

Prevention Connection



Safety resources to protect your world

Family Medical Leave (FMLA) – SAMPLE

[Employer] recognizes the importance of personal and family responsibilities and provides time away from work to eligible employees in accordance with the Family Medical Leave Act of 1993 (“FMLA”). Accordingly, this policy entitles eligible employees to either a maximum of 12 weeks or 26 weeks of unpaid leave during a 12-month period.

Definitions

To help you better understand your FMLA eligibility the following definitions are provided:

Family Member includes an employee’s spouse, son, daughter, and parent (but not a parent “in-law”). A *son* or *daughter* is any child under 18 who is the biological; adopted or foster child of the employee; or whom the employee supervises on a day-to-day basis and for whom the employee is financially responsible. A *son* or *daughter* is also any child over 18 who is incapable of self-care because of a mental or physical disability. A *parent* is the biological parent of the employee, or one who stood in the place of the biological parent when the employee was a child.

Serious Health Condition is defined as an illness, injury, impairment or physical or mental condition that requires in-patient care in a hospital, hospice or residential medical care facility or that requires continuing treatment by a health care provider; a period of incapacity that makes an individual unable to attend work, school, or perform other daily activities for more than three (3) days and that requires continuing treatment by a health care provider; or continuing treatment by a health care provider for a chronic or long-term health condition that is so serious that, if not treated, would likely result in incapacity for more than three days.

The definition of *serious health condition* is not meant to cover short-term conditions where treatment and recovery are brief; routine physical examinations; or voluntary or cosmetic treatments that are not medically necessary, unless in-patient hospital care is required.

Eligibility

To be eligible to apply for leave under the FMLA, the employee must have worked for [Employer] for a total of at least 12 months and must have worked at least 1,250 hours during the 12 months immediately preceding the start of the leave.

Qualifying Events

[Employer] will grant eligible employees a maximum of 12 weeks of unpaid family medical leave if the employee follows the procedures in this policy and requests the leave for any of the following reasons:

1. The birth of the employee's child if the leave is completed within twelve (12) months of the date of birth of the child;
2. The placement for adoption or foster care of a child with the employee if the leave is completed within 12 months of the date of placement of the child;
3. To care for an eligible family member if that individual has a serious health condition; or
4. The employee has a serious health condition that makes it impossible for the employee to perform the essential functions of his or her job.
5. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty.

[Employer] will grant eligible employees a maximum of 26 weeks of unpaid family medical leave if the employee follows the procedures in this policy and requests the leave for any of the following reasons:

1. A covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

Requirements

[Employees who are absent due to illness for more than [three, four, five e.g.] consecutive workdays are required to apply for a family and medical leave under this policy.]

Employees [must, may] apply any accrued paid vacation; personal days; or illness, injury and recovery leave or short-term disability leave to family medical leave. Any remaining family medical leave time left after the exhaustion of other leaves will be unpaid leave.

Employees may take leave intermittently (in periods of days or partial days). However, employees must apply for and gain approval from [Employer] to take intermittent leave for the birth or care of a child, except pregnancy-related leave that would qualify as leave for a serious health condition.

[Employer] requires employees to report periodically to [their manager, their supervisors, the Human Resources Department, the Personnel Department, the Benefits Department e.g.] as to their leave status and their return to work, once known.

No employee may engage in gainful employment while on authorized leave unless permission to engage in such employment is granted in writing by [the Human Resources Department, the Personnel Department, the Benefits Department, the owner, the President, the CEO e.g.].

Medical Certification

[Employer] [may, at its discretion, will] require employees to obtain a medical certification from the health care provider who is treating the employee or the employee's family member.[Employees may obtain [certification forms or practitioner forms] from [the Human Resources Department, the Personnel Department, the Benefits Department e.g.].]

In order to verify an employee's serious health condition, [Employer] may, at its discretion and expense, require the employee to obtain the opinion of a second health care provider designated or approved by [Employer]. If there is a conflict between the first and second opinions, [Employer] may, at its discretion and expense, require a third opinion from a different provider [chosen jointly by the employee and [Employer].]

[[Employer] may require a "fitness for duty" certification upon the employee's return to work, if leave was taken for the employee's own serious health condition.]

Spouses' Combined Leave

Spouses who are both employed by [Employer] are jointly entitled to a combined total of 12 weeks of leave for the birth or placement for adoption or foster care of a child or for the care of a sick parent.

While on Family and Medical Leave

Upon your timely return from leave under this policy, [Employer] will restore you to the same or an equivalent position, that is, a position with equivalent pay, benefits, responsibility and other employment terms, unless business circumstances have impacted your position.

Under this policy, during periods of unpaid leave, [you are not entitled to accrue benefits such as [vacation; illness, injury and recovery leave; and personal leave]. [You are entitled to accrue benefits such as [vacation; illness, injury and recovery leave; and personal leave].] If you are enrolled in [Employer's] medical, dental, vision and/or life insurance plans, you will retain the same coverage during your leave as long as you continue to make any contributions that you made to the plans before taking the leave.

Key Employees

A *key employee* is a salaried employee who is among the highest paid ten percent of all employees employed by [Employer] within 75 miles of the employee's worksite. [Employer] may refuse to reinstate certain key employees where restoration to employment will cause substantial and grievous economic injury to its operations. If you are a key employee, [Employer] will notify you in writing of your status as a key employee, the reasons for denying job restoration, and provide you a reasonable opportunity to return to work after notification.

Application Procedure

When the need for leave is foreseeable, you must provide [the Human Resource Department, Personnel Department e.g.] with a written request at least 30 days prior to the leave and must attempt to schedule the leave to minimize the effect on [Employer]. When the leave is not foreseeable, you must provide notice as soon as practicable.

To apply for leave under this policy, eligible employees may pick up a [Family Medical Leave form e.g.] from [the Human Resources Department, the Personnel Department, the Benefits Department e.g.].

Fraud

When employees fraudulently invoke their benefits, they hurt everyone. For this reason, benefits fraud is prohibited.

If you suspect that someone is committing fraud, please report your suspicions to [the Human Resources Department, the Personnel Department, the Benefits Department, the Compliance Department, your plan administrator, the CFO, the CEO e.g.].

Questions about This Policy

If you have questions, suggestions or concerns about this policy, you should direct them to [your manager, your supervisor, the Human Resources Department, the Personnel Department, the EEO Department, the Compliance Department e.g.].

[If you feel uncomfortable discussing your questions, suggestions or concerns about this policy with [the person, the persons, the department e.g.] listed above, you can direct them to the [Human Resources Department, Personnel Department, EEO Department, Compliance Department e.g.] [or the President, CEO e.g.].]

Additional information is available from the Department of Labor at:

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

The information and recommendations contained in this material have been obtained from sources believed to be reliable. However, SECURA accepts no legal responsibility for the accuracy, sufficiency, or completeness of such information. Additional safety and health procedures may be required under particular circumstances.