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# FMLA Checklist

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## Determine if you are a covered employer

Do you employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year? If so, you are a covered employer.

**Note:** *Private employers with fewer than 50 employees are not covered by FMLA, but may be covered by state FMLA laws. Government agencies and elementary and secondary schools are covered by FMLA regardless of the number of employees.*

## FMLA Notice

Employee must give employer at least 30 days' notice of FMLA if they are aware in advance that they will need FMLA leave. If they do not know in advance that they will need FMLA leave, employees must give notice as soon as they can.

Complete and provide the employee with the [Notice of Eligibility and Rights & Responsibilities](#).

### Attach the appropriate certification form (one of the following):

- » Certification of Health Care provider for Employee's Serious Health Condition. [DOL Form WH- 380-E](#)
- » Certification of Health Care provider for Family Member's Serious Health Condition. [DOL Form WH 380-F](#)
- » Certification of Qualifying Exigency for Military Family Leave. [DOL Form WH-384](#)
- » Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave. [DOL Form WH- 385](#)

*\*You must give the employee at least 15 calendar days to return the form.*

## FMLA Eligibility

### An employee is eligible for FMLA if:

- » The employee has been employed for at least 12 months
- » The employee has worked at least 1250 hours during the past 12 months

### Circumstances in which leave is covered:

1. Birth or placement of a child with the employee
2. To care for seriously ill spouse/domestic partner, parent, or child
3. The employee's serious health condition makes the employee unable to perform the functions of his or her position
4. A covered family member's active duty or call to active duty in the National Guard or Reserves in support of a contingency operation
5. To care for an injured or ill covered service member

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## Amount, Duration and Types of Leave

An employee is entitled to take up to 12 weeks of FMLA leave during a 12-month period for circumstances 1 through 4 above. An employee is eligible to take up to 26 weeks of FMLA leave during a 12-month period for circumstance 5 above.

### Health Insurance Continuation and Protection

An employer must maintain the employee's coverage under any group health plan at the same level and under the same conditions as would be maintained had the employee continued actively working.

## Approve FMLA

**Within 5 business days** after an employee has submitted the appropriate certification form, the **employer must complete** and provide the employee with the designation notice. [Designation Notice, Form WH-382](#)

## After FMLA Leave

- » You must return employee to the exact same job or one that is almost identical.
- » If the employee uses all of their FMLA leave and is still unable to return to work, you are not required to restore the employee to his or her position.

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Visit [www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla) for more FMLA resources

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