

# Family Medical Leave Act (FMLA)

## Federal Leave Law Changes for 2009

# Update

Issue	New Regulation	How This Changes FML Administration	Original Regulation
<b>Military Caregiver Leave</b>	<ul style="list-style-type: none"> <li>26 workweeks of leave in 12-month, rolling forward benefit period</li> <li>Identification of qualified family members</li> <li>"Per Member" and "Per Injury"</li> </ul>	<p>An employee has 12 months to take his or her 26 weeks of leave, starting with the date of the first absence in caring for a military member. Any combination of absences in the 12-month period may not exceed 26 weeks.</p> <p>"Blood Relative" is an added relationship for this type of leave only. It may simply be an individual designated as that individual's closest caregiver.</p>	No express clarification was provided.
<b>Military Exigency Leave</b>	<ul style="list-style-type: none"> <li>Definition of 'exigency' includes 7 different levels</li> <li>Relates only to National Guard/Reserves/Retired Military</li> <li>Members of the Armed Forces are not covered</li> <li>Must be due to federal contingency operation</li> </ul>	<p><b>Definition of Exigency:</b></p> <ul style="list-style-type: none"> <li>Short notice deployment Any issue in the event the military member has 7 or fewer days notice of active duty. <b>This leave may be up to 7 days long.</b></li> <li>Military events and related activities Ceremonies, etc. <b>This leave is for the duration of the event.</b></li> <li>Childcare and school activities</li> <li>Financial and legal arrangements <b>This leave may be taken up to 90 days after the termination of the covered military member's active duty status.</b></li> <li>Counseling This includes the relationships of self, the military member, or a child (standard definition under federal FMLA) of the military member—provided the counseling is due to the active duty.</li> </ul>	No express clarification was provided.

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		<ul style="list-style-type: none"> <li>■ Rest and recuperation This is for time to spend with the military member who is on a short rest and recuperation leave. <b>This leave may be up to 5 days long.</b></li> <li>■ Post-deployment activities This leave covers ceremonies, reintegration briefings, and events—including issues that arise from the death of a covered military member. <b>This leave may be taken up to 90 days from the termination of the covered military member’s active duty status.</b></li> <li>■ Additional activities Events that may arise—the employee and employer agree on the activity and duration of leave.</li> </ul>	
<p><b>Eligibility Information</b></p>	<ul style="list-style-type: none"> <li>■ Breaks in service of more than 7 years do NOT count toward months of service</li> <li>■ Special exceptions for military service or Collective Bargaining Agreement</li> </ul>	<p><b>Example:</b> Employee works for ABC company from 1994 to 1997 to gain 34 months of service before leaving the company. In 2006 (9 years later) the employee returns to the ABC company. Because there is a gap of greater than 7 years since the employee’s original service, the employee will not inherit any time toward 12 months of service.</p> <p><b>Example:</b> Employee works for ABC company from 1994 to 1997 to gain 34 months of service before leaving the company. In 2001 (4 years later) the employee returns to the ABC company. Because there is a gap of fewer than 7 years since the employee’s original service, the employee will inherit 34 months of service immediately upon re-hire and will only need to work 1,250 hours in order to be eligible for FML absences.</p> <p><b>NOTE:</b> Breaks in service due to military service or as agreed upon in a contractual Collective Bargaining Agreement do not apply and all of that historical service must be credited to the employee’s service levels.</p>	<p>No service limitations established. All prior service was counted.</p>

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<b>Serious Health Condition</b>	<ul style="list-style-type: none"> <li>■ Continuing treatment must include 2 visits to a health care provider               <ul style="list-style-type: none"> <li>■ First visit must occur within 7 days of the start of the absence</li> <li>■ Second visit must occur within 30 days of the start of the absence</li> </ul> </li> <li>■ Chronic conditions must include 2 or more health care provider visits per year</li> </ul>	<p>Employees are now expected to see their physicians more regularly to determine that a serious health condition exists. Requests for recertification may also be requested every 6 months, but only in conjunction with an employee taking an absence.</p>	<p>No parameters were established regarding frequency of health care provider visits.</p>
<b>Substituting Paid Leave</b>	<ul style="list-style-type: none"> <li>■ Employers may limit the paid-time increments to cover unpaid FML               <ul style="list-style-type: none"> <li>■ Limitations must be provided in writing</li> </ul> </li> </ul>	<p><b>Example:</b> Employee requests 2 hours off for a therapy appointment and wishes to get paid from his or her Paid Time Off (PTO) bank of time. The employer's vacation usage policy only allows an employee to use time in 4+ hours of time. The employer may not deny the employee's leave, however, he or she may require an employee take a full 4 hours or go unpaid for their 2 hour absence.</p>	<p>No express clarification was provided.</p>
<b>Counting Absence Time</b>	<ul style="list-style-type: none"> <li>■ Holidays: If leave is for less than a full week and that week has a holiday included, the holiday may not be counted as leave taken.</li> <li>■ Shut Downs: If the company shuts down for a week or more, that time may not be counted as FML for the employees who were out at that time for a qualified leave.</li> <li>■ Light Duty: If an employee returns to work full time, in a light duty position—he or she is entitled to restoration until the end of the benefit period for that employee.</li> </ul>	<p><b>Example:</b> Each day an employee is scheduled to report to work is worth a fraction of the week. If the employee is scheduled to report to work for 5 days, each day is worth 20% of a week. During a week that has a scheduled holiday, the employee is only scheduled to report to work for 4 days. The 5th day is paid, but the employee is not expected to come to work. Therefore, each day during this week is worth 25% of a week. If the employee takes a day off during the week with a holiday, the employer may only deduct 25% of a "workweek" from the employee's available time.</p>	<p>No express clarification was provided. <b>Holidays: Prudential met this regulatory requirement prior to publication of new regulations based on Department of Labor guidance.</b> Shut Downs: No clarification. Light Duty: Job restoration was in order for 12 weeks only. <b>Prudential is equipped to track and report benefit periods by employee.</b></p>

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<b>General Notice Requirements</b>	<ul style="list-style-type: none"> <li>■ General notices may be provided electronically, but must be available to applicants and employees.</li> <li>■ Notice needs to be provided at time of hire, at time of absence request, and once a year.</li> </ul>	This notice provides employees with their Rights & Responsibilities under the federal law.	Notice requirements only indicated that they must be in writing.
<b>Notice in Response to Leave Request</b>	<ul style="list-style-type: none"> <li>■ Eligibility notice must be provided within 5 days of the start of the leave.</li> <li>■ Reasons for ineligibility must be provided.</li> <li>■ Follow-up notice for leave in the same period does not need to be communicated.</li> <li>■ Rights &amp; Responsibilities notice must be provided with the eligibility notice.</li> <li>■ Instructions on how to address violations must be provided.</li> </ul>	Employers have been given additional time to provide eligibility information. However, the information they must provide has increased. If an employee is denied leave of absence because he or she has not worked for a full year, then this information must be provided on their denial notice.	<p>Notice used to be required within 2 days. Reason was not required.</p> <p>Eligibility notice was required on all first requests.</p> <p><b>Prudential currently follows these requirements.</b></p>
<b>Designation Notice</b>	<ul style="list-style-type: none"> <li>■ Approval or denial of time must be sent within 5 days after receiving "sufficient information."</li> <li>■ Dates, hours, or weeks approved need to be communicated.</li> <li>■ If a fitness for duty notice will be required, a statement of the employee's job functions must be included in the notice.</li> <li>■ Time may be designated retroactively, provided there is no harm to the employee.</li> </ul>	<p>Employers have again been given additional time to provide a decision regarding an employee's absences, but the information that must be included is more detailed. For example: An employee is only taking a partial day, when the employer designates the absence as FML time, must specifically list "June 9, 2009— 2:30 p.m.—4:30 p.m." This enables an employee to ensure the proper time was deducted. This provides an employer with more supportive information if there is a dispute in the future.</p> <p>Job descriptions must be provided only if an employer wishes to have a fitness for duty document completed by the employee's physician prior to returning to work. This description allows a physician to more accurately determine if the employee may perform all of their duties.</p> <p>Regulators noticed that prior to these modifications there were many cases in which an employee was given more than 12 workweeks of job protection because the time had not been properly designated. Under the new regulations, regulators now allow that the employer may go back and deduct the time from the employee's available time so long as it does not cause harm to the employee. An example of "harm" might be if the employee then exhausts his or her time while still out and is terminated for not returning to work when he or she thought the job was protected.</p>	<b>Prudential currently meets all notice requirements.</b>

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<b>Employee Notice Obligation</b>	<ul style="list-style-type: none"> <li>■ Employees may be required to follow normal call-in procedures.</li> <li>■ When absence is taken for a previously reported leave, employees must specifically reference the qualifying reason.</li> <li>■ If the employee does not provide enough information to determine if the leave may be qualifying, it is the employer's responsibility to inquire further so he or she may determine if the leave may qualify.</li> </ul>	<p>If an employer requires all employees to report their absence within 2 hours of the start of their shift, absences that are protected under the FMLA are not exempt from this requirement. An employee's failure to call in accordance with absenteeism policies may be subject to disciplinary action.</p> <p><b>NOTE:</b> The disciplinary action is due to failure to call in a timely fashion, not because the employee legitimately sought job protection under the FMLA.</p> <p>The new regulations incent employers to educate their management staff to recognize potential cases of FML and to ask the appropriate questions in order to identify if an absence even potentially qualifies for job protection.</p>	<p>No express clarification was provided.</p>
<b>Medical Certification</b>	<ul style="list-style-type: none"> <li>■ If a certification is considered incomplete or requiring clarification, the employer must state in writing what is deficient.</li> <li>■ Employers must give an employee 7 days to provide the clarification.</li> <li>■ If the employee has been given the opportunity to clarify or authenticate his or her certification, the employer need not have the employee's permission to contact the health care provider, so long as it is not a direct supervisor.</li> <li>■ Minimum durations of more than 6 months can be required to obtain a recertification every six months—in conjunction with an absence.</li> </ul>	<p>Medical certifications may now require an employee's physician to specifically list the functions of the employee's job, which he or she cannot perform in order to enable the employer to determine if those functions are "essential."</p> <p>Medical information received in the course of a paid leave benefit, such as Short Term Disability, may be used in order to make a decision for the FML absence. An employee may refuse to provide the information, however he or she must be informed that by refusing to provide the additional information, he or she jeopardizes receiving his or her paid benefit.</p>	<p>There was no requirement to provide the deficient information in writing.</p> <p>No express clarification was provided.</p> <p>Employee permission was required.</p> <p>Only employer physicians of like specialty could speak with the employee's health care provider.</p> <p>If certification indicated 1 year, recertification was not allowed prior to that time.</p>
<b>Perfect Attendance Awards</b>	<ul style="list-style-type: none"> <li>■ Employers may disqualify an employee from a bonus/award based on the achievement of a specific goal if the employee could not achieve that goal because of their FML absence.</li> </ul>	<p><b>Example:</b> If a bonus is based on the achievement of a specified goal such as hours worked, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. If an employee who used paid vacation leave for a non-FMLA purpose would receive the payment for an attendance bonus, then the employee who used paid vacation leave for an FMLA protected purpose also must receive the payment.</p>	<p>This practice was not allowed under the original act.</p>

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