

<b>HAVERFORD TOWNSHIP POLICE DEPARTMENT OPERATIONS MANUAL</b>		
<b>Issue Date</b> February 2021	<b>Review Date</b> February 2022	<b>Directive Number</b> <b>6.1.6</b>
<b>Accreditation Index:</b>		<b>Rescinds:</b> Directive 6.1.6 of November 2019
<b>Chapter:</b> Six – General Procedures	<b>Section:</b> One – Organization and Management	
<b>Chief of Police:</b> <i>John F. Viola</i>		

**SUBJECT: FAMILY MEDICAL LEAVE ACT (FMLA)**

**I. PURPOSE**

It is the purpose of this directive to provide employees with information regarding the Family Medical Leave Act (FMLA).

**II. POLICY**

It shall be the policy of this department that its employees follow all aspects of this directive.

**III. DEFINITIONS**

- A. **Health care provider:** A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices or any other person designated by the U.S. Secretary of Labor.
- B. **Parent:** The biological parent of an employee or an individual who treated the employee as a son or daughter during the time the employee was under 18 years of age.
- C. **12-month period of eligibility:** 12-month period of eligibility is based on a 12 month calendar year.
- D. **Permitted family member:** A spouse, a son, a daughter, and parent with serious health condition.

E. **A serious health condition:** is an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital care - Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
2. Absence plus treatment - Period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves:
  - a) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
  - b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
3. Pregnancy - Any period of incapacity due to pregnancy, or for prenatal care.
4. Chronic conditions requiring treatments - A chronic condition which:
  - a) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
  - b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - c) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
5. Permanent or long term conditions requiring supervision - A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective.
  - a) The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
    - (1) Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple treatments (non-chronic conditions) - Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).
7. For the purpose of this directive, routine physical, eye, or dental examinations are not considered treatment, and unless complications arise, the common cold, flu, earaches, upset stomachs, headaches, and routine dental problems are not ordinarily serious health conditions.

- F. **Son or daughter:** A biological, adopted, or foster child, a stepchild, a legal ward, or a person whom the employee treats as the employee's child.
- G. **Spouse:** A husband or wife; includes domestic partnership.

#### IV. PROCEDURES

##### B. General Requirements and Procedures

1. In compliance with Federal Laws concerning the Family and Medical Leave Act, Haverford Township provides covered employees with up to twelve (12) weeks of job-protected **unpaid** leave during a year for certain family and medical reasons.
  - a) Employees are eligible for Family and Medical Leave Act (FMLA) leave if they have worked for the Haverford Township Police Department for at least twelve months.
    - (1) It is not required that the twelve months be consecutive.
  - b) The employee must also have worked at least 1250 hours in the twelve month period immediately preceding the application for leave.
  - c) The employee must make a formal request in writing via e-mail to the Township's Human Resources Director and complete the U.S. Department of Labor Notice of Eligibility and Rights Forms (See appendage 1). The completed forms shall be returned to the Township Human Resources Department.

2. The following list indicates reasons for leave covered under the FMLA:
  - a) Birth of a child or the placement of a child for adoption or foster care.
  - b) A serious health condition of the employee, or the care of a child, spouse or parent who has a serious health condition.
    - (1) A serious health condition is an illness, injury, impairment or physical or mental condition requiring inpatient care of continuing medical treatment by a health care provider.
    - (2) To qualify as serious, the condition must result in either an overnight stay in a medical care facility or absence from work and/or regular daily activities for more than three days.
3. During periods of unpaid leave, an employee will not accrue Comp days, unless the Maternity Leave Policy is applicable. However, such leave will not be considered a "break in service" for purposes of the employee retirement plan or seniority.
4. The employees must give 30 days' advance notice of the need for leave where the need is foreseeable.
  - a) Emergency conditions and unforeseen events, such as a sudden serious health condition or a premature birth (A premature birth is a birth that takes place more than three weeks before the baby is due. In other words, a premature birth is one that occurs before the start of the 37th week of pregnancy), do not require such notice.
5. The Township has the right to verify an employee's request for family/medical leave.
  - a) If the employee requests leave because of a serious health condition or to care for a family member with a serious health condition, the Township requires that the request be supported by certification supplied by the health care provider responsible for the treatment of the serious health condition, on a form provided by the Township.
  - b) The certification must include the date the serious health condition began, how long the condition is expected to continue and what medical facts form the basis for these findings.
  - c) If leave is taken for the serious health condition of a family member, the certification must also include a statement that

the individual needs the care of the employee, and, if applicable, an estimate of the amount of time the employee is needed to care for the family member.

6. If the Township has reason to doubt the certification, the Township may require a second opinion be acquired from a provider of the Township's choice at the Township's expense.
  - a) Should that provider find that a serious health condition as defined by the law does not exist, a third provider, which will be mutually agreed upon, may be selected to resolve the conflict. Payment to this provider will be at Township expense.
  - b) The decision of this provider shall be final and binding.
  - c) To the extent allowed by law, the medical certification will be treated as confidential and privileged information.
7. An employee is required to report in periodically to the Township Human Resources Department while on FMLA leave. The employee shall report in weekly, or, if the employee is suffering from a serious health condition, as frequently as possible given the employee's condition.
  - a) The employee is expected to indicate whether he or she intends to return to work.
8. Leave taken under this policy can be taken intermittently or on a reduced leave schedule when certified to be medically necessary.
9. The Township can substitute an employee's paid leave for any part of the 12 week period of family leave. The employee may choose what type of paid leave to use first (annual leave, TOTO, or sick time). However, employees caring for family members must utilize annual leave, and time off for time owed (TOTO) prior to the utilization of sick time.
10. As a condition of restoring an employee who was absent on FMLA leave due to the employee's own serious health condition, under the regulations, the Township may require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the position if the employer has appropriately notified the employee that this information will be required and has provided a list of essential functions.
  - a) Additionally, the Township may require a fitness-for-duty certification up to once every 30 days for an employee taking intermittent or reduced schedule FMLA leave if reasonable safety concerns exist regarding the employee's ability to

perform his or her duties based on the condition for which leave was taken.

11. An employee utilizing FMLA for a serious health condition must comply with the requirements of Directive 1.7.1 Extra Duty and Off Duty Employment as it relates to off duty activities and employment specifically section IV. A. 3. a)
  - a) This requirement does not apply if the employee is caring for a family member or at the birth/ placement of a child.

**C. Procedure for Processing Forms and Scheduling Leave Under FMLA**

1. An employee is required to provide thirty (30) days of advance notice in writing to the Human Resources Director that the employee needs to take leave under the FMLA for his or her serious health condition, to care for a family member's serious health condition, or for the birth, adoption, or placement of a child.
  - a) When such advance notice is not possible or the need for leave cannot be foreseen, an employee must give notice as soon as practicable to Human Resources or if after hours to their supervisor.
  - b) An employee giving notice of the need for FMLA leave must explain the reason for the needed leave so as to allow the Township to determine that the leave qualifies for the act. If the employee fails to explain the reason, leave may be denied.
2. An employee's request for FMLA leave will be documented on forms provided in the FMLA packet.
3. When it is anticipated that the leave will exceed 30 days, the Human Resources Department will advise the employee of the schedule on which the employee is to contact them during the FMLA leave to check the status and the employee's intent to return to work.
4. When an employee is already off work for a qualifying event and has not given notice of FMLA leave, the Township notifies the employee that he or she has been on FMLA leave.
  - a) The employee is still responsible for filling out the necessary forms from the FMLA packet as soon as practicable.
5. The employee must return the Employee Notice of FMLA Leave and the FMLA Notice to Employee Acknowledgment forms to the Human Resources Director.

- a) If the leave is anticipated to exceed 30 days, the Township will note the scheduled check-in date on the FMLA Notice to Employee Acknowledgment form, which is included in the FMLA packet.

**D. Maintenance of Benefits**

1. Benefits provided by the Haverford Township Police Department benefit plan will be administered in accordance with this law.
  - a) If you were a Covered Employee prior to the commencement of the leave period, your coverage will stay in effect during the FMLA leave period under the same conditions as if you were not on leave.
2. Any premiums which are the responsibility of the employee to pay and are not paid during the leave period, once the leave is concluded, the re- payment of all outstanding contributions will be repaid within 31 calendar days of your return to work.
3. Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), the Township's obligation to maintain health benefits under this policy ceases:
  - a) If and when an employee informs the Township of his or her intent not to return from leave; or
  - b) If the employee fails to return from leave and thereby terminates employment; or
4. If the employee does not return to work after the period of leave has expired, the employee must reimburse the Township for the employee contribution of the health care coverage premium during the period of unpaid FMLA leave, unless the reason the employee does not return to work is:
  - a) The continuation, recurrence, or onset of a serious health condition, either of the employee or a permitted family member; or
  - b) Other circumstances beyond the control of the employee.

**BY ORDER OF THE CHIEF OF POLICE**

Certification of Health Care Provider for Family Member's Serious Health Condition (Family and Medical Leave Act)

U.S. Department of Labor Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

OMB Control Number: 1235-0003 Expires: 5/31/2018

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: \_\_\_\_\_

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form to your employer. 29 C.F.R. § 825.305.

Your name: \_\_\_\_\_  
First Middle Last

Name of family member for whom you will provide care: \_\_\_\_\_  
First Middle Last

Relationship of family member to you: \_\_\_\_\_

If family member is your son or daughter, date of birth: \_\_\_\_\_

Describe care you will provide to your family member and estimate leave needed to provide care:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Employee Signature \_\_\_\_\_ Date \_\_\_\_\_

**SECTION III: For Completion by the HEALTH CARE PROVIDER**

**INSTRUCTIONS to the HEALTH CARE PROVIDER:** The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), or genetic services, as defined in 29 C.F.R. § 1635.3(e). Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: \_\_\_\_\_

Type of practice / Medical specialty: \_\_\_\_\_

Telephone: ( \_\_\_\_\_ ) \_\_\_\_\_ Fax: ( \_\_\_\_\_ ) \_\_\_\_\_

**PART A: MEDICAL FACTS**

1. Approximate date condition commenced: \_\_\_\_\_

Probable duration of condition: \_\_\_\_\_

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

No  Yes. If so, dates of admission: \_\_\_\_\_

Date(s) you treated the patient for condition: \_\_\_\_\_

Was medication, other than over-the-counter medication, prescribed?  No  Yes.

Will the patient need to have treatment visits at least twice per year due to the condition?  No  Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

No  Yes. If so, state the nature of such treatments and expected duration of treatment:

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2. Is the medical condition pregnancy?  No  Yes. If so, expected delivery date: \_\_\_\_\_

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

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**PART B: AMOUNT OF CARE NEEDED:** When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery?  No  Yes.

Estimate the beginning and ending dates for the period of incapacity: \_\_\_\_\_

During this time, will the patient need care?  No  Yes.

Explain the care needed by the patient and why such care is medically necessary:

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5. Will the patient require follow-up treatments, including any time for recovery?  No  Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

\_\_\_\_\_

Explain the care needed by the patient, and why such care is medically necessary: \_\_\_\_\_

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6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery?  No  Yes.

Estimate the hours the patient needs care on an intermittent basis, if any:

\_\_\_\_\_ hour(s) per day; \_\_\_\_\_ days per week from \_\_\_\_\_ through \_\_\_\_\_

Explain the care needed by the patient, and why such care is medically necessary:

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7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? \_\_\_ No \_\_\_ Yes.

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: \_\_\_ times per \_\_\_ week(s) \_\_\_ month(s)

Duration: \_\_\_ hours or \_\_\_ day(s) per episode

Does the patient need care during these flare-ups? \_\_\_ No \_\_\_ Yes.

Explain the care needed by the patient, and why such care is medically necessary: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**Signature of Health Care Provider**

\_\_\_\_\_  
**Date**

**PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT**

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210.

**DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.**

Designation Notice  
(Family and Medical Leave Act)

U.S. Department of Labor  
Wage and Hour Division



OMB Control Number: 1235-0003  
Expires: 5/31/2018

Leave covered under the Family and Medical Leave Act (FMLA) must be designated as FMLA-protected and the employer must inform the employee of the amount of leave that will be counted against the employee's FMLA leave entitlement. In order to determine whether leave is covered under the FMLA, the employer may request that the leave be supported by a certification. If the certification is incomplete or insufficient, the employer must state in writing what additional information is necessary to make the certification complete and sufficient. While use of this form by employers is optional, a fully completed Form WH-382 provides an easy method of providing employees with the written information required by 29 C.F.R. §§ 825.300(c), 825.301, and 825.305(c).

To: \_\_\_\_\_

Date: \_\_\_\_\_

We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided. We received your most recent information on \_\_\_\_\_ and decided:

**\_\_\_\_\_ Your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA leave.**

**The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:**

\_\_\_\_\_ Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: \_\_\_\_\_

\_\_\_\_\_ Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

**Please be advised (check if applicable):**

\_\_\_\_\_ You have requested to use paid leave during your FMLA leave. Any paid leave taken for this reason will count against your FMLA leave entitlement.

\_\_\_\_\_ We are requiring you to substitute or use paid leave during your FMLA leave.

\_\_\_\_\_ You will be required to present a fitness-for-duty certificate to be restored to employment. If such certification is not timely received, your return to work may be delayed until certification is provided. A list of the essential functions of your position \_\_\_\_\_ **is** \_\_\_\_\_ **is not** attached. If attached, the fitness-for-duty certification must address your ability to perform these functions.

**\_\_\_\_\_ Additional information is needed to determine if your FMLA leave request can be approved:**

\_\_\_\_\_ The certification you have provided is not complete and sufficient to determine whether the FMLA applies to your leave request. You must provide the following information no later than \_\_\_\_\_, unless it is not practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied.  
(Provide at least seven calendar days)

\_\_\_\_\_  
(specify information needed to make the certification complete and sufficient)

\_\_\_\_\_ We are exercising our right to have you obtain a second or third opinion medical certification at our expense, and we will provide further details at a later time.

\_\_\_\_\_ Your FMLA Leave request is Not Approved.

\_\_\_\_\_ The FMLA does not apply to your leave request.

\_\_\_\_\_ You have exhausted your FMLA leave entitlement in the applicable 12-month period.

**PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT**

It is mandatory for employers to inform employees in writing whether leave requested under the FMLA has been determined to be covered under the FMLA. 29 U.S.C. § 2617; 29 C.F.R. §§ 825.300(d), (e). It is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 – 30 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION.**

## **Fact Sheet #28A: Employee Protections under the Family and Medical Leave Act**

The Family and Medical Leave Act (FMLA) entitles eligible employees who work for covered employers to take unpaid, job-protected leave for specified family and medical reasons. Eligible employees may take up to 12 workweeks of leave during any 12-month period for certain family and medical reasons and up to 26 workweeks of leave during a single 12-month period for military caregiver leave. *See* [Fact Sheet 28F: Qualifying Reasons for Leave under the FMLA](#) and [Fact Sheet 28M: The Military Leave Provisions under the FMLA](#). This fact sheet describes the protections the FMLA affords to employees while taking FMLA leave and upon returning to work from FMLA leave.

### **PROTECTIONS DURING FMLA LEAVE**

#### **Group Health Insurance Benefits**

If an employee is provided **group health insurance**, the employee is entitled to the continuation of the group health insurance coverage during FMLA leave on the same terms as if he or she had continued to work. If family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. The employee must continue to make any normal contributions to the cost of the health insurance premiums.

If paid leave is substituted for FMLA leave, the employee's share of group health plan premiums must be paid by the method normally used during paid leave (usually payroll deduction). An employee on unpaid FMLA leave must make arrangements to pay the normal employee portion of the insurance premiums in order to maintain insurance coverage. If the employee's premium payment is more than 30 days late, the employee's coverage may be dropped unless the employer has a policy of allowing a longer grace period. The employer must provide written notice to the employee that the payment has not been received and allow at least 15 days after the date of the letter before coverage stops.

In some instances, an employer may choose to pay the employee's portion of the premium, for example, in order to ensure that it can provide the employee with equivalent benefits upon return from FMLA leave. In that case, the employer may require the employee to repay these amounts. In addition, the employer may require the employee to repay the employer's share of the premium payment if the employee fails to return to work following the FMLA leave unless the employee does not return because of circumstances that are beyond the employee's control, including a FMLA-qualifying medical condition.

#### **Benefits Other than Health Insurance**

An employee's rights to benefits other than group health insurance while on FMLA leave depend upon the employer's established policies. Any benefits that would be maintained while the employee is on other forms of leave, including paid leave if the employee substitutes accrued paid leave during FMLA leave, must be maintained while the employee is on FMLA leave.

### **Substitution of Paid Leave**

FMLA entitles eligible employees to take unpaid leave. Under certain conditions, employees may “substitute,” or run at the same time as their FMLA leave, accrued **paid** leave (such as sick or vacation leave) to cover some or all of the period of FMLA leave. An employer may also require employees to substitute accrued paid leave for unpaid FMLA leave even when the employee has not elected to do so. In order to substitute accrued paid leave, the employee must follow the employer’s normal rules for the use of that type of leave, such as submitting a leave form or providing advance notice. If an employee does not meet the requirements to take paid leave under the employer’s normal leave policies, the employee may still take unpaid FMLA leave. Paid leave taken for reasons that do not qualify for FMLA leave does not count against the employee’s FMLA leave entitlement.

### **PROTECTIONS UPON RETURN FROM FMLA LEAVE (JOB RESTORATION)**

When an employee returns from FMLA leave, he or she must be restored to the same job or to an "equivalent job". The employee is not guaranteed the actual job held prior to the leave. An equivalent job means a job that is virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions (including shift and location).

Equivalent pay includes the same or equivalent pay premiums, such as a shift differential, and the same opportunity for overtime as the job held prior to FMLA leave. An employee is entitled to any unconditional pay increases that occurred while he or she was on FMLA leave, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted only if employees taking the same type of leave for non-FMLA reasons receive the increases. Equivalent pay includes any unconditional bonuses or payments. If an employee does not meet a specific goal for achieving a bonus because of taking FMLA leave, however, the employer must only pay the bonus if employees taking the same type of leave for non-FMLA reasons receive it. For example, if an employee is substituting accrued paid sick leave for unpaid FMLA leave and other employees on paid sick leave are entitled to the bonus, then the employee taking FMLA-protected leave concurrently with sick leave must also receive the bonus.

All benefits an employee had accrued prior to a period of FMLA leave must be restored to the employee when he or she returns from leave. An employee returning from FMLA leave cannot be required to requalify for any benefits the employee enjoyed before the leave began.

### **LIMITATIONS TO FMLA PROTECTIONS**

An employee on FMLA leave is not protected from actions that would have affected him or her if the employee was not on FMLA leave. For example, if a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours. If an employee is laid off during the period of FMLA leave, the employer must be able to show that the employee would not have been employed at the time of reinstatement.

An employer may also deny restoration to a “key” employee under certain circumstances. A key employee is a salaried, FMLA-eligible employee who is among the highest-paid 10 percent of all of the employer’s employees within 75 miles. To deny restoration to a key employee, an employer must have determined that substantial and grievous economic injury to its operations would result from the restoration, must have provided notice to the employee that he or she is a key employee and that restoration will be denied, and must provide the employee a reasonable opportunity to return to work.

## **ENFORCEMENT**

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA. *See [Fact Sheet 77B: Protections for Individuals under the FMLA](#)*. The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

**For additional information, visit our Wage and Hour Division Website:**

**<http://www.wagehour.dol.gov> and/or call our toll-free helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**  
Frances Perkins Building  
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# EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

## Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

## Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness\*; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.\*

**\*The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

## Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

## Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months\*, and if at least 50 employees are employed by the employer within 75 miles.

**\*Special hours of service eligibility requirements apply to airline flight crew employees.**

## Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and

a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

## Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

## Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

## Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

## Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

## Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

## Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

**FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.**

