

# The Family and Medical Leave Act

*What You Need  
to Know...*

# CWA

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**A Report by the Communications  
Workers of America**

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## THE FAMILY AND MEDICAL LEAVE ACT

**T**he Family and Medical Leave ACT (FMLA), enacted in 1993, allows eligible employees to take up to 12 weeks of unpaid leave in a 12 month period. The leave can be taken for the birth, adoption or foster placement of a child, the care of a family member with a serious health condition, or the employee's own serious health condition. Additionally, FMLA was expanded and revised, and now includes special provisions for members of the military and their families.

The Act was signed into law by President Clinton after nearly ten years of lobbying by labor unions, women's rights groups and grass roots organizations. The purpose of FMLA is to enable employees to more easily balance the obligations of work and family.

The FMLA does not diminish provisions in state or local FMLA laws or current CWA collective bargaining agreements which provide more favorable polices, nor does it limit negotiation of greater benefits in the future. We should view FMLA as creating a floor of benefits that can be built upon through collective bargaining.

This brochure reviews the key provisions of FMLA to assist you in representing the rights of CWA members. If you have additional questions, contact your Local President or Staff Representative.

### **Who Is Covered by the Act?**

#### **Employers**

*Private:*

■ Employers with 50 or more employees on each working day for at least 20 weeks during the current or previous year.

*Public:*

- The Federal government, its agencies and the U.S. Postal Service.
- States and their agencies (including schools) and political subdivisions.

## Employees

- Employees must have 12 months of service at the time leave begins. Service need not be consecutive or continuous.
- In addition, the employee must have worked at least 1,250 hours within the 12 months immediately preceding the commencement of the leave.
- Flight attendants and flight crew 1) must have worked or been paid not less than 60% of the applicable total monthly guarantee, and 2) worked or been paid for not less than 504 hours.
- Military service members who have missed an extended period of time for military service are exempted from FMLA's usual 12 month/1,250 hour requirement.
- Employee must work at a site where there are 50 or more employees of the same employer within 75 miles, as measured by surface mileage using available transportation routes. For employees whose worksite is not fixed (e.g., salespersons, repair and construction workers), the worksite is the location from which their work is assigned or to which they report.

### ELIGIBLE REASONS FOR FMLA LEAVE

1. Birth of a child, prenatal care, adoption or foster care (this type of leave must be taken within 12 months of adoption or placement).

2. To care for a spouse, child under 18 or over 18 with mental or physical disabilities that make them unable to care for themselves, or a parent with a serious health condition.
3. If the employee is unable to perform the functions of his/her job due to a serious health condition.
4. To care for a family member in the military (discussed below).

## **What is a “serious health condition?”**

To qualify under the FMLA, a “serious health condition” must involve:

1. More than three consecutive, full calendar days of incapacity plus: two visits to a healthcare provider (both visits must take place within 30 days of the first day of incapacity, the first visit within 7), OR a regimen of continued treatment (with the first visit to a healthcare provider within 7 days of the first day of incapacity);
2. Pregnancy, prenatal care, or incapacity related to either;
3. A chronic condition that requires the employee to make at least two “periodic” visits (at least twice per year) to a healthcare provider annually;
4. Any period of incapacity which is permanent or long term due to a condition for which treatment may not be effective (e.g. Alzheimer’s disease); or
5. Any period of absence to receive multiple treatments either for reconstructive surgery following an accident or injury, or which would result in at least three consecutive days of absence without such medical intervention.

In general, the FMLA does not apply to colds, stomach upsets, ear infections, or short term health problems that can be treated with over-the-

counter medicines and are of limited duration. However, if your medical condition satisfies the standards described above, your health care provider should complete FMLA medical certification forms for a serious health condition.

## **How much medical information can the employer require?**

The employer may require certification from a health care provider documenting the “serious health condition” of an employee or an employee’s family member, and its likely duration. The certification should provide the minimum amount of information for the employer to determine that the leave is covered by the FMLA — only the information relating to the medical condition involving FMLA leave. An employer may contact directly the health care provider seeking clarification, but under no circumstances may an employee’s direct supervisor make the inquiry.

Usually, the employer should request a certification within five business days of the employee giving notice of leave; but for unforeseen leave, within five business days of when the leave began. The employee must provide the certification within 15 days of the request unless doing so would be impracticable. If certification is not provided in a timely fashion, the employer may deny FMLA leave or delay it until certification is provided. If the certification is incomplete, the employer must give the employee an opportunity to cure it.

The employer can require the employee to seek a second opinion if the employer has reason to doubt its validity, but must pay for all costs. This opinion cannot be given by a doctor employed by the employer except in rare circumstances. If the second opinion differs from the first, the employer can require a third opinion given by a health provider jointly chosen by the employer and employee. The employer must pay all the costs of the third opinion and it is binding.

The employer may also ask an employee who has been out on FMLA leave to provide information demonstrating that he/she is able to return to work, provided that it requests such information from all employees in the same or similar jobs. Such a “fitness for duty” certification, however, must be limited to the health condition that created the need for FMLA leave. Once the health care provider certifies that the employee is able to return to work, the employer must reinstate the individual immediately.

## **Intermittent and Reduced Leave Options**

The intermittent leave option allows an eligible employee to take FMLA leave in separate blocks of time due to a single injury or illness. It may be scheduled in periods shorter than an hour to blocks of several weeks. (Chemotherapy treatments, for example, might require employees to take one week a month for 12 months.)

The reduced leave option allows the employee to decrease his/her number of working hours per week or day (ex. the employee may need to go from 8 hours a day to 6 hours a day).

## **Who qualifies for intermittent or reduced leave?**

To qualify for intermittent or reduced leave, the employee must have a medical need which is best accommodated through an intermittent or reduced leave schedule. The employer may require certification from a health care provider which documents this need. An employee seeking such leave must try to formulate a schedule which does not disrupt the employer’s operations.

In addition, the employer has the right to assign the employee taking such leave to an alternative position with equivalent pay and benefits which would better accommodate that employee’s schedule. Transfer to an alter-

native position must comply with any applicable collective bargaining provisions and with any other laws, such as the Americans with Disabilities Act (ADA) or state FMLA laws.

## **Serious chronic health conditions**

Employees who suffer from serious chronic health conditions may also need intermittent FMLA leave. An employer can ask for re-certification of your serious chronic health condition if the number of absences exceeds those estimated by your health care provider, and in all cases may request recertification every six months if in conjunction with an absence.

Employer consent for intermittent and reduced leave options is not required unless the leave is to be taken for the birth/adoption/foster care of a child. This means that your employer cannot deny intermittent or reduced leave if your health care provider has certified that it is necessary because of your serious health condition.

## **Paid or Unpaid Leave?**

*FMLA provides employees with unpaid leave only.* The Act allows the employee to choose or the employer to require that the employee take accrued paid leave instead of unpaid FMLA leave unless CWA has already reached agreement on this issue in collective bargaining. However, an employee may not be permitted to take paid leave if he or she would not qualify to do so. For example, if the employer normally requires 10 days notice for an employee's paid vacation leave but the FMLA leave was unforeseeable, an employee would not meet the notice condition for paid vacation leave. That said, an employer may waive the condition.

If the employer does require that paid leave be substituted for FMLA leave, that decision *must be made at the time the employee gives notice of the leave or before the leave begins*, except in very limited circumstances where



the employer does not have medical information to determine if the leave is covered by FMLA.

If the employee uses paid leave for reasons not covered under FMLA (e.g., care of an in-law), the employee remains entitled to the full 12 weeks of FMLA leave.

If neither the employer nor employee chooses to substitute paid leave for unpaid FMLA leave, the employee remains entitled to all paid leave accrued.

The chart below indicates the types of paid leave which can be substituted for each type of FMLA leave.

<b>Type of FMLA Leave</b>	<b>Accrued Paid Leave Which May be Substituted for Unpaid FMLA</b>
Birth/Adoption/Foster Care	Vacation, Personal, Family
Employee's Own Serious Health Condition	Vacation, Personal, Medical/Sick/Disability
Care of Seriously Ill Family Member	Vacation, Personal, Family Medical/Sick/Disability

## **Who decides if the leave requested is covered by FMLA?**

It is the employer's responsibility to designate leave (paid or unpaid) as FMLA qualifying leave. An employee who wants to take FMLA leave must give the employer enough information to make that determination. The employee does not have to mention the FMLA specifically as long as the employer is given sufficient facts to decide that the leave is covered by the Act.

## **What type of notice is required to obtain FMLA leave?**

Employers must give their employees notice about their rights under the FMLA in a handbook or general notice upon hiring, and in a clear and conspicuous posting on its premises. An employee must provide 30 days advance notice of the need for FMLA leave if the need for leave is foreseeable. If giving 30 days notice is not practicable, the employee must provide notice as soon as possible and practicable (usually the same or next business day).

If the need for leave cannot be determined in advance (such as in the case of a medical emergency), notice must be given as soon as practicable (usually within the employer's usual requirements for notifying of leave). FMLA notice provisions do not apply if the collective bargaining agreement or state laws provide less stringent notice requirements.

## **What type of information is required for an employee to return to work from FMLA leave?**

If the FMLA leave was taken because of the employee's serious health condition, an employer may have a policy requiring medical certification that the employee is able to return to work. This policy must be uniformly applied to all employees holding the same or similar jobs.

The certification must be limited to the particular health condition that caused the employee to take FMLA leave. It also must comply with the ADA's guarantees of confidentiality and limitations on the type of information an employer can request. Employees must be told in advance if such certification will be required.

## **Must health care benefits be provided during FMLA leave?**

Yes. The employer must continue to cover the employee under its group health care plan during the time the employee is on FMLA leave. The employer and employee must continue to pay the same share of the health care premium during the leave period as they paid prior to taking leave (if premium sharing is required). The employer may terminate the employee's health care benefits when notified of the employee's intent not to return to work.

An employee on FMLA is not entitled to other employment benefits (e.g., life insurance, disability insurance) unless the collective bargaining agreement or state or local law requires it. If, however, the employer typically provides such benefits during unpaid leaves, it must do so for FMLA leave as well.

## **What happens if the employee fails to return to work?**

Employers may recover any premiums paid for maintaining group health care coverage during the FMLA leave period only if the *employee's failure to return to work is not caused by a serious health condition or is within the employee's control* (e.g., accepts job elsewhere).

## **Is seniority affected by FMLA leave?**

The FMLA requires accrual of seniority during the leave period for purposes of vesting and eligibility in pension and retirement plans, including 401K. The Act does not require the accrual of seniority for other purposes unless the collective bargaining agreement or state or local law requires it.

If paid leave has been substituted for unpaid FMLA leave, seniority must accrue for all purposes during the paid leave period.

## **Are benefits restored when the employee returns to work?**

All benefits which were earned when the leave began (e.g., vacation time, personal leave) must be granted when the employee returns to work.

## **What job must be provided when the employee returns?**

When an employee returns to work after FMLA leave, he/she is entitled to return to either his/her prior position or to an “equivalent position.” To be equivalent, the position must:

- provide equivalent pay;
- provide equivalent benefits (ex: insurance, sick leave, educational reimbursements):
- have substantially similar duties, conditions, responsibilities, privileges, and status;
- be at the same or geographically proximate worksite, with the same or equivalent schedule, and with the same opportunity for bonuses and profit sharing.

## **WHAT ACTIONS ARE PROHIBITED BY THE FMLA?**

1. Denying leave to an eligible employee.
2. Refusing to provide health benefits during leave.

3. Refusing to reinstate an employee to the same or equivalent position when the leave ends.
4. Discriminating or retaliating against an employee for exercising FMLA rights or because of their involvement in any proceeding under or related to FMLA.
5. Failing to keep records, post notices, and provide other information required by the Act.
6. Manipulating the workforce to avoid FMLA obligations.

## **How is FMLA enforced?**

1. Employees who believe their FMLA rights have been violated may file a written complaint with any Wage and Hour Division Office of the Department of Labor, Complaints must be filed within two years of the violation.
2. Employees may also file a lawsuit. Such a suit may be for monetary damages, equitable relief (e.g., reinstatement), reasonable attorney fees, and other costs.
3. The statutory rights granted by FMLA can only be enforced through the contract's grievance or arbitration process if a specific provision has been negotiated which allows this.

## **What steps should be followed in evaluating a possible FMLA claim?**

1. Determine if the employee and employer are eligible and covered under FMLA.

2. Compare the leave benefits contained in the collective bargaining agreement with those profiled by FMLA. If the contract leave rights are more favorable to the employee, those rights will apply. **Note:** State employees may not be able to file private lawsuits to obtain money damages for FMLA violations. The DOL may still sue on behalf of state workers.
3. Compare the leave benefits provided by FMLA with any state or local FMLA to see which is more favorable to the employee. Remember, more favorable laws will apply. **Note:** It can be argued that general provisions of the contract (e.g., non-discrimination clauses or “savings” clauses) may permit arbitration of FMLA claims. Contract language should never be created to suggest that it is intended to be the exclusive remedy for a violation of FMLA because this could limit an employee’s right to sue in court.
4. Check to see if the employer has complied with its notice and record-keeping obligations under FMLA.
5. Make certain that the employee has complied with all applicable notice and medical certification requirements.
6. Consult the Department of Labor’s FMLA regulations for answers to specific questions and/or call your Local President or CWA Staff Representative.

## **Military Family Leave Provisions**

1. Military Caregiver Leave (also known as “Covered Service Member Leave”) — This allows eligible employees (spouse, child, parent, or next of kin of service member) to take up to 26 workweeks of leave in a single 12 month period to care for a Covered Service Member’s illness or injury incurred or aggravated in the line of duty. Covered Service Members includes veterans undergoing treatment if the treatment occurs within 5 years of leaving service.

2. Military caregiver leave is available for each injury, and each service member. So, for example, an eligible employee can take 26 weeks of leave for a wounded son, and again for a wounded daughter, during the same 12 month period.
3. If leave qualifies as care for a family member and military caregiver leave, it must be designated as military caregiver leave first.
4. Qualifying Exigency Leave — This provision helps families of military member manage their affairs while the member is on covered active duty in support of a military operation. The leave counts toward an employee’s 12 weeks of FMLA leave per year.
5. To take qualifying exigency leave, the employee must be the spouse, child, or parent of a covered service member. The Department of Labor has defined “qualifying exigency” broadly to encompass the following: (1) short notice deployment, (2) military events and related activities, (3) child care and school activities, (4) financial and legal arrangements, (5) counseling, (6) rest and recuperation, (7) post-deployment activities, (8) additional activities agreed to by employer and employee, and (9) parental leave, including arranging for alternative care and providing care on an immediate need basis.

## FREQUENTLY ASKED QUESTIONS

### **1. How much FMLA leave can be taken if both husband and wife work for the same employer?**

A husband and wife who work for the same employer may only take a combined total of 12 weeks of leave in a 12 month period if leave is for the birth, adoption, or foster care of a child or to care for a parent with a serious health condition.

If a husband and wife take a combined total of 12 weeks FMLA for one of the purposes stated above, each is also entitled to the difference between the amount he or she has taken and the guaranteed 12 weeks for purposes other than those mentioned above. For example, if a husband and wife each took 6 weeks leave for the adoption of a child, each would be entitled to another 6 weeks in the event of his/her own illness or to care for a sick child.

**2. Under my CWA contract, I get up to 12 months unpaid leave for the birth or adoption of a child or care of a seriously ill family member. Can I take the twelve months plus the 12 weeks of FMLA leave?**

No. If the twelve months of unpaid contractual leave qualifies as FMLA leave, the employer has a right to count that leave against your 12 weeks FMLA entitlement.

**3. While on FMLA leave, can I continue my life insurance coverage by reimbursing the employer premium?**

The FMLA does not guarantee such a right, but there is no reason not to request it and to work out a payment arrangement which will allow you to keep these benefits.

**4. Upon returning to work from FMLA leave, will I be guaranteed the same work shift/hours I had prior to going on leave?**

The employer is obligated to provide you with the same or “equivalent” job. Shifts and hours are part of the determination that a job is equivalent.

**Note:** The FMLA does make an exception for “key” employees — salaried employees who earn in the highest 10% of all the employer’s employees. The employer must notify the key employee before the leave begins that reinstatement will be denied because “substantial and grievous economic injury” would occur, or, if notice is given after leave begins, the employee must be given the opportunity to return to work immediately.



**5. If I choose to substitute accrued paid leave for unpaid FMLA leave, can the employer prevent me from doing so?**

An employee is entitled to substitute accrued paid leave (vacation or personal) provided by the collective bargaining agreement for unpaid FMLA leave of the same type. However, the employee can only substitute accrued paid leave if he or she would be otherwise eligible for it, or the employer waives the condition.

**Note:** Some courts have held that the employer cannot force an employee to substitute paid vacation leave for FMLA leave if the contract gives the employee the right to select vacation based on seniority or other factors. Leave substitution policies are subject to contract rights or state laws that provide more favorable rights.

**6. Can the employer require me to substitute accrued paid leave for unpaid FMLA leave?**

Yes, unless the contract says otherwise.

**7. If my CWA contract provides superior benefits to those in FMLA, why should I care about FMLA?**

Even if your contract provides greater leave benefits in some circumstances, it may not include every circumstance covered under FMLA. In addition, the FMLA obligates employers to comply with specific notice and recordkeeping rules, provides protections against retaliation or discrimination and allows an employee to bring a separate court or administrative action to enforce FMLA rights and to recover actual and liquidated damages as well as attorney fees and costs.

**8. What rights do I have if I am not able to return to the same job because of medical restrictions?**

If you are able to perform the essential functions of your job with a reasonable accommodation, you may also be protected by the ADA: the

employer must provide the accommodation or try to find an alternative job which you could perform, as required by the ADA. (See CWA's brochure on the ADA for more information about the rights and protections guaranteed by this law.)

**9. If my disability leave is terminated, but I am not well enough to return to work, am I still eligible for 12 weeks of FMLA leave?**

Yes. Assuming an employee meets all other FMLA requirements, he/she is entitled to take the full 12 weeks of FMLA leave. If the employer has required, or the employee has chosen, to substitute paid disability leave for unpaid FMLA leave, the employee is entitled to the 12 weeks less the amount of time already spent on leave. For example, if an employee's disability leave, which has been substituted for FMLA leave, is terminated after 7 weeks, that employee is entitled to 5 more weeks of unpaid FMLA leave.

**10. What if the requirements for my former job changed while I was out on FMLA leave?**

If, as a result of your leave, you missed an opportunity to take a training course or participate in testing or other skills evaluation, the employer must give you a reasonable opportunity to do so once you return to work.

**11. Will I receive cost of living or other pay increases which occurred while I was on FMLA leave?**

You are eligible for any unconditional pay increase which occurs while on leave. Increases based on seniority are governed by the collective bargaining agreement. The employer must treat your entitlement to pay increases the same as employees on other types of unpaid leave.

**12. What are my reinstatement rights if there is a change in my working condition or a layoff during the time I am on FMLA leave?**

An employee is entitled to be restored to the same job and benefits as he/she would have enjoyed had no leave been taken. If your job duties or

responsibilities change while you are on leave, the employer's reinstatement obligations apply to the "new" job.

If your job was going to be eliminated whether or not you took FMLA leave, you have no right to reinstatement to that job. Likewise, if the employer has closed the facility where you worked, you are entitled to be treated the same as if you were not on leave when it closed including receiving any termination pay.

On the other hand, the employer cannot reinstate you to an "equivalent" job that is slated for elimination if your original job is not.

### **13. How much information can the employer require I provide about my own serious health condition?**

The employer is entitled to only enough information to determine if a medical leave qualifies under FMLA.

In general, the employer is entitled to such basic information as: the nature of the health condition, the likely duration of the leave period, and a statement that the condition prevents the employee from performing the essential functions of the job.

If you suffer from a serious chronic health condition, the employer is entitled to know your health care provider's best estimate of the likely number of days or times you may be absent due to that condition over a given period of time (e.g., 4 hours per month; 6-8 days per six months). Medical certification forms approved by DOL contain a specific section asking for information about chronic serious health conditions. You should make certain this portion of the form is completed if you have such a condition and will need intermittent leave as a result.

Remember that the employer may not disclose medical information without your consent except in very limited circumstances. The employer may not request your medical records or information beyond that pertaining

to the FMLA condition. Medical information must be kept in separate, confidential files and may not be included in your personnel file.

**14. What kind of information must be provided about the serious health condition of a spouse, parent, or child?**

In addition to information about the nature and duration of the medical leave, the employer is entitled to a statement that the patient requires the employee's assistance or care to perform activities of daily living (e.g., dressing, bathing, eating, maintaining a residence) or other self-care tasks.

**15. What kind of information must be provided to justify a request for intermittent or reduced leave?**

In addition to information about the nature and duration of the medical leave, the employer must be informed that the leave requested is medically necessary or (in the case of a spouse, parent or child) that the employee's care of the person is needed or will assist in their care, treatment or recovery.

The employer must also be informed that intermittent or reduced leave provides the "best" method of accommodating or treating the serious health condition involved.

**16. What is the difference between the medical eligibility requirements for an FMLA leave for a personal illness and eligibility for a disability leave?**

The answer to this question depends upon the specific terms of an employer's disability plan. In many cases, leave taken for FMLA purposes would also qualify for leave under an employer's disability plan. If an employee's personal illness would qualify under both the FMLA and an employer disability plan, and the employer's plan provides for paid leave, the employer may require, or the employee may elect, to substitute such leave for the unpaid FMLA leave. In any event, the employer's disability plan must be reviewed to determine whether the medical eligibility

requirements for FMLA leave coincide with the requirements for disability under an employer's plan.

### **17. Can my employer count my FMLA leave as absences?**

Yes. An employer can count time spent on FMLA leave as absences from work. Any time the employee spends on FMLA leave is treated as continued service for the purposes of vesting and eligibility to participate in pension and retirement plans. However, the FMLA does not require the accrual of seniority during the leave period for purposes other than pension vesting and eligibility.

### **18. I know that I'm entitled to 12 weeks unpaid FMLA leave in a 12 month period. How is the 12 month period determined?**

The law permits the employer to choose among four options to determine the relevant 12 month period:

- (1) the calendar year;
- (2) any fixed 12 month "leave year," such as a fiscal year of a year starting on an employee's anniversary date;
- (3) the 12 month period measured from the date that any employee's first FMLA leave begins, or
- (4) a "rolling" 12 month period measured backwards from the date that any employee uses FMLA leave

### **19. I was injured at work and have been out on workers' compensation leave. Am I still entitled to my 12 weeks of FMLA leave?**

Only if your employer did not count your time off as FMLA leave. An employer is permitted to treat workers' compensation leave as FMLA-protected leave, but only if it notifies you that it is doing so. (For example, if you require four weeks off to recover from an on-the-job injury

and your employer also counts that time under the FMLA, you may only have eight weeks of FMLA leave remaining.)

**20. My employer gives “perfect attendance” bonuses. I was out on FMLA leave. Am I still eligible for one of these bonuses?**

Yes, but an employer may count FMLA absences against an employee for purposes of attendance rewards programs.

**21. My employer requires employees to meet certain production standards based on days worked. I have been out on FMLA leave. Can I be excused from meeting these standards?**

You cannot be penalized for taking FMLA leave. However, the employer is not obligated to “credit” you for production days you did not actually work or for bonuses based on production standards you did not actually meet. When a bonus program rewards production while at work or accrued earnings based on work actually performed, an employee who is not at work because of an FMLA (or other approved) leave may not qualify for the bonus period that coincides with the absence from work.

**22. I was out of work for six months on an approved educational leave of absence. When I asked for FMLA leave, my employer said I had not worked the necessary hours to be eligible. Doesn’t my approved leave count towards the FMLA’s 1,250 hour eligibility requirement?**

No. The 1,250 hour eligibility requirement is based only on actual hours worked. If you are out on any type of leave (e.g., sick, union, child care), that time is generally not counted when the employer calculates the hours you have worked for purposes of FMLA eligibility.

**23. I submitted the necessary medical certification forms for leave for my serious chronic health condition, but my employer has now asked me to submit another medical certification. Is this proper?**

Your employer may not reject the medical certification you have submitted so long as it contains sufficient information to determine that your absence is protected by the FMLA. The employer can ask you to submit to a second or third medical examination, at company expense, if it has a good faith reason to doubt the facts presented on your initial certification.

The employer can also ask you to submit a re-certification if you ask for additional leave beyond that certified by your health care provider, if your health condition has changed significantly since you submitted the original, if the employer has reason to suspect that you are not absent for the reasons stated on the certification, or if six months have passed and you require an absence.

**24. My employer has asked me to bring additional proof of my illness in order to receive payments under its paid sick leave plan, even though I have already qualified for FMLA leave. Can they do this?**

An employer may require additional medical information beyond that required for unpaid FMLA in order to qualify for more generous paid sick leave benefits. The employer must show that it requires the additional information from all covered employees. If the additional medical information is not provided, the employee is still entitled to FMLA leave but it may not be paid leave.

**25. I am returning from FMLA leave and my employer wants me to submit to a drug test. Is this permitted?**

An employer may require employees returning from FMLA leave to undergo drug testing within three days of returning to work, so long as it requires all employees in the same or similar jobs to undergo such testing. However, if your contract or state law has more favorable provisions covering drug testing, they apply instead.

**26. I have been out on FMLA leave for my serious health condition. Am I also protected by the Americans with Disabilities Act (ADA)?**

The ADA protects individuals who have a medical condition that substantially limits a major life activity. Some serious health conditions meet this requirement but others do not. Your health care provider can help you determine if you may be covered by the ADA and need a reasonable accommodation to help you perform essential job functions. (See CWA's brochure on the ADA for more information about the rights and protections guaranteed by this law.)

**27. My health care provider has just told me that I will be ready to return to work from my FMLA earlier than was originally predicted. Is my employer required to let me return early?**

Yes. You must be reinstated within two business days after giving notice that you are able to return to work. When you are covered by the FMLA, your employer can not make you leave earlier or return to work earlier.

**28. The family member I was caring for on FMLA leave has now died. Can I take additional FMLA leave time for bereavement?**

No. FMLA leave ends with the death of the family member whose care you provided. Bereavement leave provisions in your contract would now become effective.

**29. When I returned to work from my FMLA leave, I was assigned to a different work location that means I have a longer commuting time. In addition, I am being expected to work more overtime. Is this permissible?**

The FMLA requires the employer to reinstate you to the same job or one that is substantially similar to your prior job. The FMLA also prohibits an employer from treating someone less favorably because he/she took FMLA leave. Generally, this means that you should not have a substan-



tially longer commute or be required to work more hours (or receive less overtime opportunities than you had before taking leave), or be subjected to any other adverse treatment (e.g., more difficult assignments or harassment) because you took FMLA leave. If your prior job changed or was eliminated while you were on leave, however, you may be subject to those changes when you return.

**30. If I return to work and perform “light duty” until I feel fully recovered, does that period of time count against my FMLA leave?**

No. If you are at work working, that time cannot be counted against you. An employee’s right to be restored to his or her previous job is not waived by accepting a “light duty” assignment, and an employer cannot coerce the employee to take such a position. However, the right to be restored still ends at the end of the applicable FMLA leave year.

**31. My contract allows me to take five days a year to care for family members who are sick. I took leave to care for my domestic partner. Can this leave be counted as FMLA leave?**

No. The only leaves that can be subtracted from your annual 12 weeks of FMLA leave are those specifically covered by the statute. The FMLA provides leave to care for children, parents and spouses only. Like in-laws, grandparents, and other close family members, domestic partners are not covered by the FMLA. Thus, any time you take to care for them cannot be deducted from your FMLA allowance.

# State Family Leave Laws/Rules Exceeding Federal FMLA Requirements

*\*Subject to Change*

Comparison Chart — The chart that follows shows those states that have family-related leave mandates in excess of those contained in the federal Family and Medical Leave Act. Footnotes indicate those states that provide such leave for public employees only and any separate maternity, parental, school or adoption leave provisions.

The first three categories of the chart relate to a state’s Family Medical Leave Act or Rule. The fourth category relates only to a state’s separate maternity, parental, school or adoption leave provisions. When this benefit applies only to state employees it is followed by a pound symbol (#).

STATE MANDATES BEYOND FMLA				
STATE (# means public employees only)	Length of Leave (More than 12 weeks)	Minimum Number of Employees (Fewer than 50)	Employee’s Qualification (Fewer)	Separate Maternity* Parental** School*** Adoption****
Alabama	none	none	none	yes*#
Alaska #	yes	yes	yes	yes*/****
Arizona	yes	none	none	yes**#
Arkansas	yes	yes	none	yes***
†California	none	none	yes	yes*/***
Colorado	yes	none	none	yes****
Connecticut	yes	none	yes	none

<b>STATE (# means public employees only)</b>	<b>Length of Leave (More than 12 weeks)</b>	<b>Minimum Number of Employees (Fewer than 50)</b>	<b>Employee's Qualification (Fewer)</b>	<b>Separate Maternity* Parental** School*** Adoption****</b>
Delaware	none	none	none	yes****#
District of Columbia	yes	yes	yes	yes***
Florida #	yes	none	none	yes**#
Georgia	none	none	none	none
Hawaii	none	none	yes	yes*/**
Idaho	none	none	none	yes*#
Illinois	none	none	none	yes***/****#
Indiana	none	none	none	yes*#
Iowa #	yes	yes	none	yes*
Kansas #	yes	none	none	none
Kentucky	none	none	none	yes****
Louisiana	none	yes	none	yes*/***
Maine	none	yes	yes	****
Maryland	none	none	none	yes****#
Massachusetts	none	none	none	yes*/***
Michigan	none	none	none	none
Minnesota	none	yes	none	yes**/***
Mississippi	none	none	none	yes*#

STATE (# means public employees only)	Length of Leave (More than 12 weeks)	Minimum Number of Employees (Fewer than 50)	Employee's Qualification (Fewer)	Separate Maternity* Parental** School*** Adoption****
Missouri	none	none	none	yes****#
Montana	none	none	none	yes*/**#
Nebraska	none	none	none	none
Nevada	none	none	none	yes**#/****
New Hampshire	none	none	none	yes*#
New Jersey	none	none	yes	yes*#
New Mexico	none	none	none	none
New York	none	none	none	yes****
North Carolina #	none	none	yes	yes***
North Dakota #	none	none	yes	yes*#
Ohio	none	none	none	yes**#
Oklahoma	none	none	none	none
††Oregon	none	yes	yes	none
Pennsylvania	none	none	none	yes*
Puerto Rico	none	none	none	yes*
Rhode Island	none	none	yes	yes****
				*** Rhode Island EEs eligible for up to 10 hours of leave annually for school activities.
South Carolina	none	none	none	yes****#

STATE (# means public employees only)	Length of Leave (More than 12 weeks)	Minimum Number of Employees (Fewer than 50)	Employee's Qualification (Fewer)	Separate Maternity* Parental** School*** Adoption****
South Dakota	none	none	none	none
Tennessee	none	none	none	yes*/****#
Texas	none	none	none	yes**#/***#
Utah	none	none	none	none
Vermont	none	yes	yes	yes**/**
Virginia	none	none	none	none
Virgin Islands	none	none	none	yes*
Washington	none	none	none	yes*/**
West Virginia	none	none	yes	yes**#
Wisconsin	none	none	yes	none
Wyoming	none	none	none	none

# Public Employees Only

\* Maternity Leave

\*\* Parental Leave

\*\*\* School Leave

\*\*\*\* Adoption Leave

† Paid family & medical leave. Employees are entitled to up to 6 weeks off and eligible to receive up to 55% of their wages, maximum of \$728.00 per week. All

*employers are covered, not just those with 50 or more employees. However, businesses with less than 50 employees aren't required to hold the job for the worker when they take leave.*

†† *State law permits female employees to take a total of 12 weeks of additional leave within any one year period for an illness, injury, or condition related to pregnancy or childbirth that disables the employee from performing any available job duties. Additionally, any employee who takes 12 weeks, of parental leave, may take an additional 12 weeks to care for a child who is suffering from an illness, injury, or condition that is not a serious health condition, but requires home care.*



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