



# FMLA Glossary for Small Businesses

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Consulting

The Family and Medical Leave Act (FMLA) allows eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. In order to better support employees and avoid potential unlawful practices, it's important for employers to understand the various FMLA requirements and how they apply in the context of their small businesses.

This glossary contains definitions from the U.S. Department of Labor (DOL) of some common FMLA terms, including "serious health condition," "physical" or "mental disability," and "eligible employee."

Employers can use this resource to better understanding of common terms used by the FMLA and to help ensure their small businesses have proper employment practices in place.

**ACT**—The Family and Medical Leave Act of 1993.

**ADA**—The Americans with Disabilities Act of 1990.

**ADMINISTRATOR**—The administrator of the Wage and Hour Division (WHD) of the DOL and includes any official of the WHD authorized to perform any of the functions of the administrator.

**CHILD**—A biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis, who is either under age 18 or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence.

**COBRA**—The continuation coverage requirements of Title X of the Consolidation Omnibus Reconciliation Act of 1986.

**COMMERCE**—Any activity, business or industry in commerce or in which a labor dispute would hinder or obstruct commerce of the free flow of commerce and includes “commerce” and any “industry affecting commerce” as defined by the Labor Management Relations Act of 1974.

**CONTINUING TREATMENT BY A HEALTH CARE PROVIDER**—This means any one of the following:

- Incapacity and treatment—A period of incapacity of more than three consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves one of the following:
  - Treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, a nurse under the direct supervision of a health care provider, or a provider of health care services (e.g., physical therapist) under orders of or on referral by a health care provider.
  - 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. Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.
- Pregnancy or prenatal care—Any period of incapacity due to pregnancy or for prenatal care.
- Chronic conditions—Any period of incapacity or treatment for incapacity due to a chronic serious health condition. A chronic serious health condition is one that:
  - Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or a nurse under the direct supervision of a health care provider
  - Continues over an extended period of time, including recurring episodes of a single underlying condition
  - May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes and epilepsy)
- Permanent or long-term conditions—A period of incapacity that 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 disease, a severe stroke or the terminal stages of a disease.

- Conditions requiring multiple treatments—Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or a provider of health care services under orders of or on referral by a health care provider for:
  - Restorative surgery after an accident or other injury
  - A condition that would likely result in a period of incapacity of more than three consecutive full calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis and kidney disease
- Absences attributable to incapacity due to pregnancy, prenatal care or chronic conditions qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than three consecutive full calendar days.

**COVERED ACTIVE DUTY OR CALL TO COVERED ACTIVE DUTY STATUS**—In the case of a member of the regular U.S. armed forces, this means duty during the deployment of the member with the U.S. armed forces to a foreign country. In the case of a member of the U.S. Army Reserve, duty during the deployment of the member with the U.S. armed forces to a foreign country under a federal call or order to activity duty in support of a contingency operation under U.S. Code Title 10.

**COVERED SERVICE MEMBER**—A current member of the U.S. armed forces, including a member of the National Guard or Army Reserve, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or on temporary disability retired list for a serious injury or illness. It can also mean a covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness.

**COVERED VETERAN**—An individual who was a member of the U.S. armed forces, including a member of the National Guard or Army Reserves, and was discharged or released under conditions other than dishonorable at any time during a five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

**DAUGHTER**—See “Child.”

**ELIGIBLE EMPLOYEE**—An employee who has been employed for a total of at least 12 months by the employer on the date on which any FMLA leave is to commence; has met the hours of service requirement by having been employed for at least 1,250 hours of service with the employer during the previous 12-month period or, for an airline flight crew employee, in the previous 12 months has worked or been paid for not less than 60% of the applicable total monthly guarantee and has worked or been paid for not less than 504 hours, not counting personal commute time or vacation, medical or sick leave; and who is employed in any U.S. state, the District of Columbia or any territories or possession of the United States. This does not include any federal officer or employee; any employee who is employed at a worksite at which the employer employs fewer than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is also fewer than 50; or any employee employed in any country other than the United States or any territory or possession of the United States. For purposes of determining if an individual is an eligible employee, an employer does not need to consider any period of previous employment that occurred more than seven years before the date of the most recent hiring of the employee unless the break in service is occasioned by the fulfillment of the employee’s covered service obligations under the Uniformed Services Employment and Reemployment Rights Act or a written agreement, including a collective bargaining agreement.

**EMPLOY**—To suffer or permit to work.

**EMPLOYEE**—Any individual employed by an employer, including the U.S. government, U.S. Postal Service or Postal Regulation Commission, and any U.S. state or political subdivision of a state. Under the FMLA, “employee” has the same meaning as defined in Section 3(e) of the FLSA.

**EMPLOYER**—Any person engaged in commerce or in an industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. This also includes any person who directly or indirectly acts in the interest of an employer, any successor in interest of an employer and any public agency.

**EMPLOYMENT BENEFITS**—All benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an employee benefit plan. This does not include nonemployment-related obligations paid by employees through voluntary deductions, such as supplemental insurance coverage.

**EXTENUATING CIRCUMSTANCES**—Circumstances beyond the employee’s control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts.

**FLSA**—The Fair Labor Standards Act.

**GROUP HEALTH PLAN**—Any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer’s employees, former employees or the families of such employees or former employees. For purposes of the FMLA, the term “group health plan” shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that no contributions are made by the employer; participation in the program is voluntary; the employer’s sole functions with respect to the program are to permit the insurer to publicize the program to employees, collect premiums through payroll deductions and remit them to the insurer; the employer receives no consideration in the form of cash or otherwise in connection with the program; and the premium charged does not increase in the event the employment relationship is terminated.

**HEALTH CARE PROVIDER**—A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices or any other person determined by the U.S. secretary of labor to be capable of providing health care services. Others “capable of providing health care services” only include the following:

- Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the state and performing within the scope of their practice as defined under state law
- Nurse practitioners, nurse midwives, clinical social workers and physician assistants who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law

- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts
- Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits
- Health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country and is performing within the scope of his or her practice as defined under such law

"Authorized to practice in the state" means that a provider must be authorized to diagnose and treat physical or mental health conditions.

**INCAPABLE OF SELF-CARE**—An individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" or "instrumental activities of daily living." Activities of daily living include adaptive activities, such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories and using a post office.

**INTERMITTENT LEAVE**—Leave taken in separate periods of time due to a single illness or injury rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

**KEY EMPLOYEE**—A salaried FMLA-eligible employee who is among the highest-paid 10% of all the employees employed by the employer within 75 miles of the employee's worksite.

**IN LOCO PARENTIS**—Persons with day-to-day responsibilities to care for or financially support a child. It's a relationship in which a person has put themselves in the situation of a parent by assuming and discharging the obligations of a parent to a child, and it exists when an individual intends to take on the role of a parent.

**MILITARY CAREGIVER LEAVE**—Leave taken to care for a covered service member with a serious injury or illness under the FMLA.

**NEXT OF KIN OF A COVERED SERVICE MEMBER**—The nearest blood relative other than the covered service member's spouse, parent, son or daughter in the following order of priority: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions; brothers and sisters; grandparents; aunts and uncles; and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin.

**OUTPATIENT STATUS**—With respect to a covered service member who is a current member of the U.S. armed forces; the status of a member of the armed forces assigned to either a military medical treatment facility as an

outpatient; or a unit established for the purpose of providing command and control of members of the U.S. armed forces receiving medical care as outpatients.

**PARENT**—A biological, adoptive, step- or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter, as defined below. This term does not include parents “in law.”

**PERSON**—An individual, partnership, association, corporation, business trust, public agency, legal representative or any organized group of persons.

**PHYSICAL OR MENTAL DISABILITY**—A physical or mental impairment that substantially limits one or more of the major life activities of an individual, as defined by the ADA.

**PUBLIC AGENCY**—The government of the United States; the government of a state or political subdivision thereof; any agency of the United States, including the U.S. Postal Service and Postal Regulatory Commission, a state or a political subdivision of a state, or any interstate governmental agency.

**REDUCE LEAVE SCHEDULE**—A leave schedule that reduces an employee’s usual number of hours per workweek or hours per workday.

**SERIOUS HEALTH CONDITION**—An illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. 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. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of the FMLA are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of a serious health condition are met.

**SERIOUS INJURY OR ILLNESS**—In the case of a current member of the U.S. armed forces, including a member of the National Guard or U.S. Army Reserve, an injury or illness that was incurred by the covered service member in the line of duty on active duty in the U.S. armed forces or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the armed forces and that may render the service member medically unfit to perform the duties of the member’s office, grade, rank or rating. In the case of a covered veteran, an injury or illness was incurred by the member in the line of duty on active duty in the U.S. armed forces or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the armed forces and manifested itself before or after the member became a veteran and is one of the following:

- A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the U.S. armed forces and rendered the service member unable to perform the duties of the service member’s office, grade, rank or rating.
- A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50% or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave.

- A physical or mental condition that substantially impairs the covered veteran’s ability to secure or follow a substantially gainful occupation by reason of disability or disabilities related to military service or would do so absent treatment.
- An injury, including a psychological injury, that is the basis on which the covered veteran has been enrolled in the U.S. Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

**SON**—See “Child.”

**SPOUSE**—A husband or wife as defined or recognized in the state where the individual was married. This definition includes individuals in a same-sex marriage or common-law marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have been entered into in at least one state.

**STATE**—Any state of the United States, the District of Columbia, or any territory or possession of the United States.

**TREATMENT BY A HEALTH CARE PROVIDER**— An in-person visit to a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity.

Source: U.S. Department of Labor