

FMLA QUESTIONS AND ANSWERS

Q: What does the Family and Medical leave act provide?

The Family and Medical Leave Act (FMLA) provides eligible employees up to 12 workweeks (480 hours) of unpaid leave a year, and requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave. Employees are also entitled to return to their same or an equivalent job at the end of their FMLA leave.

Q: Do the 12 months of service with the employer have to be continuous or consecutive?

No. The 12 months do not have to be continuous or consecutive; all time worked for the employer is counted.

Q: How is the 12-month period calculated under FMLA?

Employers may select one of four options for determining the 12-month period. The County has elected to use:

- A "rolling" 12-month period measured backward from the date an employee uses FMLA leave.

Q: Under what circumstances is leave designated as FMLA leave and counted against the employee's total entitlement?

In all circumstances, it is the employer's responsibility to designate leave taken for an FMLA reason as FMLA leave. The designation must be based upon information furnished by the employee. Leave may not be designated as FMLA leave after the leave has been completed and the employee has returned to work, except if:

- the employer is awaiting receipt of the medical certification to confirm the existence of a serious health condition;
- the employer was unaware that leave was for an FMLA reason, and subsequently acquires information from the employee such as when the employee requests additional or extensions of leave; or,
- the employer was unaware that the leave was for an FMLA reason, and the employee notifies the employer within two days after return to work that the leave was FMLA leave.

Q: Are there any restrictions on how I spend my time while on leave?

The employer may not restrict your activities as long as they are established under the health care certification. The protections of FMLA will not cover situations where the reason for leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave.

Q: How much leave are a husband and wife entitled to if they are employed by the same employer?

A husband and wife who are eligible for FMLA leave and are employed by the same employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for:

- for birth of the employees' son or daughter or to care for the child after birth;
- for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement; or
- for a qualifying exigency arising from the employees' son or daughter being placed on active duty, or notice of an impending call to active duty, in the Armed Forces

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If both the husband and wife use a portion of the 12 weeks for one of the above events, each would be entitled to the difference between the amount he/she has taken individually and 12 weeks for FMLA leave for another qualifying event.

Employees are entitled to 26 weeks of leave in a 12-month period for the care of a son or daughter as a covered service member. A husband and wife working for the same employer will be limited to a combined total of 26 weeks of leave for this purpose.

Q: 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.

Q: 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).

Q: 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.

Q: What happens if I do not submit a requested medical or fitness-for-duty certification?

If an employee fails to timely submit a properly requested medical certification (absent sufficient explanation of the delay), FMLA protection for the leave may be delayed or denied. If the employee never provides a medical certification, then the leave is not FMLA leave.

If an employee fails to submit a properly requested fitness-for-duty certification, the employer may delay job restoration until the employee provides the certification. If the employee never provides the certification, he or she may be denied reinstatement.

Q: Can my employer move me to a different job when I return from FMLA leave?

On return from FMLA leave (whether after a block of leave or an instance of intermittent leave), the FMLA requires that the employer return the employee to the same job, or one that is nearly identical (equivalent).

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If not returned to the same job, a nearly identical job must:

- offer the same shift or general work schedule, and be at a geographically proximate worksite (i.e., one that does not involve a significant increase in commuting time or distance);
- involve the same or substantially similar duties, responsibilities, and status;
- include the same general level of skill, effort, responsibility and authority;
- offer identical pay, including equivalent premium pay, overtime and bonus opportunities, profit-sharing, or other payments, and any unconditional pay increases that occurred during FMLA leave; and
- offer identical benefits (such as life insurance, health insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.).

Q: Do I need to check in with the office during my absence?

You should check in with HR periodically, at least every 6 weeks during your absence with the status of your return.

Q: What do I need to do before I return to work?

You are required to present a fit-for-duty or release-to-work from your physician before you can return to work. The note must simply include the date your physician certifies that you are medically able to return to work and any special restrictions, if applicable.

Q: Does workers' compensation leave count against an employee's FMLA leave entitlement?

It can. FMLA leave and workers' compensation leave can run together, provided the reason for the absence is due to a qualifying serious illness or injury and the employer properly notifies the employee in writing that the leave will be counted as FMLA leave.

Q: May I take FMLA leave for visits to a physical therapist, if my doctor prescribes the therapy?

Yes. FMLA permits you to take leave to receive "continuing treatment by a health care provider," which can include recurring absences for therapy treatments such as those ordered by a doctor for physical therapy after a hospital stay or for treatment of severe arthritis.

Any other questions regarding FMLA, please contact HR at (515) 993-6800 or Leslie.cox@dallascountyiowa.gov.