FREQUENTLY ASKED QUESTIONS

1. Which employees are eligible for an FMLA qualifying leave?

An "eligible employee" is a State employee who:

a) Has been employed by the State for at least 12 months, and
b) Has worked and been compensated for at least 1,250 hours during the 12-month period immediately preceding the leave (this does not include vacation, sick leave, other paid leave, or compensatory time - this does include overtime worked).

2. Are only permanent employees eligible for FMLA qualifying leave?

No, non-permanent employees are eligible if they meet the requirements stated under question number one above. If employees are not in insurance eligible status, they are only eligible for unpaid time off and not the insurance benefits.

3. Under what circumstances are employees eligible to take a FMLA qualifying leave?

a) For birth of the employee's child, and to care for the newborn child;
b) For placement with the employee of a child for adoption or foster care;
c) To care for the employee's spouse, son, daughter, or parent with a serious health condition; and
d) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.
e) Because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status).
f) To care for a covered servicemember (including a covered veteran) with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the covered servicemember

4. How much time may an employee take as FMLA qualifying leave?

Eligible employees may take up to twelve work weeks of leave during each fiscal year with the following exceptions:

Exceptions:

If the leave is to care for a covered servicemember (including covered veteran) with a serious injury or illness, refer to question No. 5.

If a husband and wife both work for the State, refer to Question Nos. 6 and 7.

If the leave is taken for the birth of a child or the placement of a child for adoption or foster care, refer to Question No. 9.

5. How much time may an employee take as FMLA qualifying leave to care for a covered servicemember (including a covered veteran) with a serious injury or illness?

Eligible employees may take up to 26 weeks within a single 12-month period. The 12 month period begins on the date the employee first takes FMLA leave to care for the covered servicemember and ends 12 months after that date.
6. If both husband and wife are State employees, are they both eligible for twelve weeks of FMLA qualifying leave during the fiscal year?

Yes. However, a husband and wife may take only a combined total of twelve weeks of FMLA qualifying leave per fiscal year under the following situations:

a) For the birth of a son or daughter and to care for the newborn child;
b) For placement of a child with the employee for adoption or foster care, and to care for the newly placed child; and
c) To care for the employee’s parent (not parent-in-law) who has a serious health condition.

A husband and wife may each take 12 weeks of FMLA leave if needed to care for a newborn child with a serious health condition, or an adopted or foster child with a serious health condition, even if both are employed by the same employer, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

7. If both husband and wife are State employees, are they both eligible for 26 weeks of FMLA qualifying leave to care for a covered servicemember with a serious illness or injury?

Yes. However, a husband and wife who are eligible for FMLA leave and are employed by the same covered employer are limited to a combined total of 26 weeks of FMLA qualifying leave during a single twelve month period if the leave is taken for the following reasons:

a) For birth of the employee’s son or daughter or to care for the child after birth;
b) For placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement;
c) To care for the employee’s parent with a serious health condition; or
d) To care for a covered servicemember with a serious illness or injury.

8. If an employee uses 12 weeks of FMLA qualifying leave in one fiscal year, are they allowed another 12 weeks the following fiscal year for the same condition?

Yes, provided the employee still meets all the eligibility criteria (including 1250 hours worked in the year preceding the request).

9. If FMLA qualifying leave is taken for the birth of a child, or for placement of a child for adoption or foster care, must the leave be completed within a specific period of time?

Although it is possible that an employee could qualify for two separate FMLA qualifying leaves for the birth or placement of a child (under the condition explained in Question No. 8 above), all FMLA qualifying leaves must be completed within 12 months of the birth or placement of a child. The 12-month period begins on the date of birth or placement.

10. Does FMLA leave have to be taken all at once, or can it be taken intermittently?

FMLA qualifying leave taken for the employee’s own serious health condition, to care for a spouse, son, daughter, or parent with a serious health condition, or to care for a covered servicemember with a serious injury or illness may be taken intermittently or on a reduced schedule if “medically necessary” and if that medical need can best be accommodated by an intermittent schedule. If the need for intermittent leave or a reduced schedule is documented by the employee’s or family member’s health care provider as “medically necessary”, such leave shall be granted. Intermittent leave for the birth/placement of a child may be granted at the discretion of the Appointing Authority. The Appointing Authority’s agreement is not necessary if the mother has a serious health condition in connection with the birth or if the newborn child has a serious health condition.

Leave due to a qualifying exigency may be taken on an intermittent or reduced schedule basis.
11. Is an employee required to use paid sick leave for certain FMLA qualifying leaves?

Yes. FMLA allows an employer to require the use of paid leave for certain qualifying events as stated under the terms of the collective bargaining agreements and compensation plans. Employees must use sick leave for the reasons authorized by the bargaining agreement/plan provisions. The FMLA does not require an employer to expand the use of paid leave.

12. Are there circumstances under which an employee may request to receive paid vacation or compensatory time in conjunction with FMLA?

An employee may request and receive paid vacation or compensatory time. Granting of vacation or compensatory time is not subject to any other employer requirements such as seniority or staffing needs.

However, the employee must make a reasonable effort to schedule foreseeable qualifying leave so as not to unduly disrupt the employer's operation. If the employee is unable to provide sufficient documentation to determine FMLA eligibility, the employee shall be placed on unpaid leave until such documentation is made available to the employer.

13. How do you determine the amount of FMLA qualifying leave used if an employee works a fixed part-time schedule or the employee's schedule varies from week to week?

The amount of FMLA qualifying leave is determined on a pro rata or proportional basis by comparing the requested schedule with the employee's normal schedule.

Where the schedule varies from week to week to such an extent that the employer is unable to determine with any certainty the number of hours the employee would have worked, a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period is used to calculate the employee's leave entitlement.

14. How can an Appointing Authority determine if a request for leave is a FMLA qualifying leave?

a) An employee requesting leave shall be asked the question, "Is the request for paid or unpaid time off for the purpose of an FMLA qualifying event (yes) (no)?" An employee giving notice of the need for FMLA leave must explain the reasons for the needed leave so as to allow the Appointing Authority to determine whether it is qualifying.

b) If an employee requests a leave prior to completing a request for leave slip, a supervisor may ask the reason for the leave. The supervisor will ask for this information solely for the purpose of determining whether the leave is FMLA qualifying and/or if under the terms of the State's contracts or compensation plans an employee is eligible for paid or unpaid time off.

c) If the employee fails to explain the reason, leave may be denied.

15. How can an employee determine if his or her request for time off qualifies under FMLA?

a) Notices explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act shall be posted in conspicuous places at the worksite.

b) An employee may ask his or her supervisor, contact the personnel office or their union to ask questions concerning the employee's rights and responsibilities under the FMLA.

16. Can an FMLA qualifying leave extend an employee's period of employment?

No.
17. **What are an employee’s job protection rights upon return from an unpaid FMLA qualifying leave?**

An eligible employee shall be restored to the same position that the employee held when the FMLA qualifying leave began, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment such as same shift, equivalent hours, etc.

18. **How does an FMLA qualifying leave coordinate with the Statewide Sick Leave Policy?**

The Act prohibits an employer from discriminating against employees who use FMLA qualifying leave. Therefore, the FMLA qualifying leave cannot be referred to in any employment actions including but not limited to discipline and selection.

19. **Can employees choose whether or not they want to use FMLA qualifying leave?**

No. It is the employer’s responsibility to designate leave as qualifying under FMLA. An employee may not choose whether leave shall be counted as FMLA qualifying leave.

20. **How can an employer verify an employee’s need for leave because of a “serious health condition”?**

The Appointing Authority’s FMLA designation decision must be based only on information received from the employee or the employee’s spokesperson.

An employer may also require an employee to obtain certification of a “serious health condition” from the employee’s health care provider. The employer can pay for a second opinion if it has reason to doubt the validity of the original certification. If the second opinion conflicts with the first, the employer may pay for a third opinion. The provider of the third opinion must be jointly approved by the employer and employee. The third opinion will be final.

If a leave request is for the serious health condition of a family member, the employer can require the employee to provide certification from the family member’s health care provider.

21. **Is an employee eligible to continue health insurance benefits during a FMLA qualifying leave?**

During an FMLA qualifying leave, the employee and dependent health and dental insurance coverage is maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the entire leave period.

Employees who receive the partial employer contribution must continue to pay their portion of the premium in order to retain this coverage. If the employee fails to make their premium payments, they will lose the coverage and may not be covered for any claims which may have occurred while on FMLA qualifying leave.

22. **What other insurance coverage may an employee continue during a FMLA qualifying leave?**

An employee may continue all coverage which they had prior to going on the FMLA qualifying leave, by paying the full cost of the premium. This includes, but is not limited to, basic, optional, spouse, child life insurance and short term and long term disability insurance. If the employee takes leave due to a work-related disability, short term disability may not be continued. It may be reinstated upon the employee’s return to work.

23. **May an employee choose not to retain health and dental coverages while on a FMLA qualifying leave?**

Yes, an employee may choose not to retain these coverages. The coverages will be reinstated upon the employee’s return to work.
24. **May an employee choose not to retain optional coverages while on a FMLA qualifying leave?**

Yes, an employee may choose not to retain optional coverages while off the payroll during an FMLA leave. The optional coverages will be reinstated upon return to work if the return to work is within the allotted twelve weeks of FMLA qualifying leave. If an employee chooses not to retain optional coverages, they will not be covered for any claims that may have occurred while they were on leave. Coverage reinstatement limits may apply if subsequent unpaid leave time is taken.

25. **If an employee terminates employment during the FMLA qualifying leave, may the employer recoup the costs of the premiums paid?**

Yes, an employer may recover its share of health/dental insurance premiums paid during a period of unpaid FMLA qualifying leave from an employee if the employee fails to return to work for at least thirty (30) calendar days after the leave unless the employee does not return due to the continuation, recurrence or onset of the serious health condition, or due to other circumstances beyond the employee’s control.

26. **What are an employee’s COBRA rights in relation to an FMLA qualifying leave?**

As it relates to FMLA qualifying leave, the COBRA qualifying event is termination of employment, or the end of the leave - whichever comes first. Once the COBRA qualifying event occurs, the employee may choose to “continue” health and dental by paying the entire cost of coverage - even though the employee did not pay their share of the premium during the FMLA qualifying leave.

27. **What can employees do if they believe that their rights under FMLA have been violated?**

The employee has the choice of:

a) Filing, or having another person file on his or her behalf, a complaint with the Secretary of Labor, or
b) Filing a private lawsuit pursuant to section 107 of FMLA.

28. **How are employees protected who request leave or otherwise assert FMLA rights?**

The FMLA prohibits an employer from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the Act and prohibits the employer from discharging or in any other way discriminating against any person for opposing or complaining about any unlawful practice under the Act. All persons, whether or not employers, are prohibited from discharging or in any other way discriminating against any person because that person has:

i. Filed any charge, or has instituted any proceeding under or related to FMLA;
ii. Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under FMLA; or
iii. Testified, or is about to testify, in any inquiry or proceeding relating to a right under FMLA.

29. **Do State laws providing family and medical leave still apply?**

Nothing in FMLA supersedes any provision of State law. However, if leave qualifies for FMLA and for leave under State law, the leave used counts against the employee’s entitlement under both laws.

30. **If an employee is on a non-medical leave of absence that also qualifies as an FMLA-protected leave, should that employee’s leave accrual date be adjusted?**

No. Accrual dates shall not be adjusted for employees on FMLA-qualifying leaves whether medical or not.
31. **Do employees earn sick and vacation accruals when they are on unpaid FMLA-qualifying leaves?**

   No. Employees only earn sick and vacation accruals when they are in a paid status. In addition, an employee being paid less than eighty (80) hours in a pay period due to an FMLA-qualifying unpaid leave will have his/her sick/vacation accruals prorated.

32. **Are employees on FMLA-qualifying leaves allowed to earn holiday pay during their leave?**

   Only if they are in a paid status on the normal work day before and after the holiday.

33. **Does workers’ compensation leave count against an employee’s FMLA leave entitlement?**

   It can. FMLA qualifying leave and workers’ compensation leave may run concurrently, provided the reason for the absence is due to a qualifying serious illness or injury, and the employer properly notifies the employee in writing that the leave will be counted as FMLA leave.

34. **Can an employer count missed overtime hours against the employee’s FMLA entitlement?**

   Yes, if an employee would normally be required to work overtime, but is unable to do so because of an FMLA-qualifying reason that limits his/her ability to work overtime, the hours which the employee would have been required to work may be counted against the employee’s entitlement (e.g., employee normally would be required to work 48 hours, but due to a serious health condition, can only work 40 hours. The employee would use 8 hours of FMLA-protected leave). Voluntary overtime hours that an employee does not work due to the FMLA reason may not be so counted.

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