servicemember
 - Must notify employee of request in writing within 5 days of learning of the leave need
 - Must allow employee at least 15 calendar days to submit
- Employee is responsible for cost



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FMLA Certification Forms

Certification, Military Family Leave

Qualifying exigency certification

- Employer may request a copy of military member's active duty orders
- When the leave involves a meeting with a 3rd party, may request contact information with 3rd party to confirm meeting
- No second or third opinions

Military caregiver leave certification

- May be completed by a Department of Defense (DOD), Veterans Affairs (VA), or Tricare health care provider, or by a private health care provider
- Limited second and third opinions

No recertification



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Health Care Provider Certification

- Required content will vary
- If employer questions the validity of a medical certification:
 - May require 2nd opinion and, if opinions differ, a 3rd opinion if opinions differ
 - 2nd and 3rd opinions both at employer's expense
- Employer may request a new medical certification with the first absence in a new 12-month leave year



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[See Fact Sheet #28G](#)

If Certification is Incomplete or Insufficient

- Employer must give employee written notice of what is incomplete or insufficient
 - **Incomplete:** one or more applicable entries not completed
 - **Insufficient:** information is vague, ambiguous, or non-responsive
- Must give employee at least 7 calendar days to resubmit
- May not request additional information



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Recertification of a Serious Health Condition

- May be requested in connection with an absence if the minimum duration of the condition has expired or every 6 months
- May not be requested more often than every 30 days unless:
 - Employee requested extension
 - Circumstances changed significantly
 - Employer receives information that causes doubt
- No 2nd opinions on recertification



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Fitness-for-Duty Certification

- Employer may require if employee uses FMLA leave because of a serious health condition
 - Must have a uniformly-applied policy or practice
 - Must provide notice
- Not permitted for intermittent or reduced schedule leave unless reasonable safety concerns exist
- If state or local law or collective bargaining agreement is in place, it governs the return to work



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Employee Rights



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Job-Protected Leave

After FMLA leave, employee has the right to return to work in the same job, or one that is nearly the same

- Same duties, responsibilities, status
- Same level of skill, effort, responsibility and authority
- Identical pay, including premium pay, overtime and bonus opportunities
- Identical benefits, such as life insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.

Employees are not entitled to any additional benefits other than those they would have been entitled to if they had not taken FMLA leave.



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Limitations on Restoration

Employee uses all available FMLA leave and is not able to return to work

Employment changes, such as a layoff or reduced hours, which would have occurred without FMLA leave

Employer denies key employee return to work to prevent substantial and grievous injury to operations



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Continuation of Health Insurance Coverage

- Employers are required to continue group health insurance coverage for an employee on FMLA leave under the same conditions as if the employee had not taken leave
- To maintain insurance coverage while on FMLA leave, an employee will need to continue to make any normal contributions to the cost of health insurance premiums
- If an employee chooses not to keep group health plan coverage during FMLA leave, he or she has the right to be reinstated to the same coverage levels on return to work



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Prohibited Employer Actions

Employers cannot:



Interfere with, restrain, or deny employees' FMLA rights



Discriminate or retaliate against employees for exercising FMLA rights



Use taking of FMLA leave as a negative factor in employment actions



Discharge or in any other way discriminate against an employee because of involvement in any proceeding related to FMLA



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Enforcement of the FMLA

- To enforce FMLA rights, employees may:
 - File a complaint with Wage and Hour Division
 - File a private lawsuit under section 107(a)
- Lawsuit must be filed within two years after the last action which the employee alleges was in violation of the Act, or three years if the violation was willful



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FMLA and Other Laws

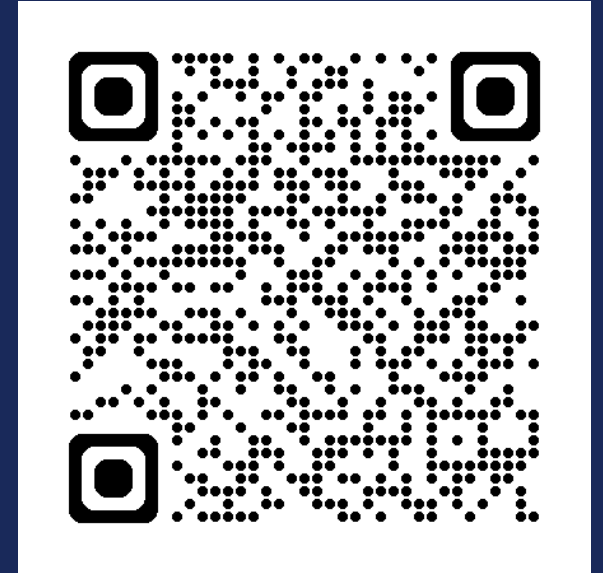
- The FMLA may apply in addition to other federal laws, state laws, an employer's policies, or a collective bargaining agreement
- Nothing in the FMLA supersedes any provision of state or local law that provides greater family or medical leave rights than those provided by the FMLA
- An employer's practices, policies, benefit programs, or plans, including a collective bargaining agreement (CBA), may not reduce or deny FMLA benefits and protections



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FMLA Resources

- ✓ Title I of the FMLA, as amended (29 U.S.C. 2601—2654)
- ✓ Regulations (29 C.F.R. Part 825)
- ✓ *The Employer's Guide to the FMLA*
- ✓ *The Employee's Guide to the FMLA*
- ✓ *The Employee's Guide to Military Family Leave under the FMLA*
- ✓ FMLA Forms and Forms Frequently Asked Questions
- ✓ FMLA Fact Sheets
- ✓ FMLA Posters (WH-1420)
- ✓ FMLA Frequently Asked Questions
- ✓ FMLA elaws Advisor



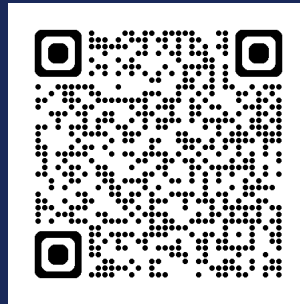
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