

## Your Right to Take Time off from Work

The Family and Medical Leave Act (FMLA) gives eligible employees the right to take up to 12 weeks of unpaid, job and benefit-protected leave of absence from work in a 12-month period. Please check your state's laws for additional protections, as some states have set more expansive medical leave standards.

### **Is my employer covered by the Family and Medical Leave Act?**

All public employers, and private employers with 50 or more employees within a 75-mile radius are covered by the FMLA.

### **Am I protected by the FMLA?**

You are protected by the FMLA if your employer is covered, AND if you have worked for your employer for at least 12 months in the past seven years at least 1,250 hours in the last year.

### **When can I take FMLA leave?**

You can take time off to take care of your own serious health condition, OR  
You can take time off to care for your spouse (including same-sex marriages), child, or parent's serious health condition.

### **What are my rights if I am covered by the FMLA?**

If you and your employer are both covered by the FMLA, you are entitled to up to 12 weeks of **unpaid** leave from your job. During that time, your employer must hold your job open for you and must maintain your benefits (like health insurance) while you are out on leave.

### **How do I prove to my employer that I need to take time off?**

When you ask to take time off from work, you do not have to mention the FMLA by name. However, your employer CAN require you to provide some sort of documentation or certification from your health care provider showing the need to take time off. Your employer has to give you at least 15 days to get the medical certification from your doctor or other health care provider.

### **What do I have to include in the medical certification?**

- Your employer might give you a form that you will need to fill out with the help of your doctor or another health care provider. Usually, there is a section for the employer to fill out, another section for you to fill out, and the rest of the form is completed by your health care provider.
- Your doctor should fill out the form to include the date that your serious medical condition began, how long the condition will probably last, and a statement about how your serious health condition is preventing you from doing your job. (See our "Medical Certification for the FMLA and ADA" handout).
- If your employer did not give you a form for your doctor to fill out, you can simply have your doctor or other health care provider write a letter explaining information mentioned above. (See our FMLA sample letter).

- Your employer can also ask for the name, address, telephone number, and fax number of your health care provider; your health care provider's type of practice/specialization; and information on symptoms, diagnosis, hospitalizations, doctor visits, prescribed medications, referrals, and other regimens of continuing treatment, but you only need to give enough information to support your need for medical leave.
- You can ask someone on your health care team other than your oncologist to help you with certification if you would prefer to keep your cancer diagnosis private.

**What kind of certification do I need if I take time off to take care of a family member?**

If you are taking time off to take care of a family member, the certification must include a statement that the serious health condition requires you to provide care during a period of treatment or supervision, and an estimate of how long the health care provider believes you will need to provide the care.

**I need to take time off of work for treatment. Do I have to tell my employer that I have cancer?**

NO. You are NOT required to tell your employer your diagnosis, even if there is a space for it on the medical certification form your employer gives you to fill out, as long as your medical certification includes enough information about your serious medical condition requiring you to take FMLA leave. This is also true if you are taking time off to care for a spouse, child, or parent.

**What if my doctor thinks that I will have to be out of work for longer than 12 weeks? Is my employer required to hold my job for me?**

Unfortunately, no. Under the FMLA, your employer is only required to hold your job for you for 12 weeks, even if you or your family member is still too sick to return to work at that point. In limited circumstances, you might be able to get an extension of leave time as a reasonable accommodation under the Americans with Disabilities Act.

**Is an employee entitled to more than 12 weeks of FMLA leave if he or she has multiple qualifying reasons?**

No. Unless leave is to care for a covered service member with a serious injury or illness, an eligible employee's FMLA leave is limited to a total of 12 workweeks during the 12-month period.

**Can my employer request a second medical opinion?**

Yes, your employer can request a second medical opinion, but your employer is responsible for the cost of the second opinion.

If the first and second medical opinions differ, a third medical opinion is binding; your employer is required to pay any expenses related to obtaining the third opinion.

**If my employer asks for medical certification and I do not provide it, can my employer deny me leave?**

Yes. You generally have 15 days to provide the certification if your employer requests it.

Although you might be able to get an extension, if you refuse to provide the certification your employer can deny you leave.

**I already gave my employer medical certification when I first went on leave. Can my employer ask me for another one?**

Maybe. Your employer may ask you for recertification of FMLA leave only if:

- Your initial leave period has ended
- Circumstances have changed (for example, you are seeking a longer period of leave), or
- Your employer has reason to believe that your first certification might not have been valid (for example, observing you performing activities that are inconsistent with what your health care provider wrote in the certification).
- Your employer can ask for recertification no more often than every 30 days.

**I gave my employer my medical certification, but my employer says it is not good enough. Now what?**

Your employer must explain why the documentation is insufficient and then give you 7 days to fix the certification. If your certification is complete but your employer is still denying FMLA leave, you may want to speak to an attorney.

**Can my employer contact my doctor without my consent?**

Yes, but only in limited circumstances. Privacy laws like HIPAA prohibit doctors from giving out private information without your consent. An HR or management official or leave administrator from your employer (NOT your direct supervisor) may contact your doctor without your consent to clarify (understand the handwriting or meaning) or authenticate the medical certification; however, your employer cannot ask for any additional information.

**If I submit a medical certification for FMLA leave, will everyone in my office know?**

No. Any FMLA-related inquiries and all related documentation are confidential and must be kept in a separate file from your personnel file.

If you have questions about the Family and Medical Leave Act and how it applies to you, please contact the CLRC at [clrcintake.org](http://clrcintake.org). You can also contact the Department of Labor at <http://www.wagehour.dol.gov> and/or 1-866-4-USWAGE (1-866-487-9243).

**What if I do not qualify for FMLA?**

If you do not work for a qualifying employer or if you have not met the qualifications for FMLA, review the medical leave policy in your employee manual. Some employers provide medical leave, even if they are not required to by law.

Additionally, you could ask for leave as a reasonable accommodation under the Americans with Disabilities Act (ADA). An employer is not required to provide leave time as a reasonable accommodation, but if it is reasonable to the employer (not an undue hardship for the employer), they may be willing to provide you with some time off and hold your job open as a way to accommodate you. ADA requirements: <https://www.eeoc.gov/eeoc/publications/fs-ada.cfm>.

The following page includes a sample letter you can use to request medical leave under FMLA.

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SAMPLE FMLA LEAVE REQUEST LETTER

Date: \_\_\_\_\_

Supervisor: \_\_\_\_\_

Department: \_\_\_\_\_

Dear [Human Resources Representative],

This letter is to request a leave of absence under the Family and Medical Leave Act due to my serious medical condition.

I am eligible for FMLA leave because I have a serious medical condition that began on \_\_\_\_\_ and will likely last until \_\_\_\_\_. Additionally, [Company Name] has over 50 employees in a 75-mile radius, I have worked for [Company Name] for over one year and worked more than 1,250 hours in the last year, and I have not used up all of my FMLA leave in the last year.

My serious health condition will prevent me from doing my job by making it difficult or impossible for me to \_\_\_\_\_, which is one of the essential functions of my job.

According to my doctor, I expect that my leave will begin on \_\_\_\_\_ and will continue through \_\_\_\_\_. I [will/will not] need to take intermittent leave during this time.

My doctor's name is \_\_\_\_\_, and [his/her] address and phone number are \_\_\_\_\_. If you request or require medical certification forms to be filled out, my doctor will fill one out in order to demonstrate my need for FMLA leave.

I understand that my FMLA leave time will be unpaid and that in order to maintain my benefits, I am required to continue paying my share of my health insurance premiums. I know that it [is/is not] [Company Name]'s policy to require employees to use banked sick and vacation time while on FMLA leave.

If you have any questions, please contact me at \_\_\_\_\_.

Sincerely,

PRINT NAME \_\_\_\_\_

TELEPHONE # \_\_\_\_\_

POSITION \_\_\_\_\_