

Municipal FMLA FAQs

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What is FMLA?

The Family & Medical Leave Act allows eligible employees of covered employers to take unpaid leave for specified family and medical reasons.

Are municipalities covered employers?

Yes, any public agency—including a local, State, or Federal entity—is a **covered employer**, regardless of how many people are working for the municipality at a given a time BUT that does not mean a city's employees are automatically **eligible employees**.

Which employees are covered by FMLA?

An eligible employee is one that

- Works for a covered employer;
- Has worked for the employer for at least 12 months;
- Has worked at least 1,250 hours for the employer in the last 12 months. This means about 32 weeks assuming a 40-hour work week; and
- Works at a location that employs at least 50 workers in a 75-mile radius.
- Has not already exhausted FMLA benefits

How are the 50 workers counted? Is this just full-time equivalent workers?

50 workers means 50 individuals on the payroll when an employee requests FMLA. This includes full time, part time, and temporary workers. If the individual is on the payroll, he or she is counted.

Do the 12 months have to be consecutive?

No, any time previously worked (including seasonal work) counts toward the 12-month requirement.

What if we have 50 employees on the job when someone gives FMLA notice, but a couple hours later we only have 49?

The municipality must still give the employee FMLA leave.

What is an eligible employee entitled to?

Up to 12 work-weeks of *unpaid leave* in a 12-month time for a qualified reason. An employee may take up to 26 work-weeks in a 12-month time if the employee is caring for a related service member under the Military Caregiver Leave Act.

What reasons qualify?

- Birth of a child or placement in adoption or foster care.
- Caring for a sick child, spouse, or parent with a serious health condition.
- Having a serious health condition that makes the employee unable to do the essential functions of his/her job.
- Qualifying exigency related to a child, spouse, or parent is a military member on active duty or called to active duty.

What counts as a serious health condition?

For purposes of FMLA, serious health condition entitling an employee to FMLA leave means an illness, injury, impairment or physical or mental condition that involves inpatient care—defined as an overnight stay in a hospital, hospice, or residential medical care facility—or requires continuing treatment by a health care provider for

- Incapacity for more than three days;
- Pregnancy and prenatal care;
- Chronic conditions (requires at least two health care providers a year, may occur intermittently);
- Permanent or long-term conditions such as a stroke; or
- Treatments requiring multiple treatments such as surgery.

Can the leave be taken on an intermittent basis allowing the employee to work on a less than full time schedule?

Yes

Do they have to give notice?

Yes. If leave is foreseeable, employees should give 30 days-notice. Where leave is unforeseeable, employees should inform the employer as soon as practicable. If this is the employees' first time asking for FMLA leave for a serious medical condition, they do not need to expressly say or mention FMLA.

What documentation do employees need to provide?

An employer may require certification by a medical provider of the serious medical condition. The employer may also ask for a second and third medical opinion.

Do we need to continue to provide health insurance while the employee is gone?

Yes, if the employee and their family are part of a group health insurance plan, the employer must continue to pay their contribution toward it.

What about other benefits?

Whether or not the employer needs to continue other benefits depends on the employer's established internal policy. Generally, employees on unpaid FMLA will not accrue any seniority, vacation, or sick leave benefits. If the employee is substituting paid leave in FMLA leave, the employer generally must continue the other benefits during the paid leave.

What about when the employees come back from leave?

Employees must be restored to their same job and benefits or a position with equivalent benefits, pay, and other terms and conditions of employment upon returning from FMLA.

What are the limits to FMLA protections?

Employees are not entitled to job restoration, if the job or hours would have otherwise been eliminated. For example, if the employee was laid off, the employer may show that the employee would have been laid off regardless of whether they were on FMLA leave.

The municipality employs a married couple and they have both asked for FMLA leave. Are both spouses entitled to 12 work-weeks?

It depends. Employers may only limit combined leave to spouses for

- The birth of a child;
- Placement of a child for adoption or foster care; or
- Care for a parent with a serious medical condition.

Employers may not limit FMLA leave if the employees are caring for a child with a serious medical condition or the employees themselves are affected by a serious medical condition.

Does a city have to post any kind of notice?

Yes. All employers must post a general notice explaining the FMLA's provisions and providing information regarding procedures for filing a claim under the Act in a conspicuous place where it can be seen by employees and applicants. An employer must post notice even if no employees are eligible for FMLA leave.

How long does a city have to grant or deny FMLA leave requests?

Absent extenuating circumstances, a city should respond to requests within 5 business days. If the request is denied, the city must provide at least one reason why the request was denied. If the request is granted, the city should also notify the employee of the specific expectations and obligations associated with the leave, whether the employee will be required to provide certification of the qualifying reason for leave, and the employee's right to substitute paid leave.