

FACT SHEET:

THE FAMILY AND MEDICAL LEAVE ACT: WHAT SHOULD VETERANS & MILITARY FAMILIES KNOW?

The Family and Medical Leave Act of 1993 (FMLA) is a federal law that provides important rights to time off from work in certain situations. However, the law does not cover all workers, or all situations, so you need to understand your rights.

What does the FMLA provide for veterans and military families?

The FMLA provides **up to 12 weeks** of *unpaid* time off (in a 12-month period) to¹:

- Address certain needs arising from a spouse, parent or child being on (or having been notified of an impending call or order to) active duty in a foreign country,
- Care for a parent, child, or spouse with a serious health condition,
- Recover from your own serious health condition (including a serious mental health condition), or
- Care for and bond with a newborn, adopted, or foster child recently placed with you.

If you are caring for a covered family member with a **service-connected illness or injury**, you may be able to take **up to 26 weeks** of unpaid time off (in a 12 month-period) under the FMLA.

Am I eligible for leave?

If you are a government employee or you work for an employer who has **50 or more employees** (within a 75-mile radius of each other) you may be eligible if:

1. You have worked for your employer for **at least one year**, and
2. You worked **at least 1250 hours** in the past 12 months.

When can I take leave in connection with a deployment?

If your parent, child, or spouse is on active duty abroad or has been notified of an impending call or order to active duty abroad in the Armed Forces (including National Guard and Reserves), you may be eligible for FMLA leave. This leave can be taken to make financial or legal arrangements for the servicemember, to make arrangements for the care or education of the servicemember's child or the care of the servicemember's parent, or to attend official military events or support programs. It can also be used to spend time with a servicemember for up to 15 days during a short-term, temporary rest and recuperation leave during deployment. If your parent, child, or

spouse is notified of an impending call or order to active duty abroad with less than 7 days notice, you can take FMLA leave for up to 7 calendar days to address any need that arises as result of that short-notice deployment.

When can I take leave to care for someone with a service-connected illness or injury?

The FMLA provides a special type of leave known as “military caregiver leave” to the parent, child, spouse, or next-of-kin of a person with a qualifying service-connected illness or injury. This leave, unlike other forms of FMLA leave, can be taken for up to 26 weeks (in a 12-month period).

You can take this leave to care for a **current member of the Armed Forces** (including National Guard or Reserves) who is receiving treatment for or recuperating from a serious illness or injury caused or aggravated by his or her active duty military service that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.

You can take this leave for a **veteran** (including a veteran of the National Guard or Reserves) who is receiving treatment for or recuperating from a serious illness or injury caused or aggravated by his or her active duty military service *if* (1) the veteran began the treatment or recovery within 5 years of the end of his or her service *and* (2) the veteran was discharged or released under conditions other than dishonorable.

If your parent, child, or spouse has a serious illness or injury that does *not* meet these requirements, you may still be able to take FMLA leave for up to 12 weeks (in a 12-month period).

How do I apply for leave?

If you know in advance that you will need FMLA leave (e.g. your spouse is having planned surgery), you must tell your employer at least 30 days before you expect to take it. If you need FMLA leave for a purpose you did not know about in advance (e.g. for a last-minute deployment), tell your employer as soon as possible and be sure to follow their rules for providing notice.

Can my employer deny me leave?

As long as you are eligible and have not used up your guaranteed 12 weeks of leave (or 26 weeks of leave to care for someone with a covered service-connected illness of injury) within the past 12 months, your employer must allow you to take leave and is prohibited from interfering with your leave. Your employer may not punish you in anyway for taking or asking for leave.

Do I have to take my leave all at once, or can I break it up into smaller chunks of time?

It depends on the circumstances.

- If you are taking FMLA leave to address the impact of a family member's deployment, you can take your leave in separate units of time rather than in one block.
- If you are taking FMLA leave to care for a family member with a serious illness or injury (including a serious service-connected illness or injury) or for your own serious illness or injury, you can your leave in separate units of time *if* doing so is considered medically necessary.
- If you take FMLA leave to care for and bond with a new child, you must take that leave in one block of time, unless you employer gives you permission to break it up.

What if I can't afford to take leave unpaid?

If you work in certain states, you may be eligible for wage replacement benefits while on FMLA leave. California, New Jersey, Rhode Island, New York, Hawaii, and Puerto Rico provide temporary disability insurance benefits, which you may be able to use if you take FMLA leave for your own serious health condition, including pregnancy-related disability or recovery from childbirth. California, New Jersey, and Rhode Island provide paid family leave benefits, which you may be able to use when taking FMLA leave to bond with a new child or care for a seriously ill relative (including a relative with serious service-connected illness or injury). New York, which already offers temporary disability insurance benefits, will begin offering paid family leave benefits in January 2018. Starting in 2020, Washington State and the District of Columbia will both begin providing paid leave for your own health, bonding with a new child, or caring for a seriously ill relative. New York and Washington State will also provide paid leave to address the impact of a family member's deployment.¹¹

In any state, you may be able to receive benefits while taking FMLA leave for your own serious health condition if your employer provides a short-term disability policy. You may also be able to use your accrued sick or vacation time while on FMLA leave.

Can I be required to use my paid vacation days during my FMLA leave?

Yes. Your employer may require you to take any paid vacation, personal or other leave you have accrued during any part of your FMLA leave.

Will I be able to get my job back when I return from leave?

Generally yes. After you return from FMLA leave, you must be restored to your original job or a position equivalent in pay, benefits, and other terms. Your employer is not required, however, to give you your job back if you would have been laid off during the period when you were on leave. For example, if there is a general downsizing and you would have been laid off even had you not taken leave, your employer does not have to give you your job back. An additional exception may apply in very rare cases if you are in the highest paid 10% of employees in your workplace.

Do I have any other protections under state law?

Yes. Several states have their own family and medical leave laws whose requirements vary from the federal law and may be more inclusive. To learn more, check out our state-by-state resources at Babygate (babygate.abetterbalance.org).

What should I do if I think my rights have been violated or I need more information?

- **If you work in New York**, call us at 212-430-5982.
- **If you work in Kentucky, Tennessee, Alabama, Mississippi, or Georgia**, call our Southern Office at 615-915-2417.

Alternatively:

- Call the U.S. Department of Labor's Wage and Hour Division, toll free, at 1-866-487-9243. You can file a complaint with the agency, which investigates claims.
- You may also bring a private claim in court against your employer for violating the FMLA, and you need not file first with the Wage and Hour Division. The National Employment Lawyers Association (www.nela.org) can help you locate an employment attorney.

This fact sheet is designed to assist you in understanding your basic rights under the FMLA. It does not cover all aspects of the law and does not constitute legal advice. It is possible that other laws or additional FMLA provisions or rules not described here may apply to your specific circumstances.

ⁱ For specific information about the FMLA and LGBT families, check out our guide at <http://www.abetterbalance.org/resources/fmla-lgbt-guide/>.

ⁱⁱ To learn more about state paid leave laws, check out our chart comparing the state programs at <http://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.