

# Q&As about FMLA

## Q: How much leave am I entitled to under FMLA?

**A:** If you are an "eligible" employee, you are entitled up to 12 weeks of leave for certain family and medical reasons during a rolling 12-month period. If eligible for Military Family Leave you are entitled to up to 26 weeks in a 12 month period.

## Q: Which employees are eligible to take FMLA leave?

**A:** Employees are eligible to take FMLA leave if they have worked for their employer for at least 12 months in the past seven years and have worked for at least 1,250 hours over the previous 12 months.

## Q: What is a "rolling" 12-month period?

**A:** The rolling 12-month is measured backward beginning with the date an employee's requested FMLA begins.

Example: An employee takes time away from work due to the birth of their child in May. The leave period lasts 12 weeks. In November, they are scheduled for surgery. Their leave request in November cannot be counted towards FMLA because they have already utilized their 12-week entitlement during their leave in May.

## Q: Do the 12 months of service with the employer have to be continuous or consecutive?

**A:** No. The 12 months do not have to be continuous or consecutive; all time worked for the employer in the past seven years is counted.

## 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 such as vacation (ETO), sick time (EIB) and unpaid leave, including FMLA and Leave of Absence, are not included.

## Q: How do I determine if I have worked 1,250 hours in a 12-month period?

**A:** Your individual record of hours worked is used to determine whether 1,250 hours have been worked in the 12 months prior to the commencement of FMLA leave. You may consult with your departmental timekeeper or supervisor. The following may be helpful for estimating whether eligibility has been met:

- More than 24 hours worked in each of the 52 weeks of the year; or
- Over 104 hours worked in each of the 12 months of the year; or
- 40 hours worked per week for more than 31 weeks (over seven months) of the year

## Q: Are part-time or per diem staff members covered?

**A:** Both part-time and per diem staff members may be eligible for FMLA leave if they have accumulated 12 months service in the past seven years and meet the 1,250 minimum hours of service in the past 12 months requirement. Usually an employee only accumulates 1250 hours if they are .7 or above or have worked extra hours and have not used benefit hours.



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## Q: Does the FMLA law guarantee paid time off?

**A:** No. The law only provides job protection. Whenever an employee takes FMLA, he or she will use accrued ETO and EIB before the employee will take unpaid leave. (Note: EIB may only be used for self, spouse or children. Please refer to EIB Policy for definition of child.)

## Q: Can the employer count leave taken due to pregnancy complications against the 12 weeks of FMLA leave for the birth and care of my child?

**A:** Yes. An eligible employee is entitled to a total of 12 weeks of FMLA leave in a 12-month period. If the employee has to use some of that leave for another reason, including a difficult pregnancy, it may be counted as part of the 12-week FMLA leave entitlement. The beginning of the 12-week period starts counting from the first day the employee is absent, not from date of delivery.

## Q: Can an employee take 12 weeks of maternity leave under FMLA even though the physician wrote the FMLA Certification for only six weeks past delivery date?

**A:** Yes. The FMLA allows for 12 weeks for pregnancy complications, childbirth and bonding. The physician usually writes the Certification to cover only the medical aspects of childbirth. Taking additional weeks, up to 12 including time prior to delivery, MUST be discussed with the Department Director/Supervisor at least 30 days prior to the beginning of maternity leave.

## Q: Can an employee take 12 weeks of maternity leave and 12 weeks of sick leave in the same year?

**A:** No. A maximum of 12 weeks is available within a 12-month rolling period for all types of qualifying FMLA leave. If you have 3 reasons for taking FMLA, you will get a maximum of 12 weeks in a 12-month rolling period.

## Q: Can leave for childbirth or adoption be taken at any time?

**A:** No. That leave must be taken within 12 months after the birth or placement for adoption or foster care. In many circumstances, however, the leave may start before the birth or placement for adoption, such as leave needed for pre-natal care or for home studies in connection with an adoption.

## Q: Can leave be taken to care for children of any age?

**A:** No. Under FMLA, a "parent", "son", or "daughter" includes not only persons biologically or legally recognized as an employee's parents or children, but also persons who have acted as an employee's parent and persons for whom the employee has accepted day-to-day parental responsibilities, which may include step-children. The term "parent" does not include a parent-in-law of the employee, and a "son" or "daughter" must be one who is under the age of 18 or of any age and mentally or physically incapable of taking care of him/herself, except for leave for a qualified exigency or care of a covered service member.

## Q: May I use FMLA to care for my parent- in- law?

**A:** No. See previous answer.



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**Q: What does an employee have to show to prove that he or she is "needed to care for" a family member?**

**A:** The employee will be required to provide a medical certification that establishes that the employee is needed to care for the family member. The Certification of Health Care Provider for Family Members Serious Illness/Injury form is sufficient.

**Q: May I take FMLA leave for visits to a therapist, if my doctor prescribes the therapy?**

**A:** Yes. FMLA permits you to take leave to receive "continuing treatment by a health care provider," which can include recurring absences for therapy treatments.

**Q: What happens if the 30 days' notice is not provided?**

**A:** Where leave is foreseeable and there is no reasonable excuse for not giving 30 days' notice, the employer can deny FMLA leave, and presumably apply its other policies, for up to 30 days after the notice is provided.

**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.

**Q: When will FMLA not apply?**

**A:** The protections of FMLA will not cover situations where the reason for leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave.

**Q: What happens if my "medical condition" is in question?**

**A:** You may be asked questions to confirm by recertification from your health care provider whether the leave needed or being taken qualifies for FMLA purposes. You may be required to submit periodic reports on your status and intent to return to work after leave. Also, if your employer wishes to obtain another opinion, you may be required to obtain additional medical certification at the SAMC's expense, or recertification during a period of FMLA leave. SAMC may have a health care provider representing the employer contact your health care provider, with your permission, to clarify information in the medical certification or to confirm that the health care provider completed it.

**Q: Can my employer deny Family Medical Leave?**

**A:** Yes. The following reasons would apply:

- If you do not meet the eligibility requirements
- Employees who give unequivocal notice that they do not intend to return to work lose their entitlement to FMLA leave.



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**Q: What if 12 weeks of FMLA are exhausted and my health care provider does not release me to return to work?**

**A:** Employees who are unable to return to work and have exhausted their 12 weeks of FMLA leave in the designated "12 month period" no longer have FMLA protection of job restoration. These employees may apply for Medical Leave of Absence; this application should be made two weeks prior to the date MLOA should begin or as soon as the employee knows they will exhaust their 12 weeks of FMLA benefits.

**Q: What steps are necessary to return to work from FMLA?**

**A:** The employee MUST communicate to their department and/or EH&W any change in health status and/or change in the expected return date (early, as scheduled or late) as soon as the employee is made aware.

The Fitness for Duty to Return from Leave Certification (FDRLC) Form must be presented to Employee Health & Wellness for final clearance to return to work; this step is not necessary when returning to work after care of a family member. This form or a comparable form from the health care provider's office must state the return to work is without restrictions or it must specifically describe any restrictions and the duration of the restrictions. For example, "No lifting more than 15 pounds for 3 weeks" is appropriate instead of "no lifting".

If there are no restrictions, EH&W will complete the Return to Work Form. The employee will take the Return to Work Form to their department.

If there are restrictions, EH&W will call the departmental representative to determine if the restrictions and/or duration of the restrictions noted by the physician can be accommodated. If the restrictions and/or duration of the restrictions can be accommodated the EH&W nurse will complete the Return to Work Form. The employee will take the Return to Work Form to their department.

If the restrictions and/or duration of the restrictions cannot be accommodated the employee may not return to work. The employee will inform their department of their status update. They will remain on FMLA until the restrictions expire and the updated Fitness for Duty to Return from Leave Certification (FDRLC) Form is completed by the Health Care Provider returning the employee to work without restrictions that cannot be accommodated. EH&W will complete the Return to Work Form. The employee will take the Return to Work Form to their department. If FMLA benefits (hours) are exhausted prior to the employee being able to return to work, then Medical Leave of Absence should be applied for by the employee. (See Step 9 of Instruction Employee Family and Medical leave.)

**Q: Is it necessary to provide a Fitness for Duty to Return from Leave Certification Form (FDRLC) to EH&W when I have been on FMLA to care for a family member?**

**A:** No. A Fitness for Duty to Return from Leave Certification Form (FDRLC) is only necessary after an FMLA for the employee's own illness. It is unnecessary to report to EH&W when returning to work after care of a family member.

**Q: Who stores the FMLA Certification forms and other FMLA related information?**

**A:** EH&W stores the Request for FMLA Form, Certification of Health Care Provider for Employee Serious Illness/Injury Form and any other FMLA related information. It is a HIPAA violation for the completed Certification of Health Care Provider form for the employee or family member to be stored in the employee's departmental employee file.



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