

BCTGM FACT SHEET



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THE FAMILY AND MEDICAL LEAVE ACT

The Family and Medical Leave Act (FMLA) is a federal law that recognizes that workers should not have to choose between their jobs and the need to deal with family emergencies. The FMLA establishes a basic floor for family leave benefits for workers. Where greater family and medical leave benefits are provided either by union contract or state law, the more generous benefits apply.

Who is covered by the FMLA?

An estimated 40 percent of U.S. workers are covered by the FMLA. Employees, including part-time and temporary workers, who have worked for an employer at least 1,250 hours (25 hours per week) during the last 12 months are eligible if they work for:

- Federal, state, and local governments and school districts.
- Private sector companies which had 50 or more employees during at least 20 weeks in the previous year. For a specific employee to be eligible, there have to be at least 50 company employees working within a 75 mile radius of where he or she works.

What are the benefits under the FMLA?

Eligible workers are entitled to 12 weeks of unpaid leave in any 12-month period:

- To deal with the birth of a child or the placement of a child with their family for adoption or foster care.
- To care for an immediate family member (child, spouse, or parent, not in-laws) with a "serious health condition."

- To take medical leave when the employee is unable to work because of his or her own "serious health condition."

Any employer-paid health insurance must be continued during the leave. Workers are guaranteed the same position or one that is equivalent in pay, benefits, shift, and responsibilities after the leave is over.

What is a serious health condition?

This is a health condition that requires one of the following:

- In-patient hospital care.
- An absence of more than three calendar days from work along with treatment.
- Treatment or therapy for a long term or chronic condition which, if not treated, would likely result in an absence of more than three days.

This definition includes such conditions as pregnancy and prenatal care, as well as long term conditions that require medical supervision, even if they are not being actively treated, like Alzheimer's disease and stroke rehabilitation. Temporary or minor conditions that do not involve either a hospital stay or continuing medical treatment are not likely to be considered a "serious health condition" for the purpose of FMLA coverage.

How does the FMLA work?

Covered employers are required to post a U.S. Department of Labor notice explaining rights and responsibilities under the Family and Medical Leave Act, and provide employees detailed information when they request FMLA leave.

It is unlawful for employers to discriminate against an employee who requests leave or complains about an employer violation of the FMLA.

Employers may require 30-day advance notice when an employee takes leave under the FMLA for something that is foreseeable - like major surgery scheduled in advance. Employers also may require medical certification of the serious health condition from a doctor or other health care provider, as well as other documentation and reports during the leave.

What happens to seniority and benefits during leave?

Health coverage is the only benefit that employers are required to continue during FMLA leave. Other benefits - such as vacation time, sick leave, and seniority - must be restored when the worker returns from leave, but need not be continued or accrued during the leave period itself.

However, under anti-discrimination laws, workers on FMLA leave cannot be denied benefits that are routinely provided to workers on other types of unpaid leave. For example, if a contract provides life insurance coverage to workers on unpaid educational leaves, the employer must extend that coverage to workers on family and medical leave as well.

Does leave always have to be taken in large blocks?

No. For medical leave (but not for birth or adoption), employers are required to allow leave on an intermittent or reduced work schedule if the worker chooses.

For example, a worker who needs continuing medical treatment, such as chemotherapy, could take one week of unpaid leave a month for 12 months (intermittent leave), while a worker whose mother needs part-time care while recovering from a fractured hip could work a half-day schedule for 24 weeks (reduced leave).

Under the FMLA, it is unlawful for an employer to discipline an employee for excessive absences when the leave is being taken in accordance with the FMLA.

A worker on a reduced or intermittent schedule may be transferred temporarily to another job that better

accommodates the new schedule, as long as pay and benefits are equivalent.

How does the FMLA affect accrued sick leave and vacation time?

Subject to certain conditions, the law gives both workers and employers the right to substitute accrued paid leave for all or part of the 12 weeks of FMLA leave.

- If a worker eligible for unpaid leave under the FMLA asks to substitute accrued paid leave, such as vacation, the employer must grant that request. Requests to use accrued sick leave to care for a relative with a serious medical condition need not be granted if the employer does not ordinarily allow sick leave to be used to care for ill family members.
- Employers, in turn, may require workers to exhaust their accrued paid leave before taking FMLA leave. The paid leave counts against the 12 weeks of unpaid leave required by law. For example, a worker who takes eight weeks of paid disability leave for pregnancy and childbirth would then be eligible to take only four weeks of unpaid parental leave that year under the FMLA.

How will the FMLA affect the leave we get under our contract?

The FMLA does not negate any provisions currently in your contracts; nor does it limit your ability to bargain for greater benefits in the future. If you've already negotiated better family and medical leave benefits in your contract than what the federal Act says, your stronger language takes precedence over the federal law. The same holds true for state laws dealing with FMLA — anything in a state law that's more favorable to the employee takes precedence over the federal law.

The FMLA creates a floor of family and medical leave benefits; this floor can be built upon and expanded in your collective bargaining process. But before bargaining for better benefits, you have to determine what you are already entitled to, under the law.

Look at the medical and family leave provisions in your current collective bargaining agreements. You

need to determine if an employer is covered by the FMLA, since not all employers are, and what bargaining unit employees are eligible for FMLA leave, since not all employees of a covered employer are eligible for FMLA benefits.

Next, compare the benefits available under FMLA to those in your collective bargaining agreement. Are there additional benefits that bargaining unit employees are eligible for under the FMLA; what benefits in your contract(s) already exceed those in the Act? Things to look for include: 1) continuation of employer-provided health coverage throughout leave period; 2) coverage of both men and women for family leave; 3) leave granted for the adoption or foster care placement of a child; 4) FMLA leave to care for an ill parent; 5) the right to take a combination of accrued paid leave and/or unpaid leave for a full 12 weeks. You should go through the same process with examining the differences in state laws and what is in a collective bargaining agreement.

After determining what benefits your members are already entitled to, you can decide to bargain for greater benefits when your contract comes up for renewal. Some suggestions include:

- (1) enforcing the FMLA through the grievance and arbitration procedure;
- (2) permit family leave to be taken for care of seriously ill grandparents, grandchildren and parents-in-law;
- (3) Expand definition of serious health condition to cover serious illnesses and injuries that may be of less than three days in duration, e.g., a child's concussion;
- (4) Require continuation of other benefits, such as life insurance, while on FMLA leave.

The following are a few examples of how you can get better benefits through the collective bargaining process.

Enforcing the FMLA through the collective bargaining agreement:

The FMLA creates statutory rights which are enforceable only through the means provided for in the statute (law). These include a civil lawsuit brought by

either an employee or the Secretary of Labor. The Secretary probably won't be bringing many FMLA lawsuits; an individual employee can bring his or her own lawsuit, but this involves finding an attorney and suffering through the legal process. **If, however, you incorporate the provisions of the FMLA into your collective bargaining agreement, you can ensure enforcement of the law through the grievance and arbitration provision in your contract.** This gives your members a quicker and more efficient remedy when their FMLA rights have been violated.

Suggested language: Any violation either of the federal Family and Medical Leave Act or of any state laws relating to family and medical leave shall be subject to the grievance and arbitration provisions of this agreement. Any remedies provided for in those laws as well as any remedies applicable to any other violation of this Agreement shall be applicable to any violation of such laws.

Continue all benefits during the FMLA leave:

The only fringe benefit the FMLA requires an employer to continue is group health benefits. You may want to negotiate over continuing all or certain benefits (other than health benefits) during periods of FMLA leave.

Suggested language: Notwithstanding the provisions of the federal Family and Medical Leave Act, the employer shall continue all fringe benefits provided for in this Agreement, without cost to the employee, during any period when an employee is taking FMLA leave to which the employee is entitled.

Expand the reasons for which FMLA leave may be taken:

FMLA only covers leave in cases of the birth of a child and to care for a newborn, for cases of adoption or foster care, to care for a seriously ill spouse, child or parent, or because of the employee's own serious illness (where an employee is not able to perform his or her job duties). An employee cannot take FMLA leave to care for a seriously ill grandparent, grandchild, parent-in-law or other person who, though unrelated, shares a close personal relationship with the employee. You may want to negotiate to expand the reasons for which an employee can take FMLA leave.

Suggested language: In addition to the reasons set forth in the federal Family and Medical Leave Act (FMLA) for which an employee may take FMLA leave, an employee may take FMLA leave to care for a grandparent, grandchild or parent-in-law who suffers from a serious health condition as defined in the FMLA. An employee may also take FMLA leave to care for any other person with whom the employee has shared a residence for at least one year and who suffers from a serious health condition as defined in the FMLA.

Expand the serious health conditions for which FMLA leave can be taken:

A “serious health condition” is defined as one that requires a night’s stay in a hospital, causes a person to be absent from normal activities (i.e., school, work) for three days, or is due to a chronic and incurable illness. Let’s say a child suffers a concussion on the playground. The child is treated as an out-patient and does not miss three days of school. Does this qualify as a “serious health condition” under the FMLA? No; therefore, parents cannot take FMLA leave in this example. You may want to negotiate to expand the reasons for which FMLA leave may be taken.

Suggested language: In addition to the reasons set forth in the federal Family and Medical Leave Act (FMLA), an employee may also take FMLA leave because of the employee’s medical emergency or to care for a spouse, child, parent, parent-in-law, grandparent, grandchild or person with whom the employee has shared a residence for at least one year who has suffered a medical emergency which requires immediate medical intervention even though the medical emergency may not necessarily require inpatient care or that the employee or family member be away from his or her daily activities for more than three calendar days.

These are just some suggestions of how you can use the collective bargaining process to build upon the benefits contained in the FMLA.

Where can we get more information on the FMLA?

For more information about the Family and Medical Leave Act, contact Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Research and Education Department, at (301) 933-8600.

