

## THE FAMILY AND MEDICAL LEAVE ACT: WHAT IT MEANS TO YOU

By Pamela Lakes Wood

- Mary has recently started a new job in Texas, working for a large retailer, but she is worried about her ailing mother in Maryland. She would like to take a month off from work but does not have enough leave. Her supervisor tells her it is “out of the question” because she has only been working for the company for six months.
- Stephanie is one of 60 agents working at an insurance company in Arizona, and she has worked there full time for over a year. She has decided to adopt a Chinese baby, but she will be required to travel to China to finalize the adoption. She has two weeks of leave but would like to take off a total of six weeks. Although she is willing to take four weeks of unpaid leave, she is afraid that her employer will not let her take so much time.
- Ellen has been working for the Internal Revenue Service in Washington, D.C. for ten years. She is fed up with the work and has exhausted both her annual leave and sick leave for “mental health days.” She would like to take some time off for a much needed vacation and is willing to take leave without pay. The department head says that he will give her the time if the Family and Medical Leave Act (FMLA) requires him to do so.

In each of the above situations, the worker may wonder whether she has the right to take time off under the Family and Medical Leave Act (FMLA). The FMLA, which became effective on August 5, 1993, generally provides that certain American workers may take up to 12 weeks of unpaid leave for any of the following reasons:

1. For the birth and care of the newborn child of an employee;
2. For placement with the employee of a child for adoption or foster care;
3. To care for an immediate family member (spouse, child, or parent) with a serious health condition;  
or
4. To take medical leave when the employee is unable to work because of a serious health condition.

What employers are subject to the Act? The FMLA only applies to employees of public agencies (including state, local, and federal agencies), all public and private elementary and secondary schools, and companies with 50 or more employees, provided that certain conditions are satisfied. To be covered, a private sector employer must have employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year and must be engaged in commerce or in any industry or activity affecting commerce. Regulations for nonfederal employees appear in Title 29 of the Code of Federal Regulations (C.F.R.), part 825, while those relating to most federal employees appear in Title 5 of the C.F.R., part 630.

Assuming that your employer is covered by the Act, what criteria do you need to meet? First, you must be employed at a location within the United States where the employer employs at least 50 employees within 75 miles. Second, you must have worked for the company for at least 12 months. Third, you must have worked for the employer for at least 1,250 hours over that period.

Entitlement to leave under the FMLA is subject to certain restrictions. An employee who has exhausted paid leave is only entitled to unpaid leave. If the leave is taken for the birth or adoption of a child, it must be concluded within 12 months of the birth or placement of the child. Leave may be taken intermittently – that is,

in blocks of time, or by a reduced work schedule – if it is medically necessary to care for a seriously ill family member, or if required by the employee’s own serious illness. For birth or adoption, use of intermittent leave is subject to employer approval. Employers may also require medical certifications or other documentation. Special rules apply to certain categories of employees.

So how would you advise Mary, Stephanie, and Ellen if they were to ask you whether they could take time off under the FMLA? Mary is out of luck. Although the company for which she works is undoubtedly subject to the FMLA, she has not worked there for the requisite 12-month period. Stephanie, on the other hand, is likely to fare better. Her company employs 50 or more employees at the site where she works, and the adoption of a child is one of the acceptable purposes for which leave may be taken under the Act. Ellen is unlikely to be eligible for FMLA leave. While the FMLA applies to the Federal government, and she has worked for the IRS long enough, the Act does not provide vacation time. She would not be able to take leave under the Act unless she can establish that the leave is necessary because she cannot work due to a serious medical condition.

Suppose Ellen decides to argue that she has a serious mental illness that prevents her from working. Her psychiatrist is willing to substantiate her need for the time off and she can produce records from her recent hospitalization at a psychiatric ward for clinical depression. Would that change the result?

The FMLA defines a serious health condition as an illness, injury, impairment, or physical or mental condition that involves:

- (A) inpatient care in a hospital, hospice, or residential medical care facility; or
- (B) continuing treatment by a health care provider.

The regulations expand upon what types of conditions are covered. Ellen might be able to qualify under this definition depending upon the circumstances of her case.

Suppose Stephanie is married to Jim, who has worked in the same office for as long as she has, and Jim would like to accompany her to China. He also has two weeks of vacation time but would like to take six weeks off. Is he eligible under the FMLA? Spouses employed by the same employer may be limited to a combined total of 12 workweeks of family leave when required for the birth and care of a child, placement and care of a child for adoption or foster care, or care of an employee’s parent who has a serious health condition.

The FMLA was designed to assist employees in balancing work and family responsibilities. It is administered by the Wage and Hour Division of the Employment Standards Administration of the U.S. Department of Labor, except for federal employees, for whom the Office of Personnel Management administers the FMLA. The above is just a summary of the major provisions of the FMLA. Additional information concerning the Act is available at the Department of Labor website, [www.dol.gov](http://www.dol.gov), or may be obtained from your local office of the Wage and Hour Division (check your local phonebook). For federal employees, information is available at the Office of Personnel Management website, [www.opm.gov](http://www.opm.gov).

*~Pamela Lakes Wood is currently an administrative law judge at the U.S. Department of Labor in Washington, D.C., where she works on a variety of labor-related matters not relating to the FMLA. The views expressed in this article are her own and do not necessarily reflect those of the U.S. Department of Labor.*