

# An Introduction to the Family Medical Leave Act

MARCH 2009 UPDATE



Presented to:  
Washtenaw Community College  
Office Professional/Technical  
Association

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**Who is eligible for FMLA?**

An employee of a covered employer who meets the following requirements:

- Employed by the employer for at least 12 months, and
- Worked at least 1250 hours during the 12-month period immediately preceding the commencement of the leave, and
- Employed at a work where 50 or more employees are employed by the employer within 75 miles of the work site.

**Who is a covered employer?**

Any employer who employs 50 or more employees for each working day during 20 or more calendar workweeks in the current or preceding calendar year.

**What are the qualifying events that trigger a Family Medical Leave?**

- Birth or placement for adoption/foster care of son or daughter, and to care for newborn child;
- To care for the employee's spouse, son, daughter, or parent with a serious health condition;
- Because of a serious health condition for purposes of determining eligibility for FMLA leave.
- A qualifying exigency of a service member on active duty or called to active duty in support of a contingency operation. This includes:
  - Short-notice deployment (seven days or less notification, leave limited to seven days)
  - Military events and related activities
  - Childcare and school activities
  - Financial and legal arrangements
  - Counseling
  - Rest and recuperation
  - Post-deployment activities
  - Other activities as agreed upon between the employee and College
- To care for a family member that is in the Armed Forces, with a serious illness or injury incurred in the line of duty. This includes an adult child of the employee.

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\*The following provides a summary of the major components of the Family Medical Leave Act. More detailed information available from Human Resources. This document is intended to provide a summary of the important components of the law and does not replace any requirements defined in the Act.

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**What is the definition of a serious health condition?**

A “serious health condition” is an illness, injury, impairment, or physical or mental condition that involves:

1. Inpatient care at a hospital, hospice, or residential medical care facility;
2. Continuing treatment by a health care provider including incapacity of more than three consecutive calendar days, involving treatment two or more times within 30 days by a health care provider or; at least a single visit to a health care provider that results in a continuing treatment regimen (visit must take place within seven days of the first day of incapacity);
3. Pregnancy or prenatal care; or
4. A chronic, episodic, or long-term incapacity.

**What job benefits and protection does a covered employee have under FMLA?**

- An eligible employee may take up to 12 weeks (480 hours for an employee working 40 hours per week) of unpaid, job protected leave within a 12-month period for a qualifying event. If multiple qualifying events occur within a 12-month period, the total amount of time available for FMLA leave to cover all events is 12 weeks.
- If caring for an ill or injured Armed Forces family member, an eligible employee may take up to 26 weeks (1,040 hours for an employee working 40 hours per week) of unpaid, job protected leave within a 12 month period.
- For the duration of the FMLA leave, the employer must maintain the health coverage under any group health plan. Employees are required to continue to pay the employee portion of premium (for example, co-premiums as set by the bargaining agreement.) Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits and other employment terms.
- Use of FMLA cannot result in a loss of any employment benefit that accrued prior to the start of the leave.

**What responsibilities does an employee have?**

The employee must provide notice (in advance where possible) of the need for FMLA and medical certification documenting that the health condition meets the definition of a serious health condition.

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**Does FMLA have to be taken all at once or can it be taken in parts?**

FMLA leave may be taken intermittently or on a reduced leave schedule in one of the following cases:

- After the birth or placement of a child for adoption or foster care, if the employer approves.
- If an intermittent/reduced leave schedule is a medical necessity.

**How much time may a husband and wife take if they are both employed by the same employer?**

A husband and wife who are eligible for FMLA leave and are employed by the same employer are limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for:

- The birth of the employee's son or daughter or to care for the child after birth;
- For placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement;
- To care for the employee's parent with a serious health condition.

When both employees take a portion of their 12-week leave entitlement for one of these reasons, each employee has the right to take the remainder of 12 weeks if they have another qualifying FMLA event.

**What are the required timeframes imposed by the Family Medical Leave Act?**

An employee must provide the employer at least 30 days advance notice before the leave is to start if the need for the leave is foreseeable. If it is not foreseeable, the employee must give notice as soon as practicable, within normal call in procedures. When 30 days notice has been given, an employee should return the medical certification prior to the start of the leave. When this is not possible, the employee has at least 15 days to return the medical certification.

The employer must notify the employee of their eligibility for FMLA leave within 5 business days of notification of the need for leave. The employer must notify the employee of leave approval or denial within 5 business days of the receipt of medical certification.

**What other factors are important to know?**

FMLA is an unpaid leave but employees may choose to substitute paid leave for FMLA leave. If an employee does not choose to substitute paid leave, the employer may require the employee to substitute paid leave for FMLA leave.

The employer may designate FMLA leave based on information received from the employee or employee's spokesperson, without formal request for leave.

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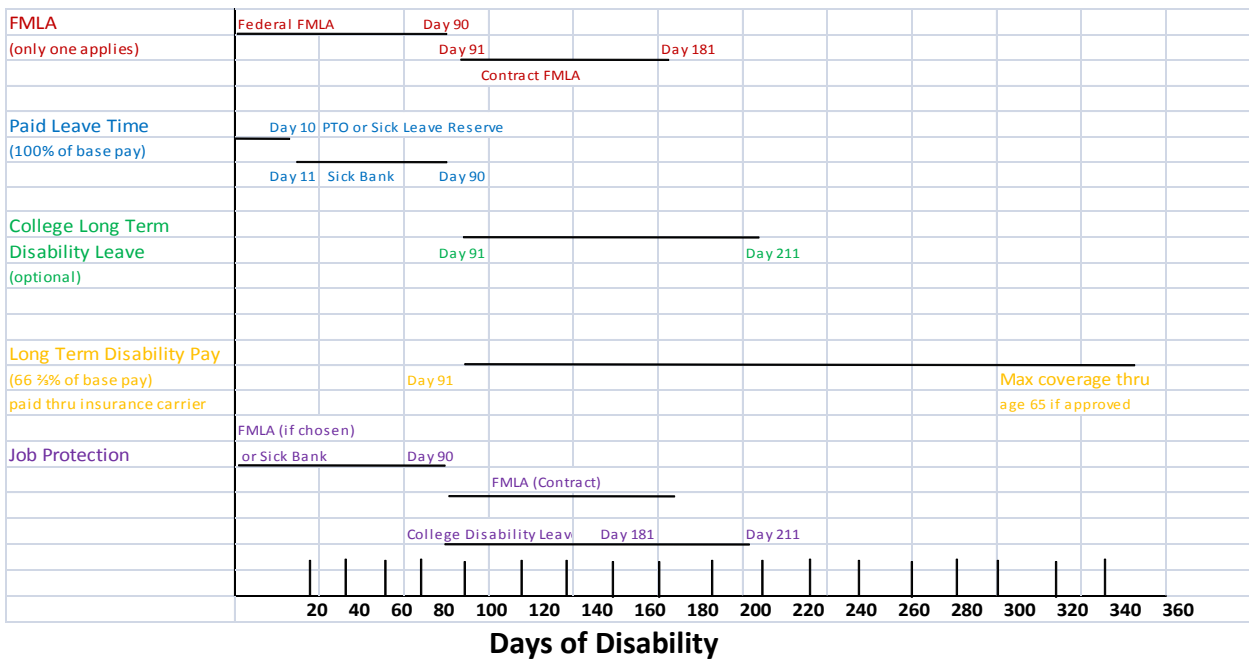
**Time away from work due to the employee's health condition:**

- For non-work related illnesses/injuries, the FMLA leave may begin on day 1 of incapacity (per federal law) or day 91 of incapacity (per the labor agreement). This decision is at the discretion of the employee. Date of incapacity will be determined by physician's certification.

For work related illnesses/injuries, the FMLA leave will begin on day 1 of the absence. Payment for work related illness or injury under College employee benefit programs is subject to Workers Compensation law.

- Human Resources will determine an employee's eligibility for FMLA leave of absence based on eligibility criteria and the medical documentation provided by the employee.
- Pay during extended absences is provided using the appropriate payment program as follows:
  - Payment for non-work related illness or injury, availability of other employee benefits and submission deadlines are as follows:

**Timeline reference, (see notes for detailed explanation)**



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**First 10 consecutive working days:**

- Pay is from employee's accrued time off benefits (PTO or sick leave reserve in that order).
- Employee benefits remain paid as if employee were working.
- Employee's position is protected under the terms of the labor agreement or FMLA if requested and approved.
- For FMLA requests beginning at day 1 of incapacity, the Request for FMLA Leave form and medical certification must be submitted to Human Resources within 15 days from when FMLA begins.
- If FMLA is not elected, a physician's note stating diagnosis and length of absence will be required to approve leave.

**Before day 45 of the absence:**

- Submission of completed long term disability (LTD) application to Human Resources.

**Before day 75 of the absence:**

- For FMLA leave beginning day 91 of incapacity, submission of completed Request for FMLA leave and medical certification to Human Resources.

**Until 90 calendar days:**

- Employee's personal accrued time off benefits (PTO or sick leave reserve in that order).
- College funded sick leave bank with approved application (not more than one time per contract year.)
- Employee benefits remain paid as if employee were working.
- Employee's position is protected under the terms of the labor agreement or FMLA if requested and approved.

**91 – 210 calendar days:**

Given approved claim status by the LTD carrier, the LTD benefit begins effective day 91. Per the terms of the labor agreement. "After an association member has used the correct combination of her or his PTO, personal sick leave reserve and allotted sick bank days, application shall be made for a Medical/Disability Leave upon certification by a licensed medical doctor (in case of a mental illness, a licensed psychiatrist). The certification shall state that (1) the association member is unable the work, (2) reason therefore, and (3) anticipated period of disability.

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According to the underwriter's regulation, the employee must be on approved Long Term Disability Leave the 91<sup>st</sup> of her or his disability to continue her or his employment. Disability leaves due to physical or mental illness may be granted for periods up to 120 calendar days. For association members who have worked for the College at least 1250 hours over the prior 12-month period, the first 12 weeks of medical/disability leave shall be counted toward the employee's entitlement under the Family and Medical Leave Act of 1993." (Section 13.5 Medical/Disability Leave)

- For FMLA request beginning at day 91 of incapacity, the Request for FMLA Leave form and medical certification must be submitted to Human Resources within 15 days from when FMLA begins.
- Employee's position is protected under the terms of FMLA through day 175 of the absence if the approved FMLA leave runs from day 91 – 175 absence. The employee's position is protected under the labor agreement through day 210.
- If the employee is on an approved FMLA leave, employee benefits remain paid as if employee were working through day 175 or until the exhaustion of FMLA leave if FMLA time has been taken in the 12 months. COBRA is available upon exhaustion of FMLA leave, but no later than day 176.
- If the employee is not on an approved FMLA leave, employee benefits are available at day 91 at employee expense under COBRA.
- For employees with less than 5 years of continuous service, the employment relationship ends if the employee is unable to return at day 211.

**211 – 365 calendar days:**

- Long Term Disability benefit continues based on an on-going, approved disability, according to the provision of the LTD policy.
- Employee benefits are available at employee expense under COBRA.
- For employees with at least 5 years of continuous service, the employee's position is protected under the terms of the labor agreement and employment relationship ends if the employee is unable to return at day 366.

**Absences over 365 days:**

- Long Term Disability benefit continues based on an on-going, approved disability, according to the provision of the LTD policy.

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**Time away from work due to a qualified family member's health condition:**

- Human Resources will determine an employee's eligibility for a FMLA leave of absence. The employee must complete a FMLA Request Form and provide the required medical certification. The employee must provide the College with at least 30 days notice when the need for the leave is foreseeable or if it is not foreseeable, the employee must give notice as soon as practicable.
- Employee may use personal accrued time off benefits (PTO or sick leave reserve, if eligible), during an approved FMLA leave.

**The W.C.C. Family and Medical Leave policy is available on the HRM website under Benefits:**

**[http://www4.wccnet.edu/humanresources/benefits\\_familymedicalleave.php](http://www4.wccnet.edu/humanresources/benefits_familymedicalleave.php)**

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