

9.09 FAMILY AND MEDICAL LEAVE ACT

Employers are required to provide notice regarding the Family and Medical Leave Act (FMLA) to its employees. Webb County calculates FMLA leave on a rolling basis.

~~FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to “eligible” employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.~~

Eligibility Requirements:

An employee who works for a covered employer must meet the three (3) criteria below, in order to be eligible for FMLA leave. The employee must:

1. Have worked for the employer for at least 12 months;
2. Have at least 1,250 hours of service in the 12 months before taking leave; and
3. Work at a location where the employer has at least 50 employees within 75 miles of the employee’s worksite.

~~Reasons for Taking Leave: Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job - protected leave in a 12- month period for the following reasons:~~

~~Unpaid leave must be granted for any of the following reasons:~~

1. The birth of a child or placement of a child for adoption or foster care;
2. To bond with a child (leave must be taken within 1 year of the child’s birth or placement);
3. To care for the employee’s spouse, son or daughter, or parent, who has a **qualifying** serious health condition; or
4. For a serious health condition that makes the employee unable to perform the employee’s job.
5. For qualifying exigencies related to the foreign deployment of a military member who is the employee’s spouse.

An Eligible employee who is a covered service member’s spouse, child, or next of kin may also take up to 26 weeks of FMLA in a single 12-month period to care for the service member with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or a reduced schedule.

It is Webb County’s policy that the employee shall be required to use any (**accruals**) available paid leave while on FMLA leave.

~~Advance Notice and Medical Certification: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.~~

- ~~1. The employee ordinarily must provide 30 days advance notice when the leave is “foreseeable.”~~
- ~~2. An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer’s expense) and a fitness for duty report to return to work.~~

Requesting Leave:

Generally, employees must give 30-days advance notice of the need for FMLA leave. If it is not possible to give 30-days’ notice, the employee must notify the employer as soon as possible and, generally, follow the employer’s usual procedures. Whether the employee’s notice of unforeseeable leave is timely, will depend upon the facts of the particular case.

The employer must advise Human Resource

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic re-certification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

Employer Responsibilities:

Once an employer becomes aware that the employee’s need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employer must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

Job Benefits and Protection:

1. For the duration of FMLA leave, the employer must maintain the employee’s health coverage under any “group health plan.” If employee does not have accruals from which the health insurance coverage can be deducted, then the employee is responsible for contacting the Employee Benefits division of Risk Management, and make arrangements for payments.

2. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
3. The use of FMLA leave cannot result in the loss of any employment benefit that accrues prior to the start of an employee's leave.

Unlawful Acts by Employers: FMLA makes it unlawful for any employer to:

1. Interfere with, restrain, or deny the exercise of any right provided under FMLA;
2. Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

~~Application to Employees of Webb County: The employee has the option, subject to the approval of his Department Head or Elected Official, to take FMLA leave concurrently with sick leave, annual leave, and/or personal days. In the absence of an employee making such an election, the Department Head or Elected Official may designate the leave as FMLA leave, with appropriate notice to the employee. Leave under the FMLA runs concurrently with Workers Compensation leave at the option of the Department Head or Elected Official.~~

Enforcement:

The U.S. Department of Labor is authorized to investigate and resolve complaints of violations. An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

For Additional Information: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.