



Understanding Family & Medical Leave Act & Recent amendments to the American with Disabilities Act

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Disclaimer

This information is intended to be accurate as of the date created and may not reflect changes in the law since that time. This information also may not apply to all situations and is not intended to serve as legal advice.

Family Medical Leave Act

Learning Objectives

- I. Legislative intent of FMLA Leave
- II. Understanding FMLA Legal Requirements
- III. FMLA Commonly Asked Questions
- IV. How is FMLA Administered at the University of Akron?
- V. Review the Recent Amendments to the ADA

Family Medical Leave Act Legislation

- Legislation was enacted by Congress on February 5, 1993. FMLA became effective on August 5, 1993. It was amended in 2008.
- Legislative Intent: To allow employees to balance their work and family life by taking reasonable unpaid leave for certain family and medical reasons.
- Administered by the U.S. Department of Labor's Employment Standards Administration Wage and Hour Division.

Family Medical Leave Act Legislation

- Entitles an “eligible employee” to take up to 12 weeks of unpaid, job-protected leave during any rolling 12-month period for a “qualifying reason.”
- Amended on January 28, 2008.
 - Act now permits a “spouse, son, daughter, parent or next of kin” to take up to 26 workweeks of leave to care for a “member of the Armed Forces, including a member of the National Guard.”
 - Documentation required

Family Medical Leave Act Eligibility

- Work for a “covered” employer
 - *public agencies, including state, local and Federal employers, local education agencies (schools) and private employers (employ 50 or more employees for at least 20 workweeks / yr.);*
- Have worked for the employer for a minimum total of 12 months;
- Have worked at least 1,250 hours over the previous 12 months;
- Work at a location in the United States where at least 50 employees are employed at a location or within a 75 mile radius.

Family Medical Leave Act

Common Definitions

- Family:
 - Spouse as recognized by State of Ohio
 - Son, Daughter
 - Parent, Guardian
- Personal Medical:
 - illness of employee
- Family Medical:
 - illness of employee's family member

Family Medical Leave Act

Qualifying Reasons

- The birth and care of the newborn child of the employee (*must conclude within 12 months after birth*);
- For placement with the employee of a child for adoption or foster care (*must conclude within 12 months after placement*);
- To care for an immediate family member (*spouse, child or parent*) with a serious health condition;
- The employee's own serious health condition.

Note: Spouses employed by the same employer may be limited to a combined 12 workweeks of family leave.

Family Medical Leave Act

Additional qualifying reasons for Member of Armed Forces

January 28, 2008 Amendment:

*up to 26 weeks to care for member of
Armed Forces who is:*

- undergoing medical treatment, recuperation or therapy; or
- on outpatient status; or
- on temporary disability retired list for a serious injury or illness.

Family Medical Leave Act

Serious Health Condition

- An illness, injury, impairment or physical or mental condition that involved either:
 - any period of incapacity or treatment connected with inpatient care; or
 - continuing treatment of a healthcare provider which includes any period of incapacity due to . . . → →

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Serious Health Condition

- (1) Incapacity and Treatment: A health condition lasting more than 3 consecutive **full calendar** days **AND** any subsequent treatment or period of incapacity relating to the same condition; **that also involves**:
- a). treatment two or more times under the supervision of a health care provider; **or**
(example: in person visits, the first within 7 days and both within 30 days of the first day of incapacity)

 - b). one treatment by a health care provider *(e.g. an in-person visit within 7 days of the first day of incapacity)* with a continuing regimen of treatment *(e.g., prescription medication, physical therapy)*; **or**

Family Medical Leave Act

Serious Health Condition

- (2) Pregnancy or prenatal care; **or**
- (3) A chronic serious health condition which extends over a period of time; **or**
- (4) A permanent or long-term condition for which treatment may not be effective; **or**
- (5) Any absences to receive multiple treatments for restorative surgery for a condition which would likely result in a period of incapacity of more than 3 days if not treated.

Family Medical Leave Act

Intermittent Leave

- Subject to employer's approval;
- May be taken to care for a seriously ill family member or because of the employee's serious health condition;
- May be taken to care for a newborn or newly placed adopted or foster care child.

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Record Keeping

- Employers may account for FMLA leave in the shortest period of time that their payroll systems use, provided it is one hour or less;

Family Medical Leave Act

Substitution of Paid Leave

- Employees may choose to use, or employers may require the employee to use, accrued paid leave to cover some or all of the FMLA leave taken.
 - *i.e. paid sick, vacation and/or personal leave*

Family Medical Leave Act

Maintenance of Health Benefits

- Employer required to maintain group health insurance coverage for an employee on FMLA;
- Arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

Family Medical Leave Act

Job Restoration

Returning from FMLA Leave

- Employee must be restored to his / her original job, or to an equivalent job with equivalent pay, benefits and other terms and conditions of employment;
- FMLA can not be counted against the employee under a “no fault” attendance policy;
- Special provisions for “key” employees:
 - “key employee’s” are salaried and among the highest paid ten percent of all employees within 75 miles of worksite;
 - “substantial and grievous economic injury” to business operations.

Family Medical Leave Act Notice

- Employees seeking FMLA leave are required to provide 30-day advance notice when need is foreseeable and notice is practicable;
- Employers obligated to inform employees of their rights and responsibilities under FMLA.

Family Medical Leave Act

Medical Certification

- Employers MAY require employees to provide:
 - Medical certification and re-certifications;
 - The employer must allow the employee at least **15 calendar days** to obtain the medical certification.
 - Employer may request every 30 days (not more often)
 - Second or third opinions (at the employer's expense);
 - Univ. of Akron retains a doctor for second opinions.
This is arranged through Employee Benefits
 - Periodic reports during FMLA leave regarding employee's status and intent to return to work.

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Unlawful Acts

- Employer may not interfere with, restrain, or deny the exercise of any right provided by FMLA;
- Employer may not discharge or discriminate against any individual involved in any proceeding related FMLA.

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Unlawful Acts

- Employers cannot use the taking of FMLA leave as a negative factor in employment actions:
 - *Examples: hiring, promotions, disciplinary actions and/or performance evaluations.*
 - FMLA can not be counted under “no fault” attendance policies.
- Employers may provide greater leave rights under a collective bargaining agreement or employee benefit plan.

Family Medical Leave Act

Common Questions

Q: Does the law guarantee paid time off?

No. FMLA only requires unpaid leave. However, the employee may elect, or the employer may require the employee, to use accrued paid leave such as vacation or sick leave for some or all of the FMLA leave period.

Q. Does workers' compensation leave count against an employee's FMLA entitlement leave?

It can. FMLA leave and workers' compensation leave can run together, providing the reason for the absence is due to a qualifying serious illness or injury and the employer properly notifies the employee in writing that the leave will be counted as FMLA.

Family Medical Leave Act

Common Questions

- Q. If an employer fails to tell employees that the leave is FMLA leave, can the employer count the time they have already been off against the 12 weeks of FMLA?**
- A. In most situations, the employer cannot count leave as FMLA leave retroactively. Remember, the employee must be notified in writing that an absence is being designated as FMLA leave. **IF the employer was not aware** of the reason for the leave, leave may be designated as FMLA leave retroactively only while the leave is in progress or within two business days of the employee's return to work.

Family Medical Leave Act

Common Questions

Q. Who is considered an immediate “family member” for purposes of FMLA Leave?

A. An employee’s spouse, children (son or daughter), and parents are immediate family members. The term “parent” does NOT include a parent “in-law.” The terms son or daughter does not include individuals age 18 or over unless they are “incapable of self-care” because of a mental or physical disability that limits one or more of the “major life activities” as defined in the ADA.

Family Medical Leave Act

Common Questions

- Q. Do the 1,250 hours include paid leave time or other absences from work?**
- A. No. The 1,250 hours include only those hours actually worked for the employer. Paid leave and unpaid leave, including FMLA leave, are not included.
- Q. Can my employer make inquiries about my leave during my absence?**
- A. Yes, but only to you. Unless you have signed authorization to furnish medical records.

Family Medical Leave Act

Common Questions

Q. Can my employer require me to return to work before I exhaust my leave?

A. Subject to certain limitations, your employer may deny the continuation of FMLA leave due to a serious health condition if you fail to fulfill any obligations to provide supporting medical certification. The employer may not, however, require you to return to work early by offering you a light duty assignment.

Family Medical Leave Act

How is FMLA Administered at the University of Akron

- Step 1:** Employee completes “Employee Request for Leave” form and “Authorization to Furnish Medical Records” form. Both of these forms are to be returned to the Benefits Coordinator. (ASB 140/ Univ. Zip code 0602);
- Step 2:** The Benefits Coordinator will prepare an “employer response” to give the employee as well as the “Notice of Rights and Responsibilities”;
- Step 3:** The Vice President or Provost signs the employer response and a copy is sent to the employee and the head of the employee’s department along with the “FMLA Designation Notice.” The employee notice will serve to notify each party that the employee response has been approved;

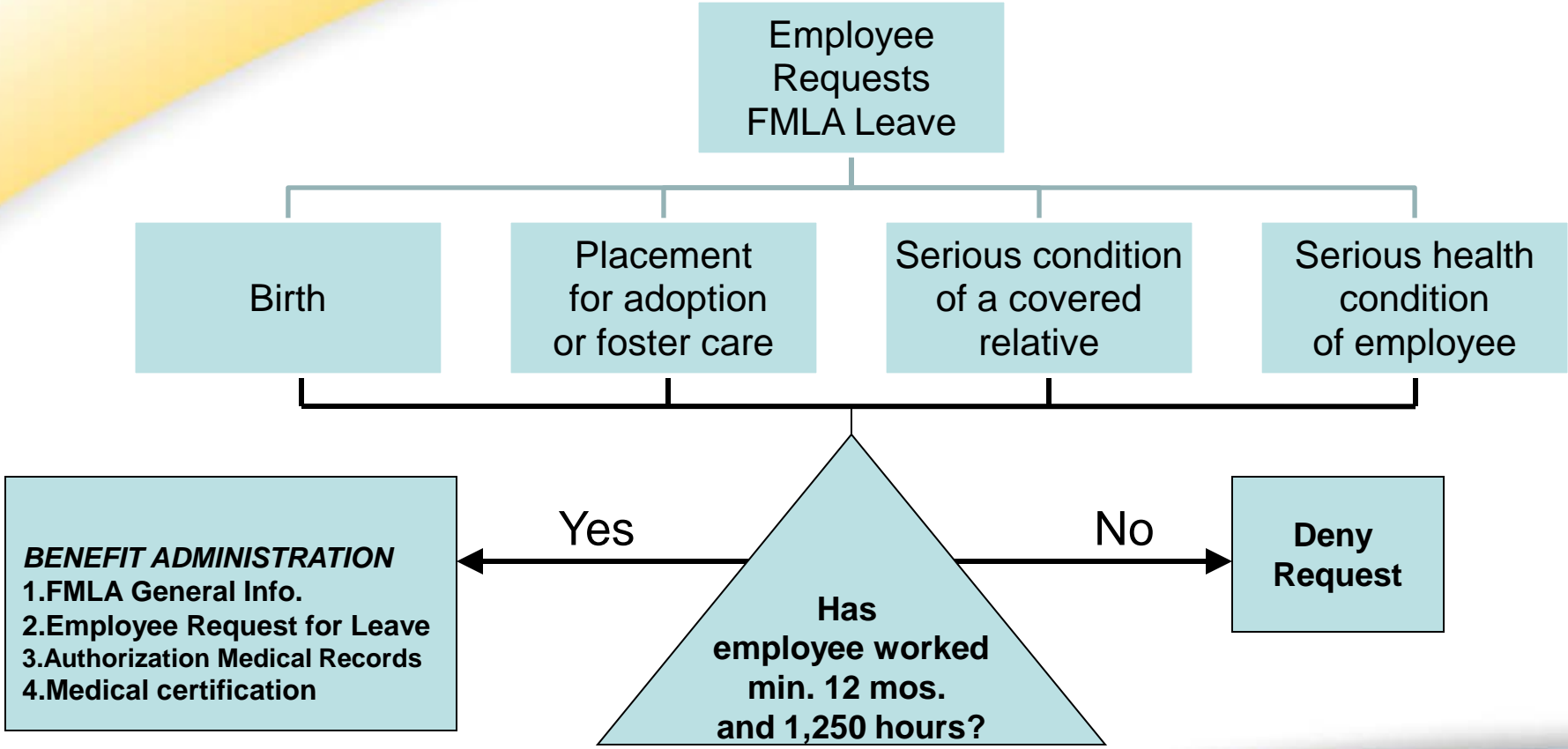
Family Medical Leave Act

How is FMLA Administered at the University of Akron

- Step 4:** The Department head will notify the employee's supervisor that the employee has been approved for FMLA Leave;
- Step 5:** The Employee is responsible for providing the "Certification of Health Care Provider" form to the Health Care provider(s). This form must be returned to the Benefits Coordinator as soon as possible.

Family Medical Leave Act

The University of Akron



Family Medical Leave Act

How is FMLA Administered at the University of Akron

All completed forms need must be sent to:

The University of Akron
Human Resources Department
Benefits Administration
ASB 135
Akron, Ohio 44325-0602

Questions may be directed to the Yvonne Brooks, Benefits Coordinator at extension 7583.

Family Medical Leave Act

The University of Akron Sick Leave Policies:

3359-11-01 Sick Leave for Faculty, Contract Professional, Classified and Unclassified exempt staff interim rule

3359-26-04 (Non-Exempt Staff) Absence from Campus Interim Rule

Family Medical Leave Act Resources

University of Akron

<http://www.uakron.edu/hr/UABenFMLA.php>

U.S. Department of Labor

General Information

<http://www.dol.gov/esa/whd/fmla/>

Frequently Asked Questions and Answers

<http://www.dol.gov/elaws/esa/fmla/faq.asp>

Fact Sheet

<http://www.dol.gov/esa/regs/compliance/whd/whdfs28.htm>

American with Disabilities Act

Amendments to the Law

- Major Life Activities
 - those activities that are of central importance to daily life
 - The Act expanded the scope of individuals covered by ADA by broadening the definition of major life activities effective January 1, 2009.
 - Disability applies to physical or mental impairment that substantially limits one or more major life activities

American with Disabilities Act

Major Life Activities

- Major life activities:

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Thinking
- Concentrating
- Communicating
- Working

American with Disabilities Act

Major Life Activities

- Major life activities also expanded to include major bodily functions such as:
 - Immune system
 - Normal cell growth
 - Digestive
 - Brain
 - Respiratory
 - Reproductive functions

American with Disabilities Act

Requirement for Disability Remains

- Any disability must still “substantially limit” a major life activity to be considered a disability
- But “substantially limits” will be read less strictly than it was before
- Employees in remission can be considered disabled

Note: *The disability does not have to substantially limit an activity related to work (i.e. insomnia – may substantially limit sleeping although not related to a job function directly)*

American with Disabilities Act

Mitigating Measures

- Are you disabled if you could take medication to take care of the problem?
- Under old law, you were not disabled.
- Under new law, you are disabled.

Note: Mitigating measures (i.e. medication, prosthetics, hearing aids, assistive technology, medical equipment etc.) are not considered in whether an employee is disabled.

Exception: eyeglasses or contacts

American with Disabilities Act

Supervisor's Obligation

- Supervisors should not try to determine if an employee is disabled or provide accommodations for a disabled employee.
- Contact *Becky Hoover, Director, Employee Relations* at 330-972-6462 to discuss any disability issue or request for accommodation.

Thank you

Questions?