

U.S. Department of Labor
Wage and Hour Division



(Revised September 2012)

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 WHD website for 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 WHD website for 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 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, D.C., 20210
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1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)