

FMLA (FAMILY AND MEDICAL LEAVE ACT) IN D.C, MARYLAND, & VIRGINIA; D.C PAID SICK AND SAFE LEAVE ACT



WHAT IS THE FMLA?

The federal FMLA requires certain employers to provide unpaid leave to employees who: 1) have serious health conditions, 2) need to care for sick family members, and/or 3) take care of new children (by birth, adoption, or foster care).

What are the Benefits of the FMLA? The FMLA provides:

- **12 weeks** unpaid family or medical leave for every 12 months.
 - Under the D.C. FMLA, employers may provide up to 16 weeks every 24 months for *family* leave.
 - Under the D.C. FMLA, employers may provide up to 16 weeks every 24 months for *medical* leave.
- **26 weeks** unpaid family or medical leave for every 12 months to care for a military service member.
- **A Job-Guarantee**, which means that the employer must return the employee to the same or equivalent job after leave, even if the employee has been replaced in the interim. An equivalent job is one that has comparable pay, benefits, responsibilities and hours of work. Vacation or seniority, however, does not accrue during leave.

Which Employers are Required to Provide FMLA for their Employees?

- Under federal law, employers with 50 or more employees within a 75-mile radius must provide FMLA coverage.
- Under the D.C. FMLA, employers need only have 20 employees to provide the coverage.

Which Employees are Covered by FMLA?

- An employee can use FMLA if he/she has been employed by the same employer for at least 12 months (do not need to be consecutive) before the request for leave. Under D.C. FMLA, the employee must be employed by the employer for one year without a break in service. Or
- An employee can use FMLA if he/she has worked at least 1,250 hours during the 12 months before the leave request (average of 24 hours/week). Under D.C. FMLA, it's at least 1,000 hours during the 12 months before the leave request (average of 19 hours/week).

Which Situations and Family Relations Allow for an Employee to Take the FMLA?

- If the employee is suffering from a serious health condition that stops him/her from being able to perform the functions of the job, then that employee may take leave
- When a child, spouse, or parent is suffering from a serious health condition.
- For a new baby, FMLA may be taken anytime within the first 12 months of the birth.
- For a new child who has been newly adopted or received into foster care anytime within 12 months of placement.
- A “qualifying exigency” arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty in the Armed Forces. Or, an employee who is the spouse, son, daughter, parent, or next of kin of a covered service member to care for the service member when they are suffering a serious health condition.

What is a “Serious Health Condition” under the FMLA? A serious health condition is an illness, injury, impairment, or physical or mental condition involving:

- **Inpatient care** in a hospital, hospice, or residential care facility **OR continuing treatment by a health care provider** (which includes 2 or more visits to a doctor, nurse, or physician’s assistant under a doctor’s direct supervision or one visit which results in a “regimen of continuing treatment”) **AND a period of incapacity of more than 3 consecutive calendar days.**
- Incapacity due to terminal or chronic condition. Note: Leave for substance abuse may only be taken for treatment, not incapacity.
- Incapacity due to pregnancy or for prenatal care.

What are Possible FMLA Violations by an Employer? An Employer may:

- Wrongfully count FMLA-qualified leave as absences under a progressive absenteeism policy.

(July 2012)

- Miscalculate eligibility for FMLA leave by: failing to designate a 12-month leave period OR failing to give notice of applicability of FMLA within two business days.
- Fail to post required FMLA notices.
- Fail to maintain health benefits during leave.
- Harass an employee for requesting FMLA leave or taking FMLA leave.
- Deny an employee's request for FMLA-qualifying leave.
- Fire an employee while on FMLA leave or upon return from FMLA leave.
- Fire or discriminate against an employee for asserting his/her rights under FMLA.

What are the Local FMLA Laws in Maryland and Virginia?

- In Maryland, the amount of leave depends on hours worked. Non-temporary state employees are entitled to take paid sick leave for illness or disability of the employee and for a medical appointment of the employee or an immediate family member. State employees can accrue up to 15 days of paid sick leave per year from the beginning of employment. State employees taking leave after the birth or adoption of a child are entitled to a 30-day leave.
- In Virginia, public employees are entitled to paid family and personal leave for absences due to a short-term incident, illness or death of a family member, or other personal need. The amount of hours depends on length of employment.

What is the D.C. Paid Sick and Safe Leave Act of 2008?

- Under the DC Paid Sick and Safe Leave Act of 2008, both public and private employers in D.C. must provide their employees with paid sick or safe leave. Employees start accruing leave when they begin working for an employer, and may begin using the leave after 90 days of work for that employer.

How Do I Request The D.C. Paid Sick and Safe Leave?

- To obtain the leave, an employee must submit a written request with at least 10 days' notice or, if not a foreseeable situation, before the start of the shift. In the event of an emergency, the employee should notify the employer within 24 hours of the emergency occurring or before the next shift.
- **NOTE! The following workers are not covered under this law:** Independent contractors, students, certain health care workers, and restaurant wait staff/bartenders receiving a combination of wages and tips.

How Much Leave is Granted?

- Employers with 100 or more employees must provide each employee at least 1 hour of paid leave for every 37 hours worked, up to 7 days of leave per year.
- Employers with 25 to 99 employees must provide each employee at least 1 hour of paid leave for every 43 hours worked, up to 5 days of leave per year.
- Employers with 24 or fewer employees must provide each employee at least 1 hour of paid leave for every 87 hours worked, up to 3 days of leave per year.

What Qualifies as "Leave" Under this Law?

- **"Sick"** leave is taken to tend to an employee's physical or mental health or that of an employee's family member.
- **"Safe"** leave is leave taken to obtain social or legal services addressing stalking, domestic violence, or sexual abuse of the employee or employee's family member.
- **"Family member"** includes grandparents, parents of spouses, domestic partners, and someone who has shared a committed relationship and residence with the employee for the past year.

For more information about your workplace rights come to EJC's Workers' Rights Clinic from 6:00 p.m. – 9:00 p.m. on Wednesdays at Bread for the City, NW (1525 7th Street, NW, between P and Q Streets, NW; list starts at 5 p.m.) or, from 11:00 a.m. – 2:00 p.m. the first and third Fridays of each month at Bread for the City, SE (1640 Good Hope Road, SE). The clinic is first-come, first served, and no appointment is necessary. For more information, visit the D.C. Employment Justice Center website at www.dcejc.org.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in Washington, D.C. Because laws and procedures frequently change, the D.C. Employment Justice Center cannot ensure that the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights.

DC EMPLOYMENT JUSTICE CENTER
1413 K STREET, NW, FIFTH FLOOR, WASHINGTON, DC 20005
 PHONE: 202.828.WORK FAX: 202.828-9190 www.dcejc.org justice@dcejc.org

(July 2012)