

FMLA FAQ

Am I required to prove that I have a serious health condition?

GMCS does require an employee to pick up Form WH 380-E (for an employee or intermittent leave), WH 380-F (for eligible family members) from the Personnel Office. The employee must have their physician fill out the form with all pertinent information (time needed, serious health condition of the employee or the employee's immediate family member must be supported by a certification issued by a health care provider).

Is my employer required to pay me when I take FMLA leave?

The FMLA only requires unpaid leave. However, the law permits an employee to elect, or the employer to require the employee, to use accrued paid vacation leave, paid sick or family leave for some or all of the FMLA leave period.

Are there any restrictions on when an employee can take leave for the birth or adoption of a child?

Leave to bond with a newborn child or for a newly placed adopted or foster child must conclude within 12 months after the birth or placement. The use of intermittent FMLA leave for these purposes is subject to the employer's approval. If the newly born or newly placed child has a serious health condition, the employee has the right to take FMLA leave to care for the child intermittently, if medically necessary and such leave is not subject to the 12-month limitation.

When can a parent take leave for a newborn?

Mothers and fathers have the same right to take FMLA leave to bond with a newborn child. A mother can also take FMLA leave for prenatal care, incapacity related to pregnancy, and for her own serious health condition following the birth of a child. A father can also use FMLA leave to care for his spouse who is incapacitated due to pregnancy or child birth.

Intermittent Leave -Does an employee have to take leave all at once or can it be taken periodically or to reduce the employee's schedule?

When it is medically necessary, employees may take FMLA leave intermittently – taking leave in separate blocks of time for a single qualifying reason – or on a reduced leave schedule – reducing the employee's usual weekly or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

Can an employer change an employee's job when the employee takes intermittent or reduced schedule leave?

Employees needing intermittent/reduced schedule leave for foreseeable medical treatments must work with their employers to schedule the leave so as not disrupt the employer's operations,

subject to the approval of the employee's health care provider. In such cases, the employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodate recurring periods of leave better than the employee's regular job.

What is a serious health condition?

The most common serious health conditions that qualify for FMLA leave are:

- conditions requiring an overnight stay in a hospital or other medical care facility;
- conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than three consecutive days and have ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
- chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and
- pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).

Am I required to prove that I have a serious health condition?

An employer may require that the need for leave for a serious health condition of the employee or the employee's immediate family member be supported by a certification issued by a health care provider. The employer must allow the employee at least 15 calendar days to obtain the medical certification.

What and when do I need to tell my employer if I plan to take FMLA leave?

- Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day. When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the employer's usual and customary notice and procedural requirements for requesting leave.
- Employees must provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, and/or that the employee or employee's qualifying family member is under the continuing care of a health care provider.

Is an employee required to follow an employer's normal call-in procedures when taking FMLA leave?

Yes. Under the regulations, an employee must comply with an employer's call-in procedures unless unusual circumstances prevent the employee from doing so (in which case the employee must provide notice as soon as he or she can practicably do so). The regulations make clear that, if the employee fails to provide timely notice, he or she may have the FMLA leave request delayed or denied and may be subject to whatever discipline the employer's rules provide.

- Example:
- Sam has a medical certification on file with his employer for his chronic serious health condition, migraine headaches. He is unable to report to work at the start of his shift due to a migraine and needs to take unforeseeable FMLA leave. He follows his employer's absence call-in procedure to timely notify his employer about his need for leave. Sam has provided his employer with appropriate notice.

Can I use my paid leave as FMLA leave?

Under the regulations, an employee may choose to substitute accrued paid leave for unpaid FMLA leave if the employee complies with the terms and conditions of the employer's applicable paid leave policy. The regulations also clarify that substituting paid leave for unpaid FMLA leave means that the two types of leave run concurrently, with the employee receiving pay pursuant to the paid leave policy and receiving protection for the leave under the FMLA. If the employee does not choose to substitute applicable accrued paid leave, the employer may require the employee to do so.

How do collective bargaining agreements (CBAs) affect the FMLA Regulations?

An employer must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the FMLA may not be diminished by any employment benefit program or plan. For example, a provision of a CBA which provides for reinstatement to a position that is not equivalent because of seniority (e.g., provides lesser pay) is superseded by FMLA.

Who do I contact if I need additional information or I want to file a complaint?

If you have questions, or you think that your rights under the FMLA may have been violated, you can contact the Wage and Hour Division (WHD) at 1-866-487-9243. You will be directed to the WHD office nearest you for assistance. There are over 200 WHD offices throughout the country staffed with trained professionals to help you. To find the one nearest you, go to <http://www.dol.gov/whd/america2.htm>

Can I take FMLA leave for reasons related to domestic violence issues?

FMLA leave may be available to address certain health-related issues resulting from domestic violence. An eligible employee may take FMLA leave because of his or her own serious health condition or to care for a qualifying family member with a serious health condition that resulted from domestic violence. For example, an eligible employee may be able to take FMLA leave if he or she is hospitalized overnight or is receiving certain treatment for post-traumatic stress disorder that resulted from domestic violence.

Can I continue to use FMLA for leave due to my chronic serious health condition?

Under the regulations, employees continue to be able to use FMLA leave for any period of incapacity or treatment due to a chronic serious health condition. The regulations continue to define a chronic serious health condition as one that (1) requires “periodic visits” for treatment by a health care provider or nurse under the supervision of the health care provider, (2) continues over an extended period of time, and (3) may cause episodic rather than continuing periods of incapacity. The regulations clarify this definition by defining “periodic visits” as at least twice a year.

Fitness for Duty re-certification

- If the employer will require the employee to present a fitness-for-duty certification to be restored to employment, the employer must provide notice of such requirement with the designation notice. An employer may require that the certification specifically address the employee’s ability to perform the essential functions of the employee’s job. In such case, the employer must indicate that in the designation notice and include a list of the essential functions of the employee’s position
- If the employee never submits the fitness-for-duty certification the employee may be terminated.