



# YOUR RIGHTS TO FAMILY AND MEDICAL LEAVE FROM WORK In Washington, D.C

## 1. What rights do workers in Washington, D.C. have to take family and/or medical leave?

Federal and Washington, D.C. law provide certain workers with the right to take job guaranteed **unpaid** leave from work to care for (1) the worker's own serious health condition, (2) the serious health condition of a family member, spouse, parent or child of the worker; or (3) the birth, adoption or foster placement of a worker's child. The federal law is the Family and Medical Leave Act (FMLA) and the District of Columbia laws are called D.C. family leave law and D.C. medical leave law. **If you qualify for family/medical leave under one or both of these laws, your employer must:**

- ▶ Not fire you or retaliate against you for taking up to 12 or 16 weeks of leave for qualifying reasons (described below);
- ▶ Give you your job back at the end of your leave or give you a job that has the same pay and working conditions; and
- ▶ Continue to pay for your health insurance benefits during the leave if you had them while you were working.

## 2. Are you covered under D.C. and/or federal family/medical leave laws?

The D.C. and federal family and medical leave laws are similar, but not the same. This means that **you may be covered under one law or both laws**. To determine if you are covered by one or both of the family and/or medical leave laws you must review the lists below and make sure that you answer "yes" to **ALL** of the questions in one column or both columns.

<b>Under D.C. Family and Medical Leave Law</b>	<b>Under federal Family and Medical Leave Act</b>
Have you worked for your employer <b>at least 12 months</b> continuously leading up to your request for leave?	Have you worked for your employer for <b>at least 12 months at any point</b> (does not need to be consecutive)?
Have you worked <b>at least 1,000 hours</b> (an average of 19 hours per week) during the 12 months before taking leave?	Have you worked for your employer for <b>at least 1,250 hours</b> (an average of 25 hours per week) during the 12 months before taking leave?
Does your employer have <b>20 or more employees</b> within the District of	Does your employer employ <b>50 or more employees</b> within a 75 mile radius of your

Columbia?	worksite?
-----------	-----------

**3. If you answered “yes” to one set of questions above, then how much leave can you take and for what reasons can you take family and medical leave from work?**

If you answered “yes” to every question in the first column, then you are eligible for up to 16 weeks of unpaid family or medical leave every two years (24 months) under D.C. law for the reasons listed in the chart below. If you answered “yes” to all of the questions in the second column above, then you are eligible for up to 12 weeks of unpaid family or medical leave every 12 months under the federal Family and Medical Leave Act. If you answered yes to all of the questions in both columns, then you are eligible for leave under both laws.

If you qualify for leave under one of these laws, you may only take the leave for reasons that are listed in the chart below. *You are not protected under these laws if you take leave from work for other reasons.* **Note that the permitted reasons for taking leave are different under the DC and federal law, so it is important to check both.**

<b>REASONS FOR TAKING LEAVE</b>	
<b>Under D.C. Leave Law</b>	<b>Under Federal Family and Medical Leave Law</b>
You need to take leave from work to care for your own <b>serious health condition</b>	You need to take leave from work to care for your own <b>serious health condition.</b>
You need to care for a <b>family member</b> (a family member is a person related by “blood, legal custody or marriage” or any person with whom the worker has “shared a mutual residence” within the last year, and with whom the worker “maintains a committed relationship.”) who has a <b>serious health condition.</b>	You need to care for the <b>serious health condition</b> of a <b>spouse, child or parent.</b>
You are giving birth to a child, bonding with your newborn, adopting a child, or having a foster child placed with you. (Fathers and mothers can take leave for any of these reasons.) This leave must be taken within 1 year of the birth, adoption or placement of the child.	You are giving birth, need prenatal care, or wish to “bond with your new born or adopted child.” (Fathers and mothers can take bonding leave.) This leave must be taken within 1 year of the birth, adoption or placement of the child.

**4. What is a serious health condition?**

Under both D.C. and federal law, a *serious health condition* is a physical or mental illness, injury or impairment that involves either inpatient care in a hospital or 4 days of incapacity plus follow-up treatment. The definition also includes incapacity due to a terminal or chronic condition, or for pregnancy or prenatal care. Conditions not covered include the common cold, routine dental work, or a black eye. Case law indicates that the flu is not covered, but it would depend on the length of incapacity and other factors. The EJC has a checklist that will help in determining whether a serious health condition exists.

The language in the law is rather complicated, and can be difficult to apply. So if you have any doubt that your condition meets the definition, come to the EJC Worker's Rights Clinic and we will help determine if you qualify for FMLA leave. See the bottom of this handout for times and locations.

**5. What if I am covered by both DC and federal family and medical leave laws? How much leave can I take?**

If you are covered by both laws, then you are entitled to protections under both laws, and you can take at least 16 weeks of leave. Do not assume, however, that you can take more than 16 weeks of leave or that you can take 28 weeks of leave by combining the two laws (16 under the D.C. law and 12 under the federal law). Consult with an attorney if you need or plan to take more than 16 weeks of leave.

**6. What if I need to take more leave from work than the amount of weeks permitted under DC and federal family and medical leave laws?**

If you take more leave than you are permitted under these laws, your employer can fire you, so it is critical that you know how much family and medical leave you have when you are taking it.

**7. What must your employer tell you about your rights under family and medical leave laws?**

An employer that is covered under the laws must provide you with the following information about your rights under these laws in the following ways:

- ▶ post a notice stating workers' rights and responsibilities under family and medical leave laws at the workplace where workers can see it;
- ▶ provide detailed written information about workers' rights and responsibilities to any eligible worker who tells her employer, verbally or in writing, of the need for family or medical leave; and
- ▶ tell a worker that the leave the worker is taking counts as family and medical leave.

So, look for postings at your worksite about family and medical leave laws, look in your employee handbook if you have one, or your collective bargaining agreement if you are in a union, for information about your rights under the family and medical leave laws.

**8. What do I need to tell my employer in order to take family and medical leave?**

If you know in advance that you're going to need to take family and/or medical leave – for example if you're pregnant and you plan to stay home with your baby after it is born on family bonding leave – you must inform your employer 30 days before the leave begins. If you do not know in advance that you will need to take leave – for example if you're in a car accident or have emergency surgery – you must tell your employer that you need to take medical leave as soon as possible, the beginning of the leave.

**Tip:** If possible, you should tell your employer in writing that you need to take leave and keep a copy of the letter for your files. You should also document any conversations you have with your employer about family and medical leave.

You do not have to sign a medical release or give your employer your entire medical history or the entire medical history of your family member to qualify for family and medical leave. However, you must give your employer enough information for it to understand that you are taking leave for a qualifying reason, as listed in question #3 in this fact sheet.

If your employer has questions about your need for leave, it may request a medical certification from your doctor regarding your need for leave, ask for second and third opinions about the need for leave (but only if it agrees to pay for these opinions), and get periodic reports from you while you are on leave. It is important to cooperate with your employer's procedures regarding their request for medical certification and periodic reports. If you do not cooperate, you will not be protected under the family and medical leave laws.

**9. Can you get paid during family and medical leave?**

Family and medical leave as provided under the federal and D.C. family and medical leave laws is **unpaid**. However, in certain circumstances, you may choose to, or your employer may require you to use any accrued paid sick or vacation time in conjunction with your family medical leave.

**10. Do you have to take all of your family/medical leave at once?**

No. You can take family or medical leave one day at a time, one week at a time or all of it at once. How much leave you take is determined by when your doctor states you are able to work. Moreover, in some cases, you may take family/medical leave intermittently or work part-time. For example, if you have cancer and need radiation treatments once a week, you may be able to take time once a week. To qualify, for part-time or intermittent leave, you must show that taking the leave intermittently or on a part-time basis is medically necessary and that your serious health condition or that of your family member, spouse, child or parent is best accommodated through an intermittent or part-time basis.

**11. If you believe your rights under family and medical leave laws have been violated or if you want help understanding your rights under D.C. and federal family and medical leave laws, where should you go for help?**

You can enforce your rights under the federal Family and Medical Leave Act and seek damages including reinstatement to your job and back pay by filing a complaint with the local U.S. Department of Labor, Wage and Hour Division office (202-219-7043). Maryland and Northern Virginia workers should contact the Maryland District Office: Room 207 Appraisers Stores Building, 103 South Gay Street, Baltimore, MD. 21202. Any office can be reached at 1-866-4-USWAGE (1-866-487-9243). The complaint must be filed **within two years** after the earliest discriminatory act or by filing a complaint in federal District Court within two years after the earliest discriminatory act. Seek the assistance of an attorney if you chose to file a complaint in federal court. If you prevail, your employer may be ordered to pay your legal costs and attorney's fees.

To enforce your rights under the D.C. family and medical leave laws, you must file a complaint with the D.C. Human Rights Office (202-727-4559), 441 4<sup>th</sup> Street, NW, Suite 570 North (Metro: Judiciary Square), or D.C. Superior Court **within one year** of the violation or discovery of the violation of your rights.

*For more information about your workplace rights come to one of the Workers' Rights Clinic run by the D.C. Employment Justice Center from 6:00 p.m. – 7:30 p.m. on Wednesdays at Bread for the City, NW (1525 7<sup>th</sup> Street, NW, between P and Q Streets, NW, near the Howard Univ/Shaw Metro stop on the Green Line) or from 3:00 p.m. – 4:30 p.m. on Mondays at Bread for the City, SE (1640 Good Hope Road, SE). No appointment is necessary, and you may call (202) 828-9675 for additional information about the clinic. You can also visit the D.C. Employment Justice Center website at [www.dcejc.org](http://www.dcejc.org).*

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

**DC EMPLOYMENT JUSTICE CENTER**

MAIN OFFICE: 727 15TH STREET, NW, SECOND FLOOR, WASHINGTON, DC 20005

PHONE: 202.828.WORK

FAX: 202.828-9190

[www.dcejc.org](http://www.dcejc.org)

[justice@dcejc.org](mailto:justice@dcejc.org)