

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness*; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.*

***The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months*, and if at least 50 employees are employed by the employer within 75 miles.

***Special hours of service eligibility requirements apply to airline flight crew employees.**

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and

a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Wage and Hour Division



WHD Publication 1420 · Revised February 2013

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE HAWAII FAMILY LEAVE LAW

Basic Leave Entitlement

Under the HFLL and rules, an employee shall be entitled to a total of up to four (4) weeks of unpaid family leave each calendar year upon the birth of a child of the employee or the adoption of a child; or to care for the employee's child, spouse, reciprocal beneficiary, sibling, or parent with a serious health condition.

Employment & Benefits Protections

Except for workforce reduction situations, the employee must be restored to the same or equivalent position held prior to the leave, or restored to an equivalent position with equivalent employment benefits, pay, and other terms and condition of employment.

If, however, during a leave, the employer experiences a layoff or workforce reduction and the employee would have lost a position had the employee not been on family leave, the employee is not entitled to reinstatement in the former or equivalent position. In such circumstances, the employee retains all rights, including seniority rights, pursuant to the good faith operation of a bona fide layoff and recall system.

Eligibility Requirements

Employees are eligible if they work within the State of Hawai'i, and have worked for at least six (6) consecutive months.

Consecutive employment means continuous employment with no break in service, such as by resignation, termination or layoff. Paid periods of leave or authorized unpaid leaves of absence are not considered breaks in service.

Definition of Serious Health Condition

A physical or mental condition that warrants the participation of the employee to provide care during the period of treatment or supervision by a health care provider, and:

1. Involves inpatient care in a hospital, hospice, or residential health care facility; or
2. Requires continuing treatment or continuing supervision by a health care provider.

Use of Leave

Intermittent leave is allowable for all qualifying reasons.

Substitution of Paid Leave for Unpaid Leave

An employee may substitute their accrued paid leave for unpaid leave. If your employer provides for paid sick leave, you may use up to ten (10) days of your accrued and available sick leave.

Employee Responsibilities

In any case which the necessity for family leave is foreseeable, the employee shall provide the employer with prior notice in a manner that is reasonable and practicable. Requests for family leave shall include evidence that the employee has submitted the request and provided required data in accordance with section 398-9.5.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under HFLL.

Covered employers must inform employees if leave will be designated as HFLL-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not HFLL-protected, the employer must notify the employee.

Prohibited Acts

It shall be unlawful for any employer to:

- interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under Chapter 398;
- discharge or in any other manner discriminate against any individual for opposing any practice made unlawful under Chapter 398.

Enforcement

Any individual claiming to be aggrieved by an alleged unlawful act may file with the department a verified complaint in writing.

For additional information

[dhrd.hawaii.gov/state-employees/employee-benefits/family-friendly-benefits/family-and-medical-leave/
labor.hawaii.gov/wsd/files/2013/10/Family-Leave-Comparison-Chart-rev-10-29-2013.pdf](http://dhrd.hawaii.gov/state-employees/employee-benefits/family-friendly-benefits/family-and-medical-leave/labor.hawaii.gov/wsd/files/2013/10/Family-Leave-Comparison-Chart-rev-10-29-2013.pdf)