

Benefit Fact Sheet

Objective

To provide eligible employees with job-protected leave and the maintenance of health benefits while on certain types of leave.

Why offer it?

Employers are required by federal law to comply with the FMLA. Penalties and fines may be imposed for non-compliance.

Who offers it?

- All public agencies regardless of the number of employees, including state, local and federal employers, local education agencies (i.e., schools both public and private).
- Private sector employers who are engaged in commerce, or in any industry or activity affecting commerce, with 50 or more employees on the payroll for 20 work weeks during the current or preceding calendar year.

To be eligible for FMLA leave, an employee must have worked for the employer at least 12 months (not necessarily consecutively) and for at least 1,250 hours within a 12-month period before the leave begins. Employees must be credited for any time period he/she would have worked while engaged in “uniformed services”. In addition, the employer must employ at least 50 workers at or within 75 miles of the workplace.

What are the provisions of the law?

A covered employer must grant an eligible employee up to a total of 12 work weeks of unpaid leave during any 12-month period for one or more of the following reasons:

- Birth and care of a newborn child.
- Placement of a foster child.
- Adoption of a child.
- To care for an immediate family member (i.e., spouse, child, or parent) with a serious health condition.
- The employee’s own serious health condition.
- The employee is an immediate family member of service members who are taking part in a “contingency operation” or because of any “qualifying exigency”.
 - A “contingency operation” is defined as a military operation that results in a service member being retained or called to duty.
 - Per the [Department of Labor Wage and Hour Division](#), a “qualifying exigency” has been defined to include:
 - “Issues arising from a covered military member’s short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification;
 - Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
 - Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary

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- due to circumstances arising from the active duty or call to active duty of the covered military member;
- Making or updating financial and legal arrangements to address a covered military member's absence;
 - Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
 - Taking up to five days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
 - Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member;
 - Any other event that the employee and employer agree is a qualifying exigency."

The National Defense Authorization Act of 2008 expands leave benefits by requiring employers to provide up to a combined total of 26 weeks of unpaid leave within a 12-month period to employees who are caring for a "covered service member" wounded in the line of duty. Eligible employees include spouses, children, parents, or next of kin of the service member.

While FMLA is generally unpaid, employers may require the employee to use any accrued paid time off during the leave. Spouses employed by the same employer are jointly entitled to a combined total of 12 work weeks of leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

Health Benefits

A covered employer is required to offer to continue group health insurance coverage for an employee on FMLA. This coverage must be the same as was provided before the leave was taken and on the same terms as if the employee continued working. Employers may request premium payments from the employee while the employee is on leave. In some instances, the employer may recover premiums that were paid to maintain health coverage for an employee who fails to return to work from FMLA.

Intermittent Leave

FMLA may be taken intermittently in blocks of time or by reducing the employee's normal weekly or daily work schedule, as long as the reduced leave schedule is deemed medically necessary or to care for a newborn, new adoption, or new foster care child. Employers may require certification from the health care provider.

Job Restoration

Upon return from FMLA, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. In addition, an employee's use of FMLA cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA, nor be counted against the employee under an attendance policy.

Exceptions

Under specified and limited circumstances, an employer may refuse to reinstate certain highly paid "key" employees (any employee who is salaried and is among the highest paid ten percent of employees within 75 miles of the work site). In order to do so, the employer must:

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- Notify the employee in writing of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave.
- Notify the employee as soon as the employer decides it will deny job restoration, and explain the reasons for the decision.
- Offer the employee a reasonable opportunity to return to work from FMLA leave after giving the notice.
- Make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

Notice and Certification

Whenever possible, employees who wish to use FMLA leave are required to provide their employer with 30-days advance notice.

Employers may require the following:

- Medical certification supporting the need for leave due to a serious health condition.
- Second or third medical opinions (at the employer's expense) and periodic recertification.

What are the provisions of the California Paid Family Leave Insurance law?

In some situations the California Paid Family Leave may coincide with FMLA. However, it is important to note Paid Family Leave insurance is separate from and does not change the requirements of FMLA. The primary differences in the laws are:

- The instances for which leave is provided.
- FMLA protects an employee's job whereas Paid Family Leave does not.
- FMLA provides leave *without* pay whereas Paid Family Leave provides leave *with* pay.

For California workers covered by State Disability Insurance, Paid Family Leave (PFL) insurance provides up to six weeks of benefits during any 12-month period for individuals who must take time off for one or more of the following reasons:

- To care for a seriously ill child, spouse, parent, or registered domestic partner.
- To bond with a new minor child.

Regarding taxation, the federal Internal Revenue Service (IRS) has determined that Paid Family Leave insurance payments can be considered unemployment compensation under Section 85 of the Internal Revenue Code. Therefore, all Paid Family Leave payments must be reported to the IRS on a Form 1099G. For federal tax purposes, Paid Family Leave payments must be included in a claimant's gross income. For state tax purposes, Paid Family Leave payments are not taxable.

Informational link(s)

- [FMLA Compliance Guide](#) (Department of Labor)
- [California Paid Family Leave Insurance](#) (California Employment Development Department)
- [Requirements of FMLA Compliance](#) (Entrepreneur.com)
- [Paperwork & Certification Requirements of FMLA](#) (Entrepreneur.com)

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- [National Defense Authorization Act](#) (Department of Labor)

Sample forms

- [Response form](#) -- This form is used by employers who wish to formally respond to employee's requests for FMLA.
- [Certification of health care provider](#) -- This form must be completed by the employee's health care provider prior to or directly following (e.g., in the case of an emergency) a request for FMLA.
- [Posting - Notice of Employee Rights Under FMLA](#) -- Covered employers must post a notice explaining rights and responsibilities under FMLA. Failure to do so could result in a fine of up to \$100 per offense.

This Fact Sheet is designed to provide a general overview of the benefit program, service, or regulatory act it describes. The information included in this document is not a substitute for legal or professional opinion relative to a plan sponsor's particular fact pattern. Your ArlenGroup consultant can answer more specific questions relative to its application for your organization. A menu of additional topics is available online at: www.arlengroup.com/facts.