

# **Family Medical Leave Frequently Asked Questions**

## **1. What does the Family and Medical leave act provide?**

The Family and Medical Leave Act (FMLA) provides eligible employees up to 12 workweeks of unpaid leave in a 12-month period and requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave. Employees are also entitled to return to their same or an equivalent job at the end of their FMLA leave.

The FMLA also provides certain military family leave entitlements. Eligible employees may take FMLA leave for specified reasons related to certain military deployments of their family members. Additionally, they may take up to 26 weeks of FMLA leave in a single 12-month period to care for a covered service member with a serious injury or illness.

## **2. Who can take Family Medical leave?**

To be eligible to take leave under the FMLA, an employee must:

- work for a covered employer such as Orange County Government.
- have worked 1,250 hours during the 12 months prior to the start of leave.
- work at a location where the employer has 50 or more employees within 75 miles; and
- have worked for the employer for 12 months. The 12 months of employment are not required to be consecutive for the employee to qualify for FMLA leave. In general, only employment within seven years is counted unless the break in service is (1) due to an employee's fulfillment of military obligations, or (2) governed by a collective bargaining agreement or other written agreement.

## **3. Does the time I take off for vacation, sick leave, or PTO count toward the 1,250 hours?**

The 1,250 hours include only those hours worked for the employer. Paid leave and unpaid leave, including FMLA leave, are not included.

## **4. How many weeks of Family Medical Leave can an employee take?**

Eligible employees may use up to 12 weeks of Family and Medical Leave within a 12-month period following the first day the employee uses leave. In the case of certain Military Family Leave, discussed below, the amount of leave may be up to 26 weeks.

## **Family Medical Leave Frequently Asked Questions**

### **5. Do I get paid during FMLA leave?**

The FMLA only requires unpaid leave. However, the law permits an employee to elect, or the employer to require the employee to use accrued paid vacation leave, paid sick or family leave for some or all the FMLA leave period. An employee must follow the employer's normal leave rules in order to substitute paid leave. When paid leave is used for an FMLA-covered reason, the leave is FMLA-protected.

### **6. Can I use my Term and Personal Leave while on Family Medical Leave?**

Employees on approved FML must utilize all applicable leave balances in accordance with Orange County Policy. Leave must be exhausted in the following order: sick (old), sick, term, floating holiday, and personal/vacation leave.

### **7. What are the steps to request FML?**

You will need to submit a completed Employee Request Form and Certification of HealthCare – Employee form or Certification of HealthCare-Family form. To locate form, visit [myOCHR](#). You can upload the forms electronically or fax to 407-836-5605.

**\*\*NOTE\*\*** Do not email Certification of Health Care Provider forms.

### **8. When should I submit my request for FML?**

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable—generally, either the same or next business day.

When the need for leave is not foreseeable, the employee must provide notice as soon as practicable, absent unusual circumstances.

### **9. My spouse also works for Orange County BCC; do we need to share 12 weeks of leave?**

Employees who are legally married and both employees work for Orange County BCC are required to share 12 weeks of FML. Employees have full discretion in how they share their 12 weeks. Employees are also required to share leave for FML Care of Parent.

## **Family Medical Leave Frequently Asked Questions**

**10. My spouse works for another Orange County entity such as Orange County Comptroller, Orange County Public Schools, or Orange County Clerks of Courts; do we need to share leave?**

No.

**11. What is the difference between Consecutive Leave and Intermittent Leave?**

Consecutive leave is leave taken not broken up by periods of work. Intermittent leave is leave in increments of minutes, hours, or days.

**12. Do I need to call in when I need to be out for FML reasons?**

Yes. Under the regulations, an employee must comply with an employer's call-in procedures unless unusual circumstances prevent the employee from doing so (in which case the employee must provide notice as soon as he or she can practically do so). The regulations make clear that, if the employee fails to provide timely notice, he or she may have the FMLA leave request delayed or denied and may be subject to whatever discipline the employer's rules provide.

**13. Can I use FML while on Worker's Compensation?**

If the Worker's Compensation injury qualifies as a serious health condition under Family Medical Leave, employees can be approved for FML. Approved FML can run concurrently with Worker's Compensation.

**14. What is covered active duty?**

For a member of the Regular Armed Forces, *covered active duty or call to covered active-duty status* means duty during the deployment of the member with the Armed Forces to a foreign country.

For a member of the Reserve components of the Armed Forces (members of the National Guard and Reserves), *covered active duty or call to covered active-duty status* means duty during the deployment of the member with the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation.

**15. Are families of servicemembers in Regular Armed Forces eligible for Military Caregiver Leave?**

Yes. Military caregiver leave extends to those seriously injured or ill members of both the Regular Armed Forces and the National Guard or Reserves.

## **Family Medical Leave Frequently Asked Questions**

### **16. Can I take Military Caregiver leave if I am the stepson or stepdaughter of the covered servicemember or if I am the stepparent of a covered servicemember?**

Yes. Under the FMLA for military caregiver leave, a "son or daughter of a covered servicemember" means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, and who is of any age. Under the FMLA for military caregiver leave, a "parent of a covered servicemember" means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law."

### **17. How much leave may I take to care for a covered service member?**

An eligible employee is entitled to take up to 26 workweeks of leave during a "single 12-month period" to care for a seriously injured or ill covered servicemember. The "single 12-month period" begins on the first day the eligible employee takes military caregiver leave and ends 12 months after that date, regardless of the method used by the employer to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons.

### **18. When is a return-to-work notice required?**

A return-to-work notice is required for employees who are out an approved FML consecutive leave for his/her own serious health condition.

### **19. What happens when I exhaust Family Medical Leave?**

Two (2) weeks prior to you exhausting FML, you will receive a letter via email and certified mail advising you of the next steps. You can also reference Orange County Policy 309 Leave of Absence.