

(FMLA)
FAMILY MEDICAL LEAVE ACT PACKET
(FOR FAMILY MEMBERS)



Niagara Falls City School District Office of Human Resources

630-66th Street Niagara Falls, NY 14304
716-286-4225

EMPLOYEE CHECKLIST

☐ **EMPLOYEE REQUESTS LEAVE**

Request must be made 30 days in advance of leave date if feasible, or as soon as need for leave is known if less than 30 days.

☐ **HRO DETERMINES ELIGIBILITY FOR FMLA LEAVE**

Employee must have at least 12 months of service (need not be continuous) and at least 1,250 hours actually worked in the 12 month period immediately preceding commencement of the leave (hours actually worked includes overtime, but does not include holiday, vacation, sick leave, or other paid leaves).

☐ **HRO NOTIFIES EMPLOYEE OF ELIGIBILITY AND RIGHTS**

Provides notification within five (5) days of receipt of leave request; requests medical certification of the need for leave.

☐ **EMPLOYEE SUBMITS STAFF LEAVE REQUEST FORM**

Employee completes employee section of Staff Leave Request Form, attaches the medical certification if available, and gives it to the HRO.

☐ **HRO VERIFIES AND COMPLETES STAFF LEAVE REQUEST FORM**

HRO checks form for accuracy, and completes the designation of leave section ensuring compliance with applicable policy or collective bargaining agreement language. A copy of the leave request forms is sent to the Benefits Office and returns the completed and signed original to the employee within 5 work days. The Benefits Office will contact the employee if needed regarding payment of group insurance contributions.

☐ **EMPLOYEE PROVIDES APPROPRIATE MEDICAL CERTIFICATION**

Employee provides certification within 15 days to HRO, or notifies if extra time is needed. If certification is unclear or incomplete, department requests additional information.

☐ **PROVIDE EMPLOYEE WITH DESIGNATION NOTICE**

Within 5 days of employer receiving sufficient information regarding qualification of leave, HRO provides written notification of designation and return to work information to employee.

☐ **EMPLOYEE NOTIFIES HRO OF CHANGES DURING LEAVE**

Employee notifies HRO if any change in return to work date is anticipated. If a leave extension is needed, the employee should notify the department as soon as possible, and must provide an updated medical certification for the extension prior to the original return to work date.

☐ **EMPLOYEE RETURNS TO WORK**

If previously requested, employee must provide Return to Work Certification prior to return to work.

☐ **EMPLOYEE CONTACTS THE BENEFITS OFFICE**

Employee calls Benefits to verify that all enrollments remain active.

☐ **RESOURCES**

For additional information employee should review all items in FMLA packet or contact the human resources office. Employee may also review the applicable policy or collective bargaining agreement.



Niagara Falls City School District Office of Human Resources

630-66th Street, Niagara Falls, NY 14304
(716) 286-4225 (Phone) ♦ (716) 286-4224 (Fax)

Staff Leave/Medical Request

Employee: _____ Phone: _____

Home Address: _____

Position: _____ Location: _____

Please check reason for Leave

	Type of Leave (Select one:)	From	Through
<input type="checkbox"/>	Medical (Must provide medical certification) 1. Own serious health condition (not work related) 2. Maternity: Care for newborn/placed child Benefits continue if using sick days/sick bank		
<input type="checkbox"/>	FMLA (Unpaid Leave). Must provide medical certification: 1. Own serious health condition (not work related) 2. Maternity: Care for newborn/placed child 3. Care for parent/spouse/child w/serious health condition Benefits continue only for 12 weeks of approved FMLA (60 days)		
<div>Anticipated Date for Maternity Leave _____ Pregnancy Leave _____ 6 Weeks OR _____ 8 Weeks Child Rearing (FMLA, Unpaid Leave) _____ 12 Weeks OR _____ One (1) Semester</div>			
<input type="checkbox"/>	Personal (Unpaid Leave). Must provide letter giving brief description of reason for leave. Not entitled to Benefits		
<input type="checkbox"/>	Educational (Unpaid Leave). Must provide brief description of need for leave and documentation to support enrollment in a college program. Not entitled to Benefits		
<input type="checkbox"/>	Military leave (Unpaid Leave) Must attach orders. Benefits continue only for 12 weeks of approved FMLA (60 days)		
<input type="checkbox"/>	Other: Leave to take other position in District		

Continue on back



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A leave of absence may consist of leave without pay and/or paid leave (i.e. vacation, personal illness, etc.) Paid leave may be used in accordance with applicable policy/contracts.

It is your responsibility to contact the Human Resource office with any changes to your leave.

A note from your physician and an appointment with the District Medical Director are required before you can return from a medical leave of absence (ie. Maternity, medical, FMLA).

Employee Signature: _____ Date _____

Designation of Leave

To be completed by HRO Department:

_____ Your leave is denied for the following reason(s) _____

_____ Your leave has been approved

You are required to enter your absence in Frontline as a sick day and notify Ms. Maria Massaro via email @ mmassaro@nfschools.net that you are using a FMLA unpaid day with the exact dates. All days will be docked through payroll.

Date Employee Notice of Approval Sent _____

Date FMLA Notice sent out: _____

Signature: _____

Date: _____

Administrator for Human Resources



The Employee's Guide to The Family and Medical Leave Act



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR



An Introduction to the Family and Medical Leave Act

When you or a loved one experiences a serious health condition that requires you to take time off from work, the stress from worrying about keeping your job may add to an already difficult situation.

The Family and Medical Leave Act (FMLA) may be able to help. Whether you are unable to work because of your own serious health condition, or because you need to care for your parent, spouse, or child with a serious health condition, the FMLA provides unpaid, job-protected leave. Leave may be taken all at once, or may be taken intermittently as the medical condition requires.

This guide provides a simple overview of how the FMLA may benefit you. In your time of need, sometimes you just *need time*.

This Guide Will Explain:

- Who Can Use FMLA Leave?
- When Can I Use FMLA Leave?
- What Can the FMLA Do for Me?
- How Do I Request FMLA Leave?
- Communication With Your Employer
- Medical Certification
- Returning to Work
- How to File a Complaint
- Web Site Resources



Who Can Use FMLA Leave?

In order to take FMLA leave, you must first work for a covered employer. Generally, private employers with at least 50 employees are covered by the law. Private employers with fewer than 50 employees are not covered by the FMLA, but may be covered by state family and medical leave laws. Government agencies (including local, state and federal employers), and elementary and secondary schools are covered by the FMLA, regardless of the number of employees.

If you work for a covered employer, you need to meet additional criteria to be eligible to take FMLA leave. Not everyone who works for a covered employer is eligible.

First, you must have worked for your employer for at least 12 months. You do not have to have worked for 12 months in a row (so seasonal work counts), but generally if you have a break in service that lasted more than seven years, you cannot count the period of employment prior to the seven-year break.

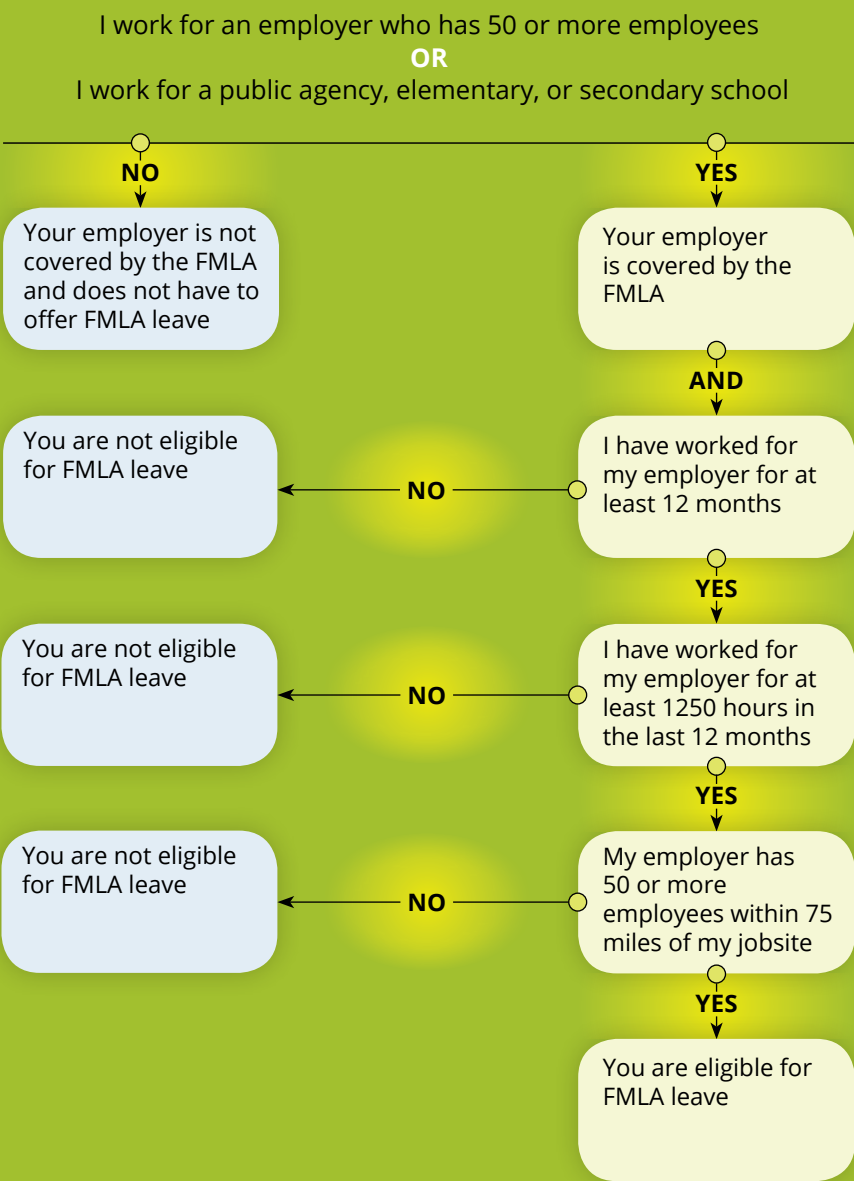
Second, you must have worked for the employer for at least 1250 hours in the 12 months before you take leave. That works out to be an average of about 24 hours per week, over the course of a year.

Lastly, you must work at a location where the employer has at least 50 employees within 75 miles of your worksite. So even if your employer has more than 50 employees, if they are spread out and there are not 50 employees within 75 miles of where you work, you will not be eligible to take FMLA leave.

Airline Flight Attendants/Flight Crew Employees

Due to non-traditional work schedules, airline flight attendants and flight crew members are subject to special eligibility requirements under the FMLA. You meet the hours of work requirement if, during the 12 months prior to your need for leave, you have worked or been paid for at least 60% of your applicable monthly guarantee, and have worked or been paid for at least 504 hours, not including personal commute time, or time spent on vacation, medical or sick leave.

Am I Eligible for FMLA Leave?



When Can I Use FMLA Leave?

If you work for an employer that is covered by the FMLA, and you are an eligible employee, you can take up to 12 weeks of FMLA leave in any 12-month period for a variety of reasons including:

Serious Health Condition

You may take FMLA leave to care for your spouse, child or parent who has a serious health condition and when you are unable to work because of your own serious health condition.

The most common serious health conditions that qualify for FMLA leave are:

- 1) conditions requiring an overnight stay in a hospital or other medical care facility;
- 2) conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than 3 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);
- 3) 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
- 4) pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).

Military Family Leave

The FMLA also provides certain military family leave entitlements. You may take FMLA leave for specified reasons related to certain military deployments. Additionally, you may take up to 26 weeks of FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.





Expanding Your Family

You may take FMLA leave for the birth of a child and to bond with the newborn child, or for the placement of a child for adoption or foster care and to bond with that child. Men and women have the same right to take FMLA leave to bond with their child but it must be taken within one year of the child's birth or placement and must be taken as a continuous block of leave unless the employer agrees to allow intermittent leave (for example, a part-time schedule).

Parent

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This term does not include parents "in law".

Son or Daughter

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

In Loco Parentis

A child under the FMLA includes not only a biological or adopted child, but also a foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis. The FMLA regulations define in loco parentis as including those with day-to-day responsibilities to care for and financially support a child. Employees who have no biological or legal relationship with a child may nonetheless stand in loco parentis to the child and be entitled to FMLA leave. For example, an uncle who is caring for his young niece and nephew when their single parent has been called to active military duty or an employee who is co-parenting a child with his or her same sex partner may exercise their right to FMLA leave. Also, an eligible employee is entitled to take FMLA leave to care for a person who stood in loco parentis to the employee when the employee was a child. (See Administrator's Interpretation No. 2010-3 and Fact Sheets 28B and C.)

What Can the FMLA Do for Me?



If you are faced with a health condition that causes you to miss work, whether it is because of your own serious health condition or to care for a family member with a serious health condition, you may be able to take up to 12 weeks of job-protected time off under the FMLA.

If you take FMLA leave, your employer must continue your health insurance as if you were not on leave (you may be required to continue to make any normal employee contributions).

As long as you are able to return to work before you exhaust your FMLA leave, you must be returned to the same job (or one nearly identical to it). This job protection is intended to lessen the stress that you may otherwise feel if forced to choose between work and family during a serious medical situation.

Time off under the FMLA may not be held against you in employment actions such as hiring, promotions or discipline.

You can take FMLA leave as either a single block of time (for example, three weeks of leave for surgery and recovery) or in multiple, smaller blocks of time if medically necessary (for example, occasional absences due to diabetes). You can also take leave on a part-time basis if medically necessary (for example, if after surgery you are able to return to work only four hours a day or three days a week for a period of time). If you need multiple periods of leave for planned medical treatment such as physical therapy appointments, you must try to schedule the treatment at a time that minimizes the disruption to your employer.

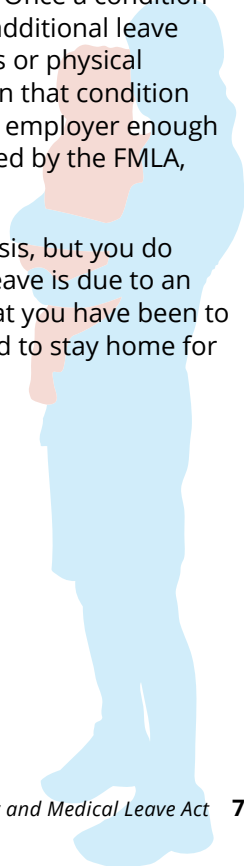
FMLA leave is unpaid leave. However, if you have sick time, vacation time, personal time, etc., saved up with your employer, you may use that leave time, along with your FMLA leave so that you continue to get paid. In order to use such leave, you must follow your employer's normal leave rules such as submitting a leave form or providing advance notice. Even if you don't want to use your paid leave, your employer can require you to use it during your FMLA leave. For example, if you are out for one week recovering from surgery, and you have two weeks of paid vacation saved up, your employer can require you to use one week of your vacation time for your FMLA leave. When you use paid leave for an FMLA-covered reason (whether at your request or your employer's), your leave time is still protected by the FMLA.

How Do I Request FMLA Leave?

To take FMLA leave, you must provide your employer with appropriate notice. If you know in advance that you will need FMLA leave (for example, if you are planning to have surgery or you are pregnant), you must give your employer at least 30 days advance notice. If you learn of your need for leave less than 30 days in advance, you must give your employer notice as soon as you can (generally either the day you learn of the need or the next work day). When you need FMLA leave unexpectedly (for example, if a family member is injured in an accident), you **MUST** inform your employer as soon as you can. You must follow your employer's usual notice or call-in procedures unless you are unable to do so (for example, if you are receiving emergency medical care).

While you do not have to specifically ask for FMLA leave for your first leave request, you do need to provide enough information so your employer is aware it may be covered by the FMLA. Once a condition has been approved for FMLA leave and you need additional leave for that condition (for example recurring migraines or physical therapy appointments), your request must mention that condition or your need for FMLA leave. If you don't give your employer enough information to know that your leave may be covered by the FMLA, your leave may not be protected.

You do not have to tell your employer your diagnosis, but you do need to provide information indicating that your leave is due to an FMLA-protected condition (for example, stating that you have been to the doctor and have been given antibiotics and told to stay home for four days).



Communication With Your Employer

Ongoing communication between you and your employer will make the FMLA process run much more smoothly. Each of you has to follow guidelines about notifying the other when FMLA leave is being used.

You will need to inform your employer if your need for FMLA leave changes while you are out (for example, if your doctor determines that you can return to work earlier than expected). Your employer may also require you to provide periodic updates on your status and your intent to return to work.

Your employer must notify you if you are eligible for FMLA leave within 5 business days of your first leave request. If the employer says that you are not eligible, it has to state at least one reason why you are not eligible (for example, you have not worked for the employer for a total of 12 months).

At the same time that your employer gives you an eligibility notice, it must also give you a notice of your rights and responsibilities under the FMLA. This notice must include:

- a definition of the 12-month period the employer uses to keep track of FMLA usage. For example, it can be a calendar year, 12 months from the first time you take leave, a “fixed” year such as your anniversary date, or a “rolling” 12-month period measured backward from the date you use FMLA leave. You need to know which way your employer measures the 12-month window so that you can be sure of how much FMLA leave you have available when you need it;

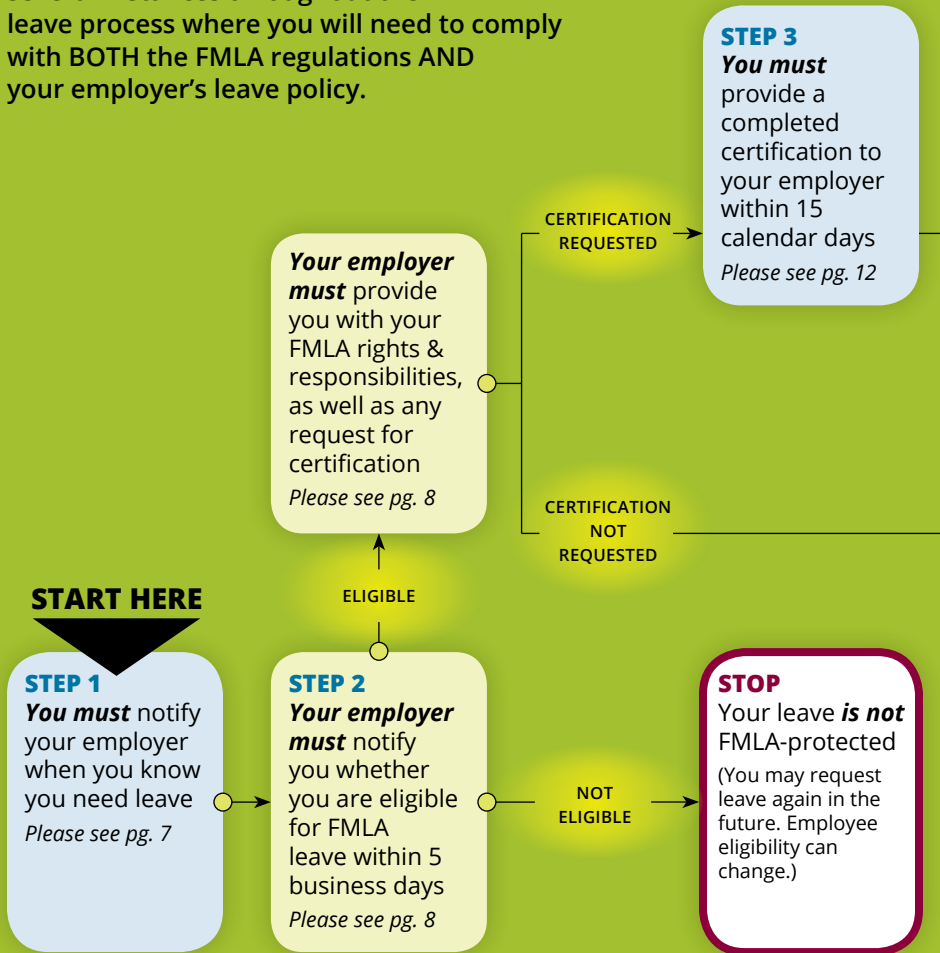
- whether you will be required to provide medical certification from a health care provider;
- your right to use paid leave;
- whether your employer will require you to use your paid leave;
- your right to maintain your health benefits and whether you will be required to make premium payments; and
- your right to return to your job at the end of your FMLA leave.

When your employer has the information necessary to determine if your leave is FMLA protected, it must notify you whether the leave will be designated as FMLA leave and, if possible, how much leave will be counted against your FMLA entitlement. If your employer determines that your leave is not covered by FMLA, it must notify you of that determination.

The FMLA Leave Process

This flowchart provides general information to walk you through your initial request for FMLA leave. It is a step-by-step guide that will help you navigate the sometimes complicated FMLA process.

Please note, it is **ESSENTIAL** that you are familiar with your employer's leave policy. There are several instances throughout the FMLA leave process where you will need to comply with **BOTH** the FMLA regulations **AND** your employer's leave policy.

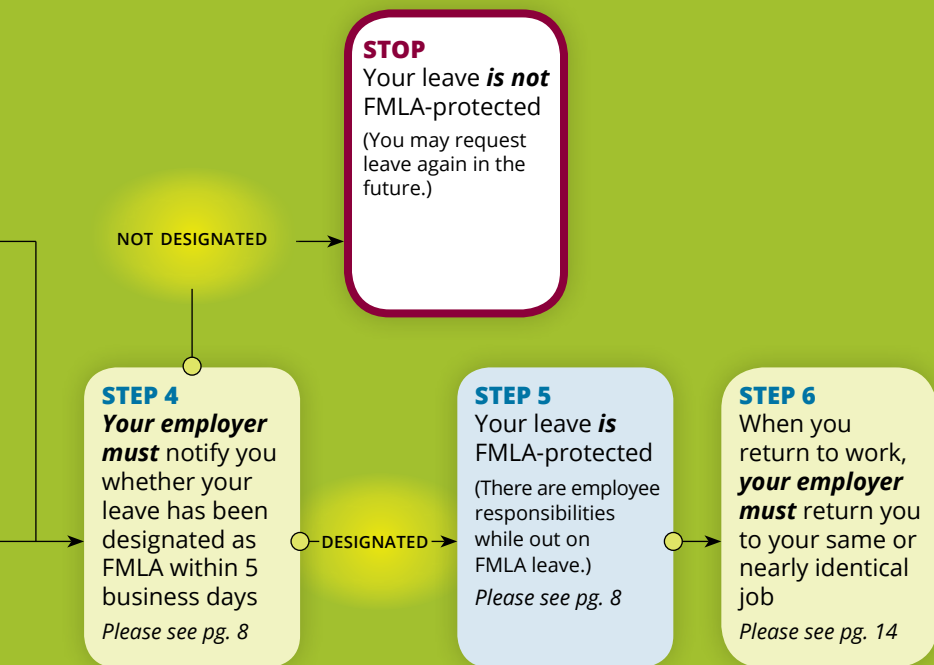




YOUR RESPONSIBILITY



YOUR EMPLOYER'S RESPONSIBILITY



Medical Certification

If your employer requests medical certification, you only have 15 calendar days to provide it in most circumstances. You are responsible for the cost of getting the certification from a health care provider and for making sure that the certification is provided to your employer. If you fail to provide the requested medical certification, your FMLA leave may be denied.

The medical certification must include some specific information, including:

- contact information for the health care provider;
- when the serious health condition began;
- how long the condition is expected to last;
- appropriate medical facts about the condition (which may include information on symptoms, hospitalization, doctors visits, and referrals for treatment);
- whether you are unable to work or your family member is in need of care; and
- whether you need leave continuously or intermittently. If you need to take leave a little bit at a time, the certification should include an estimate of how much time you will need for each absence, how often you will be absent, and information establishing the medical necessity for taking such intermittent leave.

If your employer finds that necessary information is missing from your certification, it must notify you in writing of what additional information is needed to make the certification complete. You must provide the missing information within 7 calendar days.

If your employer has concerns about the validity of your certification, it may request a second opinion, but it must cover the cost. Your employer may request a third opinion if the first and second opinion differ, but it must cover the cost.

If your need for leave continues for an extended period of time, or if it changes significantly, your employer may require you to provide an updated certification.

Certification at a Glance



YOUR EMPLOYER MAY REQUIRE YOU TO:

- Correct any deficiencies in your certification identified by your employer within 7 days
- Obtain a 2nd medical opinion if your employer doubts the validity of your certification
- Obtain a 3rd medical opinion if the 1st and 2nd opinions differ

YOUR EMPLOYER MAY DENY FMLA LEAVE IF YOU FAIL TO PROVIDE A REQUESTED CERTIFICATION



YOUR RESPONSIBILITY



YOUR EMPLOYER'S RESPONSIBILITY

Returning to Work



When you return to work, the FMLA requires that your employer return you to the same job that you left, or one that is nearly identical.

If you are not returned to the exact same job, the new position must:

- 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;
- offer identical benefits (such as life insurance, health insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.); and
- offer the same general work schedule, and be at the same (or nearby) location.

Please keep in mind that if you exhaust your FMLA leave entitlement and are unable to return to work, your employer is not required to restore you to your position.

SPECIAL CIRCUMSTANCES:

“Key” Employees

Certain “key” employees may not be guaranteed reinstatement to their positions following FMLA leave. A “key employee” is defined as a salaried, FMLA-eligible employee who is among the highest paid 10 percent of all the employees working for the employer within 75 miles of the employee’s worksite.

Teachers

Special rules apply to employees of local education agencies. Generally, these rules apply when you need intermittent leave or when you need leave near the end of a school term.

Please visit our web site for more complete information.

How to File a Complaint

The U.S. Department of Labor's Wage & Hour Division (WHD) is responsible for administering and enforcing the Family and Medical Leave Act for most employees.

If you have questions, or you think that your rights under the FMLA may have been violated, you can contact WHD at 1-866-487-9243. You will be directed to the WHD office nearest you for assistance. There are over 200 WHD offices throughout the country staffed with trained professionals to help you.

The information below is useful when filing a complaint with WHD:

- your name;
- your address and phone number (how you can be contacted);
- the name of the company where you work or worked;
- location of the company (this may be different than the actual job site where you worked);
- phone number of the company;
- manager or owner's name; and
- the circumstances of your FMLA request and your employer's response.

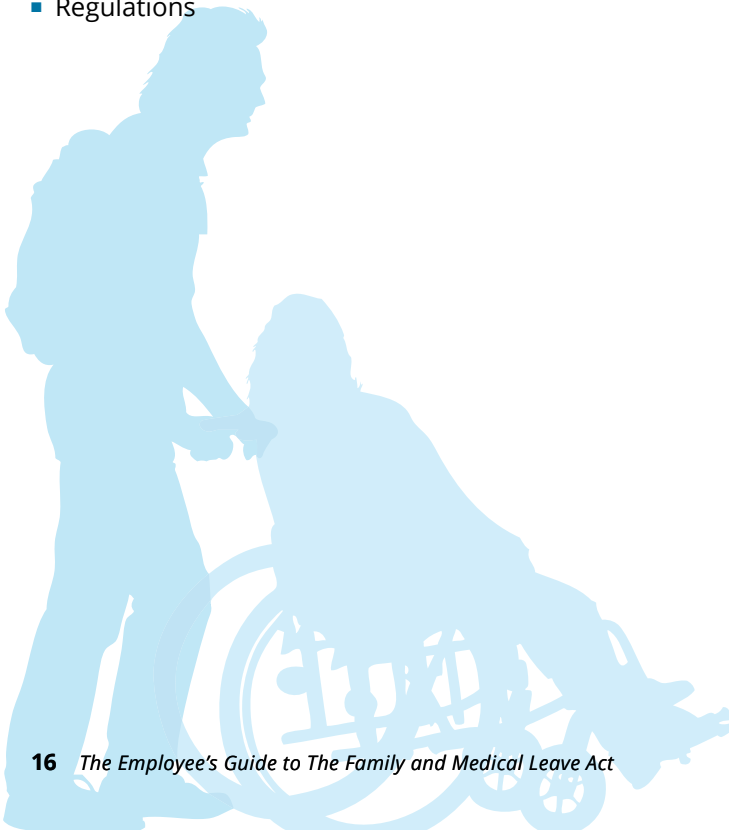
Your employer is prohibited from interfering with, restraining, or denying the exercise of FMLA rights, retaliating against you for filing a complaint and cooperating with the Wage and Hour Division, or bringing a private action to court. You should contact the Wage and Hour Division immediately if your employer retaliates against you for engaging in any of these legally protected activities.

To contact the WHD office nearest you, visit:
www.dol.gov/whd/america2.htm

Web Site Resources

Visit the Wage and Hour Division web site at [**www.dol.gov/whd/fmla**](http://www.dol.gov/whd/fmla) for resources containing information about the FMLA, including:

- Key News
- General Guidance
- Fact Sheets
- e-Tools
- Posters
- Forms
- Interpretive Guidance
- Law
- Regulations



**U.S. Department of Labor
Wage and Hour Division**

200 Constitution Avenue, NW

Washington, DC 20210

1-866-4-USWAGE

(1-866-487-9243)

www.dol.gov/whd

Fact Sheet #28: The Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. This fact sheet provides general information about which employers are covered by the FMLA, when employees are eligible and entitled to take FMLA leave, and what rules apply when employees take FMLA leave.

COVERED EMPLOYERS

The FMLA only applies to employers that meet certain criteria. A **covered employer** is a:

- Private-sector employer, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer;
- Public agency, including a local, state, or Federal government agency, regardless of the number of employees it employs; or
- Public or private elementary or secondary school, regardless of the number of employees it employs.

ELIGIBLE EMPLOYEES

Only eligible employees are entitled to take FMLA leave. An **eligible employee** is one who:

- Works for a *covered employer*;
- Has worked for the employer for at least *12 months*;
- Has at least *1,250 hours* of service for the employer during the 12 month period immediately preceding the leave*; and
- Works at a location where the employer has at least *50 employees within 75 miles*.

* Special hours of service eligibility requirements apply to airline flight crew employees. See Fact Sheet 28J: Special Rules for Airline Flight Crew Employees under the Family and Medical Leave Act.

The 12 months of employment do not have to be consecutive. That means any time previously worked for the same employer (including seasonal work) could, in most cases, be used to meet the 12-month requirement. If the employee has a break in service that lasted seven years or more, the time worked prior to the break will not count *unless* the break is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement, including a collective bargaining agreement, outlining the employer's intention to rehire the employee after the break in service. See "FMLA Special Rules for Returning Reservists".

LEAVE ENTITLEMENT

Eligible employees may take up to **12 workweeks** of leave in a 12-month period for one or more of the following reasons:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care;
- To care for a spouse, son, daughter, or parent who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

An eligible employee may also take up to **26 workweeks** of leave during a "single 12-month period" to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. The "single 12-month period" for military caregiver leave is different from the 12-month period used for other FMLA leave reasons. *See Fact Sheets 28F: Qualifying Reasons under the FMLA and 28M: The Military Family Leave Provisions under the FMLA.*

Under some circumstances, employees may take FMLA leave on an intermittent or reduced schedule basis. That means an employee may take leave in separate blocks of time or by reducing the time he or she works each day or week for a single qualifying reason. 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 operations. If FMLA leave is for the birth, adoption, or foster placement of a child, use of intermittent or reduced schedule leave requires the employer's approval.

Under certain conditions, employees may choose, or employers may require employees, to "substitute" (run concurrently) accrued paid leave, such as sick or vacation leave, to cover some or all of the FMLA leave period. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

NOTICE

Employees must comply with their employer's usual and customary requirements for requesting leave and provide enough information for their employer to reasonably determine whether the FMLA may apply to the leave request. Employees generally must request leave 30 days in advance when the need for leave is foreseeable. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances.

When an employee seeks leave for a FMLA-qualifying reason for the first time, the employee need not expressly assert FMLA rights or even mention the FMLA. If an employee later requests additional leave for the same qualifying condition, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave. *See Fact Sheet 28E: Employee Notice Requirements under the FMLA .*

Covered employers must:

- (1) Post a notice explaining rights and responsibilities under the FMLA (and may be subject to a civil money penalty of up to \$110 for willful failure to post);
- (2) Include information about the FMLA in their employee handbooks or provide information to new employees upon hire;

- (3) When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA-qualifying reason, provide the employee with notice concerning his or her eligibility for FMLA leave and his or her rights and responsibilities under the FMLA; and
- (4) Notify employees whether leave is designated as FMLA leave and the amount of leave that will be deducted from the employee's FMLA entitlement.

See Fact Sheet 28D: Employer Notice Requirements under the FMLA.

CERTIFICATION

When an employee requests FMLA leave due to his or her own serious health condition or a covered family member's serious health condition, the employer may require certification in support of the leave from a health care provider. An employer may also require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition. See Fact Sheet 28G: Certification of a Serious Health Condition under the FMLA. For information on certification requirements for military family leave, See Fact Sheet 28M(c): Qualifying Exigency Leave under the FMLA; Fact Sheet 28M(a): Military Caregiver Leave for a Current Servicemember under the FMLA; and Fact Sheet 28M(b): Military Caregiver Leave for a Veteran under the FMLA.

JOB RESTORATION AND HEALTH BENEFITS

Upon return from FMLA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot be counted against the employee under a "no-fault" attendance policy. Employers are also required to continue group health insurance coverage for an employee on FMLA leave under the same terms and conditions as if the employee had not taken leave. See Fact Sheet 28A: Employee Protections under the Family and Medical Leave Act .

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules apply to intermittent or reduced schedule FMLA leave or the taking of FMLA leave near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under the FLSA regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to an eligible employee's use of FMLA leave.

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 information and 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
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

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.

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**Certification of Health Care Provider for
Family Member's Serious Health Condition
under the Family and Medical Leave Act**

**U.S. Department of Labor
Wage Hour Division**



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

OMB Control Number: 1235-0003
Expires: 6/30/2023

The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA leave to care for a family member with a serious health condition to submit a medical certification issued by the family member's health care provider. 29 U.S.C. §§ 2613, 2614(c)(3); 29 C.F.R. § 825.305. The employer must give the employee **at least 15 calendar days** to provide the certification. If the employee fails to provide complete and sufficient medical certification, his or her FMLA leave request may be denied. 29 C.F.R. § 825.313. Information about the FMLA may be found [on the WHD website at www.dol.gov/agencies/whd/fmla](http://www.dol.gov/agencies/whd/fmla).

SECTION I - EMPLOYER

Either the employee or the employer may complete Section I. While use of this form is optional, this form asks the health care provider for the information necessary for a complete and sufficient medical certification, which is set out at 29 C.F.R. § 825.306. **You may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308.** Additionally, you **may not** request a certification for FMLA leave to bond with a healthy newborn child or a child placed for adoption or foster care.

Employers must generally maintain records and documents relating to medical information, medical certifications, recertifications, or medical histories of employees or 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.

- (1) Employee name: _____
First Middle Last
- (2) Employer name: _____ Date: _____ (mm/dd/yyyy)
(List date certification requested)
- (3) The medical certification must be returned by _____ (mm/dd/yyyy)
(Must allow at least 15 calendar days from the date requested, unless it is not feasible despite the employee's diligent, good faith efforts.)

SECTION II - EMPLOYEE

Please complete and sign Section II before providing this form to your family member or your family member's health care provider. The FMLA allows an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to the serious health condition of your family member. If requested by your employer, your response is required to obtain or retain the benefit of the FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). **You are responsible for making sure the medical certification is provided to your employer within the time frame requested, which must be at least 15 calendar days.** 29 C.F.R. §§ 825.305-825.306. Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA leave request. 29 C.F.R. § 825.313.

- (1) Name of the family member for whom you will provide care: _____
- (2) Select the relationship of the family member to you. The family member is your:
- ☐ Spouse ☐ Parent ☐ Child, under age 18
☐ Child, age 18 or older and incapable of self-care because of a mental or physical disability

Spouse means a husband or wife as defined or recognized in the state where the individual was married, including in a common law marriage or same-sex marriage. The terms "child" and "parent" include *in loco parentis* relationships in which a person assumes the obligations of a parent to a child. An employee may take FMLA leave to care for an individual who assumed the obligations of a parent to the employee when the employee was a child. An employee may also take FMLA leave to care for a child for whom the employee has assumed the obligations of a parent. No legal or biological relationship is necessary.

Employee Name: _____

(3) Briefly describe the care you will provide to your family member: *(Check all that apply)*

☐ Assistance with basic medical, hygienic, nutritional, or safety needs

☐ Transportation

☐ Physical Care

☐ Psychological Comfort

☐ Other: _____

(4) Give your **best estimate** of the amount of leave needed to provide the care described: _____

(5) If a **reduced work schedule** is necessary to provide the care described, give your **best estimate** of the reduced schedule you are able to work. From _____ (mm/dd/yyyy) to _____ (mm/dd/yyyy), I am able to work _____ (hours per day) _____ (days per week).

Employee

Signature _____ Date _____ (mm/dd/yyyy)

SECTION III - HEALTH CARE PROVIDER

Please provide your contact information, complete all relevant parts of this Section, and sign the form below. A family member of your patient has requested leave under the FMLA to care for your patient. The FMLA allows an employer to require that the employee submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a family member with a serious health condition. For FMLA purposes, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that *involves inpatient care or continuing treatment by a health care provider*. For more information about the definitions of a serious health condition under the FMLA, see the chart at the end of the form.

You also may, but are **not required** to, provide other appropriate medical facts including symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment. Please note that some state or local laws may not allow disclosure of private medical information about the patient's serious health condition, such as providing the diagnosis and/or course of treatment.

Health Care Provider's name: *(Print)* _____

Health Care Provider's business address: _____

Type of practice / Medical specialty: _____

Telephone: (____) _____ Fax: (____) _____ E-mail: _____

PART A: Medical Information

Limit your response to the medical condition for which the employee is seeking FMLA leave. Your answers should be your **best estimate** based upon your medical knowledge, experience, and examination of the patient. **After completing Part A, complete Part B to provide information about the amount of leave needed.** Note: For FMLA purposes, "incapacity" means the inability to work, attend school, or perform regular daily activities due to the condition, treatment of the condition, or recovery from the condition. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b).

(1) Patient's Name: _____

(2) State the approximate date the condition started or will start: _____ (mm/dd/yyyy)

(3) Provide your **best estimate** of how long the condition lasted or will last: _____

(4) For FMLA to apply, care of the patient must be medically necessary. Briefly describe the type of care needed by the patient (e.g., assistance with basic medical, hygienic, nutritional, safety, transportation needs, physical care, or psychological comfort).

Employee Name: _____

(5) Check the box(es) for the questions below, as applicable. For all box(es) checked, the amount of leave needed must be provided in Part B.

☐ **Inpatient Care:** The patient (☐ has been / ☐ is expected to be) admitted for an overnight stay in a hospital, hospice, or residential medical care facility on the following date(s): _____

☐ **Incapacity plus Treatment:** (e.g. outpatient surgery, strep throat)

Due to the condition, the patient (☐ has been / ☐ is expected to be) incapacitated for *more than* three consecutive, full calendar days from _____ (mm/dd/yyyy) to _____ (mm/dd/yyyy).

The patient (☐ was / ☐ will be) seen on the following date(s): _____

The condition (☐ has / ☐ has not) also resulted in a course of continuing treatment under the supervision of a health care provider (e.g. prescription medication (other than over-the-counter) or therapy requiring special equipment)

☐ **Pregnancy:** The condition is pregnancy. List the expected delivery date: _____ (mm/dd/yyyy).

☐ **Chronic Conditions:** (e.g. asthma, migraine headaches) Due to the condition, it is medically necessary for the patient to have treatment visits at least twice per year.

☐ **Permanent or Long Term Conditions:** (e.g. Alzheimer's, terminal stages of cancer) Due to the condition, incapacity is permanent or long term and requires the continuing supervision of a health care provider (even if active treatment is not being provided).

☐ **Conditions requiring Multiple Treatments:** (e.g. chemotherapy treatments, restorative surgery) Due to the condition, it is medically necessary for the patient to receive multiple treatments.

☐ **None of the above:** If none of the above condition(s) were checked, (i.e., inpatient care, pregnancy) no additional information is needed. Go to page 4 to sign and date the form.

(6) If needed, briefly describe other appropriate medical facts related to the condition(s) for which the employee seeks FMLA leave. (e.g., use of nebulizer, dialysis) _____

PART B: Amount of Leave Needed

For the medical condition(s) checked in Part A, complete all that apply. 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 if the benefits and protections of the FMLA apply.

(7) Due to the condition, the patient (☐ had / ☐ will have) **planned medical treatment(s)** (scheduled medical visits) (e.g. psychotherapy, prenatal appointments) on the following date(s): _____

(8) Due to the condition, the patient (☐ was / ☐ will be) **referred to other health care provider(s)** for evaluation or treatment(s).

State the nature of such treatments: (e.g. cardiologist, physical therapy) _____

Provide your **best estimate** of the beginning date _____ (mm/dd/yyyy) and end date _____ (mm/dd/yyyy) for the treatment(s).

Provide your **best estimate** of the duration of the treatment(s), including any period(s) of recovery _____ (e.g. 3 days/week)

Employee Name: _____

- (9) Due to the condition, the patient (☐ was / ☐ will be) **incapacitated for a continuous period of time**, including any time for treatment(s) and/or recovery.

Provide your **best estimate** of the beginning date: _____ (mm/dd/yyyy) and end date _____ (mm/dd/yyyy) for the period of incapacity.

- (10) Due to the condition it, (☐ was / ☐ is / ☐ will be) medically necessary for the employee to be absent from work to provide care for the patient on an **intermittent basis** (periodically), including for any episodes of incapacity i.e., episodic flare-ups. Provide your **best estimate** of how often (frequency) and how long (duration) the episodes of incapacity will likely last.

Over the next 6 months, episodes of incapacity are estimated to occur _____ times per (☐ day / ☐ week / ☐ month) and are likely to last approximately _____ (☐ hours / ☐ days) per episode.

Signature of
Health Care Provider _____ Date _____ (mm/dd/yyyy)

Definitions of a Serious Health Condition (See 29 C.F.R. §§ 825.113-.115)
Inpatient Care
<ul style="list-style-type: none">• An overnight stay in a hospital, hospice, or residential medical care facility.• Inpatient care includes any period of incapacity or any subsequent treatment in connection with the overnight stay.
Continuing Treatment by a Health Care Provider (any one or more of the following)
<u>Incapacity Plus Treatment:</u> A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves either: <ul style="list-style-type: none">○ Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity; or,○ At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider. For example, the health provider might prescribe a course of prescription medication or therapy requiring special equipment.
<u>Pregnancy:</u> Any period of incapacity due to pregnancy or for prenatal care.
<u>Chronic Conditions:</u> Any period of incapacity due to or treatment for a chronic serious health condition, such as diabetes, asthma, migraine headaches. A chronic serious health condition is one which requires visits to a health care provider (or nurse supervised by the provider) at least twice a year and recurs over an extended period of time. A chronic condition may cause episodic rather than a continuing period of incapacity.
<u>Permanent or Long-term Conditions:</u> A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider, such as Alzheimer's disease or the terminal stages of cancer.
<u>Conditions Requiring Multiple Treatments:</u> Restorative surgery after an accident or other injury; or, a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days if the patient did not receive the treatment.

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 15 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 Avenue, N.W., Washington, D.C. 20210.

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