

# THE FAMILY AND MEDICAL LEAVE ACT

## OVERVIEW

The Family and Medical Leave Act (FMLA) provides eligible employees with up to 12 workweeks of unpaid leave with job protection during a 12-month period for certain family and medical needs. FMLA leave differs from leave without pay (LWOP) in that an employee who establishes eligibility may not be denied FMLA leave. This section focuses on Title II of the FMLA.

Refer to the end of this section for the following tools:

1. Employee Checklist
2. Supervisor Checklist
3. Letter Templates

## REFERENCES

- Title [5 U.S.C., Chapter 63, Subchapter V](#): Family and Medical Leave
- Title [5 CFR Part 630, Subpart L](#): Family and Medical Leave

## ENTITLEMENT

Full-time employees are entitled to 12 weeks (480 hours) of unpaid leave in a 12-month period (*12 weeks x 40 hours = 480 hours*).

Part-time employees are entitled to prorated FMLA leave. FMLA leave is calculated on an hourly basis that will equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek (e.g., if the employee is scheduled to work 24 hours per week, then the employee is entitled to 288 hours of leave (*12 weeks x 24 hours = 288 hours*)).

## SITUATIONS FMLA MAY BE INVOKED

The following table provides the situations for which FMLA may be invoked and for which family members:

<i>Entitlement</i>	<i>Conditions for Use</i>	<i>Family Members</i>
FMLA	Up to 12 weeks (480 hours) of unpaid FMLA leave during any 12-month period for: <ol style="list-style-type: none"><li>1. The birth of a son or daughter of the employee and the care of such son or daughter within one year of birth.</li><li>2. The placement of a son or daughter with the employee for adoption or foster care and the care of such son or daughter within one year of placement.</li><li>3. The care of a spouse, son, daughter, or parent of the employee, who has a serious health condition.</li></ol>	For the care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition.  Son or daughter must be under 18, or over

<i>Entitlement</i>	<i>Conditions for Use</i>	<i>Family Members</i>
	<p>4. A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of their position.</p> <p>5. A qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or notified of an impending call to order) in the Armed Forces. For additional information see OPM's CHCO memo <a href="#">CPM 2010-06</a>.</p>	18 but incapable of self-care because of a mental or physical disability.
FMLA to Care for a Covered Service Member	Up to 26 weeks (1,040 hours) of unpaid leave during a single 12-month period to care for a covered servicemember who was injured or ill in the line of duty. Includes conditions that develop within 5 years of end of military service. 480-hour sick leave limit does not apply to leave substituted for this purpose. For additional information see OPM's CHCO memo <a href="#">CPM 2010-06</a> .	Available to an employee who is the spouse, son, daughter, parent, or next of kin of a covered service member.

## ELIGIBILITY

All employees are covered under the FMLA, and USDA employees will fall under either Title I or Title II of the FMLA:

### 1. Title I.

- a. Employees who serve under a temporary appointment with a time limitation of one year or less, and intermittent employees are covered by Title I of the FMLA and are subject to Department of Labor regulations. (See [29 U.S.C. Ch. 28](#))
- b. To be eligible the employee must have completed 12 months of service and have performed at least 1,250 hours of service during the 12-month period in a Title I position immediately before starting FMLA leave. Although the 12 months does not have to be consecutive, employment prior to a continuous break in service of 7 years or more is not counted. There are exceptions if the break was because of military service. (See [29 CFR 825.110](#))

### 2. Title II.

- a. Most Federal employees are covered by Title II of the FMLA and are subject to the Office of Personnel Management (OPM) regulations (temporary and term employees must have an appointment with a time limitation beyond one year in order to receive FMLA leave under Title II). (See [5 U.S.C., Chapter 63, Subchapter V](#) and [5 CFR Part 630, Subpart L](#)).
- b. To be eligible the employee must earn sick leave and annual leave and have completed 12 months of service. The 12 months of service does not need to be recent or consecutive months and all types of Federal employment count towards the one-year requirement. (See [5 CFR 630.1201\(b\)\(ii\)](#))

## FAMILY MEMBERS

The definition of family members under the FMLA is much narrower than the definition of family members for purposes of sick leave. Family members include only (see [5 U.S.C. 6382\(a\)\(1\)\(C\)](#)):

1. Parent
2. Spouse
3. Child

**Parent:** May be a biological, adoptive, step, or foster father or mother, or any individual who stands or stood *in loco parentis* to an employee who is a son or daughter. This term does not include parents "in law" (see [5 CFR 630.1202](#)). Must provide day-to-day care or financial support.

**Spouse:** Is a husband or wife, which refers to the other person with whom an individual entered into marriage as defined or recognized under state law. "Spouse" includes an individual in a same-sex or common law marriage. (See [29 CFR 825.102](#))

**Child:** Is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability (see [5 CFR 630.1202](#)). The son or daughter under 18 must first have a disability to be covered. Beyond that must be incapable of self-care because of the disability, requires active assistance or supervision, and have a serious health condition and needs the care of the parent. In general, an employee may not take FMLA leave to care for a son or daughter who is 18 years of age or older. An employee may take FMLA leave to care for a son or daughter as defined under FMLA who is 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to begin.

- **Example.** An employee's healthy 19-year-old daughter is pregnant, and the employee wants to invoke FMLA to care for her daughter after she gives birth. The FMLA regulations provide entitlement to care for a son or daughter who is under the age of 18; or 18 or older and incapable of self-care because of a mental or physical disability. The employee may use sick leave to care for her daughter during the period of recovery from childbirth, but she may not invoke FMLA for such purpose.

***In loco parentis.*** Any individual who has daily responsibility for the care and financial support of a child, or who had that responsibility when the employee was a child. A biological relationship with the employee is not required. (See [29 CFR 825.102](#))

- **Example.** An employee whose same or opposite sex domestic partner is having a child, but the employee is not the child's biological parent, or a grandparent who will raise a child, is entitled to use FMLA leave to bond with the child or to care for the child if the employee will stand *in loco parentis* to the child. An employee who will stand *in loco parentis* to a baby is considered a parent for FMLA purposes and is entitled to use FMLA leave to bond with or care for the child, even if the employee is not the child's biological parent.

**Physical or Mental Disability.** Refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in [29 CFR 1630.2](#)(h), (i) and (j).

**Incapable of Self Care.** A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADL's) or “instrumental activities of daily living” (IADL's). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc. (see [5 CFR 630.1202](#)). Temporary, short-term restrictions would generally not be covered.

**“Care” and FMLA.** Care of a newborn or child placed for adoption or foster care does not imply a need for care because of illness. Care of a family member with a serious health condition means providing care for that person. Family care does not include babysitting or running errands. (*Khourdaji v. Army*, 101 FMSR 81789 (MSPB AJ 05/31/01))

**Child on Covered Active Duty or Call to Covered Active-Duty Status.** Is the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood *in loco parentis*, who is on covered active duty or call to covered active-duty status, and who is of any age. (See [5 CFR 630.1202](#))

**Next of Kin.** If an employee is taking leave to care for a family member who is also a member of the military, FMLA leave can be taken for next of kin, under [29 U.S.C. 2612](#)(a)(3). Next of kin means the nearest blood relative of that individual.

## SERIOUS HEALTH CONDITION

Under the FMLA, a serious health condition is an illness, injury, impairment, or physical or mental condition that includes any one of the following (see [5 CFR 630.1202](#)):

1. Inpatient care involving at least an overnight stay in a hospital, hospice, or similar facility.
2. Continuing treatment by a healthcare provider that includes examinations to determine whether there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists. Continuing treatment is a period of incapacity of more than three consecutive calendar days that involves treatment from a healthcare provider.
3. A period of incapacity due to pregnancy or childbirth, or for prenatal care, even if the affected individual does not receive active treatment from a healthcare provider during the period of incapacity or the period of incapacity does not last more than three consecutive calendar days.
4. A period of incapacity or treatment for such incapacity due to a chronic serious health condition that requires periodic visits for treatment that continues over an extended period of time and may cause episodic rather than a continuing period of incapacity. The condition is covered even if the affected individual does not receive active treatment from

a healthcare provider during the period of incapacity or the period of incapacity does not last more than three consecutive calendar days.

5. A period of incapacity that is permanent or long term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider.
6. A period of absence to receive multiple treatments by a healthcare provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity for more than three consecutive calendar days in the absence of medical intervention or treatment. (See [5 CFR 630.1202](#))

*"Incapacity" is the inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition (see [5 CFR 630.1202](#)). Incapacity applies to the essential functions of an employee's position as defined in [29 CFR 1630.2\(n\)](#).*

### **Not a Serious Health Condition**

A serious health condition does not include:

1. Routine physical, eye, or dental examinations.
2. Continuing treatment that includes taking over-the-counter medications, bed rest, exercise, and other similar activities that can be initiated without a visit to a healthcare provider.
3. A condition for which cosmetic treatments are administered unless inpatient hospital care is required or unless complications develop.
4. An absence because of an employee's use of an illegal substance unless the employee is receiving treatment for substance abuse by a healthcare provider or on referral by a healthcare provider.

Unless there are complications, the definition also excludes; the common cold; the flu; earaches; upset stomach; minor ulcers; headaches (other than migraines); routine dental or orthodontia problems; or periodontal disease.

Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress may be serious health conditions only if they require inpatient care or continuing treatment by a healthcare provider. (See [5 CFR 630.1202](#))

### **PAID PARENTAL LEAVE**

Paid parental leave is a form of paid leave that may only be used when substituting it for unpaid FMLA leave. Eligible employees may substitute up to 12 weeks of paid parental leave for unpaid FMLA for the birth of a son or daughter of the employee and care of such son or daughter, or the placement of a son or daughter with the employee for adoption or foster care and the care of such son or daughter, that occurs on or after October 1, 2020. Regulations for paid parental leave can be found at [5 CFR 630, Subpart Q](#).

- **Example 1.** An employee's granddaughter is born. The employee is not eligible for paid parental leave because FMLA can be invoked for the birth of the employee's son or daughter (not the employee's grandchild).
- **Example 2.** An employee invoked FMLA for the birth of his son and asked to substitute paid parental leave for unpaid FMLA for the next 12 weeks. About 10 weeks later, his mom called about damage to her house and asks if he can take a few days to drive up and fix it. The employee may request other leave (annual, credit, comp, or LWOP) but may not use paid parental leave for such purpose.

## How to Apply for Paid Parental Leave

Employees must:

1. Invoke FMLA;
2. Sign a Service Agreement; and
3. Request leave.

See Employee Checklist, for a step-by-step guide to invoking FMLA and requesting to substitute paid parental leave for unpaid FMLA leave.

## Eligibility

Full-time and part-time employees, with an appointment of more than one year in duration, and who have completed at least 12 months of service are eligible for paid parental leave. The 12 months of service does not have to be 12 recent or consecutive months and includes time spent in a temporary or intermittent position.

1. Intermittent employees and temporary employees with an appointment that is not-to-exceed one year or less are not eligible for paid parental leave.
2. Eligibility for the birth of a child is based on the delivery of a living child. An employee is not eligible for paid parental leave if not a live birth.
3. Eligibility for placement of a son or daughter refers to a new placement. The adoption of a stepchild or a foster child who has already been a member of the employee's household and has an existing parent-child relationship with an adopting parent would not qualify for paid parental leave.
  - **Example 1.** On September 12, 2021, an employee was appointed to a permanent position (he has no prior creditable Federal service). On December 14, 2021, his child is born. He cannot invoke FMLA until he has 12 months of service. Once he becomes eligible for FMLA, he must use paid parental leave within one year of birth (by September 11, 2022).
  - **Example 2.** An employee has a total of 10 months of service under several temporary appointments. On February 14, 2021, his child is born. On May 9, 2021, he was appointed to a permanent position. He is now permanent and will be eligible for paid parental leave as soon as he has completed 12 months of service (the 10 months under the temporary appointments count towards the 12-months of service eligibility requirement; therefore, he will need to work 2 additional months before he is eligible). Once he has completed the remaining 2 months of service under the

permanent appointment, he must use paid parental leave within one year of the child's birth (by February 13, 2022).

- **Example 3.** An employee has been fostering a child on and off for several years and later adopts the child. The employee is not eligible for paid parental leave because it was not a new placement (the child was already in the household in foster care before they were adopted).
- **Example 4.** Two male employees are married and have a child through an unrelated surrogate (all 3 are Federal employees). Both male employees would be eligible for paid parental leave for care of the child. However, the surrogate mother would not be eligible for paid parental leave.

### **Paid Parental Leave Must be used Within 12 Months of Birth**

The entitlement to FMLA (including paid parental leave) expires one year after the birth or placement of the child. Paid parental leave must be used within 12 months of the birth or placement of the child. At the end of that 12-month period, any unused paid parental leave is forfeited, it may not be paid out, and an employee may not roll it over.

- **Example.** An employee and his wife have a baby on April 17, 2021. He invokes FMLA and has until April 16, 2022 (within 12 months of the birth) to use paid parental leave. He may not use paid parental leave before April 17, 2021, or after April 16, 2022; he may not roll over any unused leave; and he may not be paid out for any unused leave.

**Bonding.** The purpose of paid parental leave is for care of an employee's newly born or newly placed son or daughter and for bonding with the child. Paid parental leave is to cover periods when the employee is in the home with the child or is otherwise involved in spending time bonding with the child. Paid parental leave is available as long as an employee has a continuing parental role in connection with the child whose birth or placement was the basis for the leave entitlement.

Use of paid parental leave is reserved for periods when an employee is acting in a parental role and engaged in activities directly related to the care of the child whose birth or placement triggered the leave entitlement. Using paid parental leave for these purposes supports the objective of increased parent-child bonding. Paid parental leave may be used to cover short periods away from the child's physical presence to support care (e.g., buying diapers, etc.). Paid parental leave would not be appropriate if an employee engaged in activities not directly connected to care for the child or if the employee is outside the local geographic area where the child is located. A parent who does not maintain a continuing parental role with respect to a newly born or placed child would not be eligible for paid parental leave once the parental role has ended.

### **Paid Parental Leave May Not be used Before the Birth or Placement**

Eligible employees may use paid parental leave after the occurrence of the birth or placement involved, which results in the employee assuming a parental role with the newly born or placed child. Once the child is born or after placement, paid parental leave is used to substitute unpaid FMLA. The following types of leave may be used before the birth or placement:

1. **Unpaid FMLA.** Unpaid FMLA leave may be taken before or after the date of the birth, adoption, or foster care placement. Unpaid FMLA leave may be taken for related purposes such as classes, meetings, and medical treatment before the actual event, but an employee may not substitute paid parental leave for pre-birth activities.
2. **Annual Leave.** An employee may use annual leave for any purpose before or after the date of the birth, adoption or foster care placement. Annual leave may be used to substitute unpaid FMLA.
3. **Credit Hours.** Credit hours may be used before or after the date of the birth, adoption or foster care placement. However, credit hours may not be used to substitute unpaid FMLA.
4. **Compensatory Time Off.** Compensatory time off may be used before or after the date of the birth, adoption or foster care placement but compensatory time off may not be used to substitute unpaid FMLA.
5. **Sick Leave.** Sick leave may be used for medical needs while pregnant (prenatal care, morning sickness, prescribed bed rest, doctor appointments, etc.) and to care for a family member for medical needs while pregnant.

Sick leave may be used during the period of incapacitation for delivery and recuperation and to care for a family member during this time. Most healthcare providers certify the recovery period is 6 weeks for a normal childbirth and 8 weeks for a cesarean, unless complications arise. A supervisor may request medical certification indicating the duration of the employee's or family member's recovery from childbirth.

Sick leave may be used for adoption-related purposes such as appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; time required by the adoption agency or ordered by the court to care for the adopted child; and any other activities necessary to allow the adoption to proceed.

Sick leave may be used to substitute unpaid FMLA in accordance with sick leave regulations. There is no limit to how much sick leave an employee may use for their own personal medical needs, but they are limited to 480 hours per leave year to care for a family member with a serious health condition.

- **Example 1.** On August 9, 2021, an employee invoked FMLA during her pregnancy and used 2 weeks of unpaid FMLA to attend prenatal classes. The child was born on September 15, 2021, and she may now begin using paid parental leave. Since she used 2 weeks of FMLA during her pregnancy she only has 10 weeks of paid parental leave available (not 12 weeks) until the next FMLA 12-month period. The employee may invoke FMLA on August 9, 2022 (after the first FMLA period expires) and use the remaining 2 weeks of paid parental leave, but the remaining 2 weeks must be used within one year of birth (by September 14, 2022).
- **Example 2.** An employee uses sick leave during her pregnancy and uses 6 weeks of sick leave to recover from childbirth (medical certification stated 6-week recovery period). After the 6 weeks, she has recovered from childbirth and invokes FMLA to spend an additional 12 weeks bonding with her healthy baby. She replaces the unpaid FMLA leave with paid parental leave for the birth and care for her child.



- **Example 3.** An employee used 8 weeks of sick leave to care for his wife during her incapacitation period (cesarean so healthcare provider certified the recovery period was 8 weeks). After the incapacitation period, he used FMLA leave and replaced the 12 weeks of unpaid FMLA with paid parental leave.

## Service Agreement

An employee must sign a service agreement stating they agree to work for the agency for at least 12 weeks after they have used the leave. Agencies must create a service agreement form for employees to use for such purpose. Agencies may use the template from the OPM webpage and customize it for their agency: [Template - Agreement to Complete 12-Week Work Obligation](#)

1. An employee may not use paid parental leave until they have signed a service agreement.
2. The 12-week obligation begins once the employee's paid parental leave concludes.
3. If the employee fails to meet the 12-week service agreement period, then they will be billed for the amount of the government's contribution paid by the agency on behalf of the employee to maintain the employee's health insurance coverage during the period of paid parental leave.
4. Any periods of work between intermittent uses of paid parental leave do not count toward completion of the 12-week work obligation. The work obligation is met by performing work after use of paid parental leave concludes.
5. The work obligation refers to a period during which the employee is in a duty status. Only periods of actual work count towards the 12-week obligation. Periods of leave, paid time off (holidays), and unpaid time (LWOP, AWOL, suspension, or furlough) will not count toward the 12-week work obligation.
6. The 12-week work obligation is statutorily fixed and applies regardless of the actual amount of leave used (i.e., an employee who uses less than 12 weeks of paid parental leave would still be obligated to work 12 weeks).
7. If an employee transfers between agencies while using paid parental leave, they will not receive an additional 12 weeks of leave and are responsible for working for the new agency for 12 weeks once the paid parental leave concludes.
8. The 12-week work obligation is waived if the employee is unable to return to work because of a serious health condition related to the birth or placement (e.g., the employee suffers serious health complications resulting from the birth).
  - **Example 1.** An employee and his wife had a baby in February. He invokes FMLA, signs a service agreement, and begins to use paid parental leave intermittently. The last day he used paid parental leave was on July 31, 2021, which means the service agreement period begins the next day, on August 1, 2021, and ends 12 weeks later on October 25, 2021 (extended 2 days for the 2 holidays). If the employee takes leave it will extend the service agreement date. If he quit before October 23, 2021, then he would be billed for the amount of the government's contribution of health benefits and would need to pay the overpayment back to the agency.
  - **Example 2.** An employee has a baby girl, invokes FMLA, signs a service agreement, and uses 4 weeks of paid parental leave. She transfers to DOI. She has 8 weeks of

paid parental leave remaining that she may use during the 12-month period of her daughter’s birth and she must complete her 12-week work obligation with DOI. If she did not fulfill the service agreement, then she could be billed by both USDA and DOI for the government’s contribution for health insurance.

### Multiple Births

If an employee has multiple children born or placed on the same day, it is considered a single event. The employee would be limited to 12 weeks of paid parental leave.

- **Example.** An employee’s wife gave birth to triplets. The employee may only receive 12 weeks total of paid parental leave (not 36 weeks) even though his wife had triplets.

An employee may invoke FMLA for each birth, adoption, or foster care placement and would receive 12 weeks of paid parental leave during each 12-month FMLA period. If an employee has one or more children born or placed during the 12-month period following the date of an earlier birth or placement of a child of the employee, each event will generate a 12-week leave entitlement to be used during the 12-month period following birth/placement. However, any use of paid parental leave during an overlap period (i.e., period contained within more than one 12-month period following birth/placement) will count toward the 12-week limit for each birth/placement involved. In other words, usage of paid parental leave may count toward multiple 12-week limits to the extent that there are simultaneously in effect multiple ongoing 12-month periods beginning on the date of an applicable birth/placement.

- **Example.** An employee had a child in January and another child in November:
  - **FMLA Qualifying Reason #1.** On January 19, 2021, an employee gives birth to a baby boy. She invokes FMLA and may use 12 weeks of paid parental leave by January 18, 2022.
  - **Overlap Period.** On November 3, 2021, she gives birth to a baby girl. She has already used all 12 weeks of paid parental leave and cannot invoke FMLA again until the first FMLA period expires on January 18, 2022.
  - **FMLA Qualifying Reason #2.** On January 19, 2022 (once the first FMLA period expires) she invokes FMLA for the birth of her baby girl and may receive 12 weeks of paid parental leave again. Paid parental leave must be used by November 2, 2022 (within 12 months after birth). The employee would have 2 separate service agreements to work for the agency (12 weeks for the first FMLA period and 12 weeks for the second FMLA period).

Multiple Births	Jan 21	Feb 21	Mar 21	Apr 21	May 21	Jun 21	Nov 21	Dec 21	Jan 22	Feb 22	Mar 22	Apr 22	Total
<b>FMLA Qualifying Reason #1.</b> She invokes FMLA on January 19, 2021, for birth of baby boy.	2	4	4	2									12
<b>Overlap Period.</b> She has baby girl on November 3, 2021.													
<b>FMLA Qualifying Reason #2.</b> First FMLA period expires so she can invoke									2	4	4	2	12

Multiple Births	Jan 21	Feb 21	Mar 21	Apr 21	May 21	Jun 21	Nov 21	Dec 21	Jan 22	Feb 22	Mar 22	Apr 22	Total
FMLA on January 19, 2022, for birth of baby girl.													

**Off Season.** Paid parental leave may not be used during an employee’s off season because employees may only claim paid parental leave during their scheduled tour of duty. Employees are not scheduled to work during the off season; therefore, FMLA unpaid leave and paid parental leave may not be used during an off-season period.

- **Example.** An employee is a permanent seasonal who works 13 pay periods on and 13 pay periods off (season starts May 9, 2021 and ends October 6, 2021).
  - On September 3, 2021, his wife gives birth to a baby boy. He invokes FMLA and his FMLA entitlement ends 12 months after the birth of his son on September 2, 2022.
  - He is able to use 5 weeks of paid parental leave before his season ends. He may not use paid parental leave after October 6, 2021.
  - When his season begins again on May 8, 2022, he is able to use the remaining 7 weeks of paid parental leave. FMLA entitlement ends 12 months after the birth of his child. The employee may not be kept in pay status just to receive paid parental leave.

FMLA for Birth	Sep 21	Oct 21	Nov 21	Dec 21	Jan 22	Mar 22	Apr 22	May 22	Jun 22	Jul 22	Aug 22
He invokes FMLA on September 3, 2021, for birth of his son and he may not use paid parental leave after October 6, 2021 (when his season ends). Season begins again on May 8, 2022, and he has 7 weeks remaining of paid parental leave that can be used before 12 months of his child’s birth (by September 2, 2022).	4	1						4	3		

**FMLA FOR MILITARY SITUATIONS**

**Qualifying Exigency**

Eligible employees receive up to 12 weeks of unpaid FMLA during a 12-month period for a qualifying exigency occurring because of the employee’s spouse, son, daughter, or parent being on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. Qualifying exigencies include (see [5 CFR 630.1204](#)):

1. Short-notice deployment
2. Military events and related activities
3. Childcare and school activities
4. Financial and legal arrangements

5. Counseling
6. Rest and recuperation
7. Post-deployment activities
8. Additional activities where the agency and employee agree to the leave

### **Service Member Caregiver Leave**

Eligible employees may take up to 26 weeks of FMLA leave during a single 12-month period to care for a service member or veteran with a serious injury or illness ([5 U.S.C. 6382\(a\)\(3\)](#)).

Employees may take FMLA leave to care for service members or veterans who suffer a serious injury or illness while on active duty. Eligible employees may take leave to care for a veteran for up to 5 years after the veteran leaves military service ([5 U.S.C. 6381\(8\)\(B\)](#)). During that single 12-month period, the employee is entitled to a combined total of 26 administrative workweeks of leave for service member caregiver leave and any other for which FMLA leave may be used.

Normal leave year limitations on the use of sick leave to care for a family member do not apply. An employee may substitute annual or sick leave for any part of the 26-week period of unpaid FMLA leave to care for a covered service member. For additional information, see [Recent Changes to the Family and Medical Leave Act](#).

- **Example.** An employee invokes FMLA to care for a covered service member. The employee also has a child during that time and wants to take 12 weeks of FMLA for the birth of their child. The employee has 14 weeks of FMLA remaining to care for the service member (26 weeks for covered service member minus 12 weeks for birth equals 14 weeks remaining).

### **ADVANCE NOTICE**

An employee must provide at least 30 calendar days' notice if the need for leave is foreseeable (birth, placement of a child, or planned medical treatment). If the need for leave is not foreseeable and the employee cannot provide 30 calendar days' notice, then they must provide notice within a reasonable period of time appropriate to the circumstances involved.

If the need for leave is foreseeable and the employee fails to give 30 calendar days' notice with no reasonable excuse for the delay of notification, then the supervisor has the discretion to make the action effective 30 days after it was received. (See [5 CFR 630.1207](#))

If the leave is foreseeable based on planned medical treatment, the employee and supervisor should work together to schedule medical treatment so that it does not unduly disrupt the agency's operations, subject to the approval of the healthcare provider. A supervisor may request the rescheduling of treatment because of agency work requirements, but rescheduling must be acceptable to the healthcare provider. (See [5 CFR 630.1207\(b\)](#))

FMLA may not be requested retroactively unless both the employee and representative were incapacitated and unable to make the request. If incapacitated, the request must be submitted within 5 workdays upon return to work. Medical documentation is required. (See [5 CFR 630.1203\(b\)](#))

An agency may not place an employee on FMLA and may not subtract leave from an employee's entitlement to FMLA unless they have obtained confirmation from the employee of their intent to use FMLA leave.

- **Example.** An employee has been absent from work for the past two days and has failed to call in (no call/no show). On the third day, the supervisor was able to reach the employee and the employee said she was invoking her entitlement to FMLA leave as an emergency foster care parent and is taking FMLA leave for the previous two days plus the current day. The employee said she never knows when the courts will contact her to pick up a child, so she is unable to notify her supervisor in advance of her schedule. The supervisor denies the FMLA leave request for the previous two days because FMLA may not be invoked retroactively, and the supervisor also denies the request for FMLA leave for the current day because even though the employee can provide notice at the last minute because of an unexpected placement for foster care, the employee must still follow agency leave requesting procedures.

## MEDICAL CERTIFICATION

A supervisor may request medical certification for FMLA leave taken for the serious health condition of the employee or to care for an employee's spouse, son, daughter, or parent who has a serious health condition. A supervisor may ask only for the information required to make an FMLA determination and may not require any additional personal or confidential information.

**An agency may not contact the healthcare provider directly.**

The U.S. Department of Labor form [WH-380E](#) (for the employee's serious health condition) or form [WH-380F](#) (for the family member's serious health condition), or equivalent document may be used for this purpose. All medical information must be handled in accordance with the confidentiality provisions of the Privacy Act. If needed, a healthcare provider employed by the agency may contact the healthcare provider who completed the medical certification with the employee's permission for purposes of clarifying the certification.

The supervisor has the right to ask (see [5 CFR 630.1208](#)):

- What is the reason for the absence?
- What essential functions of the position can the employee not perform?
- Has the employee seen their healthcare provider?
- How long does the employee expect to be incapacitated?
- When does the employee expect to return to duty?

If the agency requests medical certification then the employee must provide written medical certification signed by a healthcare provider within 15 calendar days of the request, which may be extended to 30 calendar days if the 15-day deadline cannot be met despite the diligent, good-faith efforts of the employee (see [5 CFR 630.1208\(h\)](#)). If an employee does not comply with the notification and medical certification requirements, then the employee is not entitled to FMLA leave.

If leave will be taken intermittently or on a reduced leave schedule, then the certification must also include a schedule of those dates on which such leave will be taken.

## Medical Certification Table

FMLA Issue	Medical Certification
<b>Employee's Own Serious Health Condition</b>	<ol style="list-style-type: none"> <li>1. The date the condition began;</li> <li>2. The probable duration;</li> <li>3. The regimen of treatment (number of visits, general nature and duration of treatment, including referral to other provider of health services); and</li> <li>4. A statement that the employee is unable to perform the essential functions of their position. (The healthcare provider may review the employee's position description and/or performance standards to assist in making this determination).</li> <li>5. Form WH-380-E is available to assist the medical provider in providing appropriate documentation.</li> </ol>
<b>Care for a Family Member with a Serious Health Condition</b>	<ol style="list-style-type: none"> <li>1. The date the condition began;</li> <li>2. The probable duration;</li> <li>3. The regimen of treatment (number of visits, general nature and duration of treatment, including referral to other provider of health services);</li> <li>4. A statement from the healthcare provider that the family member needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs in making arrangements to meet such needs, and that the family member would benefit from the employee's care or presence (including psychological comfort); and</li> <li>5. A statement from the employee identifying the type of care they must provide and an estimate of the amount of time/time period during which the care will be provided.</li> <li>6. Form WH-380-F is available to assist the medical provider in providing appropriate documentation.</li> </ol>
<b>Paid Parental Leave</b>	<p>A supervisor has the right to require appropriate documentation and have employees certify the use of paid parental leave is directly connected to a birth or placement that has occurred. If substituting paid parental leave for unpaid FMLA, the following are considered appropriate documentation:</p> <p><b>Childbirth</b></p> <ol style="list-style-type: none"> <li>1. Birth certificate</li> <li>2. Document naming employee as second parent, such as declaration of paternity or court order of filiation</li> <li>3. Appropriate court documents</li> <li>4. Consular report of birth abroad</li> <li>5. Documentation provided by the child's healthcare provider</li> <li>6. Hospital admission form associated with the delivery</li> <li>7. Other documentation approved by the agency</li> </ol> <p><b>Adoption</b></p>

FMLA Issue	Medical Certification
	<ol style="list-style-type: none"> <li>1. Documentation provided by the adoption agency confirming the placement and date of placement</li> <li>2. Letter signed by the parent's/parents' attorney confirming the placement and date of placement</li> <li>3. Immigrant visa for the child issued by U.S. Citizenship and Immigration Services</li> <li>4. Adoptive placement agreement</li> <li>5. Independent adoption placement agreement</li> <li>6. Other documentation approved by the agency</li> </ol> <p><b>Foster Care</b></p> <ol style="list-style-type: none"> <li>1. Foster care placement record</li> <li>2. Other documentation from the foster agency confirming the placement and date of placement</li> <li>3. Foster care placement letter issued by the relevant local department of social services or authorized voluntary foster care agency</li> <li>4. Other documentation approved by the agency</li> </ol>
<b>Qualifying Exigency</b>	<p>When qualifying exigency leave is being used, <a href="#">5 CFR 630.1209(a)</a> authorizes an agency to require the employee to provide a copy of the covered military member's active-duty orders or other documentation issued by the military that indicates the covered military member is on covered active duty or call to covered active-duty status. An agency may request the following information: (See <a href="#">5 CFR 630.1209(b)</a>)</p> <ol style="list-style-type: none"> <li>1. Statement of appropriate facts regarding the qualifying exigency.</li> <li>2. Approximate date on which the qualifying exigency commenced or will commence.</li> <li>3. Beginning and end dates for continuous periods of leave.</li> <li>4. Estimate of the frequency and duration of intermittent leave.</li> <li>5. Contact information if the qualifying exigency involves meeting with a third party.</li> </ol> <p>Form <a href="#">WH-384</a> is available for the employee to use for such purpose.</p>
<b>Servicemember Caregiver Leave</b>	<p>An agency may require the employee to provide:</p> <ol style="list-style-type: none"> <li>1. A copy of the covered military member's active-duty orders or other documentation issued by the military which indicates that the covered military member is on covered active duty or call to covered active-duty status.</li> <li>2. The dates of the covered military member's active-duty service.</li> <li>3. A signed employee statement or description of appropriate facts regarding the qualifying exigency (e.g., a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs).</li> </ol>

FMLA Issue	Medical Certification
	<ol style="list-style-type: none"> <li>4. Approximate date the exigency will commence (or had commenced).</li> <li>5. If the request is for a single, continuous period of time, the beginning and ending dates for the absence.</li> <li>6. If the request is on an intermittent or reduced schedule basis, an estimate of its frequency and duration.</li> <li>7. If the request is due to meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting, and a brief description of the purpose of the meeting.</li> </ol> <p>Form <a href="#">WH-385</a> is available for the employee to use for such purpose.</p>

### Questionable Medical Certification

If the agency doubts the validity of the original medical certification, an agency may further require the employee to obtain a second opinion from an agency-designated independent healthcare provider. If there are discrepancies between the first and second opinions, an agency may require a third, final and binding opinion by a provider approved by the Agency and the employee. Second and third opinions are at the Agency's expense (see [5 CFR 630.1208\(j\)](#)). Because of the costs involved, contact Employee Relations or Labor Relations for guidance before the request for a second or third medical opinion or for recertification.

If the medical treatment must begin and the employee cannot provide the requested (original) certification, or if the agency questions the validity of the certification, the agency must grant provisional leave pending the final certification.

### Medical Recertification

Supervisors may also require periodic recertification for leave taken for pregnancy, chronic conditions, or long-term conditions under the continuing supervision of a healthcare provider. Subsequent medical recertification may be required at the agency's expense, on a periodic basis, but not more than every 30 calendar days. For leave taken for all other serious health conditions (including intermittent or reduced leave schedules) if the health provider has specified on the medical certification a minimum duration of the period of incapacity, recertification may not be requested until that period has passed.

To require medical certification more frequently than every 30 calendar days or than the minimum duration, the employee must have requested that the original leave period be extended, the original circumstances described must have changed significantly, or the agency must have received information that caused doubt on the continued validity of the medical certification (see [5 CFR 630.1208\(j\)](#)). Contact Employee Relations or Labor Relations before requesting a medical recertification.

### 12-MONTH PERIOD

The 12-month period begins on the first day an employee takes FMLA leave and continues for 12 months. An employee is not entitled to 12 additional workweeks of FMLA leave until the



previous 12-month period ends and a situation occurs that entitles the employee to another period of FMLA leave (this may include a continuation of the previous situation).

An employee may take only the amount of FMLA leave that is necessary to manage the circumstances that prompted the need for leave under the conditions cited.

- **Example.** An employee invoked FMLA for the birth of his daughter and asked to substitute paid parental leave for unpaid FMLA for the next 12 weeks. A few weeks later, his dad is hospitalized with a massive heart attack. The employee leaves to spend time with his dad at the hospital and is gone for 4 days. The employee may invoke FMLA to care for his dad and he can substitute sick leave or annual leave for the unpaid FMLA, but he may not substitute paid parental leave for this time.

Unused FMLA leave from one 12-month period may not be carried over into the next 12-month period.

- **Example.** An employee invokes FMLA on March 3, 2021, and the first day they use FMLA leave is on April 14, 2021. The 12-month period begins on April 14, 2021 (it begins on the first day they use FMLA leave and not on the date they invoke FMLA) and ends 12 months later, on April 13, 2022. A new FMLA period may begin on April 14, 2022.

Federal holidays authorized or granted by Executive Order and nonwork days established by law during the period when an employee uses FMLA leave will not count toward the entitlement. Furlough days that occur during the period in which the employee is on FMLA may not be counted toward the 12-week entitlement. (See [5 CFR 630.1203\(e\)](#))

- **Example.** An employee invokes FMLA and starts FMLA leave on July 15, 2020. On August 1, 2020, the employee is furloughed then a continuing resolution is signed 6 weeks later, on September 12, 2020. The employee may not substitute leave during the time they are furloughed (August 1, 2020, to September 12, 2020). The employee's 12-month FMLA period is extended 6 weeks due to the furlough (instead of ending July 14, 2021, the 12-month FMLA period would now end on August 25, 2021).

## MULTIPLE FMLA QUALIFYING EVENTS

An employee may have multiple FMLA qualifying reasons within the same 12-month FMLA period, but the employee is still limited to 12 weeks total of FMLA total during any 12-month period. The employee may need to provide supporting documentation for each qualifying reason.

- **Example.** Multiple FMLA qualifying events during the 12-month period:

### 1. First 12-Month FMLA Period.

- **FMLA Qualifying Reason #1.** On July 23, 2021, an employee invokes unpaid FMLA to care for her husband who was hospitalized with COVID. She has 12 weeks of unpaid FMLA that will end in one year (July 22, 2022). She used 10 weeks of unpaid FMLA to care for her husband.
- **FMLA Qualifying Reason #2.** On December 2, 2021, she gives birth to a baby girl. The employee may substitute unpaid FMLA with paid parental leave. Since she used 10 weeks of unpaid FMLA to care for her husband, she

can use the remaining 2 weeks of FMLA before the first period of FMLA expires on July 22, 2022. (12-week entitlement minus 10 weeks used equals 2 weeks remaining)

2. **Second 12-Month FMLA Period.** On July 23, 2022, she invokes FMLA for the birth of her child (because the first period of FMLA expired on July 22, 2022, so she can invoke a new period of FMLA for the birth of her child). Her FMLA entitlement ends 12 months after the birth of her child (FMLA ends December 1, 2022, and not on July 22, 2023). She used 2 weeks paid parental leave during the first period of FMLA so she has 10 weeks of paid parental leave remaining and it must be used within 1 year of the child's birth.

## STACKING LEAVE

FMLA leave is a separate entitlement and is in addition to annual leave or sick leave. Employees must designate which days they use as FMLA leave. When using FMLA, an employee may request:

1. Unpaid FMLA (counts towards the 12-week FMLA entitlement).
2. To replace unpaid FMLA with annual leave, sick leave (in accordance with sick leave regulations), or paid parental leave, if applicable (counts towards the 12-week FMLA entitlement).
3. Or not designate the day as an FMLA day and just use their annual leave, sick leave, or LWOP (does not count towards the 12-week FMLA entitlement).

FMLA leave permits extensive absence from the workplace to the point where productivity may be affected. Although a supervisor generally cannot deny sick leave if the employee provides medical certification, they can deny annual leave or LWOP if there is a need for the employee to be at work, unless the employee invokes their rights under the FMLA.

- **Example 1.** An employee's delivery date is September 15. Her child will be delivered by cesarian section so her doctor's note states she will need 8 weeks for recovery. The employee uses 8 weeks of sick leave during her recuperation period. After her recovery period, she invokes FMLA and substitutes 12 weeks of paid parental leave for unpaid FMLA. If the employee provides appropriate documentation, then the supervisor must approve the employee's request to use sick leave and FMLA.
- **Example 2.** An employee uses 6 weeks of sick leave for recuperation after childbirth. After the 6 weeks, she has recovered from childbirth and no longer has an entitlement to take sick leave. She invokes FMLA and substitutes 12 weeks of paid parental leave for unpaid FMLA. After the 12 weeks, she requests an additional 8 weeks of annual leave to continue bonding with her child. The supervisor does not have to approve the request for annual leave based on mission needs and could require the employee to return to duty after the 12-week FMLA entitlement.
- **Example 3.** An employee can take 12 weeks of sick leave to care for a parent with a serious health condition and then invoke FMLA. Although the employee has exhausted their entitlement to sick leave to care for a family member with a serious health condition

and cannot substitute any sick leave, they may invoke their right to the 12 weeks of unpaid leave under FMLA, and they may substitute annual leave for the unpaid leave.

- **Example 4.** An employee is adopting a baby from China and has used 16 weeks of sick leave for adoption-related activities (travel to and from China and for the time spent there for necessary adoption activities). Upon return, the employee invokes FMLA so he can spend 12 weeks to care for his new child. The supervisor denies the request because he says the employee already took 16 weeks of sick leave for adoption-related activities, that he was going to deduct the 12-week FMLA entitlement from the 16 weeks he already took, and that it is crucial the employee return to duty as soon as possible. The supervisor cannot deny the request because the employee is entitled to use his sick leave in addition to using 12 weeks of FMLA leave.

## INTERMITTENT USE

An employee may take the 12 weeks of unpaid FMLA leave all at one time or they can take the 12 weeks intermittently throughout the 12-month period. The agency and employee must agree to use the leave intermittently.

If intermittent leave or leave on a reduced schedule is required, the certification must include the dates (actual or estimates) on which planned medical treatment is expected, the duration of such treatment, and the period of recovery; or if a chronic or continuing condition with an unknown duration, whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

- **Example 1.** An employee uses sick leave during her incapacitation period and after her recovery period, she invokes FMLA. She returns to work on a part-time basis (not a part-time employee but using FMLA leave intermittently to work part time and be on FMLA leave part time to bond with her baby). The employee works for 4 hours each morning and uses 4 hours of FMLA intermittently each workday until the FMLA runs out. The employee substitutes paid parental leave for the unpaid FMLA.
- **Example 2.** An employee is becoming a foster parent and wants to take time to bond with her daughter but also wants to work during this time. She asks her supervisor to return to work on a reduced schedule. She works 3 days and takes FMLA for 2 days each week until the FMLA runs out. The employee substitutes paid parental leave for the unpaid FMLA.

## SUBSTITUTING PAID LEAVE

Use of paid leave must be consistent with current laws and regulations governing the use of that specific type of leave. Supervisors may not require employees to use accrued leave for unpaid FMLA and they may not deny substitution of any form of properly used paid leave in place of unpaid FMLA.

1. **Annual Leave.** Annual leave may be substituted for unpaid FMLA leave (including advanced annual leave).
2. **Paid Parental Leave.** Paid parental leave may be substituted for unpaid FMLA for the birth, adoption, or foster care placement of the employee's son or daughter.

3. **Credit Hours.** Credit hours may not be substituted for unpaid FMLA leave. (See [5 CFR 630.1206\(b\)](#) and 61 FR 64446)
4. **Compensatory Time Off Hours.** Comp hours may not be substituted for unpaid FMLA leave. (See [5 CFR 630.1206\(b\)](#) and 61 FR 64446)
5. **Voluntary Leave Transfer Program.** Donated annual leave under the VLTP may be substituted for unpaid FMLA leave.
6. **Sick Leave.** An employee has an entitlement to use their accrued sick leave in addition to invoking FMLA. Sick leave, including advanced sick leave, may be substituted for unpaid FMLA leave consistent with sick leave law and regulations. (See [5 U.S.C. 6307](#))
  - a. **Employee's Serious Health Condition.** There is no limit to how much sick leave an employee may use for their own medical needs for their serious health condition.
  - b. **Adoption.** There is no limit to the amount of sick leave that may be used for adoption-related purposes. Sick leave may not be used for foster-care purposes.
  - c. **Care for Family Member with a Serious Health Condition.** The amount of sick leave that may be used each year to care for a family member is limited. An employee may not use more than 480 hours of sick leave per leave year for all family care purposes.
    - **Example 1.** An employee used 480 hours of sick leave during the leave year to care for his mom who was diagnosed with cancer. Then he invokes FMLA. The employee is entitled to 12 weeks of unpaid leave under the FMLA, and he could substitute annual leave, but he may not substitute sick leave because he has already used the statutory annual limit of 480 hours of sick leave to care for a family member with a serious health condition.
    - **Example 2.** An employee invokes FMLA due to her pregnancy and may substitute sick leave for unpaid FMLA during the pregnancy. Once the child is born, the employee may substitute paid parental leave for unpaid FMLA. The employee is limited to 12 weeks FMLA in a 12-month period and all FMLA leave must be concluded within one year of birth.
    - **Example 3.** An employee's son was injured in combat and he uses 12 weeks of sick leave to care for a family member with a serious health condition. He invokes FMLA to care for a covered servicemember and substitutes 26 weeks of sick leave for unpaid FMLA.

## HEALTH BENEFITS

An employee who takes FMLA leave is entitled to maintain health benefits coverage and may pay the employee share of the premiums on a current basis or pay upon return to work.

Benefits and service credit may be affected by FMLA absence that involved LWOP. Refer to OPM's Fact Sheet, [The Effect of Extended LWOP of Other Non-Pay Status on Federal Benefits and Programs](#).

## RETURN TO DUTY

Upon return from FMLA leave, the employee will be returned to their same position or an equivalent position, with equivalent benefits, pay, status, and other terms and conditions of employment in the same commuting area. (See [5 CFR 630.1208](#))

Employees who occupy positions that have specific medical standards, physical requirements, or who are covered by a medical evaluation program must provide return to duty certification before they may be returned to duty.

## PREVENTING FMLA ABUSE

Whether FMLA leave is paid or unpaid it permits extensive absence from the workplace to the point where productivity may be affected. For this reason, it is important to prevent fraud and abuse of the system. Recertification within the permissible limits is one way to discourage abuse and obtaining a second (or third) medical opinion is another.

Any indication that FMLA leave is not being used for a legitimate purpose should be followed up on, just as with sick leave or workers' compensation abuse. Employees who use FMLA leave for purposes not intended may be disciplined.

- **Example 1.** An employee invoked FMLA to care for their spouse with a serious health condition but in August, they used one week of FMLA leave to take family vacation and took their family to Disneyland. FMLA leave is for an employee's own serious illness or the illness of a family member. If an employee were on FMLA leave and used it to take their family on vacation, they would be committing FMLA fraud.
- **Example 2.** An employee invoked FMLA because of their own serious health condition. They took a second job while taking FMLA leave. Keep in mind the purpose of FMLA leave and it is intended for an employee who has a serious health condition that precludes them from reporting for duty or if there is a family member whose serious health condition requires care from the employee. If an employee were on FMLA leave and then took a second job, they would be committing FMLA fraud.

## APPEAL RIGHTS

There is no right to sue to enforce FMLA rights under Title II. Decisions to grant or deny leave to Title II employees may be reviewed through appropriate grievance procedures, either administrative or negotiated. The MSPB may consider an alleged violation of the FMLA if the employee has undergone an appealable adverse action that involves FMLA entitlements. The MSPB does not have jurisdiction to review an alleged FMLA violation on its own. Allegations of discrimination under EEO law in application of the FMLA fall under agency EEO procedures and EEOC regulations. OPM has no adjudicatory role.

## ADVERSE ACTIONS

An employee's decision to invoke FMLA does not prevent an agency from taking performance-based actions or disciplinary actions against that employee. FMLA does not make an employee immune from the impacts of a reduction-in-force before, during, or after a period of FMLA

leave. Prior to taking an adverse action, supervisors must contact the servicing Employee Relations Specialist to determine if FMLA obligations exist.

## EMPLOYEE CHECKLIST

Use the following checklist when invoking your entitlement to FMLA leave to ensure all requirements have been met:

Step	Situation	Employee Roles and Responsibilities
Step 1	Invoke FMLA	<ul style="list-style-type: none"> <li>a. You must provide at least 30 days' notice to your supervisor when you are invoking your entitlement to FMLA, or in emergencies, as soon as practicable. (See <a href="#">5 CFR 630.1207</a>)</li> <li>b. You must invoke your entitlement to FMLA verbally or in writing. Form <a href="#">OPM-71</a> can be used for such purpose. FMLA may not be invoked retroactively.</li> </ul>
Step 2	Request Time Off	<ul style="list-style-type: none"> <li>a. Just like any leave, you must request FMLA in advance. Form <a href="#">OPM-71</a> can be used to request the dates and times you will be taking unpaid FMLA. You may also substitute annual and sick leave for unpaid FMLA (in accordance with sick leave regulations).</li> <li>b. Review all available leave options and discuss with your supervisor, then develop a leave plan which best fits your needs.</li> <li>c. <b>Paid Parental Leave.</b> Use your agency Paid Parental Leave Request Form (do not use the OPM-71 to request time off). You must request paid parental leave in advance. Your supervisor has the right to ask you to certify the paid parental leave is being used in connection with a birth or placement that has occurred.</li> </ul>
Step 3	Sign the Service Agreement	<ul style="list-style-type: none"> <li>a. <b>Paid Parental Leave.</b> If you are invoking FMLA for the birth or placement (adoption or foster care) and replacing the unpaid FMLA with paid parental leave, you must sign a service agreement stating you agree to work for the government for at least 12 weeks once the use of paid parental leave has concluded. Use your agency Service Agreement for Paid Parental Leave Form.</li> <li>b. You may not use paid parental leave until you have signed the service agreement.</li> </ul>
Step 4	Provide Medical Documentation (if requested)	<ul style="list-style-type: none"> <li>a. Your supervisor has the right to require medical certification for FMLA leave taken for your serious health condition or for FMLA leave to care for your spouse, son, daughter, or parent who has a serious health condition. Department of Labor form <a href="#">WH-380E</a> (for your serious health condition) or form <a href="#">WH-380F</a> (for the family member's serious health condition) can be used for such purpose.</li> <li>b. <b>Paid Parental Leave.</b> Your supervisor has the right to require appropriate documentation showing the use of paid parental leave is directly connected to a birth or placement that has occurred.</li> </ul>

Step	Situation	Employee Roles and Responsibilities
		<ul style="list-style-type: none"> <li>c. If your supervisor asks for medical certification then you must provide written medical certification signed by a healthcare provider within 15 calendar days of the request. If you are unable to meet the 15-day deadline, despite your diligent, good-faith efforts, then it may be extended up to 30 calendar days. If you do not comply with the notification and medical certification requirements, then you are not entitled to FMLA leave.</li> <li>d. Your supervisor also has the right to request an agency-designated second, or third medical opinion, at the agency’s expense, and they may also request subsequent medical recertification every 30 calendar days. (See <a href="#">5 CFR 630.1208</a>)</li> <li>e. If taking FMLA leave intermittently, your supervisor has the right to schedule your medical treatment around the agency operations, as long as it is OK with the healthcare provider.</li> </ul>
Step 5	On FMLA Leave	<p>Employees must use the proper transaction codes to ensure the limitations on FMLA are not exceeded (Paycheck8 coding is provided below):</p> <ul style="list-style-type: none"> <li>a. <b>Unpaid FMLA.</b> Code DC-01 + TC-71 when using unpaid FMLA towards the 12-week limit.</li> <li>b. <b>Birth.</b> Code PC-70 + TC-62 when substituting paid parental leave for unpaid FMLA for a biological birth.</li> <li>c. <b>Adoption.</b> Code PC-71 + TC-62 when substituting paid parental leave for unpaid FMLA for placement for adoption.</li> <li>d. <b>Foster Care.</b> Code PC-72 + TC-62 when substituting paid parental leave for unpaid FMLA for placement for foster care.</li> <li>e. <b>Annual Leave.</b> Code DC-01 + TC-61 when substituting annual leave for unpaid FMLA for yourself.</li> <li>f. <b>Sick Leave.</b> Code DC-01 + TC-62 when substituting sick leave for unpaid FMLA for yourself.</li> <li>g. <b>Sick Leave/General Family Care.</b> Code PC-62 + DC-01 + TC-62 when substituting sick leave for unpaid FMLA for general family care or bereavement purposes.</li> <li>h. <b>Sick Leave/Serious Health Condition.</b> Code PC-62 + DC-02 + TC-62 when substituting sick leave for unpaid FMLA for a family member with a serious health condition.</li> </ul> <p>Your supervisor may periodically check in on you to see how you are doing and to see if they need to make workload adjustments.</p>
Step 6	Return to Work	<p>If you are in a position that has specific medical standards, physical requirements, or are covered by a medical evaluation program, then you must provide a return to duty certification, at the agency’s expense, before you may return to duty. (See <a href="#">5 CFR 630.1208</a>)</p>

Step	Situation	Employee Roles and Responsibilities
		You must be returned to the same position or an equivalent position at the same level in the organization and with equivalent duties, benefits, pay, status, and other terms and conditions of employment.

## SUPERVISOR CHECKLIST

Use the following checklist when your employee invokes FMLA leave. Communication between you and your employees is the key to the successful management of FMLA leave. When an employee requests leave for a personal or family medical situation, ask them if they want to invoke their entitlement to FMLA because they may be hesitant to bring it up.

Step	Situation	Supervisor Roles and Responsibilities
Step 1	Eligibility	<b>Determine Eligibility.</b> The first step for a supervisor is to determine eligibility ( <i>see Eligibility section</i> ). If the employee does not meet the eligibility requirements, they are not entitled to FMLA leave.
Step 2	Employee Invokes FMLA	<b>Advance Notice.</b> Your employee must invoke FMLA either verbally or in writing at least 30 calendar days in advance or, in emergencies, as soon as practicable. (See <a href="#">5 CFR 630.1207</a> )  Supervisors are encouraged to get the FMLA request in writing and to require a written leave request for all FMLA absences.
Step 3	The FMLA Request is Received	<b>Acknowledge Request.</b> It is imperative that when your employee requests FMLA that you acknowledge the request.
Step 4	FMLA Entitlement	<b>Notify Employee of Entitlement.</b> Employees must be informed of their FMLA entitlements. ( <i>See letter template (1), "Notifying an Employee of their Entitlements under the FMLA"</i> ).
Step 5	Service Agreement for Paid Parental Leave	<b>Service Agreement.</b> When your employee requests FMLA absences, your agency Paid Parental Leave Request Form must be used and attached to the service agreement. Your employee may not use paid parental leave until you have their signed service agreement. You have the right to ensure the leave is being used in connection with a birth or placement that has occurred.
Step 6	Positions with Medical Standards	<b>A Return to Duty Certification Must be Provided.</b> You must notify your employees in positions that have specific medical standards, physical requirements, or who are covered by a medical evaluation program, that they must provide a return to duty certification before they may return to duty (see <a href="#">5 CFR 630.1208</a> ). <i>See letter template (1), "Notifying an Employee of their Entitlements under the FMLA"</i> .
Step 7	Medical Certification	a. <b>Medical Certification.</b> You do not have to ask for medical certification, but it is recommended you have the employee provide a medical justification for their absences. A note from a physician just



Step	Situation	Supervisor Roles and Responsibilities
		<p>saying that the employee is under physician’s professional care is not sufficient; it does not tell you that the employee’s condition is serious enough to be unable to report for duty. If you ask for medical certification then the employee must provide written medical certification signed by a healthcare provider within 15 calendar days of the request. If it is not forthcoming within 15 days, then you need to once again request that it be provided. If it is not provided within 30 calendar days, then you can legally deny the leave.</p> <p>b. <b>Paid Parental Leave.</b> You have the right to require appropriate documentation showing the use of paid parental leave is directly connected to a birth or placement that has occurred.</p> <p>c. <b>Missing Information.</b> If the medical certification you receive is missing required information or the information provided is vague, you can use the letter templates to request the additional information for the employee or for the family member. <i>See letter template (2) or (3), “To Request Missing or Vague Information in the Medical Certification”.</i></p> <p>d. <b>Second Opinion.</b> If the medical certification does not seem valid, you may request an Agency-designated second (or third) medical opinion (see <a href="#">5 CFR 630.1208</a>). Because of the costs involved, contact Employee Relations or Labor Relations for guidance first.</p>
Step 8	On FMLA Leave	<p>a. <b>SF-52.</b> If your employee will receive unpaid FMLA (LWOP) for more than 30 consecutive days, then you must submit an SF-52. Contact your servicing Human Resources Office for guidance. Human Resources will also provide information regarding the impact of extended LWOP on benefits, leave, etc.</p> <p>b. <b>Code the Time Correctly.</b> Ensure the time is coded properly to ensure the employee does not exceed the leave limit.</p> <p>c. <b>Chart Leave Patterns.</b> For someone on intermittent FMLA leave, track patterns. If there’s a pattern of Monday, Fridays, or holidays, it may be FMLA abuse. You can ask the employee’s healthcare provider to confirm the pattern of leave is consistent with the employee’ health condition and need for leave. (See <a href="#">29 CFR 825.308</a>)</p> <p>d. <b>Schedule Medical Treatment around Your Operations.</b> For intermittent leave, schedule medical treatment around your operations, as long as it is OK with the healthcare provider. The law allows management to control the workplace to promote efficiency and attendance.</p>
Step 9	Check In	<p><b>Periodically Check in on Your Employee.</b> This is not meant to spy on them, but one of care, and one for which you need to make workflow considerations. You cannot ask your employee to perform work when they are taking FMLA leave.</p>

Step	Situation	Supervisor Roles and Responsibilities
Step 10	Medical Recertification	<p><b>Certify and Recertify.</b> This is one of the best tools an employer can use to fight FMLA abuse. You may request subsequent medical recertification every 30 calendar days (if the healthcare provider has specified a minimum time period of incapacitation on the medical certification, recertification may not be requested until that period has passed). (See <a href="#">5 CFR 630.1208</a>)</p> <p>Because of the costs involved, contact Employee Relations or Labor Relations for guidance before requesting medical recertification.</p>
Step 11	Return to Duty	<p>a. <b>SF-52.</b> If you submitted an SF-52 to place your employee on unpaid FMLA (LWOP) then you will need to submit an SF-52 to return your employee to duty. Contact your servicing Human Resources Office for assistance.</p> <p>b. <b>Job Protection.</b> Your employee must be returned to the same position or an equivalent position at the same level in the organization and with equivalent duties, benefits, pay, status, and other terms and conditions of employment.</p> <p>c. <b>Positions with Medical Standards.</b> You must request return to duty certification, at the agency's expense, from employees in positions that have specific medical standards, physical requirements, or who are covered by a medical evaluation program. (See <a href="#">5 CFR 630.1208</a>)</p>

## LETTER TEMPLATES

### Template 1: Notifying Your Employee of Their Entitlements Under the FMLA

*Copy and paste the below, fill in the missing information, send via email or use your agency's letterhead, and provide it to your employee when notifying them of their entitlements under the FMLA:*

**Subject:** Family and Medical Leave Act Entitlements

**To:** *(Insert employee's name)*

The purpose of this letter is to advise you of your entitlement to leave under the Family and Medical Leave Act (FMLA). Under the provisions of Title II FMLA, you are entitled to up to 12 administrative workweeks (480 hours) of leave without pay (LWOP) during a 12-month period for the following events:

1. The birth of a son or daughter of the employee and the care of such son or daughter within one year of birth;
2. The placement of a son or daughter with the employee for adoption or foster care and the care of such son or daughter within one year of placement;
3. The care of the spouse, son, daughter, or parent of the employee, who has a serious health condition; or

4. Serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of their position.
5. A qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or notified of an impending call to order) in the Armed Forces.

Up to 26 weeks (1,040 hours) of unpaid leave during a single 12-month period to care for a covered servicemember who was injured or ill in the line of duty. The combined amount of basic FMLA leave, qualifying exigency leave, and leave for care of a covered service member cannot exceed 26 administrative workweeks in a 12-month period.

You may elect to substitute up to 12 weeks of paid parental leave for unpaid FMLA for the birth, adoption, or foster care placement of your child that occurs on or after October 1, 2020. You may not use paid parental leave until you have signed a service agreement stating you will work for the agency for at least 12 weeks after you have used the leave; even if you do not use the full 12 weeks of paid parental leave. The 12-week obligation begins once your use of the paid parental leave concludes. If you fail to meet the 12-week service agreement period, then you will be billed for the amount of the government's contribution paid by the agency on your behalf to maintain your health insurance coverage during the period of paid parental leave.

You may elect to substitute annual leave or sick leave (when applicable) for any or all of the unpaid FMLA.

Leave for the care of a covered family member with a serious health condition or leave for the serious health condition of an employee may be taken intermittently or on a reduced leave schedule subject to the patient's medical needs as determined by the attending healthcare provider.

If you would like to invoke your entitlement to FMLA, you must do so verbally or in writing and provide at least 30 calendar days' notice if the need for leave is foreseeable. You are required to submit specific documentation to support the request for leave under FMLA. You may also be required to submit periodic medical recertification, at the agency's expense.

You may elect to maintain your health benefits coverage by making direct payments to the National Finance Center (NFC) for your portion of your benefits or incurring a debt that will be liquidated when you return to duty. If you choose to pay your share of premiums while in an unpaid leave status, you must contact Human Resources for the election form and payment instructions.

You will be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment following your return to duty. The entitlement to be returned to an equivalent position does not extend to intangible and immeasurable aspects of the position. An employee is not entitled to any right, benefit, or position of employment unless the employee would have been entitled to that right, benefit, or position had the employee not taken leave under FMLA.

Employees who occupy positions that have specific medical standards, physical requirements, or who are covered by a medical evaluation program must provide return to duty certification before they may be returned to duty.

Please be advised that FMLA is one of the many leave programs that are available for your use. Sick leave, annual leave, and the Voluntary Leave Transfer Program may also be appropriate for the FMLA qualifying event.

## Template 2: To Request Missing or Vague Information in the Medical Certification (FMLA Leave for the Employee)

*Copy and paste the below, fill in the missing information, send via email or use your agency's letterhead, and provide it to your employee when their medical certification is missing information, or the information provided was vague:*

**Subject:** Request for Additional Medical Information

**To:** *(Insert employee's name)*

The purpose of this letter is to request missing or vague information in the medical certification submitted by *(Insert name of the healthcare provider)* dated *(Insert date of the medical certification)* for Family and Medical Leave Act (FMLA) leave. We have received the medical certification in connection with your request for FMLA leave for the period of *(Insert start date)* to *(Insert end date)* due to your serious health condition(s); however, the following required information is missing from the medical certification or is vague and needs clarification: *(Delete all the bullets below that do not apply)*

1. The date the serious health condition commenced.
2. The probable duration of the serious health condition or specification by your healthcare provider that the serious health condition is a chronic or continuing condition with an unknown duration. The certification must also state whether you are presently incapacitated and the likely duration and frequency of further episodes or incapacity.
3. The appropriate medical facts within the knowledge of your healthcare provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by your healthcare provider.
4. A statement that you are unable to perform one or more of the essential functions of your position or require medical treatment for a serious health condition. A copy of your position description is attached to this letter to assist your healthcare provider in making this determination.
5. The medical certification you provided appears to be a request for intermittent leave or leave on a reduced leave schedule. Under [5 CFR 630.1208](#)(b)(6), such a request must include one of the following:
  - a. If the absence is for planned medical treatment (such as dialysis or physical therapy) the dates (actual or estimates) on which such treatment is expected to be given, the duration of such treatment, and the period of recovery, if any, before you would be able to return to work;
  - b. If the serious health condition is a chronic or continuing condition with an unknown duration, the certification must state whether you are presently incapacitated and the likely duration and frequency of future episodes of incapacity.

In accordance with [5 CFR 630.1208](#)(h), the complete medical documentation is due on *(Insert date that is 15 calendar days from the date of this letter)*. If you do not meet this deadline your leave may be denied. If you have made a diligent effort to obtain the information from your healthcare provider and have been unable to do so, you may request a 15-calendar day extension. No extensions beyond 30 calendar days are authorized under the regulations.

You will be carried in a provisional FMLA leave status from *(Insert date of this letter)* to *(Insert 15 days later)* based on the medical information that has been received in accordance with [5 CFR 630.1208\(g\)](#). If you do not submit the additional medical information as requested above then you are not entitled to FMLA leave and you may be charged Absent without Leave (AWOL), or in some cases, you may be asked if you would like to charge your request for FMLA leave to another type of leave.

Please contact me if you have any questions about this letter.

Enclosure: (1) Copy of your position description

### **Template 3: To Request Missing or Vague Information in the Medical Certification (FMLA Leave for a Family Member)**

*Copy and paste the below, fill in the missing information, send via email or use your agency's letterhead, and provide it to your employee when the medical certification for the family member is missing information or the information provided was vague:*

**Subject:** Request for Additional Medical Information

**To:** *(Insert employee's name)*

The purpose of this letter is to request missing or vague information in the medical certification submitted by *(Insert name of the healthcare provider)* dated *(Insert date of the medical certification)* for Family and Medical Leave Act (FMLA) leave. We have received the medical certification in connection with your request for FMLA leave for the period of *(Insert start date)* to *(Insert end date)* due to your need to provide care for *(Insert the word spouse, son, daughter, or parent)* as defined under [5 CFR 630.1202](#); however, the following required information is missing from the medical certification or is vague and needs clarification: *(Delete all the bullets below that do not apply)*

1. The date the serious health condition commenced.
2. The probable duration of the serious health condition or specification by the healthcare provider that the serious health condition is a chronic or continuing condition with an unknown duration. The certification must also state whether the patient is presently incapacitated and the likely duration and frequency of further episodes of incapacity.
3. The appropriate medical facts within the knowledge of the healthcare provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by the healthcare provider.
4. A statement from the healthcare provider that your *(Insert the word spouse, son, daughter, or parent)* requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and/or would benefit from your care or presence.
5. Your statement regarding the care you will provide and an estimate of the amount of time needed to care for your *(Insert the word spouse, son, daughter, or parent)*.

6. The medical certification you provided appears to be a request for intermittent leave or leave on a reduced leave schedule. Under [5 CFR 630.1208](#)(b)(6), such a request must include one of the following:
  - a. If the absence is for planned medical treatment (such as dialysis or physical therapy) the dates (actual or estimates) on which such treatment is expected to be given, the duration of such treatment, and the period of recovery, if any, during which your *(Insert the word spouse, son, daughter, or parent)* would require care; or
  - b. If the serious health condition is a chronic or continuing condition with an unknown duration, the certification must state whether the patient is presently incapacitated and the likely duration and frequency of future episodes of incapacity.

In accordance with [5 CFR 630.1208](#)(h), the complete medical documentation is due on *(Insert date that is 15 calendar days from the date of this letter)*. If you do not meet this deadline your leave may be denied. If you have made a diligent effort to obtain the information from the healthcare provider and have been unable to do so, you may request a 15-calendar day extension. No extensions beyond 30 calendar days are authorized under the regulations.

You will be carried in a provisional FMLA leave status from *(Insert date of this letter)* to *(Insert 15 days later)* based on the medical information that has been received in accordance with [5 CFR 630.1208](#)(g). If you do not submit the additional medical information as requested above then you are not entitled to FMLA leave and you may be charged Absent without Leave (AWOL), or in some cases, you may be asked if you would like to charge your request for FMLA leave to another type of leave.

Please contact me if you have any questions about this letter.