



# The Family and Medical Leave Act (FMLA): An Overview

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## Summary

The Family and Medical Leave Act of 1993 (FMLA), as amended, is intended to help employees balance work and family life. The act provides eligible employees with two types of job-protected leave: regular leave and military family leave. In turn, military family leave consists of qualifying exigency leave and military caregiver leave.

*Eligible employees.* Under the FMLA, an eligible employee is an employee who has worked for the employer for at least 12 months (the 12 months need not be consecutive), has worked a minimum of 1,250 hours in the 12 months preceding the start of FMLA leave, and is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite.

*Covered employers.* The FMLA covers both private and public sector employers. The FMLA covers private employers who employed at least 50 employees for at least 20 weeks in the preceding or current calendar year. Public agencies are covered by the FMLA regardless of the number of employees. To be eligible for FMLA leave, public employees must meet the above employee eligibility requirements of the act. Public agencies include the federal government and state and local governments. A “state” includes the District of Columbia and the territories and possessions of the United States.

*Job-protected leave.* After returning from FMLA leave, employees generally have the right to return to the same, or an equivalent, job with the same pay, benefits, and working conditions.

*Paid versus unpaid leave.* FMLA leave is generally unpaid leave. An employee may, however, substitute accrued paid leave for FMLA leave. Private employers may require an employee to substitute accrued paid leave for unpaid leave. While an employee is on FMLA leave, an employer must maintain the employee’s group health insurance coverage.

*Regular FMLA leave.* An eligible employee may take up to 12 weeks of leave for the birth and care of a child; to care for an adopted or foster child; to care for a spouse, a child under age 18, or a parent with a serious health condition; or because the employee is unable to work because of his or her own serious health condition.

The 12 weeks of FMLA leave need not be continuous. If there is a medical need, an employee may take “intermittent” leave or work a part-time schedule. Although it is not required, an employer may agree to allow an employee to take intermittent or part-time leave for the birth or care of a child or to care for an adopted or foster child.

*Military family leave.* Eligible employees may take two types of military family leave. The first type of leave is for a qualifying exigency. Qualifying exigencies include a “short notice deployment” (which is a notice that a member of the employee’s family will be deployed in seven days or less); time for the employee to arrange for childcare, make financial or legal arrangements, or attend official ceremonies; time to care for a parent of a military member if the parent is incapable of self-care; and up to 15 days of leave for the employee to spend time with a member of the military who is on temporary leave for rest and recuperation during a deployment.

The second type of military family leave is military caregiver leave. An employee who is the spouse, son or daughter (of any age), parent, or next of kin of a covered servicemember with a

serious injury or illness can take up to 26 weeks of leave during a 12-month period to care for the servicemember.

*Airline flight crews.* The FMLA has special rules that apply to airline pilots, flight attendants, and other airline crewmembers. A member of an airline flight crew is eligible for FMLA leave if he or she worked (1) at least 504 hours during the previous 12-month period for the employer and (2) at least 60% of the minimum number of hours that the employee was scheduled to work in any given month or, for an employee who is in “reserve status,” at least 60% of the hours that an employee was paid for any given month. The hours that airline flight crews work include the hours spent in flight and the hours that a crewmember is on duty but not in flight. The hours that a crewmember is on duty may include hours between flights or hours during which a crewmember is on reserve status waiting to be called to duty.

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The Family and Medical Leave Act (FMLA, P.L. 103-3) was enacted in 1993. The act is intended to help employees more easily balance work and family life.<sup>1</sup> This report provides a legislative history of the FMLA and describes the major provisions of the act.

## Legislative History

The FMLA requires covered employers to provide eligible employees with job-protected leave for the birth and care of a newborn child, to care for a newly placed adopted or foster care child, to care for a family member who has a serious health condition, or for an employee's own serious health condition that makes him or her unable to work.

In January 2008, President George W. Bush signed the National Defense Authorization Act for Fiscal Year 2008 (NDAA for FY2008, P.L. 110-181). The act created two types of military family leave: qualifying exigency leave and military caregiver leave. The legislation did not specify the effective date for the amendments. In practice, military caregiver leave became effective on January 28, 2008, the date that the bill was signed into law.<sup>2</sup> Before issuing final regulations on November 17, 2008, implementing military caregiver leave, the U.S. Department of Labor (DOL) required employers to use existing FMLA procedures "as appropriate" in order to provide employees with military caregiver leave.<sup>3</sup> Because the NDAA for FY2008 required DOL to define qualifying exigency leave, DOL took the position that employers were not required to provide qualifying exigency leave until the department defined the term in regulations.<sup>4</sup> Qualifying exigency leave became effective on January 16, 2009, the date that regulations that define qualifying exigency leave went into effect.<sup>5</sup>

In October 2009, President Barack Obama signed the National Defense Authorization Act for Fiscal Year 2010 (NDAA for FY2010, P.L. 111-84). The law modified and expanded the military family leave provisions enacted in 2008. The amendments also extended military caregiver leave to qualified veterans. The amendments required DOL to define a serious injury or illness of a veteran. On February 6, 2013, DOL published final regulations implementing the FMLA amendments in the NDAA for FY2010. The regulations went into effect on March 8, 2013.<sup>6</sup>

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<sup>1</sup> 29 C.F.R. §825.101. An employee guide to the FMLA is available at the U.S. Department of Labor, Wage and Hour Division, *The Employee's Guide to the Family and Medical Leave Act*, <http://www.dol.gov/whd/fmla/employeeguide.pdf>.

<sup>2</sup> U.S. Department of Labor, Wage and Hour Division, "The Family and Medical Leave Act of 1993; Notice of Proposed Rulemaking," *Federal Register*, vol. 73, February 11, 2008, p. 7876. (Hereinafter cited as DOL, *The Family and Medical Leave Act of 1993; Proposed Rulemaking*, February 11, 2008.)

<sup>3</sup> U.S. Department of Labor, Wage and Hour Division, "The Family and Medical Leave Act of 1993; Final Rule," *Federal Register*, vol. 73, November 17, 2008, p. 67962. (Hereinafter cited as DOL, *The Family and Medical Leave Act of 1993; Final Rule*, November 17, 2008.)

<sup>4</sup> U.S. Department of Labor, Wage and Hour Division, "The Family and Medical Leave Act; Notice of Proposed Rulemaking," *Federal Register*, vol. 77, February 15, 2012, p. 8962. (Hereinafter cited as DOL, *The Family and Medical Leave Act; Notice of Proposed Rulemaking*, February 15, 2012.)

<sup>5</sup> DOL, *The Family and Medical Leave Act of 1993; Final Rule*, November 17, 2008, p. 67934.

<sup>6</sup> U.S. Department of Labor, Wage and Hour Division, "The Family and Medical Leave Act; Final Rule," *Federal Register*, vol. 78, February 6, 2013, p. 8834. (Hereinafter cited as DOL, *The Family and Medical Leave Act; Final Rule*, February 6, 2013.)

The Airline Flight Crew Technical Corrections Act (AFCTCA, P.L. 111-119) became law in December 2009. The act changed the way hours of work are calculated, for purposes of FMLA leave, for airline flight crews. This change became effective on December 21, 2009, the date that the amendments became law.<sup>7</sup>

## **The Major Provisions of the Family and Medical Leave Act (FMLA)**

Covered employers must provide eligible employees with two types of FMLA leave: regular leave and military family leave. Military family leave consists of qualifying exigency leave and military caregiver leave.

FMLA leave is job-protected leave. After returning from FMLA leave, an employee generally has the right to return to the same, or an equivalent, job with the same pay, benefits, and working conditions.<sup>8</sup>

FMLA leave is generally unpaid leave. An employee may, however, substitute accrued paid leave (e.g., vacation or personal leave) for FMLA leave. Private employers may require an employee to substitute accrued paid leave for unpaid FMLA leave.<sup>9</sup> Federal agencies cannot require employees to substitute paid leave for unpaid FMLA leave.<sup>10</sup> When paid leave is substituted for unpaid FMLA leave, the employee receives pay while on leave and receives the job protections of the FMLA.

While an employee is on FMLA leave, an employer must maintain the employee's group health insurance coverage. Both the employer and employee continue to pay their regular shares of an employee's health insurance premiums.<sup>11</sup>

### **Eligible Employees**

Under the FMLA, an eligible employee is an employee who has been employed by the employer for

- at least 12 months, although the 12 months need not be consecutive,<sup>12</sup>

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<sup>7</sup> DOL, *The Family and Medical Leave Act; Notice of Proposed Rulemaking*, February 15, 2012, p. 8962. The regulations implementing AFCTCA were published in February 2013. DOL, *The Family and Medical Leave Act; Final Rule*, February 6, 2013.

<sup>8</sup> 29 C.F.R. §825.100. An exception to job-protected leave exists for "key employees." Regulations state that an employer may deny job-protection to a "key employee" if restoring the employee to his or her original job would cause "substantial and grievous economic injury to the operations of the employer." 29 C.F.R. §825.216.

<sup>9</sup> 29 C.F.R. §825.207.

<sup>10</sup> 5 C.F.R. §630.1206(d).

<sup>11</sup> 29 C.F.R. §825.209.

<sup>12</sup> If an employee has a break in service of seven years or more, employment before the seven-year break is not counted toward the 12 months of employment. But, employment before a seven-year break in service is counted if the break is for military service or there is a written agreement (including a collective bargaining agreement) in which the employer agrees to rehire the employee after a break in service. 29 C.F.R. §825.110.

- a minimum of 1,250 hours in the 12 months preceding the start of FMLA leave, and<sup>13</sup>
- is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite.<sup>14</sup> The number of employees is determined at the time an employee requests leave.<sup>15</sup>

Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA, P.L. 103-353), time that an employee has spent in the National Guard or Reserves is counted toward his or her eligibility for FMLA leave. Thus, the time that an employee spends fulfilling his or her National Guard or Reserve duty is counted in determining whether the employee has been employed for at least 12 months by the employer. The hours that an employee spends fulfilling his or her National Guard or Reserve obligation are counted in determining whether the employee has worked at least 1,250 hours in the preceding 12 months.<sup>16</sup>

### **Airline Flight Crews**

The FMLA provides special rules for determining the eligibility of airline flight crews. Flight crew members include pilots, flight attendants, and other crewmembers. The Airline Flight Crew Technical Corrections Act of 2009 changed the way hours of work are calculated for airline flight crews.

As described above, under the FMLA, an eligible employee is a person who has worked at least 12 months for the employer and a minimum of 1,250 hours in the 12 months preceding the start of FMLA leave. The Airline Flight Crew Technical Corrections Act (AFCTCA) amended the FMLA as it applies to airline flight crews. Under the AFCTCA, a member of an airline flight crew is eligible for FMLA leave if he or she worked (1) at least 504 hours during the previous 12-month period for the employer and (2) at least 60% of the minimum number of hours that the employee was scheduled to work in any given month or, for an employee who is in “reserve status,” at least 60% of the hours that an employee was paid for any given month.<sup>17</sup>

The AFCTCA clarifies that the hours that airline flight crews work include not only the hours spent in flight, but also the hours that a crewmember is on duty but not in flight. Hours that airline

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<sup>13</sup> The 12-month period may be a calendar year or some other 12-month period chosen by the employer. (29 C.F.R. §825.200.) Hours worked do not include paid or unpaid leave and the minimum 1,250 hours of work include only those hours actually worked by the employee for the employer. U.S. Department of Labor, *Employee Eligibility*, <http://webapps.dol.gov/elaws/whd/fmla/6i.aspx>.

<sup>14</sup> 29 C.F.R. §825.110. The 101<sup>st</sup> Congress passed H.R. 770, the “Family and Medical Leave Act of 1990.” The House Report on H.R. 770 said that the purpose of the 75-mile radius in determining the size of an employer is to recognize the difficulties that an employer may have in reassigning work to employees at different worksites. (U.S. Congress, House Committee on Education and Labor, *Family and Medical Leave Act of 1989*, report to accompany H.R. 770, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., H.Rept. 101-28, part 1 (Washington, DC: GPO, 1989), p. 24.) H.R. 770 was vetoed by President George H. W. Bush. The House vote to override the veto was less than the two-thirds majority needed to override a presidential veto.

<sup>15</sup> 29 C.F.R. §825.110.

<sup>16</sup> 29 C.F.R. §825.110.

<sup>17</sup> An employee who works 40 hours a week for 52 consecutive weeks works 2,080 hours during the 12-month period. An employee who works 1,250 hours during a 12-month period works 60% of the 2,080 hours worked by a full-time, full-year employee.

crewmembers are on duty may include hours between flights or hours that a crewmember is on reserve status waiting to be called to duty.<sup>18</sup>

## **Covered Employers**

The FMLA covers both private and public sector employers. The FMLA applies to private employers who are engaged in commerce and who employed 50 or more employees for at least 20 weeks in the preceding or current calendar year.<sup>19</sup> Public agencies are covered by the FMLA regardless of the number of employees. Public agencies include the federal government and state and local governments. A “state” includes the District of Columbia and the territories and possessions of the United States.

Although the FMLA covers public sector employers regardless of the number of employees, to be eligible for leave, public employees must meet the employee eligibility requirements of the act; that is, they must have been employed by the agency for at least 12 months, worked at least 1,250 hours during the preceding 12 months, and work at a worksite with at least 50 employees within 75 miles of the worksite.<sup>20</sup>

Private sector and state and local governments are covered by Title I of the FMLA. Title I is administered by the U.S. Department of Labor (DOL). Most federal employees (including employees of the Government Printing Office and U.S. Postal Service) are covered by Title II of the FMLA. The Office of Personnel Management (OPM) administers Title II. OPM issues separate FMLA regulations at 5 C.F.R Part 630, Subpart L. Although the Government Accountability Office (GAO) and the Library of Congress (LOC) are covered by Title I, the Comptroller General of the United States and the Librarian of the Library of Congress, respectively, administer the act for employees of these two agencies. The Congressional Accountability Act of 1995 covers other employees of the legislative branch, including employees of the U.S. Senate and U.S. House of Representatives.<sup>21</sup>

## **Regular FMLA Leave**

An eligible employee may take up to 12 weeks of regular FMLA leave during a 12-month period. An employee may take regular FMLA leave for the following reasons:

- The birth of a child of the employee and to care for the newborn child.
- The placement with the employee of a child for adoption or foster care and to care for the child after placement.
- To care for the employee’s spouse, child under age 18 (or of any age if unable to care for himself or herself because of a physical or mental disability), or parent who has a serious health condition.

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<sup>18</sup> Bureau of National Affairs, “House Gives Final Approval to Legislation to Allow Flight Crews to Qualify for Leave,” *Daily Labor Report*, December 3, 2009.

<sup>19</sup> 29 C.F.R. §825.104.

<sup>20</sup> 29 C.F.R. §825.108.

<sup>21</sup> 29 C.F.R. §825.109.



- Because of the employee’s own serious health condition that makes him or her unable to work.<sup>22</sup>

For purposes of the FMLA, a “serious health condition” means an illness, injury, or physical or mental condition that involves inpatient care or ongoing treatment by a health care provider.<sup>23</sup>

An employee need not take the 12 weeks of FMLA leave in one continuous period. If there is a medical need, the FMLA allows employees to take “intermittent” leave or work a part-time schedule. Employees may take intermittent or part-time leave to care for their own or an eligible relative’s serious health condition. Although the FMLA does not require an employer to provide intermittent or part-time leave for the birth of a child or for the placement of a child for adoption or foster care, employers may agree to provide intermittent or part-time leave.<sup>24</sup>

Employers may require employees on intermittent or part-time leave to transfer temporarily to another position for which they are qualified and that better accommodates their changed hours. The new position must provide the employee with the same pay and benefits. Once an employee is no longer taking intermittent leave or working part-time, the employer must return the employee to his or her previous, or an equivalent, job.<sup>25</sup>

A husband and wife who are eligible for FMLA leave and who are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for the birth or to care for a newborn child, for the placement or to care for an adopted or foster care child, or to care for the employee’s parent who has a serious health condition.<sup>26</sup>

The FMLA prescribes a minimum benefit. If a state or local government enacts a more comprehensive family and medical leave law or an employer offers more generous family and medical leave (e.g., by providing more weeks of leave or leave for additional reasons), employees are entitled to the more generous benefits.<sup>27</sup>

## **Military Family Leave**

The National Defense Authorization Act for Fiscal Year 2008 (NDAA for FY2008) expanded the FMLA. The act created two types of military family leave: qualifying exigency leave and military caregiver leave. The National Defense Authorization Act for Fiscal Year 2010 (NDAA for FY2010) modified and expanded both types of leave.

The description below of military family leave is based on November 2008 regulations that implemented the NDAA for 2008 and the FMLA statute, as amended by the NDAA for FY2010.

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<sup>22</sup> 29 C.F.R. §825.112.

<sup>23</sup> 29 C.F.R. §825.113.

<sup>24</sup> 29 C.F.R. §825.120.

<sup>25</sup> 29 C.F.R. §§825.202-825.204.

<sup>26</sup> 29 C.F.R. §825.120.

<sup>27</sup> 29 C.F.R. §§825.700, 825.701.

Although the FMLA generally defines a son or daughter as a person under the age of 18, for the purposes of military family leave, a son or daughter may be of any age.<sup>28</sup>

## **Qualifying Exigency Leave**

An employee who is the spouse, son, daughter, or parent of a member of the regular Armed Forces who has been deployed to a foreign country or a member of the National Guard or Reserves who has been called to active duty and is deployed to a foreign country can take up to 12 weeks of job-protected leave for a qualifying exigency.<sup>29</sup>

An employee is eligible for up to 12 weeks of qualifying exigency leave in each 12-month period. Qualifying exigency leave may be taken intermittently.

Qualifying exigencies include the following activities:

- Time to deal with a “short notice deployment,” which is a notice that a military member will be deployed in seven days or less.
- Time to attend official ceremonies or programs sponsored by the military.
- Time to arrange for childcare or enroll a child in a new school or day care facility.
- Time needed to make financial or legal arrangements to address a military member’s absence.
- Time for counseling for oneself, the military member, or a child of the military member.
- Up to 15 days of leave to spend time with a military member who is on temporary leave for rest and recuperation during a deployment.

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<sup>28</sup> The NDAA for FY2008 did not change the FMLA’s statutory definition of “son or daughter.” However, DOL regulations that implement the NDAA for FY2008 developed separate definitions of son or daughter for the purposes of qualifying exigency leave and military caregiver leave. In its discussion of the definition of son or daughter for the purposes of qualifying exigency leave, DOL noted that, under federal law, the minimum age to enlist in the U.S. military is 17 (with parental consent). Thus, most sons or daughters who are on active duty or have been called to active duty in the National Guard or Reserves are adults. Because the statutory definition of son or daughter would not allow parents to take qualifying exigency leave if an adult son or daughter is on active duty or called to active duty in the National Guard or Reserves, DOL created a separate definition of son or daughter for purposes of qualifying exigency leave. In the case of military caregiver leave, DOL reasoned that the statutory definition of son or daughter would not allow adult children to take military caregiver leave to care for a parent who is a covered servicemember with a serious injury or illness. Therefore, DOL developed a separate definition of son or daughter for purposes of military caregiver leave. DOL, *The Family and Medical Leave Act of 1993; Proposed Rulemaking*, February 11, 2008, p. 7928. DOL, *The Family and Medical Leave Act of 1993; Final Rule*, November 17, 2008, pp. 67956, 67965-67966.

<sup>29</sup> Under the NDAA for FY2008, qualifying exigency leave was available to an employee if a family member was on active duty or called to active duty in the National Guard or Reserves, but not on active duty in the regular Armed Forces. Under the NDAA for FY2008, there was no requirement that the family member who was in the National Guard or Reserves be deployed to a foreign country. DOL, *The Family and Medical Leave Act; Notice of Proposed Rulemaking*, February 15, 2012, p. 8962.

The NDAA for FY2010 extended qualifying exigency leave to federal civil service employees. On September 30, 2011, OPM published final regulations implementing the expansion of qualifying exigency leave to federal employees. U.S. Office of Personnel Management, “Absence and Leave; Qualifying Exigency Leave; Final Rule,” *Federal Register*, vol. 76, September 30, 2011, pp. 60701-60706.

- Time to attend post-deployment activities such as arrival ceremonies or to make funeral arrangements and attend the funeral of a military member who died while on active duty.
- Time to care for a parent of a military member if the parent is incapable of self-care.
- Other activities that the employer and employee agree on are qualifying exigencies. These activities may include leave to spend time with the military member either before or after a deployment or leave to take care of a household emergency that would normally be handled by the military member.<sup>30</sup>

An employer may require an employee requesting exigency leave to provide a copy of the military member's active duty orders. An employer may also require that a request for exigency leave be supported by a certification that includes information on the type of exigency leave that is being requested.<sup>31</sup>

### **Military Caregiver Leave**

An employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness can take up to 26 weeks of job-protected leave to care for the servicemember. A covered servicemember is a current member of the regular Armed Forces or the National Guard or Reserves or a veteran who was a member of the regular Armed Forces or National Guard or Reserves during the five years before the date on which the veteran receives treatment.<sup>32</sup> The servicemember must have incurred the serious injury or illness in the line of duty while on active duty.<sup>33</sup>

An eligible employee may take 26 weeks of military caregiver leave during a single 12-month period. The 12-month period begins on the first day that the employee takes caregiver leave and ends 12 months later. Military caregiver leave can be taken intermittently if medically necessary. Spouses who are employed by the same employer are limited to a combined total of 26 weeks of military caregiver leave.<sup>34</sup>

Military caregiver leave can be taken by a servicemember's "next of kin," who is a family member other than the servicemember's spouse, parent, son, or daughter. A next of kin may be a brother or sister, aunt or uncle, grandparent, first cousin, or another relative designated by the servicemember.

An employer may require that an employee requesting military caregiver leave provide a certification completed by an authorized health care provider of the covered servicemember.<sup>35</sup>

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<sup>30</sup> 29 C.F.R. §825.126.

<sup>31</sup> 29 C.F.R. §825.309.

<sup>32</sup> U.S. Congress, House of Representatives, *National Defense Authorization Act for Fiscal Year 2010, Conference Report to Accompany H.R. 2647*, 111<sup>th</sup> Cong., 1<sup>st</sup> Sess., Report 111-288, October 7, 2009, <http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt288/pdf/CRPT-111hrpt288.pdf>, p. 739.

<sup>33</sup> 29 C.F.R. §825.127(c).

<sup>34</sup> 29 C.F.R. §825.127(e).

<sup>35</sup> 29 C.F.R. §825.310.

## **Administration of FMLA Leave**

The FMLA imposes certain administrative requirements on both employers and employees.

### **Employee and Employer Notifications**

An employee must notify his or her employer if the employee intends to take FMLA leave. When the need for leave is foreseeable, employees must provide employers with at least 30 days' advance notice before FMLA leave is to begin. If the need for leave is not foreseeable, an employee must notify the employer as soon as is "practicable." As soon as practicable generally means that an employee must notify the employer on either the same day or next business day of the need for leave. Employees are generally expected to follow the employer's established procedures for requesting leave (e.g., contacting a specific person).<sup>36</sup>

Employers must, within five business days of receiving an employee's request for leave, inform the employee whether he or she is eligible for leave.<sup>37</sup>

An employer may also designate an employee's leave as FMLA leave even if the employee does not request FMLA leave. The reasons for the employee's leave must meet the eligibility criteria for FMLA leave. In a 1995 opinion letter, DOL stated:

So long as the employer is a covered employer, the employee is an eligible employee, and the reason for the absence meets one of the conditions described in the definitions of "serious health conditions" under FMLA, the employer may designate (and so advise the employee) and count the absence against the employee's 12-week FMLA entitlement even if the employee has not requested that it be counted as such.<sup>38</sup>

### **Medical Certifications of Serious Health Conditions**

An employer may require a request for FMLA leave for the serious health condition of a family member or the employee's own serious health condition be supported by a certification from a health care provider. The employer's request for certification must be made within five business days after an employee requests leave. The employee must provide the certification within 15 calendar days, unless it is not practicable for the employee to do so or the employer allows the employee more than 15 days to provide the certification.<sup>39</sup>

If an employer considers a certification to be incomplete, the employer must give the employee seven days to complete the certification. If an employee does not provide a complete certification, an employer may contact the employee's health care provider or the provider of the family

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<sup>36</sup> 29 C.F.R. §§825.302-825.303.

<sup>37</sup> 29 C.F.R. §825.300.

<sup>38</sup> U.S. Department of Labor, Wage and Hour Division, *Opinion Letter FMLA-68*, July 21, 1995, <http://www.dol.gov/whd/opinion/FMLA/prior2002/FMLA-68.pdf>.

<sup>39</sup> 29 C.F.R. §825.305.

member for clarification of the certification. An employee's direct supervisor may not contact the health care provider. Instead, contact must be made by another health care provider, a human resources professional, a leave administrator, or a manager other than the employee's direct supervisor.

An employer may require an employee to submit recertifications of the employee's need for leave. An employer may not request a recertification more often than every 30 days, or after the minimum duration indicated on the original certification if that period is more than 30 days. An employer may require an employee to submit a recertification in less than 30 days if the employee requests an extension of leave, the circumstances described in the original certification change, or the employer has information that questions the employee's reason for absence or the validity of the certification. If a health care provider indicates on the original certification that the employee's condition is expected to last longer than six months (e.g., a lifetime), an employer may request recertifications every six months.<sup>40</sup>

## **Enforcement of the FMLA**

If private sector or state and local government employees believe that their employer has violated the law (e.g., by denying them leave or retaliating against them for taking FMLA leave), they may file a complaint with DOL's Wage and Hour Division. If, after investigating a complaint, the Wage and Hour Division cannot resolve the matter, the department's Office of the Solicitor may seek to compel compliance through the courts.

Private sector and state and local government employees may bring a private civil action without filing a complaint with the Wage and Hour Division.<sup>41</sup> A lawsuit must be filed within two years after the last action that the employee alleges was a violation of the FMLA. A lawsuit must be filed within three years if the employee alleges that the employer deliberately violated the act.<sup>42</sup>

According to OPM, it does not enforce the FMLA with respect to federal employees. A federal employee may, however, file a grievance under an agency's administrative procedures or under grievance procedures negotiated by the agency and employees.<sup>43</sup>

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<sup>40</sup> 29 C.F.R. §§825.305-825.308.

<sup>41</sup> The right of state employees to sue their employers for violations of the FMLA was affirmed by the U.S. Supreme Court in May 2003. For more information, see CRS Report RL31604, *Suits Against State Employers Under the Family and Medical Leave Act: Analysis of Nevada Department of Human Resources v. Hibbs*, by Jody Feder.

Federal executive branch employees are not entitled to sue and can only obtain appellate judicial review of Merit Systems Protection Board (MSPB) decisions in the federal circuit.

<sup>42</sup> 29 C.F.R. §825.400.

<sup>43</sup> U.S. Office of Personnel Management, *What Are My Appeal Rights Under the Family and Medical Leave Act?* <http://www.opm.gov/faqs/Search.aspx?q=appeal%2brights>

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