Crisis Care Toolkit:
A Legal Resource Guide for Orlando Victims and Families

HUMAN RIGHTS CAMPAIGN

IMMIGRATION EQUALITY

Lambda Legal
making the case for equality

CENTER FOR CIVIL AND HUMAN RIGHTS
LGBT INSTITUTE

Littler
Employment & Labor Law Solutions Worldwide®

National Center for TRANSGENDER EQUALITY

NCLR

THE LGBT BAR

out&EQUAL
Workplace Advocates

OUT LEADERSHIP

TLDEF
Transgender Legal Defense & Education Fund

the Williams INSTITUTE

A coalition of LGBTQ advocacy groups: The Human Rights Campaign (HRC), Immigration Equality, Lambda Legal, the LGBT Institute at the Center for Civil and Human Rights, the National Center for Transgender Equality (NCTE), the National Center for Lesbian Rights (NCLR), the National LGBT Bar Association, Out & Equal Workplace Advocates, Out Leadership, the Transgender Legal Defense & Education Fund (TLDEF), the Williams Institute, and the law firm of Littler Mendelson have assembled this resource guide on benefits that may be available in this time of need. This toolkit is not intended to be legal advice and does not constitute legal advice.

Individuals seeking legal advice and referrals may contact the Orange County Bar Association at 407-422-4537 between 9:00 a.m. to 5:00 p.m. It is handling phone intake and referrals for victim legal inquiries, in coordination with the Legal Aid Society of the Orange County Bar Association, the Florida Bar's Real Property, Probate and Trust Law Section, and other affiliate bar organizations. Individuals seeking legal advice about immigration-related issues may contact Immigration Equality at 212-714-2904 or at orlando@immigrationequality.org for free and confidential legal advice.

I was injured in the attack and cannot work. What options do I have to try to keep my job?

Family and Medical Leave Act (FMLA):

- If you face a serious health condition that causes you to miss work, you may be able to take up to 12 weeks of unpaid, job-protected time off under the FMLA. FMLA leave may be available as a single block of time or intermittently.
- If you take FMLA leave, your employer will continue your health insurance as if you were not on leave, but you may have to continue to make any usual employee contributions. As long as you are able to return to work before you exhaust your FMLA leave, you must be returned to the same or an equivalent job.
- Under the FMLA, serious health conditions include a) conditions for which you had an overnight stay in a hospital; b) conditions that incapacitate you for more than three consecutive days and require ongoing medical treatment; c) chronic conditions that require treatment two or more times a year; and d) pregnancy.
- Serious health conditions include both physical and psychological health conditions.
- The FMLA applies to employers who employ 50 or more employees for 20 or more calendar weeks during the previous or current calendar year and to all governmental employers.
- Only employees who work at a worksite where 50 or more employees are employed within 75 miles may be eligible for the leave.
- To be eligible for FMLA leave, you must have worked for your employer for at least 12 months and have worked at least 1,250 hours during the 12-month period before the starting date of the leave.
- Taking FMLA leave requires you to notify your employer about your serious health condition and your need to take time off of work.

- The U.S. Department of Labor has published guides in both English and Spanish for employees on the FMLA and are included at the end of this document.

Employee Assistance Program (EAP):

- Many employers have an Employee Assistance Program. These programs assist employees in getting help for personal or family problems including mental health, financial or legal concerns. Typically there is no cost for contacting the EAP and seeking a confidential assessment or referral. You can ask your employer if this service is available to you and your family members.

Health Insurance and Continuing Health Insurance Through COBRA, Assistance with HIV/AIDS Medication, and Assistance with Medical Bills:

- If you receive your health insurance from your employer and you are unable to work, you can ask your employer if it will require you to pay your share of the health insurance premiums while you are on leave. If you fail to make the payment on time, you may not be able to continue your health insurance benefits.
- If you have family members on your insurance coverage, you are usually expected to continue to pay the premium for them as well.
- If you were receiving health insurance through a family member who has lost his or her health insurance, you should receive information on how you can continue your health insurance. This notice is commonly referred to as a COBRA notice. You have up to 60 days to decide whether to continue your health insurance through COBRA. If you do not receive a notice within 14 days of the end of your coverage, you can contact the company that provides your health insurance.
- If you continue your health insurance through COBRA, you will usually pay the full cost of the insurance. For this reason, it can be important to compare the coverage and cost of coverage under COBRA with the coverage available through a state or federal healthcare marketplace (www.HealthCare.gov) for which you may be eligible. In most cases, the choice you make will be binding on you through the end of the calendar year.
- The U.S. Department of Labor has published guides in both English and Spanish for employees about continuing health insurance under COBRA:

  An Employee's Guide to Health Benefits Under COBRA:
  https://www.dol.gov/ebsa/publications/cobraemployee.html

  Una guía para el empleado sobre los beneficios de salud bajo COBRA
  https://www.dol.gov/ebsa/publications/cobraemployeesp.html
- If you or a family member are taking HIV/AIDS medications, are uninsured or have inadequate prescription coverage, and have income below 400% of the federal poverty level (this means annual income of less than $47,820 for a single-person household or $97,200 for a four-person household), you may be eligible to participate in the Florida AIDS Drug Assistance Program (ADAP). Information on the program and how to enroll can be found at:

  http://www.floridahealth.gov/diseases-and-conditions/aids/adap/index.html

  You also can call for information on the program: English: 1-800-352-2437 (1-800-FLA-AIDS) Spanish: 1-800-545-7432 (1-800-545-SIDA)

- If you or a family member are uninsured and need medical care from a hospital, you can ask the hospital about its financial assistance program. Hospitals usually will give an uninsured person a copy of any facility discount and charity care discount policies for which the uninsured person may be eligible. Information on the financial assistance programs of Orlando Health, Florida Hospital, and Nemours Children's Health System can be found at:

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  http://www.nemours.org/patientfamily/financialassistance.html

- If you or a family member have a child age 18 or younger, the child may be eligible for coverage under Florida's Child Insurance Program (CHIP). Information on the program in both English and Spanish can be found at:

  http://floridakidcare.org/index.html

  http://floridakidcare.org/espanol.html

Short-Term Disability (STD):

- Some employers have a short-term disability policy or insurance that is available if you have an extended absence caused by a physical or psychological medical condition that prevents you from performing your job. These policies will typically pay you a fixed percentage of your regular pay while you are on leave. You can ask your employer whether it offers such a benefit and how to apply.

- Typically, you will need to supply information from a doctor to support a claim that you are medically unable to perform your job.

Long-Term Disability (LTD):

- Some employers also have a long-term disability insurance that is available if you have an extended absence caused by a physical or psychological medical condition that prevents you from performing your job for more than a 90 or 180 days. The terms of these policies vary. You can ask your employer if it offers such a benefit and how to apply.

- As with short-term disability, you usually need to supply information from a doctor to support a claim that you are medically unable to perform your job.

- The U.S. Department of Labor has published guides in both English and Spanish for employees on seeking healthcare and disability benefits:

  Filing a Claim for Your Health or Disability Benefits
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  Cómo Presentar Una Reclamación Para Sus Beneficios de Salud o Incapacidad
  https://www.dol.gov/ebsa/publications/FilingBenefitsClaimsp.html

Americans with Disabilities Act (ADA):

- The ADA prohibits employers with 15 or more employees from discriminating against employees who are qualified to perform the essential functions of their job with or without a reasonable accommodation. The ADA requires employers to provide a reasonable accommodation to qualified individuals with disabilities so they can perform their job unless providing that accommodation would create an undue hardship for the employer.

- A person is disabled under the ADA if the person has a physical or mental impairment that substantially limits any one of the person's major life activities.

- Major life activities include things like caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.
- A reasonable accommodation under the ADA may include things such as adjusting marginal job duties, providing or modifying equipment, modifying a work schedule, or granting a temporary leave of absence to enable you to recuperate or receive treatment.
- Under the ADA, your employer must know about your impairment. If you believe that you may need a reasonable accommodation, you can request one.
- A short guide in both English and Spanish for drafting a request for reasonable accommodation is included at the end of this document.

A family member was injured in the attack, and I need to care for them or my family member's children. Can I take time off to care for them?

Family and Medical Leave Act (FMLA):

- If you need to miss work to care for a parent, child or spouse with a serious health condition, you may be able to take up to 12 weeks of unpaid, job-protected time off under the FMLA. You can take leave in a single block of time or intermittently.
- If you take FMLA leave, your employer will continue your health insurance as if you were not on leave, but you may have to continue to make any usual employee contributions. As long as you are able to return to work before you exhaust your FMLA leave, you must be returned to the same or an equivalent job.
- Under the FMLA, serious health conditions include a) conditions for which someone had an overnight stay in a hospital; b) conditions that incapacitate a family member for more than three consecutive days and require ongoing medical treatment; c) chronic conditions that require treatment two or more times a year; and d) pregnancy.
- Serious health conditions include both physical and psychological health conditions.
- The FMLA applies to employers who employ 50 or more employees for 20 or more calendar weeks during the previous or current calendar year and to all governmental employers.
- Only employees who work at a worksite where 50 or more employees are employed within 75 miles may be eligible for the leave.
- To be eligible for FMLA leave, you must have worked for your employer for at least 12 months and have worked at least 1,250 hours during the 12-month period before the starting date of the leave.
- Eligible employees may take leave to care for their spouse and children who either are under 18 or are 18 or older and are incapable of taking care of themselves because of a mental or physical disability. Employees can take FMLA leave for adult children only if their adult children need assistance with three or more activities of daily living such as bathing, dressing, eating, cooking, cleaning, etc.
- The FMLA permits employees to take leave to care for a child who is not biologically related to the employee if the employee can show that the employee is responsible for the child's day-to-day care and the employee is financially responsible for the child.

- Providing care includes providing both physical and psychological care and comfort to a family member.
- You do not have to be the only caregiver to be eligible to take FMLA leave.
- Taking FMLA leave requires notifying your employer about your need to take time off of work to care for your family member with a serious health condition.
- The U.S. Department of Labor has published guides in both English and Spanish for employees on the FMLA and are included at the end of this document.

Employee Assistance Program (EAP):

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Health Insurance and Assistance with HIV/AIDS Medication, and Assistance with Medical Bills:

- If you receive your health insurance from your employer and you are unable to work, you should ask your employer if it will require you to pay your share of the health insurance premiums while you are on leave. If you fail to make the payment on time, you may not be able to continue your health insurance benefits.
- If you have family members on your insurance coverage, you will be expected to continue to pay the premium for them as well.
- If you or a family member are taking HIV/AIDS medications, are uninsured or have inadequate prescription coverage, and have income below 400% of the federal poverty level (this means annual income of less than $47,820 for a single-person household or $97,200 for a four-person household), you or your family member may be eligible to participate in the Florida AIDS Drug Assistance Program (ADAP). Information on the program and how to enroll can be found at:

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- If you or a family member have a child age 18 or younger, the child may be eligible for coverage under Florida's Child Insurance Program (CHIP). Information on the program in both English and Spanish can be found at:

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A family member or friend was killed or injured in the attack, and I am having difficulty coping. I cannot work due to my current emotional state. What options do I have to try to keep my job?

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A family member was killed in or died as a result of the Orlando attack. What happens with their final paycheck? What else do I need to get from my family member's employer?

Final Payment of Wages:

- If you lost a family member in the attack, Florida law permits, but does not require, employers to send an employee's final wage payment and any check for reimbursement of expenses or other assistance directly to the employee's surviving spouse. If there is no surviving spouse, an employer may pay the employee's children if the children are over 18. If there are no children over 18, the payment may be made to the employee's parent. You can contact your family member's employer to ask that such payments be made to you.

Life Insurance:

- Some employers may offer employees the ability to obtain life insurance through work. If you lost a loved one in the attack, you can check with the individual's employer to see if they had a life insurance policy through work.
- If so, the employer can assist you by providing you with the information necessary for you to seek a payment on the policy.

Health Insurance and Continuing Health Insurance Through COBRA, Assistance with HIV/AIDS Medication, and Assistance with Medical Bills:

- If you were receiving health insurance through a family member who was killed in the Orlando shooting, you should receive information on how you can continue your health insurance. This notice is commonly referred to as a COBRA notice. You have up to 60 days to decide whether to continue your health insurance through COBRA. If you do not receive a notice within 14 days of the end of your coverage, you can contact the company that provides your health insurance.

- If you continue your health insurance through COBRA, you will usually pay the full cost of the insurance. For this reason, it can be important to compare the coverage and cost of coverage under COBRA with the coverage available through a state or federal healthcare marketplace (www.HealthCare.gov) for which you may be eligible. In most cases, the choice you make will be binding on you through the end of the calendar year.

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A loved one was seriously injured in the Orlando attack. How can my loved one make sure that someone is able to make decisions about their care if my loved one is not able to do so?

Hospital Visitation Rights

- Generally, hospitals are required to notify patients of their right, subject to their consent, to receive the visitors they designate, including, but not limited to, a spouse, a domestic partner (including a same-sex domestic partner), another family member, or a friend, and of their right to withdraw or deny such consent at any time. Visitation privileges may not be denied or restricted on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.

Healthcare Advance Directives:

- If you have a loved one who was injured in the tragedy, you may want to consider asking them to prepare a healthcare surrogate designation form or a living will that can be used in the event that your loved one becomes incapable of making decisions concerning their health.
- A healthcare surrogate designation is a document in which you name another person who may receive medical information about you and is empowered to make medical decisions for you if you are unable to make them yourself.
- A living will is a statement that a person makes regarding the medical care and life-prolonging procedures that someone wants to receive if that person becomes incapacitated and unable to make his or her own healthcare decisions.
- The Florida Agency for Healthcare Administration has model forms of both directives available on its website in both English and Spanish:

  Healthcare Advance Directives
  http://www.floridahealthfinder.gov/reports-guides/advance-directives.aspx

  Directivas por anticipado de cuidado médico
  http://www.floridahealthfinder.gov/reports-guides/advance-directives-espanol.aspx

I was a witness to the attack and wish to share information with authorities, but I am an immigrant without documentation. If I speak with law enforcement and/or government officials, can I be deported?

- Often, different federal, state, local, and tribal law enforcement agencies collaborate when investigating a crime, especially one as large as the Orlando attack. It can be difficult to know which agency or branch a law enforcement official is part of. Understandably, immigrants in the U.S. may be wary of reporting a crime or cooperating with law enforcement agencies in an investigation. Congress created the U visa out of recognition that survivors of violent crimes without legal status may be reluctant to help in the investigation or prosecution of criminal activity.
- Some of the eligibility requirements for an immigrant to obtain U visa status include: (1) being a survivor of a serious crime; (2) suffering substantial physical or mental abuse as a result of having been a victim of criminal activity;, and (3) having a federal, state, local, or tribal law enforcement officer, prosecutor, judge, or other government official certify that the immigrant is/was willing to participate in the investigation and/or prosecution of the crime. Many individuals who survived the Orlando attack may be eligible for a U visa, even if they were not physically harmed as the result of the attack.
- If you have questions about whether to speak to government or law enforcement officials or about whether you may be

eligible for a U visa, contact Immigration Equality at 212-714-2904 or at orlando@immigrationequality.org for free and confidential legal advice.

I am receiving medical care following the attack, and my family members or loved ones who live in another country would like to visit and help me. I may need help for an extended period of time. Do they need a special visa? If they do, how can they get one?

- A person seeking to enter the U.S. to visit a relative or friend who needs help as a result of the Orlando attack may do so by obtaining a visitor visa (B1/B2 visa) from the State Department. To be eligible for a visitor visa, foreign nationals must demonstrate they intend to visit the country temporarily for business or "pleasure" (including a family visit, even if that is to comfort or mourn a family member). They must also establish that they do not intend to remain in the U.S. permanently. The presumption under U.S. immigration law is that every visitor visa applicant intends to remain in the U.S. until they demonstrate otherwise. Applicants for a visitor visa must overcome this presumption by demonstrating strong ties to their home country.
- To increase the chances of obtaining a visitor visa, applicant may want to submit proof of their reasons for returning home before their authorized stay in the U.S. expires. Such proof may include a copy of their lease or mortgage, a letter from an employer confirming employment and authorized leave, bank accounts with funds, and evidence of family responsibilities such as the care of children, a spouse, or an elderly parent.
- Please note that visitors to the U.S. entering on a B1/B2 visa are not authorized to work for pay while they are visiting the country. As such, applicants must also demonstrate the ability to provide for their basic needs while they are in the U.S. A letter from a family member or a friend offering to provide room and board may be helpful. If a family member is seeking entry to the U.S. to visit someone injured or involved in the Orlando attack, they should inform the consular officer that this is the case.
- If a family member's visa application is denied, they may then attempt to enter the U.S. by applying for humanitarian parole from the Department of Homeland Security. Homeland Security has discretionary authority to grant humanitarian parole that allows for the temporary entry of individuals into the U.S. for urgent humanitarian reasons or for significant public benefit. Applicants for humanitarian parole must prove that they have no other option to enter the U.S. before applying for parole. As such, demonstrating that the applicant has been denied a visa is usually required.
- A family member also may make an application for humanitarian parole on behalf of someone who is outside of the U.S. and has an urgent need to enter the country. Much like the B1/B2 visa, applicants for humanitarian parole must demonstrate that they intend to stay in the U.S. for only a finite amount of time. Nevertheless, parole may be issued for up to one year and is renewable. Applicants for humanitarian parole seeking to enter the U.S. to visit a family member involved in the Orlando attack should inform Homeland Security that this is the case.
- If you or your family members have questions about how to apply to visit the United States, they may contact Immigration Equality at 212-714-2904 or at orlando@immigrationequality.org for free and confidential legal advice.

I need assistance following the Orlando attack such as medical care, including psychological care, or legal assistance. I am an immigrant without documentation. If I seek out assistance, can I be deported?

- While seeking medical care, psychological care, or legal assistance is very unlikely to put you at risk of being deported, undocumented immigrants may be concerned that receiving medical or other benefits may affect their ability to obtain immigration status in the future. Immigrants should be aware that in almost all instances, medical and legal professionals must keep information about you, including your immigration status, confidential.
- If you or your family members have questions about how receiving medical care or other benefits may affect your current or future immigration status, please contact Immigration Equality at 212-714-2904 or at orlando@immigrationequality.org for free and confidential legal advice.

I am living in Florida with a visa that will soon run out. If I need medical care or I am providing care to someone as a result of the attack in Orlando, can I get my visa extended?

- While many visas can be renewed or extended, in most cases you must file your request before your authorized stay expires. In addition, an individual may also have other options for more permanent immigration status if that is desired.
- If you are interested in extending or renewing your authorized stay and/or visa, or if your visa has recently expired, please contact Immigration Equality at 212-714-2904 or at orlando@immigrationequality.org for free and confidential legal advice.

The Employee's Guide to the Family and Medical Leave Act

UNITED STATES DEPARTMENT OF LABOR

An Introduction to the Family and Medical Leave Act

When you or a loved one experiences a serious health condition that requires you to take time off from work, the stress from worrying about keeping your job may add to an already difficult situation.

The Family and Medical Leave Act (FMLA) may be able to help. Whether you are unable to work because of your own serious health condition, or because you need to care for your parent, spouse, or child with a serious health condition, the FMLA provides unpaid, job-protected leave. Leave may be taken all at once, or may be taken intermittently as the medical condition requires.

This guide provides a simple overview of how the FMLA may benefit you. In your time of need, sometimes you just *need time*.

This Guide Explains:

- **Who Can Use FMLA Leave?**
- **When Can I Use FMLA Leave?**
- **What Can the FMLA Do for Me?**
- **How Do I Request FMLA Leave?**
- **Communication with Your Employer**
- **Medical Certification**
- **Returning to Work**
- **How to File a Complaint**
- **Website Resources**

Who Can Use FMLA Leave?

In order to take FMLA leave, you must first work for a covered employer. Generally, private employers with at least 50 employees are covered by the law. Private employers with fewer than 50 employees are not covered by the FMLA, but may be covered by state family and medical leave laws. Government agencies (including local, state and federal employers) and elementary and secondary schools are covered by the FMLA, regardless of the number of employees.

If you work for a covered employer, you need to meet additional criteria to be eligible to take FMLA leave. Not everyone who works for a covered employer is eligible.

First, you must have worked for your employer for at least 12 months. You do not have to have worked for 12 months in a row (so seasonal work counts), but generally if you have a break in service that lasted more than seven years, you cannot count the period of employment prior to the seven-year break.

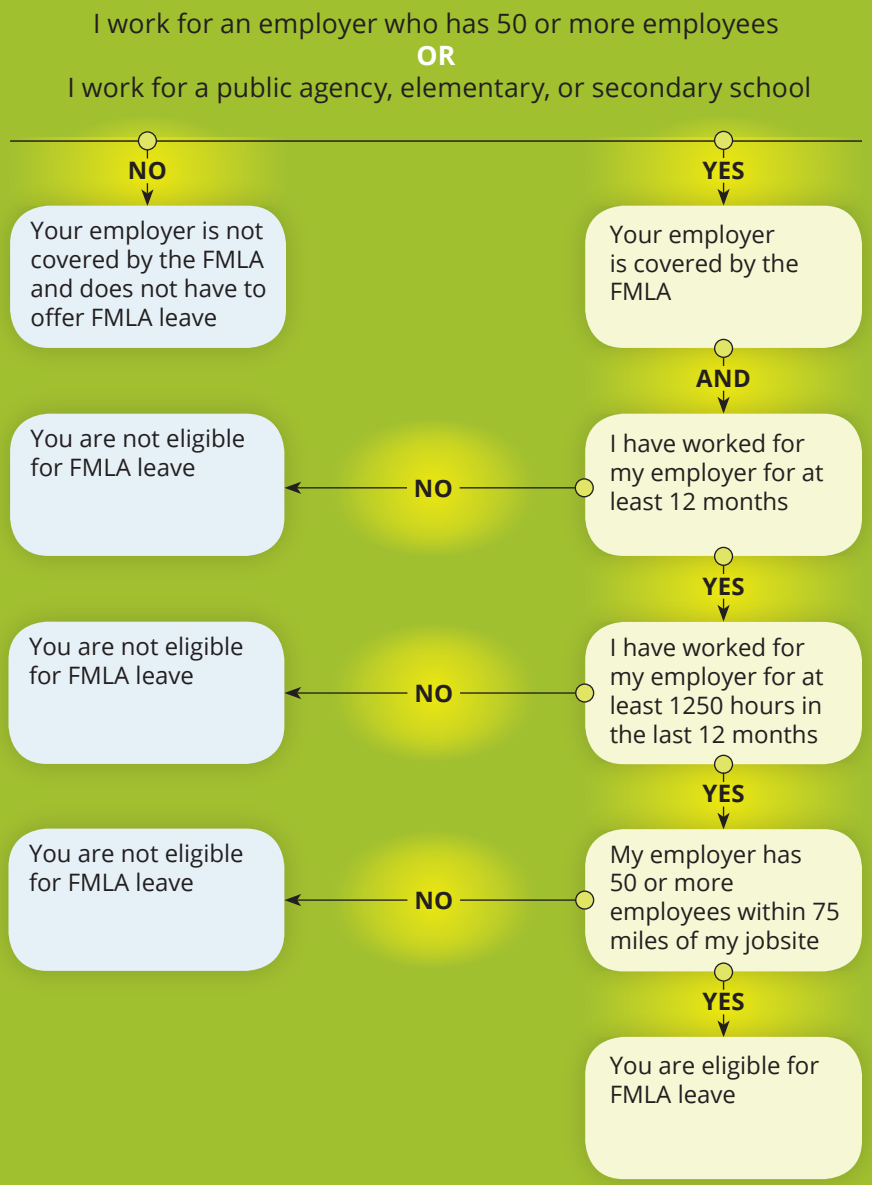
Second, you must have worked for the employer for at least 1250 hours in the 12 months before you take leave. That works out to an average of about 24 hours per week over the course of a year.

Lastly, you must work at a location where the employer has at least 50 employees within 75 miles of your worksite. So even if your employer has more than 50 employees, if they are spread out and there are not 50 employees within 75 miles of where you work, you will not be eligible to take FMLA leave.

Airline Flight Attendants/Flight Crew Employees

Due to non-traditional work schedules, airline flight attendants and flight crew members are subject to special eligibility requirements under the FMLA. You meet the hours of work requirement if, during the 12 months prior to your need for leave, you have worked or been paid for at least 60% of your applicable monthly guarantee, and have worked or been paid for at least 504 hours, not including personal commute time, or time spent on vacation, medical or sick leave.

Am I Eligible for FMLA Leave?



When Can I Use FMLA Leave?

If you work for an employer that is covered by the FMLA, and you are an eligible employee, you can take up to 12 weeks of FMLA leave in any 12-month period for a variety of reasons, including:

Serious Health Condition

You may take FMLA leave to care for your spouse, child or parent who has a serious health condition, or when you are unable to work because of your own serious health condition.

The most common serious health conditions that qualify for FMLA leave are:

1) conditions requiring an overnight stay in a hospital or other medical care facility;
2) conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than three consecutive days and require ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
3) chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and
4) pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).

Military Family Leave

The FMLA also provides certain military family leave entitlements. You may take FMLA leave for specified reasons related to certain military deployments. Additionally, you may take up to 26 weeks of FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.

Expanding Your Family

You may take FMLA leave for the birth of a child and to bond with the newborn child, or for the placement of a child for adoption or foster care and to bond with that child. Men and women have the same right to take FMLA leave to bond with their child but it must be taken within one year of the child's birth or placement and must be taken as a continuous block of leave unless the employer agrees to allow intermittent leave (for example, a part-time schedule).

Parent
Parent means 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 child. This term does not include parents-in-law.

Son or Daughter
Son or daughter (or *child*) means a biological, adopted, or foster child, stepchild, legal ward, or 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.

Spouse
Spouse means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a common law marriage or same-sex marriage.

In Loco Parentis
A person stands *in loco parentis* if that person provides day-to-day care or financial support for a child. Employees with no biological or legal relationship to a child can stand *in loco parentis* to that child, and are entitled to FMLA leave (for example, an uncle who cares for his sister's children while she serves on active military duty, or a person who is co-parenting a child with his or her same-sex partner). Also, an eligible employee is entitled to FMLA leave to care for a person who stood *in loco parentis* to that employee when the employee was a child. (*See Administrator's Interpretation No. 2010-3 and Fact Sheets 28B and C.*)

What Can the FMLA Do for Me?

If you are faced with a health condition that causes you to miss work, whether it is because of your own serious health condition or to care for a family member with a serious health condition, you may be able to take up to 12 weeks of job-protected time off under the FMLA.

If you take FMLA leave, your employer must continue your health insurance as if you were not on leave (you may be required to continue to make any normal employee contributions).

As long as you are able to return to work before you exhaust your FMLA leave, you must be returned to the same job (or one nearly identical to it). This job protection is intended to reduce the stress that you may otherwise feel if forced to choose between work and family during a serious medical situation.

Time off under the FMLA may not be held against you in employment actions such as hiring, promotions or discipline.

You can take FMLA leave as either a single block of time (for example, three weeks of leave for surgery and recovery) or in multiple, smaller blocks of time if medically necessary (for example, occasional absences due to diabetes). You can also take leave on a part-time basis if medically necessary (for example, if after surgery you are able to return to work only four hours a day or three days a week for a period of time). If you need multiple periods of leave for planned medical treatment such as physical therapy appointments, you must try to schedule the treatment at a time that minimizes the disruption to your employer.

FMLA leave is unpaid leave. However, if you have sick time, vacation time, personal time, etc., saved up with your employer, you may use that leave time, along with your FMLA leave so that you continue to get paid. In order to use such leave, you must follow your employer's normal leave rules such as submitting a leave form or providing advance notice. Even if you don't want to use your paid leave, your employer can require you to use it during your FMLA leave. For example, if you are out for one week recovering from surgery, and you have two weeks of paid vacation saved up, your employer can require you to use one week of your vacation time for your FMLA leave. When you use paid leave for an FMLA-covered reason (whether at your request or your employer's), your leave time is still protected by the FMLA.

How Do I Request FMLA Leave?

To take FMLA leave, you must provide your employer with appropriate notice. If you know in advance that you will need FMLA leave (for example, if you are planning to have surgery or you are pregnant), you must give your employer at least 30 days advance notice. If you learn of your need for leave less than 30 days in advance, you must give your employer notice as soon as you can (generally either the day you learn of the need or the next work day). When you need FMLA leave unexpectedly (for example, if a family member is injured in an accident), you MUST inform your employer as soon as you can. You must follow your employer's usual notice or call-in procedures unless you are unable to do so (for example, if you are receiving emergency medical care).

While you do not have to specifically ask for FMLA leave for your first leave request, you do need to provide enough information so your employer is aware it may be covered by the FMLA. Once a condition has been approved for FMLA leave and you need additional leave for that condition (for example recurring migraines or physical therapy appointments), your request must mention that condition or your need for FMLA leave. If you don't give your employer enough information to know that your leave may be covered by the FMLA, your leave may not be protected.

You do not have to tell your employer your diagnosis, but you do need to provide information indicating that your leave is due to an FMLA-protected condition (for example, stating that you have been to the doctor and have been given antibiotics and told to stay home for four days).

Communication with Your Employer

Ongoing communication between you and your employer will make the FMLA process run much more smoothly. Each of you has to follow guidelines about notifying the other when FMLA leave is being used.

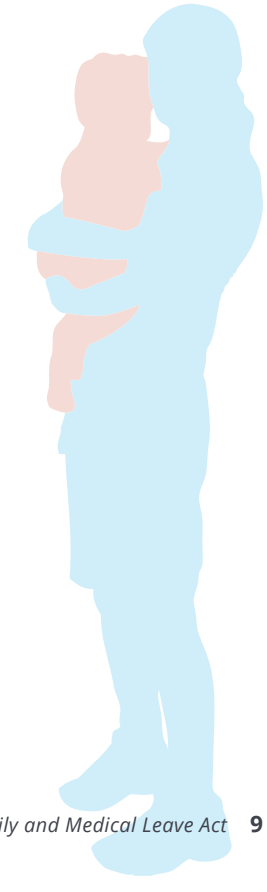
You will need to inform your employer if your need for FMLA leave changes while you are out (for example, if your doctor determines that you can return to work earlier than expected). Your employer may also require you to provide periodic updates on your status and your intent to return to work.

Your employer must notify you if you are eligible for FMLA leave within five business days of your first leave request. If the employer says that you are not eligible, it has to state at least one reason why you are not eligible (for example, you have not worked for the employer for a total of 12 months).

At the same time that your employer gives you an eligibility notice, it must also give you a notice of your rights and responsibilities under the FMLA. This notice must include all of the following:

- A definition of the 12-month period the employer uses to keep track of FMLA usage. It can be a calendar year, 12 months from the first time you take leave, a fixed year such as your anniversary date, or a rolling 12-month period measured backward from the date you use FMLA leave. You need to know which way your employer measures the 12-month window so that you can be sure of how much FMLA leave you have available when you need it.
- Whether you will be required to provide medical certification from a health care provider.
- Your right to use paid leave.
- Whether your employer will require you to use your paid leave.
- Your right to maintain your health benefits and whether you will be required to make premium payments.
- Your right to return to your job at the end of your FMLA leave.

When your employer has the information necessary to determine if your leave is FMLA protected, it must notify you whether the leave will be designated as FMLA leave and, if possible, how much leave will be counted against your FMLA entitlement. If your employer determines that your leave is not covered by FMLA, it must notify you of that determination.



The FMLA Leave Process

This flowchart provides general information to walk you through your initial request for FMLA leave step by step, and help you navigate the sometimes complicated FMLA process.

Please note, it is ESSENTIAL for you to be familiar with your employer's leave policy. There are several instances throughout the FMLA leave process where you will need to comply with BOTH the FMLA regulations AND your employer's leave policy.

YOUR RESPONSIBILITY

YOUR EMPLOYER'S RESPONSIBILITY

START HERE

STEP 1
You must notify your employer when you know you need leave
Please see page 7

STEP 2
Your employer must notify you whether you are eligible for FMLA leave within five business days
Please see page 8

NOT ELIGIBLE

STOP
Your leave ***is not*** FMLA-protected
(You may request leave again in the future. Employee eligibility can change.)

ELIGIBLE

Your employer must provide you with your FMLA rights and responsibilities, as well as any request for certification
Please see page 8

CERTIFICATION REQUESTED

STEP 3
You must provide a completed certification to your employer within 15 calendar days
Please see page 12

CERTIFICATION NOT REQUESTED

STEP 4
Your employer must notify you whether your leave has been designated as FMLA within five business days
Please see page 8

NOT DESIGNATED

STOP
Your leave ***is not*** FMLA-protected
(You may request leave again in the future.)

DESIGNATED

STEP 5
Your leave ***is*** FMLA-protected
(There are employee responsibilities while out on FMLA leave.)
Please see page 8

STEP 6
When you return to work, ***your employer must*** return you to your same or nearly identical job
Please see page 14

Medical Certification

If your employer requests medical certification, you only have 15 calendar days to provide it in most circumstances. You are responsible for the cost of getting the certification from a health care provider and for making sure that the certification is provided to your employer. If you fail to provide the requested medical certification, your FMLA leave may be denied.

The medical certification must include some specific information, including:

- contact information for the health care provider;
- when the serious health condition began;
- how long the condition is expected to last;
- appropriate medical facts about the condition (which may include information on symptoms, hospitalization, doctors visits, and referrals for treatment);
- whether you are unable to work or your family member is in need of care; and
- whether you need leave continuously or intermittently. (If you need to take leave a little bit at a time, the certification should include an estimate of how much time you will need for each absence, how often you will be absent, and information establishing the medical necessity for taking such intermittent leave.)

If your employer finds that necessary information is missing from your certification, it must notify you in writing of what additional information is needed to make the certification complete. You must provide the missing information within seven calendar days.

If your employer has concerns about the validity of your certification, it may request a second opinion, but it must cover the cost. Your employer may request a third opinion if the first and second opinion differ, but it must cover the cost.

If your need for leave continues for an extended period of time, or if it changes significantly, your employer may require you to provide an updated certification.

Certification at a Glance

STEP 1
Your employer must notify you if a certification is required

STEP 2
You must provide a completed certification to your employer within 15 days

STEP 3
Your employer must designate your leave if it is FMLA-protected

YOUR EMPLOYER MAY REQUIRE YOU TO:

- Correct any deficiencies in your certification identified by your employer within seven days
- Obtain a 2nd medical opinion if your employer doubts the validity of your certification
- Obtain a 3rd medical opinion if the 1st and 2nd opinions differ

YOUR EMPLOYER MAY DENY FMLA LEAVE IF YOU FAIL TO PROVIDE A REQUESTED CERTIFICATION

YOUR RESPONSIBILITY

YOUR EMPLOYER'S RESPONSIBILITY

Returning to Work

When you return to work, the FMLA requires that your employer return you to the same job that you left, or one that is nearly identical.

If you are not returned to the exact same job, the new position must:

- involve the same or substantially similar duties, responsibilities, and status;
- include the same general level of skill, effort, responsibility and authority;
- offer identical pay, including equivalent premium pay, overtime and bonus opportunities;
- offer identical benefits (such as life insurance, health insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.); and
- offer the same general work schedule and be at the same (or a nearby) location.

Please keep in mind that if you exhaust your FMLA leave entitlement and are unable to return to work, your employer is not required to restore you to your position.

SPECIAL CIRCUMSTANCES:

Key Employees
Certain *key employees* may not be guaranteed reinstatement to their positions following FMLA leave. A *key employee* is defined as a salaried, FMLA-eligible employee who is among the highest paid 10 percent of all the employees working for the employer within 75 miles of the employee's worksite.

Teachers
Special rules apply to employees of local education agencies. Generally, these rules apply when you need intermittent leave or when you need leave near the end of a school term.

Please visit our website for more complete information.

How to File a Complaint

The U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for administering and enforcing the Family and Medical Leave Act for most employees.

If you have questions, or you think that your rights under the FMLA may have been violated, you can contact WHD at 1-866-487-9243. You will be directed to the WHD office nearest you for assistance. There are over 200 WHD offices throughout the country staffed with trained professionals to help you.

The information below is useful when filing a complaint with WHD:

- your name
- your address and phone number (how you can be contacted)
- the name of the company where you work or worked
- location of the company (this may be different than the actual job site where you worked)
- phone number of the company
- manager or owner's name
- the circumstances of your FMLA request and your employer's response

Your employer is prohibited from interfering with, restraining, or denying the exercise of FMLA rights, retaliating against you for filing a complaint and cooperating with the Wage and Hour Division, or bringing a private action to court. You should contact the Wage and Hour Division immediately if your employer retaliates against you for engaging in any of these legally protected activities.

To contact the WHD office nearest you, visit:
www.dol.gov/whd/america2.htm

Website Resources

Visit the Wage and Hour Division website at **www.dol.gov/whd/fmla** for resources containing information about the FMLA, including:

- Key News
- General Guidance
- Fact Sheets
- e-Tools
- Posters
- Forms
- Interpretive Guidance
- Law
- Regulations

Please refer to *The Employee's Guide to Military Family Leave under the Family Medical Leave Act* (WH1513) for more specific information about taking FMLA leave under the provisions for military family leave.

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243 **www.dol.gov/whd**

WH1506 06/15

JAN
Job Accommodation Network
Practical Solutions • Workplace Success

Accommodation and Compliance Series

Ideas for Writing an Accommodation Request Letter

Job Accommodation Network
PO Box 6080
Morgantown, WV 26506-6080
(800)526-7234 (V)
(877)781-9403 (TTY)
jan@askjan.org
askjan.org

ODEP
Office of Disability Employment Policy

A service of the U.S. Department of Labor's Office of Disability Employment Policy

IDEAS FOR WRITING
AN ACCOMMODATION REQUEST LETTER

The Americans with Disabilities Act of 1990 (ADA) requires employers to provide reasonable accommodation to qualified employees and applicants with disabilities, unless such accommodations would pose an undue hardship (e.g., too costly, too extensive, too substantial, too disruptive). In general, the applicant or employee with a disability is responsible for letting the employer know that an accommodation is needed to participate in the application process, to perform essential job functions, or to receive equal benefits and privileges of employment. Employers are not required to provide accommodations if they are not aware of the need.

According to the Equal Employment Opportunity Commission (EEOC), the federal agency charged with enforcing the ADA, an accommodation request does not have to be in writing. However, the EEOC suggests that individuals with disabilities might find it useful to document accommodation requests in the event there is a dispute about whether or when they requested accommodation. One way to document an accommodation request is to make a written request.

The ADA does not include specific guidelines or forms for requesting reasonable accommodation. However, some employers have developed in-house forms. If so, employees should use the employer's forms for requesting accommodation. Otherwise, individuals with disabilities can use any method that is effective; the ADA does not require specific language or format. The following information provides an example of an accommodation request letter. Please note that the information is to be used as a guide only and is not legal advice. If legal advice is needed, contact a legal service.

For additional information regarding the ADA and reasonable accommodation, contact JAN.

This publication was written by Linda Carter Batiste, JD. Updated 12/12/12.

Sample Accommodation Request Letter

The following is an example of what can be included in an accommodation request letter and is not intended to be legal advice.

Date of Letter

Your name
Your address

Employer's name
Employer's address

Dear (e.g. Supervisor, Manager, Human Resources, Personnel):

Content to consider in body of letter:

- Identify yourself as a person with a disability
- State that you are requesting accommodations under the ADA (or the Rehabilitation Act of 1973 if you are a federal employee)
- Identify your specific problematic job tasks
- Identify your accommodation ideas
- Request your employer's accommodation ideas
- Refer to attached medical documentation if appropriate*
- Ask that your employer respond to your request in a reasonable amount of time

Sincerely,

Your signature
Your printed name

Cc: to appropriate individuals

* You may want to attach medical information to your letter to help establish that you are a person with a disability and to document the need for accommodation.

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¿NECESITA TIEMPO?

Guía del empleado de

La Ley de Ausencia Familiar y Médica

SECCIÓN DE HORAS Y SUELDOS
DEPARTAMENTO DE TRABAJO
DE LOS ESTADOS UNIDOS

Una introducción a la Ley de Ausencia Familiar y Médica

Cuando usted o un ser querido atraviesa una condición de salud seria que le exige que se ausente de su trabajo, el estrés de la preocupación de mantener su empleo puede empeorar una situación que ya es bastante difícil.

La Ley de Ausencia Familiar y Médica (FMLA, siglas en inglés) puede ayudar. Ya sea que no puede trabajar debido a que padece de una condición de salud seria o debido a que debe cuidar a un padre, cónyuge o hijo que padece de una condición de salud seria, la FMLA le proporciona una ausencia no pagada con protección de su trabajo. La ausencia puede tomarse toda de una vez o puede tomarse de forma intermitente según la condición de salud lo requiera.

Esta guía proporciona una perspectiva general y sencilla de cómo la FMLA puede beneficiarle. En tiempos de necesidad, a veces se necesita tiempo sencillamente.

Esta guía explicará:

- ¿Quién puede usar la Ausencia de la FMLA?
- ¿Cuándo puedo usar la Ausencia de la FMLA?
- ¿Qué puede hacer la FMLA por mí?
- ¿Cómo solicito la Ausencia de la FMLA?
- Comunicación con su empleador
- Certificación médica
- Regreso al trabajo
- Cómo presentar una reclamación
- Fuentes de páginas web

¿Quién puede usar la Ausencia de la FMLA?

Para tomar la ausencia de la FMLA, primero tiene que trabajar para un empleador sujeto a esta ley. En general, los empleadores privados con por lo menos 50 empleados están sujetos a esta ley. Los empleadores privados con menos de 50 empleados no están sujetos a la FMLA, pero pueden estar sujetos a leyes estatales de ausencia familiar y médica. Las agencias gubernamentales (incluidos empleadores locales, estatales y federales) y las escuelas primarias y secundarias están sujetas a la FMLA, independientemente del número de empleados.

Si trabaja para un empleador sujeto a esta ley, necesita cumplir con criterios adicionales para ser elegible para la ausencia de la FMLA. No todo aquel que trabaja para un empleador sujeto a esta ley es elegible.

Primero, tiene que haber trabajado para su empleador por lo menos 12 meses. No tiene que haber trabajado por 12 meses seguidos (así que el trabajo por temporadas cuenta), pero generalmente si ha tenido un período de más de siete años durante el cual no trabajó, no puede contar el trabajo antes de dicho período para sumar los 12 meses.

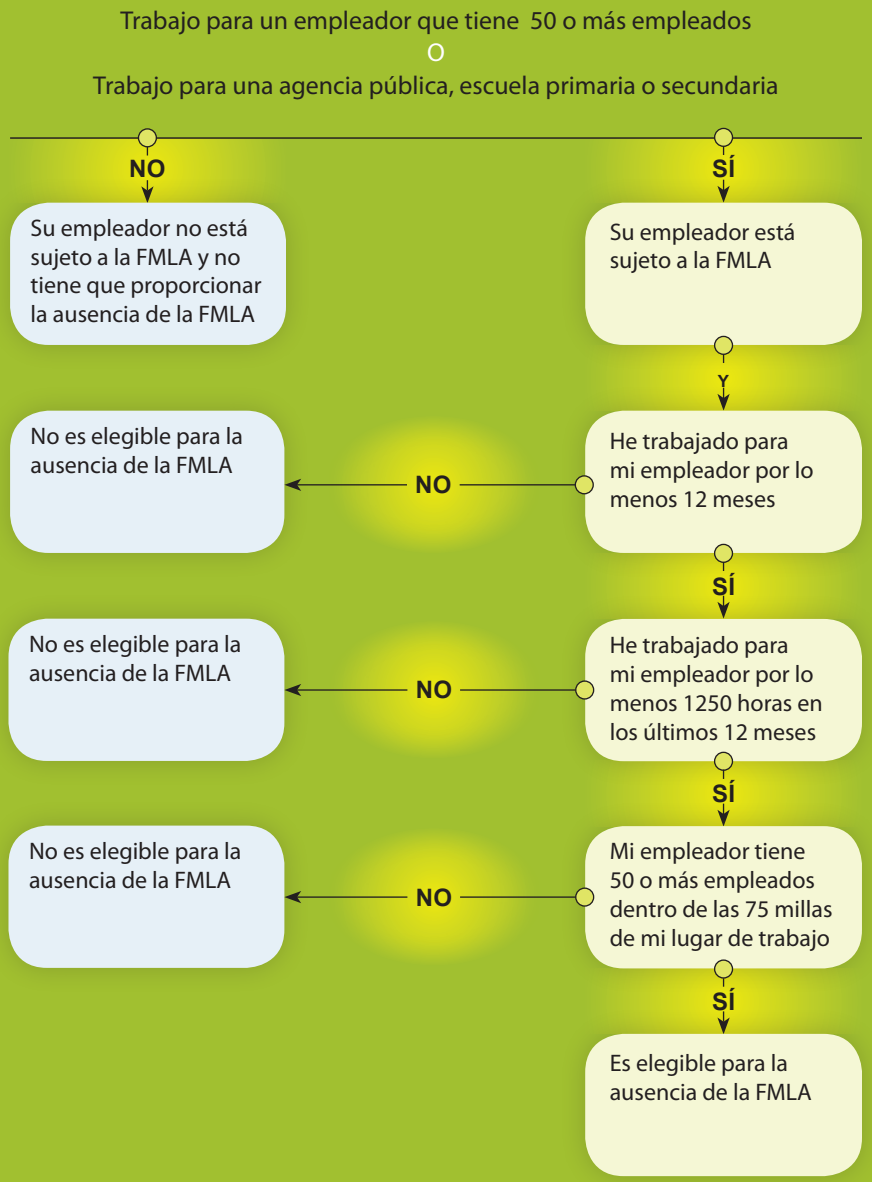
Segundo, tuvo que haber trabajado para el empleador por lo menos 1250 horas en los 12 meses antes de tomar la ausencia. Eso sería un promedio de 24 horas por semana, en un período de un año.

Finalmente, tiene que trabajar en una ubicación donde el empleador tenga por lo menos 50 empleados dentro de las 75 millas de su lugar de trabajo. Así que incluso si su empleador tiene más de 50 empleados, si están dispersos y no hay 50 empleados dentro de las 75 millas de su lugar de trabajo, no será elegible para tomar la ausencia de la FMLA.

Auxiliares de Vuelo/Tripulación de Aerolínea

Debido a horarios de trabajo no convencionales, los auxiliares de vuelo y la tripulación de aerolínea están sujetos a exigencias especiales de elegibilidad bajo el alcance de la FMLA. Cumple con la exigencia de horas de trabajo si, durante los 12 meses previos a que necesite la ausencia, ha trabajado o se le ha pagado por lo menos 60% de su garantía mensual que corresponda y ha trabajado o se le ha pagado por lo menos 504 horas, excluidos el tiempo para desplazarse al trabajo, vacaciones o ausencia familiar o médica.

¿Soy elegible para la Ausencia de la FMLA?



¿Cuándo puedo usar la Ausencia de la FMLA?

Si trabaja para un empleador que está sujeto a la FMLA, y es un empleado elegible, puede tomar hasta 12 semanas de ausencia de la FMLA en cualquier período de 12 meses por varias razones incluidas:

Condición de salud seria

Puede tomar la ausencia de la FMLA para cuidar a su cónyuge, hijo o padre que tenga una condición de salud seria o cuando no pueda trabajar debido a que usted sufre de una condición de salud seria.

Las condiciones de salud serias más comunes que califican para la ausencia de la FMLA son:

1) condiciones que requieran pasar la noche en un hospital o en otro establecimiento de atención médica;
2) condiciones que lo incapacitan a usted o a un miembro de su familia (por ejemplo, que no pueda trabajar o asistir a la escuela) por más de 3 días consecutivos y que reciba tratamiento médico continuo (ya sean varias citas médicas con un proveedor de atención médica o sólo una cita médica y atención de seguimiento como medicamentos bajo prescripción);
3) condiciones crónicas que causen que durante períodos ocasionales usted o su familiar estén incapacitados y requieran tratamiento médico de un proveedor de atención médica por lo menos dos veces al año, y
4) embarazo (incluidas citas médicas de atención prenatal, incapacidad debido a náuseas del embarazo y descanso en cama exigido por un médico).

Ausencia para Familias Militares

La FMLA también proporciona ciertos derechos de ausencia para familias militares. Puede tomar la ausencia de la FMLA por razones especificadas relacionadas a ciertos despliegues militares. Además, puede tomar hasta 26 semanas de ausencia de la FMLA en un período único de 12 meses para cuidar a un miembro del servicio con una herida o enfermedad seria.

Expandir su familia

Puede tomar la ausencia de la FMLA por el nacimiento de un bebé y para pasar tiempo con el/la recién nacido/a, o para la colocación de un(a) niño/a para adopción o tutela y para pasar tiempo con ese niño. Los hombres y las mujeres tienen el mismo derecho de tomar la ausencia de la FMLA para pasar tiempo con su hijo pero tiene que tomarse dentro de un año del nacimiento o de la colocación del niño y tiene que tomarse como un período seguido a menos que el empleador acepte permitir una ausencia intermitente (por ejemplo, un horario de medio tiempo).

Padre

Padre significa una madre o padre biológico, adoptivo, padrastro, madrastra, tutor o cualquier otro individuo que estuvo "in loco parentis," o sea, en lugar de los padres del empleado cuando el empleado era un hijo o hija. Este término no incluye suegros.

Hijo o hija

Hijo o hija significa un hijo biológico, adoptado, bajo tutela, hijastro, menor en guardia legal o el niño de una persona que esté " in loco parentis," o sea, en lugar de sus padres, que tenga menos de 18 años o mayor e "incapaz de cuidarse por sí mismo debido a una discapacidad mental o física" al momento que la ausencia de la FMLA empiece.

In Loco Parentis - En lugar de los padres

Un niño según la FMLA incluye no solamente un hijo biológico o adoptivo, sino que también un niño bajo tutela, un hijastro, una persona en guardia legal o un niño bajo el cuidado de una persona que esté en lugar de sus padres. Los reglamentos de la FMLA definen "in loco parentis - en lugar de los padres" para incluir a las personas con la responsabilidad diaria de cuidar y mantener a un niño. Los empleados que no tengan relación biológica o legal con un niño pueden, sin embargo, estar en lugar de los padres del niño y tener derecho a la ausencia de la FMLA. Por ejemplo, un tío que cuida a su sobrino o sobrina cuando el único padre que tiene ha sido llamado al servicio militar o un empleado que comparte la paternidad de un niño con su pareja del mismo género puede ejercer su derecho a acceder a una ausencia de la FMLA. También, un empleado elegible tiene derecho a tomar la ausencia de la FMLA para cuidar a una persona que estuvo en lugar de los padres del empleado cuando el empleado era un niño. (Véase la Interpretación del Administrador No. 2010-3 y las Hojas de Datos 28B y C).

¿Qué puede hacer la FMLA por mí?

Si tiene que enfrentar una condición de salud que le haga faltar al trabajo, ya sea a causa de su propia condición de salud seria o porque tenga que cuidar a un familiar con una condición de salud seria, usted podría tomar hasta 12 semanas de ausencia con protección de su trabajo otorgada por la FMLA.

Si toma la ausencia de la FMLA, su empleador tiene que continuar su seguro médico como si no estuviera ausente (se le podría exigir que siguiera abonando toda contribución normal de empleado).

Mientras pueda regresar a su trabajo antes de agotar su ausencia de la FMLA, se le tiene que regresar al mismo trabajo (o a uno casi idéntico al mismo). Esta protección de trabajo tiene como propósito aminorar el estrés que pueda de otra forma sentir si es obligado a elegir entre su trabajo y su familia durante una situación de salud seria.

El tiempo libre otorgado por la FMLA no puede usarse en su contra en acciones de trabajo tales como contratación, ascenso o disciplina.

Puede tomar la ausencia de la FMLA de corrido (por ejemplo, tres semanas de ausencia por cirugía y recuperación) o en períodos de tiempo múltiples y pequeños según sea médicamente necesario (por ejemplo, ausencias ocasionales debido a diabetes). También puede tomar una ausencia de medio tiempo si es médicamente necesario (por ejemplo, si después de una cirugía puede volver a su trabajo únicamente por cuatro horas al día o tres días a la semana por un período de tiempo). Si necesita períodos múltiples de ausencia para tratamientos médicos planeados como citas de terapia física, tiene que tratar de programar el tratamiento en un horario que minimice la interrupción a su empleador.

La ausencia de la FMLA no es pagada. Sin embargo, si tiene tiempo libre por enfermedad, vacaciones o tiempo personal, etc., acumulado con su empleador, puede usar ese tiempo de ausencia junto con la ausencia de la FMLA para que así siga recibiendo su pago. Para usar dicha ausencia, tiene que seguir la política normal de ausencia de su empleador talcomo presentar un formulario de solicitud de ausencia o proporcionar un avis o con anticipación. Aun si no quiere usar su ausencia pagada, su empleador puede exigirle usarla durante su ausencia de la FMLA. Por ejemplo, si se ausenta por una semana recuperándose de una cirugía y tiene dos semanas de vacaciones pagadas acumuladas, su empleador puede exigirle usar una semana de su tiempo de vacaciones para su ausencia de la FMLA. Cuando usa una ausencia pagada por una razón sujeta a la FMLA (ya sea porque usted lo pide o porque su empleador lo exige), su tiempo de ausencia sigue estando protegido por la FMLA.

¿Cómo solicito la Ausencia de la FMLA?

Para tomar la ausencia de la FMLA, tiene que proporcionarle a su empleador un aviso correspondiente. Si sabe con anticipación que necesitará una ausencia de la FMLA (por ejemplo, si planea una cirugía o está embarazada), tiene que darle a su empleador un aviso con por lo menos 30 días de anticipación. Si se entera de que necesita una ausencia con menos de 30 días de anticipación, tiene que darle a su empleador un aviso tan pronto como sea posible (generalmente el día que se entera que necesita la ausencia o el siguiente día laboral). Cuando necesita una ausencia de la FMLA inesperadamente (por ejemplo, si un familiar se hiere en un accidente), TIENE QUE informarle a su empleador tan pronto como sea posible. Tiene que seguir los procedimientos usuales de aviso o de llamar de su empleador a menos que no lo pueda hacer (por ejemplo, si recibe atención médica de emergencia).

Aunque no necesita pedir específicamente la ausencia de la FMLA en su primera petición de ausencia, sí necesita proporcionarle a su empleador suficiente información para que esté al tanto de que puede estar sujeta a la FMLA. Una vez que una condición haya sido aprobada para la ausencia de la FMLA y usted necesita una ausencia adicional para esa condición (por ejemplo, migrañas recurrentes o citas de terapia física), su solicitud tiene que mencionar esa condición o su necesidad de la ausencia de la FMLA. Si no le da a su empleador suficiente información para que sepa que su ausencia puede estar sujeta a la FMLA, su ausencia puede no estar protegida.

No tiene que decirle a su empleador su diagnóstico, pero sí necesita proporcionar información que indique que su ausencia se debe a una condición protegida bajo la FMLA (por ejemplo, establecer que ha ido al médico y que se le ha dado antibióticos y que se le ha ordenado quedarse en casa por cuatro días).

Comunicación con su empleador

La comunicación continua entre usted y su empleador hará que el proceso de la FMLA se lleve a cabo de la mejor forma. Cada uno tiene que seguir lineamientos sobre cómo notificar al otro sobre cuándo la ausencia de la FMLA está siendo usada.

Necesitará informarle a su empleador si su necesidad de usar la ausencia de la FMLA cambia mientras está ausente (por ejemplo, si su doctor determina que puede regresar a trabajar antes de lo esperado). Su empleador también puede exigirle que proporcione actualizaciones periódicas sobre su estado y su intención de regresar al trabajo.

Su empleador tiene que notificarle si es elegible para la ausencia de la FMLA dentro de 5 días laborales de su primera solicitud de ausencia. Si el empleador dice que usted no es elegible, tiene que establecer por lo menos una razón por la cual no es elegible (por ejemplo, no ha trabajado para el empleador por un total de 12 meses).

Al mismo tiempo que su empleador le da un aviso de elegibilidad, también tiene que darle un aviso de sus derechos y responsabilidades bajo la FMLA. Este aviso tiene que incluir:

- una definición del período de 12 meses que el empleador usa para establecer el uso de la FMLA. Por ejemplo, puede ser un año civil, 12 meses desde el primer momento en que toma la ausencia, un año "fijo" como la fecha de su aniversario o un período de 12 meses "en movimiento" medido desde la fecha que usa la ausencia de la FMLA contando hacia atrás. Necesita saber en qué forma mide su empleador la ventana de 12 meses para que pueda estar seguro de cuánta ausencia de la FMLA tiene disponible cuando la necesite;
- si necesitará presentar una certificación médica de un proveedor de atención médica;
- su derecho a usar una ausencia pagada;
- si su empleador le exigirá usar su ausencia pagada;
- su derecho a mantener sus beneficios de salud y si le exigirá hacer pagos de primas; y
- su derecho a regresar a su trabajo cuando la ausencia de la FMLA termine.

Cuando su empleador tenga la información necesaria para determinar si su ausencia está protegida por la FMLA, tiene que notificarle si la ausencia se designará como una ausencia de la FMLA y, de ser posible, cuánto tiempo de ausencia se contará contra la ausencia otorgada por la FMLA. Si su empleador determina que su ausencia no está cubierta por la FMLA, tiene que notificarle de dicha determinación.

El proceso de la Ausencia de la FMLA

Este diagrama de flujo proporciona información general para guiarle a través de su solicitud inicial de la ausencia de la FMLA. Es una guía paso a paso que le ayudará a navegar por el proceso, a veces complicado, de la FMLA.

Favor de fijarse que es ESENCIAL que esté familiarizado con la política de ausencia de su empleador. Hay varios casos a través del proceso de la ausencia de la FMLA cuando usted necesitará cumplir con AMBOS los reglamentos de la FMLA y de la política de ausencia de su empleador.

SU RESPONSABILIDAD

LA RESPONSABILIDAD DE SU EMPLEADOR

EMPIECE AQUÍ

PASO 1
Tiene que notificarle a su empleador cuando sepa que necesita la ausencia
Véase pág. 7

PASO 2
Su empleador tiene que notificarle si es elegible para la ausencia de la FMLA dentro de 5 días laborales
Véase pág. 8

NO ELEGIBLE

FINAL
Su ausencia **no está** protegida por la FMLA
(Puede solicitar una ausencia de nuevo en el futuro. La elegibilidad del empleado puede cambiar).

ELEGIBLE

Su empleador tiene que proporcionarle sus derechos y responsabilidades de la FMLA, así como cualquier solicitud de certificación
Véase pág. 8

CERTIFICACIÓN SOLICITADA

PASO 3
Tiene que proporcionarle una certificación rellenada a su empleador dentro de 15 días civiles
Véase pág. 12

CERTIFICACIÓN NO SOLICITADA

NO DESIGNADA

FINAL
Su ausencia ***no está*** protegida por la FMLA
(Puede solicitar una ausencia de nuevo en el futuro).

PASO 4
Su empleador tiene que notificarle si su ausencia ha sido designada como una ausencia de la FMLA dentro de 5 días laborales
Véase pág. 8

DESIGNADA

PASO 5
Su ausencia ***está*** protegida por la FMLA
(Hay responsabilidades del empleado mientras se ausenta bajo la ausencia de la FMLA).
Véase pág. 8

PASO 6
Cuando regrese al trabajo, ***su empleador tiene que*** permitirle volver a su mismo trabajo o a uno casi idéntico
Véase pág. 14

Certificación médica

Si su empleador solicita una certificación médica, tiene sólo 15 días civiles para proporcionarla en la mayoría de los casos. Usted es responsable de los costos de recibir la certificación de un proveedor de atención médica y por asegurarse de que la certificación sea proporcionada a su empleador. Si no proporciona la certificación médica solicitada, su ausencia de la FMLA puede ser denegada.

La certificación médica tiene que incluir alguna información específica, incluido:

- información de contacto del proveedor de atención médica;
- cuándo empezó la condición de salud seria;
- cuánto se espera que dure la condición;
- hechos médicos correspondientes sobre la condición (que puede incluir información sobre síntomas, hospitalización, visitas médicas y derivaciones para tratamiento);
- si no puede trabajar o si un familiar necesita cuidado; y
- si necesita ausentarse de forma continua o intermitentemente. Si necesita tomar la ausencia poco a poco, la certificación debe incluir un estimado de cuánto tiempo necesitará para cada ausencia, con qué frecuencia estará ausente e información que establezca la necesidad médica para tomar dicha ausencia intermitente.

Si su empleador se da cuenta de que falta información necesaria en su certificación, tiene que notificarle por escrito de la información adicional que se necesita para que la certificación esté completa. Usted tiene que proporcionar la información faltante dentro de 7 días civiles.

Si su empleador tiene dudas sobre la validez de su certificación, puede solicitar una segunda opinión, pero tiene que cubrir los gastos. Su empleador puede solicitar una tercera opinión si la primera y la segunda son distintas, pero tiene que cubrir los gastos.

Si su necesidad de ausencia continúa por un período de tiempo prolongado, o si cambia de forma significativa, su empleador puede solicitarle que proporcione una certificación actualizada.

Resumen de la certificación

PASO 1
Su empleador tiene que notificarle si se requiere una certificación

PASO 2
Usted tiene que proporcionarle una certificación rellenada a su empleador dentro de 15 días

PASO 3
Su empleador tiene que designarle su ausencia si está protegida por la FMLA

SU EMPLEADOR PUEDE EXIGIRLE QUE:

Corrija cualquier deficiencia en su certificación que su empleador haya identificado dentro de 7 días	Obtenga una segunda opinión médica si su empleador duda de la validez de su certificación	Obtenga una tercera opinión médica si la primera y segunda opiniones son distintas

SU EMPLEADOR LE PUEDE DENEGAR LA AUSENCIA DE LA FMLA SI USTED NO LOGRA PROPORCIONAR UNA CERTIFICACIÓN SOLICITADA

SU RESPONSABILIDAD

LA RESPONSABILIDAD DE SU EMPLEADOR

Regreso al trabajo

Cuando regrese al trabajo, la FMLA le exige a su empleador devolverle su mismo trabajo o uno casi idéntico.

Si no se le devuelve su mismo trabajo, el nuevo cargo tendrá que:

- involucrar las mismas o básicamente similares obligaciones, responsabilidades y estatus;
- involucrar el mismo nivel de habilidad, esfuerzo, responsabilidad y autoridad;
- ofrecer el mismo pago, incluido un pago equivalente de prima, sobretiempo y oportunidades de bonos;
- ofrecer beneficios idénticos (tales como seguro de vida, seguro médico, seguro de discapacidad, ausencia por enfermedad, vacaciones, beneficios educativos, pensiones, etc.); y
- ofrecer el mismo horario general de trabajo y estar en la misma ubicación (o en una cercana).

Tenga en mente que si agota su derecho de ausencia de la FMLA y no puede regresar a su trabajo, no se le exige a su empleador que le devuelva su cargo.

CIRCUNSTANCIAS ESPECIALES:

Empleados "claves"

A ciertos empleados "claves" se les podría no garantizar el regreso a sus cargos después de la ausencia de la FMLA. Un "empleado clave" está definido como un empleado asalariado, elegible por la FMLA que está entre el 10% de los mejor pagados de todos los empleados que trabajan para el empleador dentro de las 75 millas del lugar de trabajo del empleado.

Maestros

Aplican normas especiales para empleados de agencias educativas locales. En general, estas normas aplican cuando se necesita una ausencia intermitente o cuando se necesita una ausencia cerca del final del período escolar.

Favor de visitar nuestra página web para información más completa.

Cómo presentar una reclamación

La Sección de Horas y Sueldos (WHD - siglas en inglés) del Departamento de Trabajo de los Estados Unidos es responsable de administrar y hacer cumplir la Ley de Ausencia Familiar y Médica para la mayoría de los empleados.

Si tiene preguntas o piensa que sus derechos según la FMLA pueden haber sido incumplidos, puede ponerse en contacto con WHD al 1-866-487-9243. Se le pasará a la oficina más cercana de la WHD para que reciba asistencia. Hay más de 200 oficinas de la WHD por el país con personal profesional capacitado para ayudarle.

La información que se encuentra a continuación es útil al momento de presentar una reclamación a la WHD:

- su nombre;
- su dirección y número de teléfono (dónde se le pueda localizar);
- el nombre de la empresa para la que trabaja o trabajaba;
- la ubicación de la empresa (esta puede ser distinta al lugar donde usted trabajaba)
- número de teléfono de la empresa;
- nombre del gerente o del dueño; y
- las circunstancias de su solicitud de la FMLA y la respuesta de su empleador.

Se le tiene prohibido a su empleador interferir con el ejercicio de los derechos de la FMLA o de alguna forma obstaculizarlos o denegarle su acceso a dichos derechos, tomar represalias contra usted por presentar una reclamación y por cooperar con la Sección de Horas y Sueldos o por presentar una demanda civil en un tribunal. Debe ponerse en contacto con la Sección de Horas y Sueldos de inmediato si su empleador toma represalias en su contra por involucrarse en cualquiera de estas actividades protegidas por la ley.

Para ponerse en contacto con la oficina de WHD más cercana a usted, visite: www.dol.gov/whd/america2.htm.

Fuentes de páginas web

Visite la página web de la Sección de Horas y Sueldos en **www.dol.gov/whd/fmla** para encontrar fuentes que contienen información sobre la FMLA, incluidos:

- Noticias claves
- Orientación general
- Hojas de datos
- Herramientas virtuales
- Carteles/Pancartas
- Formularios
- Orientación interpretativa
- Leyes
- Reglamentos

Departamento de Trabajo
de los Estados Unidos
Sección de Horas y Sueldos

200 Constitution Avenue, NW
Washington, DC 20210
1-866-4-USWAGE
(1-866-487-9243)
www.dol.gov/whd

WH-1506-SP AGOSTO 2012

Ideas para escribir una carta solicitando una acomodación

Ideas para escribir una carta solicitando una acomodación

El Acta para Americanos Discapacitados (ADA por sus siglas en inglés) requiere que los empleadores provean acomodaciones razonables y efectivas a los empleados discapacitados (sin causar costos o dificultades excesivas como por ejemplo: alto costo, muy extensa, perjudicial). En general el candidato o empleado con discapacidad es responsable de comunicarle a su empleador la necesidad de obtener una acomodación para tomar parte en el proceso de contratación, desempeñar funciones esenciales del trabajo, o para recibir los beneficios y privilegios que son ofrecidos con el empleo. Los empleadores no están obligados a proveer una acomodación si ellos no tienen conocimiento de la necesidad de acomodación.

De acuerdo a la Comisión de Igualdad de Oportunidades en el Empleo (EEOC por sus siglas en inglés) la solicitud de acomodación no necesita hacerse por escrito. De todos modos, la EEOC sugiere que los individuos con discapacidades documenten la solicitud de acomodación por escrito en caso que haya una disputa durante el proceso de acomodación.

El ADA no tiene pautas específicas o planillas para solicitar una acomodación razonable. Algunos empleadores han desarrollado sus propias planillas internas, si ese es el caso, los empleados deberán utilizar esas planillas para solicitar una acomodación; de lo contrario, los individuos con discapacidades pueden utilizar cualquier método que sea efectivo. El ADA no requiere un formato ni lengua especifica. A continuación se ofrece un ejemplo de solicitud de acomodación. Por favor, note que la información aquí expresada es tan sólo una guía y no es bajo ninguna instancia un consejo legal. Si necesita una sugerencia legal, favor de contactar al servicio legal correspondiente.

Para mayor información con respecto al ADA y las acomodaciones razonables contacte a JAN.

Escrito por Linda Carter Batiste, JD. Actualizado 07/02/13

Ejemplo de una carta de solicitud de acomodación

La siguiente solicitud de acomodación es un ejemplo de la información que puede incluirse en una carta sin intenciones de ser consejo legal.

Fecha

Nombre
Dirección

Nombre del patrón
Dirección del patrón

Estimado (ej. Supervisor, Gerente, Recursos Humanos, Personal):

Contenido a considerar para el cuerpo de la carta:

- Identifíquese como una persona que posee una discapacidad.
- Declare su solicitud para una acomodación bajo el ADA (o el Acta de Rehabilitación de 1973 si usted es un empleado federal).
- Mencione las tareas laborales que le presentan dificultades.
- Sugiera ideas de acomodación.
- Haga referencia a las constancias médicas adjuntas*
- Pida una respuesta dentro de un periodo de tiempo razonable.

Sinceramente,

Firma
Nombre en imprenta
CC: Personal necesario

*Si usted quiere, adjunte a su carta las certificaciones médicas para establecer la presencia de una discapacidad desde un principio y así documentar la necesidad de una acomodación.

Este documento fue desarrollado por la Red de Acomodación en el Empleo (JAN por sus siglas en inglés). La preparación de esta publicación fue financiada por la subvención número OD-23442-12-75-4-54 otorgada por la Oficina de Políticas de Empleo para las Personas con Discapacidades del Departamento de Trabajo de los EE.UU. Este documento no refleja necesariamente las opiniones o normas de la Oficina de Políticas de Empleo para las Personas con Discapacidades del Departamento de Trabajo de los EE.UU. La mención de marcas, productos comerciales u organizaciones no implica el respaldo por parte del gobierno de los EE.UU.