

Family and Medical Leave

Working for You, Your Family and Your Job

Carmen's elderly mother fell and broke her hip, making it very difficult for her to move around and care for herself. The doctor recommended that Carmen's mother have someone with her through the recovery. Thanks to the Family and Medical Leave Act, Carmen, who had been working full time at a large automotive manufacturer, was able to take several weeks of unpaid leave without losing her job to care for her recovering mother.

Women and Family and Medical Leave

Women's participation in the workforce is steadily increasing. At the same time, women are having children at later ages and parents are living longer. This means that more women are finding themselves having to care for children as well as for parents. Taking care

of a parent or sick child can often mean having to take time off from work. Unfortunately, it isn't always easy for women to get time off when they need it. Luckily, the Family and Medical Leave Act (FMLA) can help.

How the FMLA Works

If you need to take extra time off from work in order to care for a child, spouse, parent or even yourself, the FMLA can provide you with unpaid leave from your job when family or medical responsibilities conflict with your work.

Under the FMLA, you may take up to 12 weeks of unpaid leave per year — without losing your health insurance — and return to your job or a job of equal pay, benefits and status. However, your rights under FMLA apply only under certain conditions.

You Are Eligible for FMLA Only If:

- you have worked for the same employer for at least one year, and at least 1,250 hours within that year (an average of 25 hours/month for 12 months), **AND**
- your employer has at least 50 employees who work within 75 miles of your work site.

There is only one exception to the eligibility rule.

An employer has the right to deny family and medical leave to the highest paid 10 percent of employees within a 75 mile radius, if granting the leave would cause too large of an economic burden on the employer.

If You Qualify, You May Take Leave Only If You Are:

- giving birth to or caring for a new baby, adopting a child or getting a foster child
- caring for a sick child, spouse or parent
- receiving hospital care or continuing medical treatment that prevents you from working.

Your specific rights under FMLA will vary according to the reason you need to take leave. **Remember you can only take your 12 weeks of unpaid leave if you meet the allowable conditions.**



** This tip sheet is strictly for informational purposes and does not constitute legal advice or representation. For legal advice, consult an attorney who has thorough knowledge of current laws and your issues of concern.*

Taking Family and Medical Leave

When you decide to exercise your rights under the FMLA and you are sure that you are eligible, you will want to communicate your need to take leave with your employer as soon as possible. The law states that in order to take advantage of your 12 weeks of unpaid leave, **you must inform your employer 30 days in advance of when you would like to take your leave.** In case of an emergency, your employer must be informed as soon as possible.

Your boss has the right to count any vacation, sick and personal leave time as part of your 12 weeks leave. For example, if you have a week of paid vacation and a week of paid sick leave, then you may only take an additional 10 weeks of unpaid leave under the FMLA.

In the Case of Illness

Your boss may want proof of an illness. Have the doctor or health care provider write a letter to your employer, confirming the sickness and need to take leave. If your employer wants a second or third opinion, he or she can decide to pay for one.

If your illness, or the illness of a family member, does not require you to take an entire 12 weeks off all at once, you can work fewer hours or take fewer days off as you need them. Just make sure to communicate your situation clearly to your employer.

If your spouse works for the same employer, and also needs to take time off for illness, or for the illness of a

family member, **you are each entitled to 12 weeks of leave.**

In the Case of Child Birth, Adoption, or Foster Care

If you are taking time off for a new baby or child, your employer may require you to take the entire 12 weeks off at one time. If your spouse works for the same employer and also wants to take time off for a new child, the 12 weeks of unpaid leave **can be split between the two of you.**

Remember Your Rights

If you qualify for leave under the FMLA, it is illegal for your employer to:

- deny you leave when you need to use it,
- fire you if you take leave,
- reduce or discontinue your health insurance while you are on unpaid leave,
- demote you to a lower-paying or lower-status job when you return from family or medical leave, or reduce your job benefits because you take leave.

Even if you do not qualify under the FMLA, you may want to request unpaid leave if you need it. Employers can often be understanding of one's personal responsibilities and it shouldn't hurt to ask.

Your Right to Appeal

If you believe your request for leave under FMLA has been wrongfully denied, you can appeal. You may file a complaint with the Department of Labor or take private legal action against your employer. A complaint to the Department of Labor should be made to Wage and Hour Division, Employment Standards Administration (contact information is available at www.dol.gov/esa/whd/). A complaint may be filed at any local office of the Wage and Hour Division; the address and telephone number of local offices may be found in telephone directories or on the web at www.dol.gov/esa/contacts/state_of.htm

If you decide to file a private lawsuit, please contact a licensed attorney in your area with expertise in labor law. The local chapter of the American Bar Association (ABA) can assist you in locating a legal representative. The address and telephone number of the local ABA may be found in a telephone directory or on the web at www.abanet.org/legalservices/findlegalhelp/faq_hiringlawyer.cfm

For more information on finding a free or low-cost attorney, please see Women Work!'s *Worker's Rights* Tip Sheet at www.womenwork.org