

FAMILY MEDICAL LEAVE ACT PROTECTIONS

The Family Medical Leave Act is one of the most important protections for employees because all of us are certain to fall under its protections at some point. It provides 12 weeks of protected leave every 12 months for a variety of health and family issues. Unlike normal sick leave, the FMLA guarantees that you cannot be discriminated or retaliated against for taking the leave and your employer cannot unduly interfere with your attempt to take the leave. The trade-off for these protections is that FMLA leave is generally unpaid, although you can use sick leave or other paid leave at the same time in order to continue your income.

Eligibility

There are some eligibility requirements to qualify for FMLA coverage. First, you have to have worked for your employer for a total of 12 months. The 12 months do not have to be consecutive, and it does count time over the summer when an individual may be employed but not actively working. Second, you have to have worked for a total of 1,250 hours in the previous 12 months. For hourly employees, this calculation is relatively straightforward, but for salaried employees, the calculation can be more complex. The 1,250-hour requirement includes all hours worked, including time worked on evenings and weekends, even if those hours are outside of typical school days and are not documented on a time sheet. Unless a full-time salaried employee has taken significant time off in a previous year, it is very likely that he or she will meet the 1,250 requirement.

There is one final requirement, related to the size of the employer and total number of employees, but this will only affect very small rural districts, and you can contact your UniServ director if you have questions about it.

Reasons for leave

FMLA leave is available for five different purposes:

1. To care for your own serious health condition
2. To care for the serious health condition of your spouse, child, or parent
3. Childbirth or care of a child within the first year of life
4. Placement and care of an adopted child within the first year of placement
5. Issues arising from the military status of yourself, spouse, child, or parent

A serious health condition is defined as an injury, impairment, or physical or mental condition that involves either inpatient care or causes an incapacity of three or more days and requires ongoing treatment. Therefore, a common cold may not be covered, but a more significant illness that requires more than one doctor visit or that requires an ongoing treatment program, such as prescription medication or physical therapy, would be covered.

Military issues can be significantly more complicated but would enable the individual to take up to 26 weeks of leave. Therefore, you should contact your UniServ director if one of these situations applies to you.

Process

One of the interesting aspects of the FMLA is that it does not require employer approval to apply if you meet all of the eligibility requirements and your reason for leave is covered. Nevertheless, your employer is allowed to request "certification" of the need for leave. "Certification" is enough information from you to verify that the leave does qualify for FMLA protection. This process does not require releasing all of your medical information. In fact, the Department of Labor has created the WH-380-E, a simple form that provides all the legally required information. Because one of the covered reasons for leave is an incapacity of three days, it is not uncommon for employers to send FMLA paperwork to anyone with an extended absence. Once you have received this paperwork you have 15 days to return it unless you have good cause for why you need more time.

The FMLA is an important protection, and if you need any help ensuring that your leave is protected, contact your UniServ director so that he or she can assist you with the process.