

FMLA: The Leave Process

What happens when you need to be absent from work due to a serious health condition or other qualifying circumstances?

- **What is FMLA:**
 - The Family and Medical Leave Act of 1993 is a federal law
 - Allows up to 12 weeks/60 work days of job-protected leave
 - Requires employers to provide employees job-protected, unpaid leave, for employees with qualifying life circumstances:
 - To care for a new child (birth or adoption)
 - To care for a seriously ill family member (spouse, child, or own parent)
 - To recover from a qualified serious health condition
 - To care for an injured military service member in one's family
 - To address qualifying exigencies arising out of a family member's deployment
- **Who is eligible for FMLA Leave:**
 - Employees must have worked for a minimum of 12 months (service can be non-consecutive)
 - Employees must have worked a total of 1250 hours within the 12-month period immediately preceding the date that the employee's leave commences
- **What does FMLA do for the Employee:**
 - Allows benefits to be maintained for the duration of the employee's qualifying leave (12 weeks/60 work days).
 - You will continue to be responsible for the employee portion of your health/dental insurance premium.
 - You will also be responsible for maintaining your Flexible Spending Account and/or Dependent Care Deductions if applicable.
 - All accrued paid sick/personal days must be used.
 - Bargaining Unit Members that have exhausted all accrued sick/personal days, may choose to generate a negative balance for their OWN personal illness/injury for absent time.
 - You will need to complete a Negative Balance Form available from the Human Resources Office to do so.
 - Protects an employee from disciplinary action for using approved FMLA leave, and holds an employee's position during an absence for up to 12 weeks/60 work days
 - Allows the employee flexibility in absences from work:
 - Consecutive Leave – taken continuously for an extended period of time
 - Intermittent Leave – taken on an "as needed" basis for short periods of time*
 - Reduced Leave – allows the employee's normal schedule to be adjusted to accommodate the employee's limited ability to work*

*Employee must be able to perform the essential functions of their position
- **Beginning the process:**
 - **Step 1** – The employee's Supervisor is notified that the employee may need leave from work for a potential FMLA qualifying reason
 - **Step 2** – The employee's Supervisor directs the employee to the Human Resource (HR) Office regarding their request for a leave of absence

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- **Step 3** – HR will consult with the employee (in person, over the phone or through email) to determine whether or not the employee’s leave qualifies for FMLA
 - Together, HR and the employee will:
 - Determine if the employee is eligible for FMLA
 - Discuss the employee’s rights and responsibilities under FMLA
 - Ensure employee receives required documentation (provided by HR Office) and that documentation will be completed by employee and/or employee’s health care provider
- **What “Qualifies” under FMLA:**
 - FMLA may cover any of the following reasons:
 - **Birth, Adoption, or Care of a Newborn:**
 - Both mother and father or domestic partners are each entitle to FMLA coverage for the birth of their child. This also applies to adoption and foster care placement
 - Both mother and father or domestic partners are each entitled to FMLA for bonding time until the child is one year of age or in the case of child placement, the child has been in the home for one year.
 - The mother is entitled to FMLA coverage for incapacity due to pregnancy or for her own serious health condition following the birth of the child
 - FMLA for incapacity due to pregnancy may begin before the birth of the child if necessary for a prenatal care, doctor appointments due to the pregnancy, or sever morning sickness.
 - FMLA for adoption or foster care may begin before placement if necessary for counseling, court appearance, attorney/physician consultation, or travel to another country
 - The husband or domestic partner is entitled to FMLA coverage if needed to care for his pregnant spouse who is incapacitated or has a serious health condition
 - **Needed to Care for a Family Member:**
 - Definitions of a Family Member:
 - **Spouse** – legal spouse as defined by NH law; same-sex domestic partner as qualified by NH law
 - **Parent (not in-laws)** – biological, adoptive, step or foster father or mother; any other individual who stood in loco parentis to the employee when the employee was under age 18
 - **Child** – biological, adopted or foster child, legal ward, stepchild, child of a same-sex domestic partner, or child of a person standing in loco parentis; for FMLA to care for a child with a serious health condition, the child must be under the age of 18, age 18 or older if incapable of self-care because of mental or physical disability; for FMLA for military caregiver leave or family military leave, the child may be any age
 - **Next of Kin** – nearest blood relative of the covered service member other than the spouse, parent, or child in the following order of priority unless the service member has designated in writing another blood relative: blood relatives granted legal custody of the service member; brothers and sisters; grandparents; aunts and uncles; first cousins

- FMLA coverage to care for a family member with a serious health condition is limited to the employee's
 - spouse or same-sex domestic partner
 - own parent (not in-law's)
 - the employee's child or child of the same-sex domestic partner
 - covered service member
- Caring for a family member includes:
 - Psychological care, such as comfort and support
 - Physical care, such as feeding, dressing and transportation to doctor appointments
 - Substituting for others who normally care for the family member; the employee need not be the only individual available to care for the family member
 - Making arrangements for changes in care such as transfer to a nursing home
- Caring for a family member **does not** include:
 - Visiting a sick parent who is being cared for by another family member
 - Child care when the child is not incapacitated due to a serious health condition
 - Attending a funeral or bereavement leave; when the family member dies. FMLA to care for the family member ends
 - Attending to the deceased's estate
- **Definitions of a Serious Health Condition**
 - A serious health condition is defined as an illness or injury that involves:
 - **Inpatient Care:** A condition requiring overnight hospitalization and subsequent treatment
 - **Continuing Treatment:**
 - A period of incapacity for four or more full consecutive calendar days and, an in-person visit to a health care provider within 7 days of the first day of incapacity and a second in-person visit within 30 days of the first day of incapacity **OR** an in-person visit to a health care provider within 7 days of the first day of incapacity followed by a regimen of continuing treatment such as a course of prescription medication or physical therapy
 - Pregnancy or prenatal care
 - Chronic conditions continuing over an extended period of time (e.g. asthma, diabetes, migraine headaches); any period of incapacity; may cause episodic rather than continuous incapacity; requires at least two visits annually to the health care provider
 - Permanent or long-term conditions (e.g. Alzheimer's, stroke, terminal diseases); any period of incapacity; requires continuing supervision by a health care provider
 - Conditions requiring multiple treatments (e.g. chemotherapy, dialysis, physical therapy); any period of incapacity; restorative surgery or conditions, if left untreated, would result in incapacity of more than three full consecutive calendar days

- **Definitions of a Health Care Provider**
 - A licensed physician
 - Another person capable of providing health care services such as: Podiatrists, Dentists, Clinical Psychologists, Optometrists, Chiropractors, Nurse practitioners, Nurse midwives, Clinical social workers, Physician assistants, Christian Science practitioners
- **Intermittent or Reduced Schedule FMLA**
 - Intermittent leave is FMLA coverage if taken in separate blocks of time due to a single qualifying reason
 - Reduced schedule leave reduces the employee's usual number of hours worked per day or per week
- **Leave Return Process**
 - Employee must submit to HR a completed Release to Work form from their healthcare provider and/or employee, prior to their return date
 - This release must address whether the employee can perform the essential functions of their position (i.e. restrictions/limitations)
 - If the healthcare provider releases the employee with restrictions/limitations, employee may be delayed by if HR is reviewing the return to work restrictions that may limit the employee from performing the essential functions of their job
 - The HR Office will notify the employee if proper accommodations can be made, and if the employee can return to work