

FEDERAL, STATE AND LOCAL FAMILY AND MEDICAL LEAVE LAWS

Certain employers are subject to the federal Family and Medical Leave Act of 1993 (FMLA). In addition, many state and local governments are adopting family and medical leave laws. Sorting out which laws apply and how they interact is challenging.

Federal FMLA

FMLA applies to private sector *employers* with 50 or more employees for each working day in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer. FMLA also applies to governmental employers and public schools, regardless of size.

FMLA requires covered employers to provide unpaid time off work to *eligible employees*. To be eligible, an employee must generally have worked for the employer for at least 12 months and must have worked at least 1,250 hours during the 12 months immediately preceding the beginning of the leave and worked at a location where the employer had at least 50 employees within 75 miles.

Unpaid FMLA leave is required to be offered for the following reasons:

- The employee's own serious health condition.
- To care for an immediate family member with a serious health condition.
- Due to a new child by birth, placement for adoption or foster care.
- For a "qualifying exigency" arising because a spouse, child or parent is on active military duty or is called to covered active military duty in a foreign country.
- To care for a spouse, child, parent or next of kin who is a covered military service member with a serious illness or injury.

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Family Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. The FMLA also includes certain military family leave provisions.

The unpaid FMLA leave is generally required to be offered for up to 12 weeks during a 12-month period. However, in the case of the last circumstance (to care for a covered military service member with a serious illness or injury), the maximum leave is 26 weeks during a 12-month period.

In addition to unpaid time off, FMLA also requires employers to offer to continue the employee's health coverage during the FMLA leave at a cost equal to no more than the required contribution paid by actively working employees. Employers are not required to continue other benefits such as life insurance or disability insurance, but if coverage is terminated during the leave, it must be immediately reinstated upon return with no pre-existing condition exclusion or limitation.

State and Local Leave Laws

There is a growing trend in many states to provide leave protections beyond the protections afforded employees under the FMLA. Some of these laws require unpaid or paid family leave (including parental and maternity leave laws). Other laws require paid sick leave. To the extent these laws (and/or municipal laws) provide more generous or different benefits than under the FMLA, they apply to employers in that jurisdiction in addition to FMLA. Thus, these employers must comply with both FMLA and the applicable state and/or municipal laws.

So, for example, the state leave laws in Maine, Minnesota, New York, Oregon, Vermont and Washington apply to smaller employers with less than the 50 employee threshold of FMLA. Other states such as California, Connecticut, Hawaii, Maine, and New Jersey, define the family for whom the employee is allowed to take a leave as a larger group of people, expanding the circumstances under which a leave may be taken. Other states like Connecticut, Maine and Oregon also permit a leave for additional circumstances such as organ donation.

Some of the states such as California, New Jersey, New York and Rhode Island call for paid leave to be provided. And in terms of the unpaid leave, many states such as California, Connecticut and Rhode Island provide for unpaid leaves potentially in excess of the FMLA 12 weeks standard. And there are special rules in some states. For example, in Massachusetts employers with 50 or more employees must provide employees with up to 24 hours of unpaid leave per year to participate in their children's educational activities or to accompany a child, spouse or elderly relative to medical appointments.

In addition, some municipalities have also adopted family and medical leave laws. Examples include Chicago, Minneapolis and San Francisco. However, several states are now enacting laws that prohibit municipalities from adopting laws or regulations that expand on state or federal leave requirements. Existing municipal laws are frequently grandfathered under these statutes.



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