

JOINT APWU & USPS
FAMILY & MEDICAL LEAVE ACT
QUESTIONS & ANSWERS

The American Postal Workers Union (APWU) and the United States Postal Service (USPS) have worked jointly to produce answers to the most frequently asked Family and Medical Leave Act (FMLA) questions. The parties agree that referral to these questions and answers should eliminate disputes concerning basic FMLA issues. Our expectation is that proper interpretation of the FMLA will improve communication and increase the understanding between labor and management so that employees can fulfill the Postal Service's mission in a workplace climate that promotes fairness and concern for workers entitled to FMLA job-protected absences.

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FMLA QUESTIONS & ANSWERS

SECTION 1- WHO IS COVERED

1. Q. What is the Family and Medical Leave Act of 1993?

A. In general, the Act entitles eligible employees to be absent for up to 12 workweeks per year for the birth or adoption of a child; to care for a spouse, son, daughter, or parent with a serious health condition; or when unable to work because of a serious health condition without loss of their job or health benefits. The FMLA does not provide more annual or sick leave than that which is already provided to Postal Service employees.

Source: 825.100

2. Q. Which employees are eligible?

A. Employees who have been employed by the Postal Service for at least one year and who have worked at least 1250 hours during the previous 12 months are eligible.

Source: 825.110, ELM 444.22

3. Q. I have been a transitional employee for nine months. Am I an eligible employee under the FMLA?

A. No, because you have not worked for the Postal Service for one year. Any employee, including a TE, who has worked for the Postal Service for an accumulated total of one year and has worked a total of 1250 workhours during the previous 12 months is an eligible employee under the FMLA.

Source: 825.110 (b)

4. Q. I am absent on protected leave under the Family and Medical Leave Act, and my transitional employee appointment term expires next week. How will that affect me?

A. The Family and Medical Leave Act does not affect the terms of your appointment.

Source: 825.216 (b)

5. Q. Do COP, OWCP, military leave and court leave count toward eligibility requirements under the FMLA?

A. COP, OWCP, court leave, and short periods of military leave count toward the 12-month eligibility requirement. However, none of the times mentioned count toward the 1250 hours worked eligibility requirement.

Source: 825.110, ELM 444.22

6. Q. If both spouses work for the Postal Service, does the USPS let both take up to 12 workweeks each of protected absences under FMLA each leave year?

A. Yes.

Source: ELM 515.43

7. Q. Can an employee who is separated or divorced take a protected absence under the FMLA to care for a spouse or ex-spouse with a serious health condition?

A. For an employee to take such leave, the couple must be legally married.

Source: 825.113

SECTION 2 - WHAT IS COVERED

8. Q. My mother-in-law who lives with me is ill and requires my care. Does management have to approve my leave as a covered condition?

A. No, the FMLA only provides protected absences for covered conditions of a spouse, parent, son or daughter. Leave taken to care for anyone else would require approval under normal leave policies.

Source: 825.112

9. Q. My knee problem was diagnosed during an appointment with a health care provider. He ordered three months of physical therapy treatments. Are the visits and the treatments protected by the FMLA?

A. Yes, where properly documented as a serious health condition, the absence would qualify for FMLA protection since it involves a continuing treatment under the supervision of a health care provider. The health care provider is stating that lack of treatment would likely result in a period of incapacity of more than three days. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the employer's operations.

Source: 825.114 (a)(2)(v), 825.117

10. Q. My wife's doctor said she needs almost total bed rest for the last two months of her pregnancy, and I need to stay home to care for our other children. Is this condition covered under the FMLA?

A. FMLA does not cover babysitting for the other children. However, where properly documented that the husband is needed to care for her, the wife's serious health condition would entitle the husband to a FMLA protected absence.

Source: 825.116

11. Q. If I use a midwife for both my prenatal care and the delivery of my child, would my pregnancy still be a condition covered under the FMLA?

A. Yes, pregnancy is a covered condition under the FMLA. Midwives are considered health care providers if they are authorized to practice under State law and are performing within the scope of their practice as defined under State law.

Source: 825.118 (b)(2), 825.118 (c)

12. Q. An employee had a baby and took 6 weeks of leave during a period when she was not eligible under the FMLA. Now she is eligible, and the baby is still less than a year old. Can she now take the 12 workweeks of protected absences under the FMLA?

A. Yes, only the time taken when eligible under the FMLA counts toward the 12 workweeks.

Source: 825.112

13. Q. Is an employee entitled to 12 workweeks of protected absences under the FMLA for placement or care of an adopted or foster child?

A. Yes.

Source: 825.112, 825.200, 825.201

14. Q. I took a week of protected leave under the FMLA to care for my baby who was born 2 months ago. Now I want to take the week of July 4th off to be with my baby. Since caring for my newborn is a condition covered under the FMLA, does my supervisor have to let me off for the week of July 4th?

A. Not necessarily. You are requesting time off for the birth and care of a child on an intermittent basis. Therefore, your request for the week of July 4th is subject to your supervisor's approval in accordance with current leave policies.

Source: 825.203

15. Q. Can an employee take protected leave under the FMLA to look for child care?

A. No. Of course, a supervisor can approve regular annual leave for such a purpose.

Source: 825.112

16. Q. An employee has a recurrent degenerative knee condition that qualifies as a serious health condition. The certification indicates his condition may "flare" up 1 to 2 days per month and render him incapacitated for duty. Consequently, the employee requests covered absences under the FMLA with little or no advance notice. Does this meet the criteria or intent of the intermittent leave entitlement under the FMLA?

A. Intermittent absences due to a chronic condition which incapacitates an employee are covered by the FMLA. See attached Documentation Example #4.

Source: 825.114, 825.117, 825.203, 825.204

17. Q. Is treatment for substance abuse covered under the FMLA?

A. Yes, if certified by the health care provider as a serious health condition. Absence because of the employee's use of the substance, rather than for treatment, does not qualify as a covered condition under the FMLA.

Source: 825.114 (d), 825.112 (g)

18. Q. Can the flu be considered a serious health condition under the FMLA?

A. Yes, if it complies with the definition of a serious health condition under the FMLA.

Source: 825.114 (c)

19. Q. If my child is sick, can I now take sick leave to care for him?

A. Yes, under the National Agreement-Memorandum of Understanding on Sick Leave for Dependent Care, employees may use up to 80 hours of their earned sick leave to care for a spouse, parent, son or daughter. Sick leave for Dependent Care is only protected under the FMLA when the illness qualifies as a serious health condition under the FMLA.

Source: National Agreement-Memorandum of Understanding, ELM 515.2

SECTION 3 - HOW AN ABSENCE IS COVERED

20. Q. How do I apply for leave under the FMLA?

A. Submit a form PS 3971, Request for or Notification of Absence, with the supporting documentation. Leave under the FMLA is not a separate category or type of leave. You may request annual leave, sick leave or LWOP for your absence under the FMLA. Just as in the past, in an emergency situation a phone call, telegram, etc. will suffice until it is possible for you to submit the necessary paperwork.

Source: 825.302, 825.303, ELM 510

21. Q. Do I have to mention the Family Medical Leave Act when I request time off for a covered condition?

A. No. However, an employee must explain the reasons for the absence and give enough information to allow the employer to determine that the leave qualifies for FMLA protection. If the employee fails to explain the reasons, the leave may not be protected under the FMLA.

Source: 825.208, 825.302, 825.303

22. Q. Do I have to use all of my annual leave balance before I can take LWOP for a condition covered under the FMLA?

A. No, you need not exhaust annual leave and/or sick leave before requesting leave without pay. The use of leave, paid or unpaid, is subject to management's approval consistent with the handbooks, manuals, the National Agreement and the FMLA.

Source: 825.207, ELM, NATIONAL AGREEMENT

Q. Can I take more than 12 workweeks of leave during a Postal leave year?

A. Twelve workweeks is the maximum amount of protected leave which must be granted for the covered conditions under the FMLA. After being off for 12 workweeks, you may request leave under current leave policies, but that time would not be protected under the FMLA. Approval will be subject to the terms and conditions of current policies.

Source: 825.200, ELM 510

24. Q. Do the 12 workweeks of FMLA protected leave have to be continuous?

A. No, the leave may be taken intermittently or on a reduced schedule basis as long as taking it in that manner is medically necessary. When leave is taken because of the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the supervisor agrees.

Source: 825.203, 825.204

25. Q. How will I know if the requested leave counts as part of the 12 workweek entitlement under the Family and Medical Leave Act?

A. The supervisor should provide you a copy of the Form 3971.

If the leave is approved as one of the covered conditions, the approving official will check the "Approved, FMLA" block on the Form 3971.

Source: 825.301, ELM 515

26. Q. If the employee does not request FMLA protection for an absence that meets the definition of a covered condition under the FMLA, must the supervisor designate the absence as FMLA protected leave?

A. Yes, if the employee provides sufficient information for the supervisor to be able to designate it as FMLA protected leave.

Source: 825.208

27. Q. If an employee is absent on sick leave and, while absent is diagnosed as having a serious health condition, will his entire absence be protected under the FMLA?

A. Yes, if the employee provides the supervisor with the necessary information about the serious health condition within two days of returning to work.

Source: 825.208 (d) & (e)

28. Q. Is the employer's approval required for an employee to use intermittent leave or work a reduced schedule if the employee, spouse, child or parent has a serious health condition?

A. The absence must be allowed provided proper medical certification and notice is provided. However, in foreseeable cases, the employee must attempt to schedule the absences so as not to disrupt the employer's operation. The employee may be assigned to an alternative position with equivalent pay and benefits that better accommodates the intermittent or reduced leave schedule, in accordance with National Agreement.

Source: 825.203, 825.204

29. Q. If an employee requests leave for a condition covered under the FMLA, what information should the supervisor provide to the employee?

A. A supervisor should provide the following information:

- Whether the employee is eligible or when he will be eligible.
- Whether the leave will be designated as FMLA protected.
- A copy of PS Form 3971 stating the type of leave and whether the approval is pending documentation.
- Publication 71 where applicable. Publication 71 includes the consequences for not providing the requested documentation and what information must be provided for return to duty, if any.

Source: 825.301

30. Q. What certification is required for employees requesting leave protected under the FMLA because of the birth or placement of a son or daughter, and in order to care for such son or daughter after birth or placement?

A. That the employee is the parent and the date of birth or placement of this son or daughter. No medical certification is required.

Source: 825.113 (d)

31. Q. Is recertification required for each absence when a health care provider has certified that the employee is receiving continuing treatment?

A. Excluding pregnancy, chronic conditions, and permanent/long-term conditions, recertification is not required for the duration of treatment or period of incapacity specified by the health care provider, unless:

- a) the employee requests an extension of leave
- b) circumstances have changed significantly from the original request
- c) the employer receives information that casts doubt upon the continuing validity of the certification
- d) the absence is for a different condition or reason.

Source: 825.308

32. Q. What can an employer do if he or she questions the adequacy of medical certification that includes all the required information?

A. With the employee's permission, a health care provider representing the Postal Service may contact the employee's health care provider to clarify the medical certification. Also, the Postal Service may require the employee to obtain a second opinion at the employer's expense.

Source: 826.307

33. Q. Is advance notice required for employees' use of protected leave under FMLA?

A. An employee must provide the Postal Service at least 30 days advance notice if the need for the leave is foreseeable. When the need for leave is not foreseeable, an employee should give notice to the Postal Service as soon as practicable by telephone, fax or other electronic means.

Source: 825.302, 825.303

34. Q. Can a supervisor have a blanket policy that requires recertification every 30 days for all employees requesting FMLA protection for absences related to pregnancy, chronic conditions, and permanent/long-term conditions?

A. No. On a case by case basis, the supervisor may require recertification of such conditions on a reasonable basis, but not more often than every 30 days and only in connection with an absence related to the condition. The supervisor may require recertification in less than 30 days when:

- circumstances in the previous certification have changed.
- the supervisor receives information that casts doubt upon the employee's stated reason for the absence.

Source: 825.308 (a)

SECTION 4 - WORK RULES

35. Q. May an employee be removed, disciplined, or placed on restricted sick leave as a result of protected absences under the FMLA?

A. No.

Source: 825.220

36. Q. Some Local Memorandums of Understanding (LMOU's) allow for daily percentages off on leave, will that affect those who need protected leave under the FMLA?

A. No, leave percentages do not affect the rights of employees to be absent under the FMLA. LMOU language will determine whether FMLA absences count towards the percentages.

Source: AGREEMENT BETWEEN THE LOCAL PARTIES

37. Q. Can an employee file an EEO complaint related to FMLA?

A. Yes, but only on the grounds that the FMLA was applied in a discriminatory manner.

Source: 825.702

38. Q. Can a step increase be deferred as a result of LWOP used under the FMLA?

A. Yes, if an employee has used 13 weeks of LWOP during a step increase waiting period, then the step increase can be deferred. The Family and Medical Leave Act does not require accrual of any rights or benefits during the period of leave taken under the FMLA.

Source: 825.209 (h)

39. Q. My last chance agreement states that if I have more than 4 unscheduled absences within the next six months, I can be removed from the Postal Service. Will an absence protected under the FMLA count as an absence for the purposes of my last chance agreement?

A. No.

Source: 825.220

40. Q. While absences for conditions covered by the FMLA cannot be cited as a basis for discipline, can they be discussed in periodic absence reviews concerning the importance of regular attendance?

A. Yes.

41. Q. Can the employee be separated after he or she has exhausted leave protected under the FMLA but is still unable to return to work?

A. Once leave protected under the FMLA has been exhausted, the employee's failure to return to work should be treated as any other failure to return to work.

Source: 825.309, 825.312