

# EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

## Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

## Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

## Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

## Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

## Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

## Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

## Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

## Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

## Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

## Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

## Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

**FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.**



For additional information:  
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627  
[WWW.WAGEHOUR.DOL.GOV](http://WWW.WAGEHOUR.DOL.GOV)

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division



U.S. Wage and Hour Division

WHD Publication 1420 Revised January 2009

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## Wage and Hour Division (WHD)

### Family and Medical Leave Act

#### Overview

Covered employers must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- » for the birth and care of the newborn child of the employee;
- » for placement with the employee of a son or daughter for adoption or foster care;
- » to care for an immediate family member (spouse, child, or parent) with a serious health condition; **or**
- » to take medical leave when the employee is unable to work because of a serious health condition.

#### Key News

- » The President signed into law S.1422, the "Airline Flight Crew Technical Corrections Act", Public Law 111-119, amending section 101(2) of the FMLA and establishing a special minimum eligibility requirement for airline flight attendants and flight crew members. (December 21, 2009)  
[Read more](#) about the airline flight crew technical amendments.
- » The President signed into law the National Defense Authorization Act for Fiscal Year 2010 (2010 NDAA), Public Law 111-84. Section 565 of the 2010 NDAA amends the Family and Medical Leave Act (FMLA). These amendments expand on the military family leave rights added to the FMLA in 2008. The military family leave provisions provide qualifying exigency and military caregiver leave for families of covered military members. (October 28, 2009)  
[Read more](#) about these new military leave provisions.  
[View Title I of the FMLA](#) as amended by the FY 2010 NDAA.
- » The Department of Labor's Wage and Hour Division published a [Final Rule](#) under the Family and Medical Leave Act. **The final rule became effective on January 16, 2009**, and updates the FMLA regulations to implement new military family leave entitlements enacted under the National Defense Authorization Act for FY 2008. It also includes revisions in response to public comments received on the proposed rule issued in February 2008. The Federal Register Notice and related documents are available at Wage and Hour's [FMLA Final Rule website](#). (November 17, 2008).

#### General Guidance

- » [Compliance Guide to the Family and Medical Leave Act](#) (a revision is coming soon )
- » [Special Rules for Returning Reservists under USERRA](#)
- » [Military Frequently Asked Questions \(PDF\)](#)
- » [Non-Military Frequently Asked Questions \(PDF\)](#)
- » [FMLA NDAA 2008 Guidance](#)
- » [FMLA NDAA 2010 Guidance](#)
- » [FMLA Airline Flight Crew Technical Amendments Guidance](#)

#### Fact Sheets

- » [Fact Sheet on the Final Rule](#)
- » [Fact Sheet # 28: The Family and Medical Leave Act of 1993 \(PDF\)](#)
- » [Fact Sheet # 28: The Family and Medical Leave Act of 1993 -Spanish \(a revision is coming soon\)](#)
- » [Fact Sheet # 28A: The Family and Medical Leave Act Military Leave Entitlements \(PDF\)](#)
- » [Fact Sheet # 44: Visits to Employers \(PDF\)](#)

#### e-Tools

- » [elaws Employee/Employer Advisor](#) (a revision is coming soon)
- » [Federal vs. State Family and Medical Leave Laws](#) (a revision is coming soon)

#### Posters

- » [The Family and Medical Leave Act Poster](#)
- » [The Family and Medical Leave Act Poster -- in Spanish](#)

#### Forms

- » [WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition \(PDF\)](#)
- » [WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition \(PDF\)](#)
- » [WH-381 Notice of Eligibility and Rights & Responsibilities \(PDF\)](#)
- » [WH-382 Designation Notice \(PDF\)](#)
- » [WH-384 Certification of Qualifying Exigency For Military Family Leave \(PDF\)](#)
- » [WH-385 Certification for Serious Injury or Illness of Covered Servicemember -- for Military Family Leave \(PDF\)](#)

#### Interpretive Guidance Opinion Letters

- » [FMLA Opinion Letters](#)

#### Applicable Laws, Regulations, Rules, and Histories

- » **Law**
  - » [29 U.S.C., 2601, et. seq.](#)
  - » [Amended Title I Law](#)
- » **Regulations**

- [29 CFR Part 825](#)
  - [Subpart A \(825.100 – 825.127\)](#)
  - [Subpart B \(825.200 – 825.220\)](#)
  - [Subpart C \(825.300 – 825.313\)](#)
  - [Subpart D \(825.400 – 825.404\)](#)
  - [Subpart E \(825.500\)](#)
  - [Subpart F \(825.600 – 825.604\)](#)
  - [Subpart G \(825.700 – 825.702\)](#)
  - [Subpart H \(825.800\)](#)
- **Federal Register**
  - [Federal Register Notice Nov. 17, 2008 \(PDF\) \(HTML\)](#)

**AGREEMENT**  
**between**  
**CITY OF TAMPA**  
**and**  
**TAMPA POLICE BENEVOLENT**  
**ASSOCIATION, INC.**  
**October 1, 2009 through September 30, 2010**

ARTICLE 20

SICK LEAVE

20.4.2 Family & Medical Leave Act. Any employee, while taking leave under the provisions of the Family & Medical Leave Act (FMLA), shall utilize sick and/or annual hours if available.