

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



The federal FMLA requires certain employers to provide job-protected unpaid leave to employees who have serious health conditions that render them unable to perform their jobs, or to employees who need to care for sick family members or new children (by birth, adoption, or foster care). See 29 U.S.C. § 2601 *et seq.*, 29 C.F.R. § 825.100 *et seq.*; 5 U.S.C. § 6381, 29 C.F.R. § 6301201 (federal employees); D.C. Code § 32-501 *et seq.*, 4 DCMR § 1600 (D.C. law).

Leave provided by the FMLA:

- 12 weeks every 12 months for family or medical leave.
 - Under the D.C. FMLA, employers may provide up to 16 weeks every 24 months for *family* leave.
 - Under the D.C. FMLA, employers may provide up to 16 weeks every 24 months for *medical* leave.
- Unpaid
- Job-guaranteed, which means that the employer must return the employee to the same or equivalent job after leave, even if the employee has been replaced in the interim.
 - An equivalent job is one that has comparable pay, benefits, responsibilities and hours of work.

A covered employer has:

- 50 or more employees within a 75-mile radius.
 - Under the D.C. FMLA, an employer need only have 20 employees to be covered.

An eligible employee:

- Has been employed by the same employer from whom the leave was requested for at least 12 months (do not need to be consecutive) before the request for leave.
 - Under D.C. FMLA, has been employed by the employer for one year without a break in service.
- Has worked at least 1,250 hours during the 12 months before the leave request (average of 24 hours/week).
 - Under D.C. FMLA, has worked for at least 1,000 hours (average of 19 hours/week).

Leave requested must be for the employee to care for:

- Him or herself, if he/she has a serious health condition that makes him/her unable to perform the functions of the job.
- A child, spouse, or parent suffering from a serious health condition.
- A baby, within 12 months of the birth.
- A child who has been newly adopted or received into foster care, within 12 months of placement.

A serious health condition is an illness, injury, impairment, or physical or mental condition involving:

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

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Possible FMLA violations by employer:

- Wrongfully counting FMLA-qualified leave as absences under a progressive absenteeism policy.
- Miscalculating eligibility for FMLA leave by:
 - Failing to designate a 12-month leave period OR
 - Failing to give notice of applicability of FMLA within two business days.
- Failing to post required FMLA notices.
- Failing to maintain health benefits during leave.
- Harassing an employee for requesting FMLA leave or taking FMLA leave.
- Denying an employee's request for FMLA-qualifying leave.
- Firing an employee while on FMLA leave or upon return from FMLA leave.
- Firing or discriminating against an employee for asserting his/her rights under FMLA.

D.C. PAID SICK AND SAFE LEAVE

Under the D.C. Accrued Sick and Safe Leave Act of 2008, employers in D.C., public and private, must provide their employees with paid sick or safe leave. Employees start accruing leave when they begin working for an employer, and may begin using the leave after 90 days of work for that employer. See D.C. Law 17-152.

To obtain paid sick or safe leave, an employee must submit a written request. When the leave is foreseeable, an employee should give at least 10 days' notice, or before the start of the shift when not foreseeable. In the event of an emergency, the employee should notify the employer within 24 hours of the emergency occurring or before the next shift.

Excluded workers: Independent contractors, students, certain health care workers, and restaurant wait staff/bartenders receiving a combination of wages and tips.

Amount of leave required:

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

“Sick” leave is leave taken to tend to an employee's physical or mental health or that of an employee's family member.

“Safe” leave is leave taken to obtain social or legal services addressing stalking, domestic violence, or sexual abuse of the employee or employee's family member.

The definition of “family member” is broader than under the federal FMLA. It includes grandparents, parents of spouses, domestic partners, and someone who has shared a committed relationship and residence with the employee for the past year.

Adapted from checklist prepared by Sharon Dietrich of Community Legal Services in Philadelphia, PA. Do not use this checklist as a substitute for a more thorough analysis under the statute and regulations before filing suit. For more information about your workplace rights come to one of EJC's Workers' Rights Clinics: from 6:00 p.m. – 9:00 p.m. on Wednesdays at Bread for the City, NW (1525 7th Street, NW, between P and Q Streets, NW; list starts at 5 p.m.) or, from 3:00 p.m. – 6:00 p.m. one Monday per month at Bread for the City, SE (1640 Good Hope Road, SE). Clinic is first come, first served; no appointment is necessary. For more information, you also can visit the D.C. Employment Justice Center website at www.dcejc.org.

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