

FAMILY AND MEDICAL
LEAVE ACT
(FMLA)
REFERENCE
MATERIAL
for
US Postal Service

Compensation and Benefits
Human Resources
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FOREWORD

This Family and Medical Leave Act (FMLA) reference material was compiled for the sole purpose of minimizing the need for Postal Service employees to regularly refer to the full document containing the final FMLA regulations. Its contents are based on the Department of Labor (DOL), Wage and Hour Division's final regulations issued as 29 CFR, Part 825, in the January 6, 1995 "Federal Register". Topics included in this material have the related sections of 29 CFR, Part 825, noted in parenthesis by the topic heading.

Only sections pertaining to the most common situations encountered are included, and some of the requirements are paraphrased for brevity. There is no intent to change any requirement from the full DOL regulations. For additional information concerning FMLA regulations or for clarification of information in this material, the DOL regulations must be referenced. In case of any conflict between this material and the DOL regulations, the DOL regulations are to be applied.

A listing of topics covered in the full DOL regulations is included as Appendix I in this material. Each Human Resource office in major Postal Service locations should maintain a current copy of the full DOL regulations on file.

Approval of the type of leave to be charged (i.e. annual, sick, or LWOP), cost and payment procedures for health insurance, and benefit coverage are the same for employees on FMLA leave as for employees not on FMLA leave and are absent on approved sick leave, annual leave or leave without pay.

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A.

**ONE-PAGE SUMMARY OF FMLA
PROCEDURES & RECORD KEEPING**

- (a) PS Poster 43, "Your Rights under the Family and Medical Leave Act of 1993", is to be permanently posted at each Postal Service facility where it can readily be seen by employees and employment applicants.
- (b) Form PS 3971, "Request for or Notification of Absence", is submitted by the employee stating the reason for the leave.
- (c) The Supervisor is responsible for determining if:
 - (i) The reason for the absence is a condition covered by the FMLA.
 - (ii) Additional documentation is required to know whether or not the FMLA applies.
 - (iii) Annual leave, sick leave, or leave without pay is to be charged under postal leave policies and applicable labor agreements.
- (d) In approving the request, when the reason appears to be a FMLA covered condition, either "FMLA" or "FMLA pending additional documentation" is to be noted in the PS 3971 approval block. Also, any additional information or documentation required is to be written on, or attached to, the PS 3971.
- (e) The employee's copy of the completed PS 3971 is returned to the employee with a copy of Publication 71, "Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act." Publication 71 need only be given once every six months for the same condition.
- (f) Recertification of medical conditions may be requested at reasonable intervals, but no more often than 30 days or the minimum duration specified by the health care provider, unless:
 - (i) The employee requests an extension of the leave;
 - (ii) Circumstances described by the previous certification has changed; or
 - (iii) Information is received that casts doubt upon the continuing validity of the certification.
- (g) PS 3971 and supporting documentation is maintained for three years. Detailed medical records are to be maintained in the medical unit.

B. FMLA LEAVE ELIGIBILITY (825.109, 825.110)

An employee is eligible for FMLA leave if he or she has:

- (a) a total of 12 months career or other service with the Postal Service -- the 12 months do not have to be consecutive; and
- (b) worked in the Postal Service for at least 1,250 hours during the 12 months immediately preceding the start of the leave -- the 1,250 hours must be actual work, and does not include time on any type leave.
- (c) There are no exclusions in the Postal Service for "key employees" or employees in work sites with fewer than 50 employees within 75 miles.

C. FMLA COVERED CONDITIONS (825.112, 825.201, 825.208)

- (a) Because of the birth of a son or daughter and to care for the son or daughter during the first year after birth.
- (b) Because of the placement of a son or daughter with the employee for adoption or foster care.
- (c) To care for the employee's spouse, parent, son or daughter who has a serious health condition.
- (d) For the employee's own serious health condition, including pregnancy and prenatal care, that makes the employee unable to perform his or her job.

In all circumstances, it is the supervisor's responsibility to designate leave as FMLA qualifying, and give notice of the designation on the employee's copy of the PS 3971.

D. AMOUNT OF FMLA LEAVE (825.200, 825.202, 825.205)

Up to 12 workweeks (12 times the employee's normal scheduled hours per week, up to 40 hours) of absence must be granted per leave year¹ for one or more of the covered conditions. An employee could, possibly, take 12 weeks of leave at the end of the leave year and another 12 weeks at the beginning of the following year.

A husband and wife who are both employed by the Postal Service and eligible for FMLA leave may each take 12 workweeks of leave during a leave year. This is true even though the FMLA only requires that they be allowed a combined total of 12 workweeks in some circumstances.

E. ABSENCES QUALIFYING AS FMLA LEAVE (825.207, 825.208)

- (a) In all cases the supervisor is responsible for designating whether or not an absence is FMLA qualifying and to give notice of the designation to the employee. Conditions noted in C, FMLA Covered Conditions, above qualify. However, for absences caused by a serious health condition, postal supervisors normally should not make the decision whether or not the condition meets the FMLA definition of serious health condition, but should have a current certification from a health care provider that the FMLA definition of serious

1. Postal Service leave year starts with the first pay period that begins in a calendar year and ends with the start of the next leave year.

health condition is met. The optional DOL form WH-380, *Certification of Serious Health Condition*, found as Appendix II of this material, may be used to obtain current certification. See topic P on page 7 for certification information to be provided by the employee.

- (b) If the supervisor has the requisite knowledge to determine leave is for an FMLA reason and fails to designate it as FMLA leave, the absence may not retroactively be designated as FMLA leave. The absence may be designated as FMLA leave only prospectively as of the date the employee is notified that it will be designated as FMLA leave. In such circumstances the employee is provided to the full protection of the Act for the entire period of the absence, but none of the absence preceding the employee's notice of the designation may be counted as part of the 12 workweeks of FMLA leave.
- (c) Supervisors may not designate leave as FMLA leave after the employee has returned to work with two exceptions:
 - (i) If the employee was absent for an FMLA reason and the employer did not learn the reason for the absence until the employee's return (e.g., where the employee was absent for only a brief period), the employer may, upon the employee's return to work designate the leave retroactively with appropriate notice to the employee.
 - (ii) If the supervisor knows the reason for the leave but has not been able to confirm that the leave qualifies under FMLA, or where the supervisor has requested medical certification which has not yet been received, or the parties are in the process of obtaining a second or third medical opinion, the supervisor should make a preliminary designation, and so notify the employee, at the time leave begins, or as soon as the reason for the leave becomes known. Upon receipt of the requisite information from the employee or of the medical certification which confirms the leave is for an FMLA reason, the preliminary designation becomes final. If the medical certifications fail to confirm that the reason for the absence was an FMLA reason, the supervisor must withdraw the designation (with written notice to the employee).
- (d) If the supervisor did not know the leave was used for an FMLA reason and has not designated the leave as FMLA leave, but the employee desires that the leave be counted as FMLA leave, the employee must notify the employer within two business days of returning to work that the leave was for an FMLA reason. In the absence of such timely notification by the employee, the employee may not subsequently assert FMLA protections for the absence.
- (e) Sick leave used for a medical condition which is not a serious health condition can not be counted as part of the 12 workweek FMLA entitlement. However, when employees take sick leave that turns into a serious health condition (e.g., bronchitis that turns into bronchial pneumonia) and then gives notice of the need for an extension of leave, the entire period of the serious health condition may be counted as FMLA leave.
- (f) When an on-the-job injury results in a serious health condition, time off under C.O.P. and O.W.C.P. is counted as part of the 12 workweeks per leave year for FMLA.
- (g) Once the employer learns that the leave is for an FMLA required reason, the employee must be promptly (within two business days absent extenuating circumstances) notified the leave is designated as FMLA leave. Oral notices that the leave is designated as FMLA leave shall be confirmed in writing no later than the greater of one week or the following payday.
- (h) Discussions to resolve any disputes on whether paid leave qualifies as FMLA leave and the discussion must be documented.

F. TYPE OF LEAVE (825.207, 825.208) (ELM 514.22)

Annual leave or leave without pay may be requested for conditions (a), (b), or (c) in section C above. Annual leave, sick leave, or annual may be requested for condition (d). The supervisor may require the employee to substitute accrued annual or sick leave for LWOP. Postal leave policies and applicable labor agreements provide that this is an administrative decision based on the needs of the employee, the needs of the Postal Service, and the cost of the Postal Service.

Sick leave is available only for the employee's own health condition or for exposure to, or caring for, a family member with a contagious disease ruled as requiring quarantine, or restriction of movement of the patient for a particular period by the health authorities having jurisdiction.

G. FAMILY MEMBER DEFINITION (825.113)

- (a) Spouse: Husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides.
- (b) Parent: A biological parent or individual who has or had day-to-day responsibilities to care for and financially support the employee when the employee was a child.
- (c) Son or Daughter: A biological, adopted, or foster child, stepchild, a legal ward, or a child for whom the employee has day-to-day responsibilities to care for an financially support, who is under age 18, or age 18 or older and incapable of self-care due to a mental or physical disability.

H. HEALTH CARE PROVIDER DEFINITION (825.118) (ELM 513.364)

Doctor of Medicine or other attending practitioner.

I. SERIOUS HEALTH CONDITION DEFINITION (825.114)

For purposes of FMLA, a serious health condition must be documented and involves either (a), (b), (c), (d), (e), or (f) as follows:

- (a) An overnight, or longer, stay in a medical care facility, including any related periods of incapacity, recovery, and subsequent treatments in connection with or consequent to such inpatient care; or
- (b) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom) of more than three consecutive calendar days, and including any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - (i) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by a health care provider; or
 - (ii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

Examples of such regimen of continuing treatment includes, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regime of continuing treatment for purposes of FMLA leave.

- (c) Any period of incapacity due to pregnancy, or for prenatal care.
- (d) Any period of incapacity or treatment for incapacity due to a chronic condition which may not require a visit to the health care provider for each absence, but:
 - (i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - (ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - (iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
- (e) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
- (f) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health condition provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

J. NEEDED TO CARE FOR A FAMILY MEMBER WITH A SERIOUS HEALTH CONDITION (825.116)

The medical certification provision that an employee is "needed to care for" a family member

encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse, or parent with a serious health condition who is receiving inpatient or home care.

The term also includes situations where the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home.

An employee's intermittent leave or a reduced leave schedule necessary to care for a family member includes not only a situation where the family member's condition itself is intermittent, but also where the employee is only needed intermittently -- such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party.

K. LEAVE TAKEN ON INTERMITTENT OR REDUCED SCHEDULE BASIS (825.203, 825.204, 825.117, 825.306)

Leave may be taken intermittently or on a reduced work schedule when medically necessary as described in the health care provider's certification of the serious health condition. Also, the treatment regimen and other information described in the certification meets the requirement for the medical necessity of intermittent leave or a reduced work schedule. Employees needing intermittent FMLA leave or a reduced work schedule must attempt to schedule their absences so as to have the least disruption to the employer's operations. In addition, the employee may be assigned to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced work schedule.

After the birth or placement of a child, FMLA leave may be taken intermittently only if the supervisor agrees, except when the mother or child has a serious health condition.

L. FLSA EXEMPT EMPLOYEES (825.206)

An employee exempt from Fair Labor Standards Act (FLSA) normally may not take leave in less than one day increments. However, FMLA leave taken on an intermittent or reduced work schedule basis can be taken in less than one day increments without affecting the employee's FLSA exempt status.

M. NOTICES TO EMPLOYEES (825.300, 825.301)

WH Publication 1420 (formerly USPS Poster 43), "Your Rights under the FMLA of 1993" must be permanently posted at each postal facility in a prominent position where it can be readily seen by employees and applicants for employment. See Appendix IV.

For each leave request submitted in writing or orally, the employer must provide the following information within 2 days of determining that the absence qualifies as FMLA leave:

- (a) whether or not the absence is designated as FMLA leave;
- (b) any additional documentation the employee needs to furnish; and
- (c) the type leave, i.e., annual leave, sick leave, or leave without pay to be charged.

If the employee is not at work, the information must be mailed to the employee's home address. The information should be provided on the employee's copy of form PS 3971, "Request for or Notification of Absence", with a copy of Publication 71, "Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act".

N. NOTICES EMPLOYEES PROVIDE FOR FORESEEABLE FMLA LEAVE (825.302)

An employee should request leave 30 days before FMLA leave is to begin if the leave is foreseeable. If 30 days is not practicable, the request should ordinarily be made within 2 days of when the need for leave becomes known to the employee.

The employee need not mention FMLA, but only state that leave is needed for an expected birth or adoption, for example. The supervisor should question the employee further if it is necessary to have more information to determine if the leave is being sought for a FMLA covered condition. Medical certification may be required to determine if the leave is because of a serious health condition.

When planning medical treatments or to care for others, the employee must consult with the supervisor and make a reasonable effort to schedule the leave so as not to unduly disrupt operations, subject to the approval of the health care provider.

O. NOTICES EMPLOYEES PROVIDE WHEN FMLA IS NOT FORESEEABLE (825.303)

When the approximate timing of the leave is not foreseeable, the employee should request leave as soon as practicable under the circumstances. The request is to be made no more than 1 or 2 working days after the need for leave becomes known, except in extraordinary circumstances.

The employee need not specify, or even mention FMLA, but only state that leave is needed. In such cases the supervisor is expected to obtain any additional required information through informal means. The employee or spokesperson will be expected to provide more information as soon as practical.

P. MEDICAL CERTIFICATION TO SUPPORT FMLA LEAVE (825.305, 825.306, 825 Appendix B, Form WH-380 and its Attachment)

Certification by the health care provider is required for leave requested to care for a seriously ill family member or because of the employee's own serious health condition. No less than 15 calendar days can be allowed for the employee to provide the certification. When the certification is found to be incomplete, the employee is to be advised and provided a reasonable opportunity to cure the deficiency.

No specific form is required for medical certification. Documentation from the employee's attending physician or other attending practitioner is acceptable in any format. However, the DOL optional form WH-380, Certification of Health Care Provider, found as Appendix II of this material, provides the required information. In any case the documentation should contain the following:

- (a) The health care provider's name, address, phone number, and type of practice, and the patient's name.
- (b) A certification that the patient's condition meets the FMLA definition of serious health condition, supporting medical facts, and a brief statement as to how the medical facts meet the definition's criteria.

- (c) Approximate date the serious health condition commenced, its probable duration, and the probable duration of the patient's present incapacity, if different.
- (d) Whether the employee will need to take leave intermittently or to work on a reduced schedule as a result of the serious health condition; and if so, the probable duration of such schedule, an estimate of the probable number and interval between episodes of incapacity, and period required for recovery, if any.
- (e) For pregnancy or a chronic serious health condition: whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.
- (f) For employee's own condition, including pregnancy or a chronic condition: whether the employee is unable to perform work of any kind; any parts of the employee's job he or she is unable to perform; and if the employee must be absent from work for treatment.
- (g) If additional or continuing treatments are required: nature and regimen of the treatments, an estimate of the probable number, length of absence required by the treatments, and actual or estimated dates of the treatments if known.
- (h) If leave is required to care for a family member with a serious health condition: whether the patient requires assistance for basic medical or personal needs or safety, or for transportation; or if not, whether the employee's presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery; and probable duration of the need for care or an intermittent or reduced work schedule basis. The employee is required to indicate on the form the care he or she will provide and an estimate of the time period.

Q. ADEQUACY OF MEDICAL CERTIFICATION IS QUESTIONED (825.307)

When certification is submitted with the information noted above missing, the employee may be requested to provide the additional information. However, if an employee submits a complete certification signed by the health care provider, the supervisor may not request additional information from the employee's health care provider. A health care practitioner representing the Postal Service, though, may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical certification.

If an employee is on FMLA leave that is running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employer or the employer's representative to have direct contact with the employee's workers' compensation health care provider, the employer may follow the workers' compensation provisions.

A supervisor who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the Postal Service's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits and protection provided by the Act. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as leave under leave policies. The Postal Service is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the supervisor. The employer may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employer is located in an area where access to health care is extremely limited.

If the opinions of the employee's and the employer's designated health care providers differ,

the supervisor may require the employee to obtain certification from a third health care provider, again at the Postal Service's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the supervisor and the employee. The supervisor and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the Postal Service does not attempt in good faith to reach agreement, the Postal Service will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employer that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith.

The Postal Service is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within two business days unless extenuating circumstances prevent such action.

If the employee is required to obtain either a second or third opinion the Postal Service will reimburse the employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain the second and third medical opinions.

R. RECERTIFICATION OF MEDICAL CONDITIONS (825.308)

Requests for recertification may be made at any reasonable interval, but not more often than 30 days or until the minimum duration specified by the health care provider has passed unless:

- (a) The employee requests an extension of leave;
- (b) Circumstances described by the previous certification have changed significantly (e.g., the duration of the illness, the nature of the illness, complications); or
- (c) The employer receives information that casts doubt upon the continuing validity of the certification.

The employee must provide the requested recertification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

Any recertification requested by the employer shall be at the employee's expense unless the employer provides otherwise. No second or third opinion on recertification may be required.

S. EMPLOYEE FAILS TO SATISFY CERTIFICATION REQUIREMENTS (825.311)

In the case of foreseeable leave, an employer may delay the taking of FMLA leave to an employee who fails to provide timely certification after being requested by the supervisor to furnish such certification (i.e., within 15 calendar days, if practicable), until the required certification is provided. When the need for leave is not foreseeable, or in the case of recertification, an employee must provide certification (or recertification) within the time frame requested by the supervisor (which must allow at least 15 days after the supervisor's request) or as soon as reasonably possible under the particular facts and circumstances. In the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. If an employee fails to provide a medical certification within a reasonable time under the pertinent circumstances, the employer may delay the

employee's continuation of FMLA leave. If the employee never produces the certification, the leave is not FMLA leave.

T. CIRCUMSTANCES ALLOWING DELAY OR REFUSAL OF FMLA LEAVE OR REINSTATEMENT
(825.312)

- (a) If an employee fails to give timely advance notice when the need for FMLA leave is foreseeable, the employer may delay the taking of FMLA leave until 30 days after the date the employee provides notice to the supervisor of the need for FMLA leave.
- (b) If an employee fails to provide in a timely manner a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, continuation of FMLA leave may be delayed until an employee submits the certificate. If the employee never produces the certification, the leave is not FMLA leave.
- (c) If an employee fails to provide a requested fitness-for-duty certification to return to work, an employer may delay restoration until the employee submits the certificate.
- (d) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.
- (e) If an employee unequivocally advises the employer either before or during the taking of leave that the employee does not intend to return to work, and the employment relationship is terminated, the employee's entitlement to continued leave and restoration ceases unless the employment relationship continues, for example, by the employee remaining on paid leave.
- (f) An employee may not be required to take more leave than necessary to address the circumstances for which leave was taken. If the employee is able to return to work earlier than anticipated, the employee shall provide the employer two business days notice where feasible; the employer is required to restore the employee once such notice is given, or where such prior notice was not feasible.
- (g) An employee who fraudulently obtains FMLA leave from an employer is not protected by FMLA.

LIST OF TOPICS COVERED IN REGULATIONS FOR THE
FAMILY AND MEDICAL LEAVE ACT OF 1993

**SUBPART A - WHAT IS THE FAMILY AND MEDICAL LEAVE ACT,
AND TO WHOM DOES IT APPLY?**

SECTION

- 825.100 What is the Family and Medical Leave Act?
- 825.101 What is the purpose of the Act?
- 825.102 When was the Act effective?
- 825.103 How did the Act affect leave in progress on, or taken before, the effective date of the Act?
- 825.104 What employers are covered by the Act?
- 825.105 In determining whether an employer is covered by FMLA, what does it mean to employ 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year?
- 825.106 How is "joint employment" treated under FMLA?
- 826.107 What is meant by "successor in interest"?
- 825.108 What is a "public agency"?
- 825.109 Are Federal agencies covered by these regulations?
- 825.110 Which employees are "eligible" to take leave under FMLA?
- 825.111 In determining if an employee is "eligible" under FMLA, how is the determination made whether the employer employs 50 employees within 75 miles of the work site where the employee needing leave is employed?
- 825.112 Under what kinds of circumstances are employers required to grant family or medical leave?
- 825.113 What do "spouse," "parent," and "son and daughter" mean for purposes of an employee qualifying to take FMLA leave?
- 825.114 What is a "serious health condition" entitling the employee to FMLA leave?
- 825.115 What does it mean that "the employee is unable to perform the functions of the position of the employee"?
- 825.116 What does it mean that an employee is "needed to care for" a family member?

825.117 For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by "the medical necessity for" such leave?

825.118 What is a "health care provider"?

**SUBPART B - WHAT LEAVE IS AN EMPLOYEE ENTITLED TO TAKE UNDER THE
FAMILY AND MEDICAL LEAVE ACT?**

825.200 How much leave may an employee take?

825.201 If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?

825.202 How much leave may a husband and wife take if they are employed by the same employer?

825.203 Does FMLA leave have to be taken all at once, or can it be taken in parts?

825.204 May an employer transfer an employee to an "alternative position" in order to accommodate intermittent leave or a reduced leave schedule?

825.205 How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?

825.206 May an employer deduct hourly amounts from an employee's salary, when providing unpaid leave under FMLA, without affecting the employee's qualifications for exemption as an executive, administrative, or professional employee, or when utilizing the fluctuating workweek method for payment of overtime compensation, under the Fair Labor Standards Act?

825.207 Is FMLA leave paid or unpaid?

825.208 Under what circumstances may an employer designate leave, paid or unpaid, as FMLA leave and, as a result, count it against the employee's total FMLA leave entitlement?

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Certification of Health Care Provider
(Family and Medical Leave Act of 1993)

1. Employee's Name:
2. Patient's Name (if different from employee):
3. The attached sheet describes what is meant by a "serious health condition" under the Family and Medical Act. Does the patient's condition quality under any of the categories described? If so, please check the applicable category.

(1)____(2)____(3)____(4)____(5)____(6)____, or None of the above ____

4. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:
 - 5.a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity² if different):
 - b. Will it be necessary for the employee to take time off from work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in Item 6 below)?

If yes, give the probable duration:

- c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity:

- 6.a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments.

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any.

- b. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments.
- c. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

1. Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

2. "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

7.a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind? _____

b. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)? _____ If yes, please list the essential functions the employee is unable to perform:

c. If neither a. nor b. applies, is it necessary for the employee to be absent from work for treatment?

8.a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation? _____

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery? _____

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

(Signature of Health Care Provider)

(Type of Practice)

(Address)

(Telephone number)

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule

(Employee signature)

(date)

A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or subsequent to such inpatient care.

2. Absence Plus Treatment

(a) A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

(1) Treatment³ two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment⁴ under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to pregnancy, or for prenatal care.

4. Chronic Conditions Requiring Treatments

A chronic condition which

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider.

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

3. Treatment includes examinations to determine if a serious condition exists and evaluations of the condition. Treatment does not include routine physical examinations, or dental examinations.

4. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

PUBLICATION 71, NOTICE FOR EMPLOYEES REQUESTING LEAVE FOR
CONDITIONS COVERED BY THE FAMILY AND MEDICAL LEAVE ACT,
ISSUED APRIL 1994, IS CURRENTLY BEING UPDATED TO INCLUDE
COVERAGE FOR TIME SPENT ON COP AND OWCP.

Copies of the April, 1994 issue are to be used until the new one is available.
Those are available and may be obtained from the Material Distribution Centers.

Your Rights under The Family and Medical Leave Act of 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least 1 year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any of the following reasons:

- ◆ to care for the employee's child after birth or placement for adoption or foster care;
- ◆ to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- ◆ for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- ◆ The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- ◆ An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- ◆ For the duration of FMLA leave, the employer must maintain the employee's health coverage under any group health plan.
- ◆ Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- ◆ The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- ◆ interfere with, restrain, or deny the exercise of any right provided under FMLA
- ◆ discharge or discriminate against any person for opposing any practice made unlawful by FMLA or involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

- ◆ The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- ◆ An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

US DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON DC 20210

WH Publication 1420
June 1993



Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act

Under the Family and Medical Leave Act (FMLA), employees have certain obligations to provide notice and/or other information to their employers. Failure to provide such notice or documentation could result in denial of leave or other protections afforded under the Act.

I. Qualifying Conditions - The FMLA provides that employees meeting the eligibility requirements must be allowed to take time off for up to 12 workweeks in a leave year for the following conditions:

1. Because of the birth of a son or daughter (including prenatal care), or to care for such son or daughter. Entitlement for this condition expires 1 year after the birth.
2. Because of the placement of a son or daughter with you for adoption or foster care. Entitlement for this condition expires 1 year after the placement.
3. In order to care for your spouse, son, daughter, or parent who has a serious health condition. Also, in order to care for those who have a serious health condition and who stand in the position of a son or daughter to you or who stood in the position of a parent to you when you were a child.
4. Because of a serious health condition that makes you unable to perform the functions of your position.

II. Eligibility - To be covered by FMLA, you must have been employed by the Postal Service for a total of at least one year *and* must have worked a minimum of 1,250 hours during the 12-month period before the date your absence begins.

III. Type of Leave or Pay - Absences counted toward the 12 workweeks allowed for the qualifying conditions can be any one or combination of the following:

1. Time off you take as annual leave, sick leave, and/or LWOP in accordance with current leave policies and collective bargaining agreements.
2. In the case of job-related injuries or illnesses, time off during which you are receiving continuation of pay (COP) and/or time during which you are placed on the Office of Workers' Compensation Program (OWCP) payroll.

IV. Documentation - Supporting documentation is required for your leave request to receive final approval. Documentation requirements may be waived in specific cases by your supervisor.

1. For qualifying condition (1) or (2), you must provide the birth or placement date.
2. For condition (3) or (4), you must provide documentation from the health care provider stating:
 - a. The health care provider's name, address, phone number, and type of practice, and the patient's name.
 - b. A certification that the patient's condition meets the FMLA definition of serious health condition, supporting medical facts, and a brief statement as to how the medical facts meet the definition's criteria.
 - c. The approximate date the serious health condition commenced, its probable duration, and the probable duration of the patient's present incapacity, if different.
 - d. Whether you will need to take leave intermittently or to work on a reduced schedule as a result of the serious health condition; and if so, the probable duration of such schedule, an estimate of the probable number of and the interval between episodes of incapacity, and the period required for recovery, if any.
 - e. For pregnancy or a chronic serious health condition: whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

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continued

- f. If additional or continuing treatments are required: the nature and regimen of the treatments, an estimate of the probable number of treatments; the length of absence required by the treatments, and actual or estimated dates of the treatments, if known.
 - g. For your own serious health condition, including pregnancy or a chronic condition, whether you are unable to perform work of any kind, parts of job you are unable to perform, and if you must be absent for treatments.
 - h. To care for a family member with a serious health condition: whether the patient requires assistance for basic medical or personal needs or safety, or for transportation; or if not, whether your presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery, and the probable duration of the need for care on an intermittent or reduced work schedule basis. You must indicate on the form the care you will provide and an estimate of the time period.
3. If the serious health condition is a result of a job-related injury or illness, the documentation requirements are provided separately.
 4. If the time off requested is to care for someone other than a biological parent or child, appropriate explanation of the relationship may be required.

Supporting information that is not provided at the time the leave is requested must be provided within 15 days, unless this is not practical under the circumstances. If the Postal Service questions the adequacy of a medical certification, a second or third opinion may be required. These are obtained off the clock. However, the Postal Service will pay for these opinions, plus reasonable 'out of pocket' travel expenses incurred to obtain the opinions.

During your absence, you must keep your supervisor informed of your intentions to return to work and status changes that affect your ability to return.

V. Benefits

Health Insurance - To continue your health insurance during your absence, you must continue to pay the "employee portion" of the premiums. This continues to be withheld from your salary. If the salary for a pay period does not cover the full employee portion, you are required to make the payment. If this occurs, you will be advised of the procedures for payment. Failure to make the required payments will result in loss of coverage.

Life insurance - Your basic life insurance and any optional life insurance that you carry will continue while in a pay status. In an LWOP status these are continued at no cost to you for one year. After one year in a no-pay status this coverage is discontinued; and, you will have the option to convert the coverage to an individual policy.

Flexible Spending Account (FSA) - If you participate in the FSA program, see your employee brochure for the terms and conditions of continuing coverage during leave without pay.

VI. Return to Duty

At the end of your leave, you will be returned to the same position you held when the absence began (or a position equivalent to it), provided you are able to perform the functions of the position and would have held that position at the time you returned if you had not taken the time off.

In order to return to duty, if the absence is due to your own health condition and exceeds 21 calendar days, or is due to exposure to communicable or contagious disease, mental or nervous condition, diabetes, cardiovascular disease, epilepsy, or a condition involving hospitalization, you must submit medical evidence of your ability to return to work before returning to work. You must submit medical certification stating unequivocally that you are fit for full duties without hazard to yourself or others, or indicating the duties which you are capable of performing. The medical certification must contain detailed reports with sufficient data to make a determination that you can return to work without hazard to yourself or others. A Postal medical officer or contract physician evaluates the medical report and makes the final determination of suitability for return to duty.