

# FMLA FREQUENTLY ASKED QUESTIONS

## GENERAL INFORMATION

Traditionally, the Family and Medical Leave Act (FMLA) provided job-protected time off from work to allow employees to attend to their own or a qualifying family member's serious health condition; or for the birth, adoption, or foster care of a child. In 2008, the law was expanded. Under the new law, family members of qualifying military service members may be eligible for leave.

FMLA traditionally provided up to twelve (12) weeks of leave for the following four types of events:

1. Birth of a child.
2. Adoption of a child or placement of a child in foster care.
3. To care for a qualifying family member with a serious health condition.<sup>1</sup>
4. Due to the employee's own serious health condition.

As revised, the FMLA now includes provisions for Service Member Family Leave, which provides leave for the following two types of events:

1. Qualifying Exigency (QE): Up to twelve (12) weeks of leave to attend to a Qualifying Exigency (QE) arising out of the fact that the employee's spouse, parent, son, or daughter is a service member who is "on active duty (or notified of an impending call or order to active duty) in support of a contingency operation."<sup>2</sup> QE leave is only available to families of National Guard and Reserve service members.
2. Military Caregiver: Up to twenty-six (26) weeks of leave to care for a qualifying family member who incurred a serious injury or illness in the line of duty while on active duty in the Armed Forces.<sup>3</sup>

Employers who meet certain criteria are required to allow FMLA time off from work. The State of Idaho is an employer who meets those criteria.

The FMLA provides for three types of leave: continuous, intermittent, and reduced-work schedule.

---

<sup>1</sup> Refer to the Family and Medical Leave Act Policy (online – under DHR Statewide Policies) for information about qualifying medical conditions.

<sup>2</sup> Refer to the Family and Medical Leave Act Policy (online – under DHR Statewide Policies) for more information about events which qualify as QE leave.

<sup>3</sup> Refer to the Family and Medical Leave Act Policy (online – under DHR Statewide Policies) for more information about eligibility for and limitations to the twenty-six week Service Member Family Leave.

Continuous leave is when an employee is off work entirely. Examples include:

- An employee gives birth and takes the twelve weeks following childbirth off work.
- An employee has back surgery and is off work for several weeks recovering.

Intermittent leave is when an employee takes time off in separate blocks of time due to a single qualifying reason. An employee may be able to plan the need for intermittent leave in advance, or it may be unexpected. Examples include:

- An employee is receiving chemotherapy treatments. Those treatments cause illness/nausea, requiring the employee to be absent from work. The illness/nausea occurs irregularly, and the employee's absence cannot be pre-planned.
- A pregnant employee takes time off for prenatal examinations. These absences may be pre-planned.

Reduced-work schedule is when an employee's usual work schedule is reduced. For example:

- A full-time employee with multiple sclerosis is limited to 24 hours/week of work by the physician.

Occasionally, an employee's leave will progress from one type of leave to another. For example, a full-time employee off work for surgery may be on continuous FMLA leave, and then be released by the physician to return to work on a part-time basis while recovering.

The State of Idaho, as an employer, has determined it will designate time off from work for FMLA qualifying reasons as FMLA leave.

Links to the United States Department of Labor's FMLA FAQ documents include:

[Traditional \(non-military\) FMLA](#)  
[Service Member \(military\) FMLA](#)

In addition, following are commonly-asked questions by employees.

## FMLA FREQUENTLY ASKED QUESTIONS

### **1. When should an agency designate FMLA for an employee?**

An agency will designate FMLA leave when an employee qualifying for FMLA has a qualifying medical reason to be off work. To qualify for FMLA, an employee must have been employed for at least one year, must have worked 1,250 hours in the twelve-month period preceding the start of the leave, and must have a qualifying reason to take leave.

### **2. What if an employee does not want to use FMLA, but qualifies?**

The law allows employers to designate qualifying absences as FMLA leave, regardless of the employee's preference. The State of Idaho has elected this course to ensure consistency in the application of FMLA. It is therefore not the employee's option.

### **3. If an agency designates qualifying time off as FMLA leave, why should an employee complete the FMLA Request Form?**

The FMLA Request Form facilitates a smooth transition to leave, and back to work. The form includes information which helps the agency comply with the employee's desires, such as if the employee would prefer to use accrued sick or vacation leave while on FMLA, and indicates the period the employee anticipates the FMLA leave will occur.

### **4. Is there a minimum amount of time an employee must be off before an agency designates the leave as FMLA?**

In situations where the employee requests FMLA and qualifies, FMLA leave should be granted accordingly.

In situations where the employee does not request FMLA, most agencies will wait five days and then designate FMLA. (For information specific to your agency, contact your Human Resources office.)

In either case, the employee is required to submit the required certification to support their use of FMLA.

### **5. What medical certification is required to support the use of FMLA due to the serious health condition of an employee or a qualifying family member?**

Employees requesting FMLA may provide a physician's statement or use the form that is typically included with an agency's FMLA policy.

When an employee is off work for an extended period due to illness, regardless of the employee's FMLA eligibility, the agency will typically require a doctor's note releasing the employee to return to work. Any such release should include the doctor's recommended work restrictions, if any exist. This ensures the employee and agency recognize the medical restrictions and work together to comply with those restrictions. Such a release would also suffice as the medical certification supporting the use of FMLA for situations when FMLA had been designated by the agency.

## **6. Who is considered a "parent" under the FMLA?**

If FMLA is used by an employee to care for a "parent" or used by an employee as the "parent" to care for a child, the "parent" is the biological, adoptive, step or foster father or mother or anyone else who undertook the parental role. "Parent" is the person who actually has day-to-day responsibility for caring for the child (or "in loco parentis"). Step-parents are considered parents, even when no longer married to the child's father or mother and even if there was not an official adoption.

"Parent" does not include in-laws.

## **7. When should a person going on maternity leave turn in their paperwork?**

An employee with advance knowledge of the need for leave should submit the necessary paperwork to an agency 30 days before the anticipated leave date.

## **8. I am a female employee planning to take 12 weeks of FMLA leave following the birth of my child. I have over 600 hours of sick leave accrued. I know I may use sick leave concurrently with my FMLA leave, but there must be a "bona fide" illness in order for sick leave to be used. I'm not sure just what that means—how much sick leave may I use?**

In the medical community, it is common practice to consider the first six weeks a period of incapacity for a woman who has given birth via a normal delivery (if a cesarean delivery, eight weeks is common). An agency therefore would typically allow six weeks of sick leave use for a normal delivery (or eight weeks of sick leave use for a cesarean section) without requiring additional medical documentation. For additional use of sick leave to occur, the employee must provide medical certification of the actual illness or injury of the qualifying individual.

## **9. I am adopting a baby. May I use sick leave while on FMLA?**

IDHR Rule requires an actual illness or injury for employees to use sick leave. Therefore, for an employee to use sick leave while simultaneously on FMLA following adoption, a qualifying family member must be ill or injured. In order to protect the employee from allegations of fraudulent use of sick leave, an agency would require medical certification of the illness or injury

**10. Can the employer require the employee to take more time off than is medically necessary? For example, my full-time employee is released to work 32 hours per week. I need 40 hours of work, so can I require the employee to be off until fully released?**

No. If the employee's request for intermittent or reduced work schedule leave is NOT due to birth or adoption, an employer may not require the employee to take more time off than is medically necessary.

If the employee's request for intermittent or reduced work schedule leave is due to birth or adoption, an agency may have discretion in agreeing to the leave. For example, a father plans to take two weeks off when his child is born, and then work part-time for four weeks thereafter. The agency would be required to allow the two weeks off (continuous leave) adjacent to the birth. However, the agency would not be required to allow the subsequent intermittent or reduced work schedule leave.

Note that, while an employee is on intermittent or reduced work schedule leave, the agency may assign the employee to an alternate work assignment to minimize workplace disruptions. An example would be a front-desk Customer Service Representative who is taking work intermittently for unplanned absences related to chemotherapy. Because the unplanned absences negatively impact the agency's ability to staff the reception area accordingly, the employee may be reassigned to another role (e.g., to complete filing, distribute mail, type correspondence, etc.) during the time the employee is approved for FMLA. Should this occur, the employee's pay rate and job classification will remain unaffected.

**11. I have an employee who recently became diagnosed with a serious disease. What do I need to do?**

Advise the employee the FMLA provides job protected time off from work, which may facilitate recovery or disease management. Refer the employee to your Human Resources office for additional information.

Also, tell HR that you have an employee who has been diagnosed with a serious medical condition, so that Human Resources may provide the employee with legally-required notices.

**12. As an employee, why would I want to request FMLA?**

FMLA is job protected leave. Therefore, your use of FMLA cannot negatively impact your employment. In addition, the State continues to pay its portion of your health insurance while you are on FMLA, even if you are in unpaid status.

**13. How long does an employee have to submit the FMLA Request Form and medical certification?**

An employee has 15 days to return the original medical certification and paperwork requesting leave. The agency may waive that deadline if the employee has difficulty obtaining the necessary information, but the employee must submit the form as soon as reasonably possible.

**14. If an employee fails to return the medical certification, how should we code the hours until we receive the official documentation?**

If the employee fails to return the medical certification and FMLA request paperwork within a timely fashion, the agency can deny the use of FMLA leave and corresponding paid leave (sick or vacation), if appropriate. However, circumstances differ, and consultation with your Human Resources office is highly recommended.

**15. I have an employee who works part-time. How much FMLA leave is the employee allowed?**

When a part-time employee takes FMLA leave in a single block of time, he or she is entitled to 12 workweeks of leave calculated on the customary number of hours worked in the workweek. When a part-time employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted towards the employee's FMLA leave entitlement. Part-time employees or employees working variable weekly schedules are eligible for FMLA protected leave based on a pro rata or proportional basis. Some examples include:

- A part-time employee normally works 30 hours per week. The employee goes on continuous leave and therefore may receive up to 12 weeks of leave at a rate of 30 hours per week.

- A part-time employee normally works 30 hours per week and works 20 hours per week on an FMLA reduced leave schedule. This employee would use 10 hours of FMLA leave each week, or the equivalent of one-third of a week of FMLA leave. The fractions can also be converted to an hourly equivalent as long as the conversion equitably reflects the employee's normally scheduled hours. In this example, 30 hours per week times 12 weeks equals 360 hours of FMLA leave in a 12-month period. Therefore, for each workweek the employee uses FMLA on a reduced leave schedule, 10 hours of FMLA leave can be deducted from the total 360 hours of FMLA covered leave.
- If a part-time employee has no "normal" schedule or hours worked per week, and the employer is unable to determine with certainty how many hours the employee would otherwise have worked, a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period (including any hours for which the employee took leave of any type) is used to calculate the employee's leave entitlement. FMLA eligibility is also contingent on the employee working at least 1,250 hours in the immediate preceding 12 months; many part-time employees will not meet this threshold for eligibility. For example, an employee who worked a total of 1,300 hours in the 12 months preceding the FMLA leave, would be eligible for 12 weeks of continuous leave at a rate of 27 hours per week. If FMLA leave is taken intermittently, the employee would be eligible for 324 hours of FMLA leave ( $1,300 \div 12 = 108$  hours per month or 27 hours worked per week on average). The entire hourly entitlement for this employee would be 324 hours (27 hours x 12 weeks = 324).

**16. In what situations does an agency ask for recertification of the need for continued time off?**

An agency generally requests recertification of the need to be off work every 30 days, unless the medical condition or restriction clearly indicates otherwise. For example, an employee having a baby would not be required to "recertify" the need to be off work 30 days after the birth (because the birth itself clearly qualified her for twelve weeks off).

Similarly, an employee whose physician restricted them to no work for 90 days, while completing a chemotherapy regimen, would not be asked for recertification at 30 days. However, at 90 days, the employee would be asked to provide updated medical information, which would normally consist of a release to return to work or a doctor's statement restricting the employee from working.

Employees taking extended leave for chronic (long-term) or lifelong conditions are to recertify the continued eligibility and need for FMLA every six months.

**17. Where, and for how long, should the FMLA paperwork (such as the Request Form and medical certification or re-certification) be kept?**

All employee medical records are retained by your Human Resources office or Employee Services. Such documents reside in the employee's medical file, not the employee's official personnel file. The retention requirement for such records is five (5) years after the employee's separation. If an employee provides medical records, such as re-certification for FMLA, to the supervisor, the supervisor is to forward the documentation to Human Resources for filing and retention.

**18. May FMLA be used or designated in conjunction with short-term disability?**

Yes. FMLA is job protected time off from work. Short-term disability is a program to help replace part of an employee's income when the employee cannot work due to a disability. The two are not necessarily related. So, an employee may qualify for FMLA, but still not qualify for short-term disability benefits. An agency has no input into the determination of if an employee qualifies for short-term disability.

**19. The FMLA specifies that, when an employee is off work due to FMLA and is medically released to return to work, but does not return to work, the employer may recoup its portion of insurance premiums paid while the employee was off work on FMLA. Does the State pursue this recoupment in these situations?**

Most agencies recommend that you contact the Office of Group Insurance if this issue applies to your situation.

**20. I am the supervisor of an employee who has requested FMLA. The medical certification looks suspicious—it's not signed, is on plain paper, and the letterhead looks "home-grown" like something I can type myself at the top of a piece of paper. Can I call the doctor to confirm the legitimacy of the medical certification?**

Direct contact with the health care provider is allowed to authenticate or clarify a medical certification. Employee consent is not required. However,

such contact may NEVER be made by a supervisor. You should contact your Human Resource office if this situation arises.

- 21. An employee takes 12 weeks of FMLA leave beginning February 1, 2009 due to the birth of a child. In July of 2009, the employee's spouse is injured while on active duty. How much leave may the employee take?**

The employee would have up to 14 weeks of leave to care for the injured spouse. Explanation: The FMLA provides up to 26 weeks of leave to employees who have a qualifying family member who is injured while on active duty in the Armed Forces. However, the 26 week annual entitlement is the maximum FMLA allowed in a 12-month period. Therefore, FMLA leave for "traditional" purposes reduces the availability of Service Member leave.

- 22. An employee's spouse is injured on January 1, 2009 while on active duty. The employee takes 26 weeks off work to care for the spouse. In October of the same year, the employee is injured in a car accident and has a "serious health condition" as defined under the FMLA. How much FMLA eligibility does the employee have?**

None. Military caregiver leave begins a new FMLA year. Therefore, January 1, 2009 began a new FMLA year, during which the employee used 26 weeks of FMLA. The employee has no FMLA eligibility until January 1, 2010.

- 23. An employee takes 6 weeks off beginning in February due to surgery. In May of that same year, the employee's spouse is injured while on active duty, and the employee takes 15 weeks off work. Then, in October of that same year, the employee is diagnosed with a "serious health condition" as defined under the FMLA. How much FMLA may the employee take?**

The employee would have 5 weeks of FMLA eligibility due to the employee's own serious health condition. This is because the maximum total allowable FMLA leave is 26 weeks in a 12-month period. The employee has taken 21 weeks, leaving 5 weeks available.

- 24. An employee's spouse is injured in July while on active duty. The employee takes 16 weeks off to care for and facilitate the spouse's recovery. In February of the following year, the employee is diagnosed with a serious health condition as defined under the FMLA. How much leave may the employee take?**

The employee may take up to 10 weeks of FMLA leave due to the employee's own health condition. This is because the maximum total allowable FMLA leave is 26 weeks in a 12-month period. The employee has taken 16 weeks, leaving a balance of 10 weeks available for use.

**25. On January 1, 2009, an employee begins 10 weeks of FMLA leave for the employee's own serious health condition. Then, on July 1, the employee's spouse is injured while on active duty in the Armed Forces. The employee begins 16 weeks of FMLA to care for the injured service member. When will the employee have FMLA eligibility (excluding eligibility for service member leave)?**

The employee would become eligible for FMLA leave on January 29, 2010, as a 12-month "look back" on that date would show only 472 hours of FMLA used.

**26. An employee is off work for 26 weeks beginning January 1, 2009 to care for a son who was injured while on active duty in the Armed Forces. In August, 2009, the employee's daughter, who is also in the Armed Forces, is injured while on active duty. Does the employee have any FMLA eligibility?**

No. An employee is only entitled to a total of 26 weeks of leave within any 12-month period. However, the employee could take 26 weeks of leave to care for the injured daughter beginning January 1, 2010.

**27. During June – August, I took 5 weeks of FMLA leave pursuant to the "Qualifying Exigency" provision. It is now December, and I am going to have a baby. How much FMLA eligibility do I have?**

Employees are allowed a total of 12 weeks of FMLA leave for circumstances 1-5 outlined in Statewide Policy Section 4C. Therefore, you have a total of 7 weeks of FMLA eligibility remaining.