

## **FAMILY & MEDICAL LEAVE ACT KEY POINTS**

The Family & Medical Leave Act is administered by the Department of Labor, Wage & Hour Division.

ELIGIBILITY: To qualify for FMLA, the following conditions must be met;

- Employee has worked 12 months or 52 weeks for USPS (does not have to be consecutive)
- Employee must have worked at least 1250 hours during the previous 12 months (leave, even an absence covered by Workman's Compensation, does not count).
- Casual appointments can be used to qualify under the above criteria.

ACCEPTABLE REASONS FOR USING FMLA:

- Employee's own serious health condition.
- Care of employee's child, spouse or parent with a serious health condition.
- Care for employee's newborn child up to age 1.
- For placement with employee of a child for adoption or foster care.

SERIOUS HEALTH CONDITION:

- Traumatic injuries (on or off-the-job).
- Incapacitating illnesses (self or family member)
- Chronic health condition.
- Pregnancy.

QUALIFYING CRITERIA FOR A SERIOUS HEALTH CONDITION:

- Overnight stay in a hospital, hospice, or residential medical care facility.
- Injury/illness lasting more than three (3) days with continuing treatment by a health care provider (the fourth day need not be consecutive).
- Pregnancy.
- Chronic condition.
- Long term or permanent disabling health condition.
- Conditions requiring multiple treatments to prevent period of incapacitation of more than three (3) consecutive days.

DEFINITION OF CONTINUING MEDICAL TREATMENT:

- Either two or more visits to a health care provider, or
- One visit to a health care provider, with a regimen of continuing supervised treatment.
  - a) Therapy with special equipment or a medical prescription does qualify as continuing supervised treatment.
  - b) Over-the-counter medications or instructions to "drink fluids", "exercise" or "rest" do not qualify as continuing supervised treatment.

The following minor illnesses **do not qualify** as serious health conditions under normal circumstances:

- Colds
- Routine dental or orthodontic work
- Ear aches
- Flu
- Headaches (Except migraines)
- Periodontal disease
- Minor ulcers
- Upset stomachs

**QUALIFYING CRITERIA FOR CHRONIC CONDITIONS:**

- Continues for an extended time
- Requires periodic treatment
- Causes episodic periods of incapacitation

Examples of chronic conditions:

- Severe arthritis
- Asthma
- Back injuries requiring surgery or extensive therapy
- Cancer
- Colitis
- Depression or stress related disorders
- Diabetes
- Epilepsy
- Severe heart conditions
- Migraine headaches
- Recurrent kidney stones

Examples of conditions requiring multiple periodic treatments:

- Physical therapy for carpal tunnel syndrome
- Chemotherapy
- Dialysis
- Restorative surgery due to accident or injury

**QUALIFIED HEALTH CARE PROVIDERS:**

- Physician
- Optometrist
- Osteopath
- Chiropractor (but for subluxation only)
- Podiatrist
- Dentist
- Clinical psychologist
- Nurse practitioner
- Nurse-midwives
- Christian Science practitioners
- Clinical social workers
- Any health care provider recognized by employee's health benefit program.

## MEDICAL CERTIFICATION REQUIREMENT:

- Requests for medical certification must be made directly to the employee; general postings are not sufficient. Certification requests must be made within two (2) days of the notice of absence.
- Certification must contain the date that the condition began and the expected duration; The costs of complying with FMLA certification requests are paid by the employee.
- The employee must be given fifteen (15) days to obtain FMLA medical certification; longer time must be permitted if the employee can show reasonable diligence in attempting to obtain it.
- Postal officials (other than postal physicians) can not directly contact the employee's health care provider.
- Employer may request a second or third opinion, but must pay of it. Neither a second nor third opinion can be obtained from USPS physicians. If a third opinion is requested the physician is jointly selected by the employer and employee.

"Updated" medical certification cannot be requested by the employer more frequently than every thirty (30) days, unless a significant change in the condition is evident or there is evidence of fraud

## QUALIFYING FAMILY MEMBERS:

- Sons and daughters
- Spouses
- Parents
- Relatives to whom you act in the role of a "parent"
- Relatives who acted in the role of your "parent" when you were a child
- A person acts in the role of a "parent" when he/she provides day-to-day care and financial support to the child.
- Children over 18 only qualify as family members only if they are incapable of caring for themselves due to physical or mental disability
- Spouses must meet the definition of a spouse under state law in the state in which you reside.

The standards for a serious health condition in a family member are the same as they are for an employee's own serious health condition.

## DEFINITION OF "CARING FOR":

- The family member must be unable to provide for one of the following basic needs;
  - Medical
  - Hygienic (such as changing medical dressings)
  - Nutritional (such as cooking meals)
  - Safety
  - Transportation (such as getting to medical appointments)
- A health care provider can certify the psychological benefit of the employee's presence with an incapacitated family member for qualifying under the law.
- The fact that other family members may also be available to perform these tasks is irrelevant under the law.

- FMLA is not permitted for the care of minor children due to the incapacitation of the spouse; in such cases care must be for the spouse himself/herself.
- If both husband and wife work for the USPS, each is entitled to twelve (12) weeks of FMLA covered leave to care for family members.

The law does not mandate that intermittent leave be granted following childbirth; only continuous leave is covered. However, care for a newborn child (or a foster or adopted child) does not have to be taken immediately after birth. A father may take FMLA leave for newborn care before the child's first birthday, even if the mother is also home. In the case of an adopted child, or one placed through a foster care program, the law covers the one year period beginning with the date of placement. Foster care must be authorized by a public agency to qualify under FMLA.

#### NOTIFICATION REQUIREMENTS:

- Thirty (30) days advance notice when possible
- Within two (2) days of first awareness when condition was unforeseen
- Diagnostic information may be kept private

The employee must display a willingness to re-schedule planned medical treatment if it would unduly disrupt the Employer's operation; however, if re-scheduling is not possible, the leave must be granted.

Unforeseen absences may be reported in person, or by telephone, telegraph or fax (as soon as possible).

The employee is not legally obligated to ask for FMLA in order to qualify; however, enough information must be provided to the Employer to give the indication that FMLA applies to the specific circumstances. Someone other than the ill/injured employee can provide the notice.

In the event that the nature of the condition is determined later than the reporting date, it is sufficient notice for the employee to give the information to the Employer upon learning of it (this would include situations where an initial diagnosis is later changed).

The Employer must continue health benefits coverage as if the employee was working; however, the employee is responsible to continue paying his/her share of the total premium. If the employee fails to pay his/her share, coverage can be cancelled. However, upon return to duty, the law requires that the health benefit coverage be reinstated.

If the Employer offers the employee a reduce schedule or light duty work in lieu of FMLA;

- the employee is not obligated to accept such work while the 12 week entitlement is still not completed
- Leave can not be denied if the employee refuses the light duty and/or reduced schedule
- Discipline can not be issued for refusing such assignments
- OWCP benefits could be jeopardized by refusing, however, if the injury was sustained on-the job.

Paid leave on the employee's leave balance can be used during FMLA absences (sick leave requests must comply with contractual requirements for sick leave or sick leave for dependant care).

#### RETURN TO DUTY FOLLOWING FMLA COVERED ABSENCE:

Employee **must** be restored to his/her former position. Employer obligations are;

- Posters; if posters are not in place, the employee's advance notice obligations are waived
- FMLA must be incorporated into official Handbooks or benefit documents
- Where an employee is **ineligible** for FMLA, the Employer must notify him/her by the start of the leave or within two (2) business days
- Where an employee is **eligible** for FMLA, the Employer must notify him/her of their rights and responsibilities under the law
- When leave has been designated as FMLA leave, the employee must be notified in writing (revised PS Form 3971's include notification boxes)

#### ENFORCEMENT:

- FMLA complaints are filed with the Department of Labor, Wage & Hours Division, in person, by mail, or by telephone
- A Class Action complaint can be filed on behalf of multiple employees
- A Department of Labor investigator will contact the Employer; compliance cannot be compelled, but the investigator can initiate a lawsuit
- Private lawsuits do not require the involvement of the Department of Labor
- The law does allow for lawsuits to be filed against individual managers or supervisors.

# Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act

Under the Family and Medical Leave Act (FMLA), employees have certain obligations to provide notice and/or other information to their employers. Failure to provide such notice or documentation could result in denial of leave or other protections afforded under the Act.

## I. Qualifying Conditions

The FMLA provides that employees meeting the eligibility requirements must be allowed to take time off for up to 12 workweeks in a leave year for the following conditions:

1. Because of the birth of a son or daughter (including prenatal care), or in order to care for such son or daughter. Entitlement for this condition expires 1 year after the birth.
2. Because of the placement of a son or daughter with you for adoption or foster care. Entitlement for this condition expires 1 year after the placement.
3. In order to care for your spouse, son, daughter, or parent who has a serious health condition. Also, in order to care for those who have a serious health condition and who stand in the position of a son or daughter to you or who stood in the position of a parent to you when you were a child.
4. Because of a serious health condition that makes you unable to perform the functions of your position.

## II. Eligibility

For an absence to be covered by FMLA, you must have been employed by the Postal Service for a total of at least 1 year **and** must have worked a minimum of 1,250 hours during the 12-month period before the date your absence begins. Once eligible for a given condition, if your work hours subsequently fall below 1,250 during the postal leave year, your eligibility for FMLA protected absences for that condition remains in effect for the duration of the leave year. However, if a second and unrelated condition arises in the leave year, you must meet the 1,250 eligibility test anew in order to obtain FMLA protected leave for that (i.e., second) reason.

## III. Type of Leave or Pay

Absences counted toward the 12 workweeks allowed for the qualifying conditions that can be any one or a combination of the following:

1. Time off you take as annual leave, sick leave, and/or leave without pay (LWOP) in accordance with current leave policies and collective bargaining agreements.
2. In the case of job-related injuries or illnesses, time off during which you are receiving continuation of pay (COP) and/or time during which you are placed on the Office of Workers' Compensation Program (OWCP) payroll.

## IV. Documentation on Request for Absence

Supporting documentation is required for your absence request to receive final approval. Documentation requirements may be waived in specific cases by your supervisor. *However, failure to provide requested documentation could result in a denial of FMLA-protected leave.*

1. **For qualifying condition (1) or (2)** — You must provide the birth or placement date.
2. **For qualifying condition (3) or (4)** — You must provide documentation from the health care provider.
  - a. **In both of these cases** — The medical report must include:
    - (1) The health care provider's name, address, phone number, and type of practice and the patient's name.
    - (2) A certification that the patient's condition meets the FMLA definition of *serious health condition*, supporting medical facts, and a brief statement as to how the medical facts meet the definition's criteria.
    - (3) The approximate date the serious health condition commenced, its probable duration, and the probable duration of the patient's present incapacity, if different.
    - (4) Whether it is a medical necessity that you be absent intermittently or work on a reduced schedule as a result of the serious health condition; and if so, the probable duration of such schedule, an estimate of the probable number of and the interval between treatments and/or episodes of incapacity, the period required for recovery, if any, and whether the medical need for absence is best accommodated through intermittent absence or a reduced work schedule.
  - b. **For absence due to pregnancy or a chronic serious health condition** — The medical certification must include whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.
  - c. **If additional or continuing treatments are required** — The medical certification must include the nature and regimen of the treatments, an estimate of the probable number of treatments, the length of absence required by the treatments, and actual or estimated dates of the treatments, if known.
  - d. **For absence due to your own serious health condition, including pregnancy, permanent/long term condition, or a chronic condition** — The medical certification must include whether you are unable to perform work of any kind, parts of the job you are unable to perform, and whether you must be absent for treatments.
  - e. **For absence to care for a family member with a serious health condition** — The medical certification must include whether the patient requires assistance for basic medical or personal needs or safety or for transportation; or if not, whether your presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery, and the probable duration of the need for care on an intermittent or reduced work schedule basis. You must indicate on the form the care you will provide and an estimate of the time period.
3. **If the serious health condition is a result of a job-related injury or illness** — The documentation requirements are provided separately.
4. **If the time off requested is to care for someone other than a biological parent or child** — Appropriate explanation or evidence of the relationship may be required.

Supporting information that is not provided at the time of the request for absence must be provided within 15 days of receipt of notice, unless this is not practical under the circumstances. If the Postal Service questions the adequacy of a medical certification, a second opinion may be required. If the first and second opinions differ, a third and final opinion may be required. These opinions are obtained off the clock. However, the Postal Service will pay for these opinions, plus reasonable out-of-pocket travel expenses incurred to obtain the opinions.

Employees may be required to provide recertification periodically.

During your absence, you must keep your supervisor informed of your intentions to return to work and status changes that affect your ability to return.

## V. Benefits

**Health Insurance** — To continue your health insurance during your absence, you must continue to pay the employee portion of the premiums. This payment continues to be withheld from your salary. If the salary for a pay period does not cover the full employee portion, you will be invoiced and are required to make the payment. Failure to make the required payments results in loss of coverage until you return to work.

**Life Insurance** — Your basic life insurance and any optional life insurance that you carry continue while you are in a pay status. In an LWOP status, these are continued at no cost to you for 1 year. After you are in a non-pay status for 1 year, this coverage is discontinued, but you have the option to convert the coverage to an individual policy within 31 days of the discontinuance in accordance with the Office of Personnel Management's (OPM's) current Federal Employee Group Life Insurance policy on conversion — see OPM's web site — <http://www.opm.gov/insure>.

**Flexible Spending Accounts (FSAs)** — If you participate in the FSA program, see your employee brochure for the terms and conditions of continuing coverage during leave without pay.

## VI. Placement and Documentation on Return to Duty

At the end of your FMLA covered absence, you will be returned to the same position you held when the absence began (or to an equivalent position), provided you are able to perform the functions of the position and would have held that position at the time you returned had you not taken the time off. To return to work after an absence due to your own incapacitation, you must provide certification from your health care provider that you are able to return to work and to perform the essential functions of your position.

The certification should be provided as soon as your physician anticipates your return to work, and no later than one workday before the anticipated return-to-work date. Providing this certification as early as possible will facilitate the return-to-work process and help you avoid unnecessary delays due to incomplete medical information. The medical information requested is basic to the treatment provided by the physician, and should be readily available. There is no need for a diagnosis or other private information to be included.

If you are a nonbargaining unit employee and your absence was for your own serious health condition, the statement from your medical provider that you are able to return to work is all that you must provide.

If you are a bargaining unit employee and your absence was for your own serious health condition, you must also provide the medical certification noted on page 4 and be medically cleared before you return to work under any one of the following circumstances:

1. The absence exceeds 21 calendar days.
2. The absence is due to any of the causes specified below.
3. Overnight hospitalization is required during the absence.



The medical report provided must contain enough information to determine that you can return to work without risk of injury or illness to self or others. It must identify any restrictions that prevent you from performing your duties, and whether there is a need for a special accommodation. It must include whether or not you will need to be absent intermittently or to work on a reduced schedule as a result of the condition, and if so, the probable duration of such schedule and an estimate of the probable number of and the interval between any expected treatments and/or episodes of incapacity.

Examples of specific information that may be necessary are:

1. **For absence exceeding 21 calendar days** — Treatment dates, progress to date, and any side effects experienced due to medication that could affect job performance.
2. **For absence due to exposure to a communicable or contagious disease** — The nature of the disease and certification that you can return to work without risk of transmission.
3. **For absence due to mental or nervous condition** — Treatment dates, progress to date, certification of your compliance with medication, side effects experienced due to medication that could affect job performance, certification that adequate control has been established (including, where applicable, certification that you can accept supervision), and you are able to work without risk of harm to self or to others.
4. **For absence due to diabetes** — The conditions and/or symptoms related to diabetes that caused the incapacity to work, certification that the conditions and/or symptoms have resolved, progress to date, and certification that adequate control has been established and that you are able to return to work safely.
5. **For absence due to cardiovascular disease involving high blood pressure** — Conditions and/or symptoms related to high blood pressure that caused the incapacity to work, certification that the conditions and/or symptoms have resolved, certification of your compliance with medication, side effects experienced due to medication that could affect job performance, and certification that adequate control has been established and that you are able to return to work safely.
6. **For absence due to cardiovascular disease other than high blood pressure** — Conditions and/or symptoms that caused the incapacity to work, progress to date, certification of your compliance with medication, side effects experienced due to medication that could affect job performance, and certification that you are able to return to work safely.
7. **For absence due to epilepsy (seizure disorder)** — Conditions and/or symptoms related to seizure disorder that caused the incapacity to work, side effects experienced due to medication that could affect job performance, certification of your compliance with medication, and certification that adequate control has been established and that you are able to return to work safely.
8. **For absence during which overnight hospitalization is required** — The nature of the hospitalization, the date of admission, the date of official discharge, progress to date, certification of your compliance with medication, side effects experienced due to medication that could affect job performance, and certification that you are able to return to work safely.

A postal medical officer will evaluate the medical information and make the final determination of your suitability for return to work.

## 29 CFR 825.400 - What can employees do who believe that their rights under FMLA have been violated?

**Section Number:** 825.400

**Section Name:** What can employees do who believe that their rights under FMLA have been violated?

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- (a) The employee has the choice of:
    - (1) Filing, or having another person file on his or her behalf, a complaint with the Secretary of Labor, or
    - (2) Filing a private lawsuit pursuant to section 107 of FMLA.
  - (b) If the employee files a private lawsuit, it must be filed within two years after the last action which the employee contends was in violation of the Act, or three years if the violation was willful.
  - (c) If an employer has violated one or more provisions of FMLA, and if justified by the facts of a particular case, an employee may receive one or more of the following: wages, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or, where no such tangible loss has occurred, such as when FMLA leave was unlawfully denied, any actual monetary loss sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages for the employee. In addition, the employee may be entitled to interest on such sum, calculated at the prevailing rate. An amount equaling the preceding sums may also be awarded as liquidated damages unless such amount is reduced by the court because the violation was in good faith and the employer had reasonable grounds for believing the employer had not violated the Act. When appropriate, the employee may also obtain appropriate equitable relief, such as employment, reinstatement and promotion. When the employer is found in violation, the employee may recover a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action from the employer in addition to any judgment awarded by the court.

## 29 CFR 825.401 - Where may an employee file a complaint of FMLA violations with the Federal government?

**Section Number:** 825.401

**Section Name:** Where may an employee file a complaint of FMLA violations with the Federal government?

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- (a) A complaint may be filed in person, by mail or by telephone, with the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. A complaint may be filed at any local office of the Wage and Hour Division; the address and telephone number of local offices may be found in telephone directories.
  - (b) A complaint filed with the Secretary of Labor should be filed within a reasonable time of when the employee discovers that his or her FMLA rights have been violated. In no event may a complaint be filed more than two years after the action which is alleged to be a violation of FMLA occurred, or three years in the case of a willful violation.
  - (c) No particular form of complaint is required, except that a complaint must be reduced to writing and should include a full statement of the acts and/or omissions, with pertinent dates, which are believed to constitute the violation.

# 29 CFR 825.220 - How are employees protected who request leave or otherwise assert FMLA rights?

**Section Number:** 825.220

**Section Name:** How are employees protected who request leave or otherwise assert FMLA rights?

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- (a) The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:
- (1) An employer is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the Act.
  - (2) An employer is prohibited from discharging or in any other way discriminating against any person (whether or not an employee) for opposing or complaining about any unlawful practice under the Act.
  - (3) All persons (whether or not employers) are prohibited from discharging or in any other way discriminating against any person (whether or not an employee) because that person has--
    - (i) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to this Act;
    - (ii) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under this Act;
    - (iii) Testified, or is about to testify, in any inquiry or proceeding relating to a right under this Act.
- (b) Any violations of the Act or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the Act. ``Interfering with'' the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by a covered employer to avoid responsibilities under FMLA, for example:
- (1) transferring employees from one worksite to another for the purpose of reducing worksites, or to keep worksites, below the 50-employee threshold for employee eligibility under the Act;
  - (2) changing the essential functions of the job in order to preclude the taking of leave;
  - (3) reducing hours available to work in order to avoid employee eligibility.
- (c) An employer is prohibited from discriminating against employees or prospective employees who have used FMLA leave. For example, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under ``no fault'' attendance policies.
- (d) Employees cannot waive, nor may employers induce employees to waive, their rights under FMLA. For example, employees (or their collective bargaining representatives) cannot ``trade off'' the right to take FMLA leave against some other benefit offered by the

employer. This does not prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a ``light duty'' assignment while recovering from a serious health condition (see Sec. 825.702(d)). In such a circumstance the employee's right to restoration to the same or an equivalent position is available until 12 weeks have passed within the 12-month period, including all FMLA leave taken and the period of ``light duty.''

- (e) Individuals, and not merely employees, are protected from retaliation for opposing (e.g., file a complaint about) any practice which is unlawful under the Act. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the Act or regulations.

## 29 CFR 825.201 - If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?

**Section Number:** 825.201

**Section Name:** If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?

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An employee's entitlement to leave for a birth or placement for adoption or foster care expires at the end of the 12-month period beginning on the date of the birth or placement, unless state law allows, or the employer permits, leave to be taken for a longer period. Any such FMLA leave must be concluded within this one-year period. However, see Sec. 825.701 regarding non-FMLA leave which may be available under applicable State laws.

**To file a complaint with the Dept. of Labor contact the appropriate office:**

**Northern New Jersey District Office**

US Dept. of Labor	Phone:	Joseph
ESA Wage & Hour Division	1-866-4-USWAGE	Petrella
200 Sheffield Street, Room 102	(1-866-487-9243)	District
Mountainside, NJ 07092		Director

**Southern New Jersey District Office**

US Dept. of Labor	Phone:	Dominick
ESA Wage & Hour Division	1-866-4-USWAGE	Denato
3131 Princeton Pike, Bldg. 5, Rm. 216	(1-866-487-9243)	District
Lawrenceville, NJ 08648		Director