

Family Medical Leave Act (FMLA) FAQ for HR Professionals

Eligibility, Designation, and Return:

1. Do the 1,250 hours all have to be worked at one agency?

No, the employee just must meet the following criteria to be eligible for FMLA leave:

The employee must have been employed with the State of Idaho for a total of at least twelve months. The twelve months do not have to be continuous employment. Similarly, the twelve months do not have to be all with one agency. Employees who were on the payroll for any part of a week (even just one day) will be credited with a full week.

The employee must have at least 1,250 hours of service during the twelve-month period immediately preceding the leave. These 1,250 hours must be hours worked, and do not include paid vacation or paid sick time, or periods of unpaid leave during which other benefits (i.e. a group health plan or workers compensation) continued to be provided by the state.

2. What type of medical certification is required to support the use of FMLA?

When requesting medical certification, agencies should use the forms provided by the US Department of Labor.

<https://www.dol.gov/agencies/whd/fmla/forms>.

3. If an employee does not return the FMLA forms back to Human Resources (HR) within 15 calendar days, should HR continue to work with them?

Yes! When employees are making a good faith effort to complete the process, HR should continue to work with them past the due date.

4. What happens if the medical certification is incomplete?

HR must advise the employee if it finds the medical certification is incomplete and allow the employee a reasonable opportunity to cure the deficiency. The agency must state in writing what additional information is necessary to make the certification complete and sufficient and must allow the employee at least seven calendar days to cure the deficiency, unless seven days is not practicable under particular circumstances despite the employee's diligent good faith efforts.

5. May an agency contact an employee's health care provider about their serious health condition?

HR may contact an employee's health care provider for authentication or clarification of the medical certification. Agencies may not ask the health care provider for additional information beyond that contained on the medical certification form.

6. May an employee choose to decline FMLA?

Yes, in 2018 the state's Deputy Attorney General's office took the stance that "an employee can affirmatively decline to use FMLA leave after receiving written, official confirmation of the employee's eligibility for FMLA leave." Due to this decision in most circumstances the state does not designate FMLA without employee consent.

In rare cases where an employee may be incapacitated or otherwise unable to respond, a general rule of thumb is to designate FMLA if the absence is for three or more days for a qualifying condition. (Consult with HRO in these instances)

7. Why can't we request a medical certification for FMLA leave to bond with a newborn child or a child placed for adoption or foster care?

Medical certification is requested for medical conditions, bonding time is not considered a medical condition. Agencies may ask for birth certificate or similar documentation instead. Please see below for more information:

[Fact Sheet #28Q: Taking Leave from Work for Birth, Placement, and Bonding with a Child under the FMLA](#)

[Paid Parental Leave Policy](#)

8. May a spouse or other person fill out the FMLA paperwork?

Yes. Agencies may accept paperwork from a spouse or other family member in instances where the employee is incapacitated or otherwise unable to complete the forms themselves. However, HR cannot disclose any medical information to the spouse or other family member.

9. Where can I locate template emails, and updated FMLA request forms?

Currently, these documents and information are located in Moodle under the "Micro Learning Archive for HR Employees". We are working on a permanent place to store and share documents as we move into HR Modernization.

10. May an agency require employees to submit a "medical release to return to work" before returning from FMLA leave, due to their own serious health condition?

Yes. As a condition of restoring an employee who was absent on FMLA leave due to their own serious health condition, an agency may require them to submit a "medical release to return to work." The release may include information regarding the employee's ability to resume work and perform the essential functions of their position with or without reasonable accommodation.

Additionally, if reasonable safety concerns exist, an agency may require medical documentation up to once every 30 days for an employee taking intermittent FMLA leave.

Time coding and leave options:

- 1. May employees code FMS (FMLA SICK) when they do not have sick leave available with the intent that the time codes will default to available leave options. Example: when sick leave is not available, the system will automatically take from vacation, and then go to leave without pay?**

No. Best practice is for the employee to code their time with what is reflected in their available leave “buckets” listed on their timesheet.

2. May employees code FMS (FMLA SICK) to bond with a newborn or newly adopted child?

No. In accordance with the [Sick Leave Policy](#), sick leave must be used for actual illness or other health reasons, or for medical appointments, etc.

Sick leave may, however, be used to recover from the birth of a child, or to care for one’s spouse who is recovering from the birth of a child. The medical provider would determine the amount of recovery time or time to care for a spouse after the delivery of a newborn.

Paid Parental Leave provides up to 8 weeks of paid leave specifically to bond with a newborn or newly adopted child.

3. May an agency require employees to use paid leave concurrently with FMLA time?

Yes. An agency may require the employee to use accrued leave for some or all of the FMLA leave period. An employee must follow the agency’s normal leave policy in order to use paid leave. Currently there is not a statewide standard.

4. May an employee make-up intermittent FMLA time?

Agencies cannot require employees to make up missed time due to intermittent FMLA. Employees will continue to receive their full allotment of FMLA leave without any repercussions. However, an agency that allows employees using non-FMLA leave the ability to work extra hours to make up missed time must give the employee on FMLA the same privilege.

Agencies who allow make-up of intermittent FMLA time should proceed with caution, review the medical certification for conflicts, and consider if consultation with their agency attorney is necessary to ensure they do not interfere with FMLA rights.

5. May an employee who is on FMLA for a pregnancy related condition receive donated leave?

If an employee qualifies for FMLA for a serious health condition, including prenatal care and any period of incapacity due to pregnancy or recovery from childbirth, they may receive donated leave if otherwise qualified under the [Donated Leave Policy](#).

6. How should Executive Exempt employees code FMLA?

In order for the payroll system to track FMLA hours, Executive Exempt employees must code the accurate amount of FMLA hours. (Consult with HRO for further guidance)

Other Considerations:

1. May an employee telecommute while caring for someone with a serious health condition?

It depends! Telecommuting is not to be viewed as a substitute for dependent care. However, telecommuting may be an option that provides a benefit to both the employee and the agency. Telecommuters with dependent care situations are encouraged to have alternative

solutions for providing care during the agreed upon work hours. Dependent care situations must be disclosed in the telecommuting application and will be reviewed on a case-by-case basis.

2. Does FMLA for a family member extend after they pass away?

No. Employees may use sick leave in accordance with the [Sick Leave Policy](#) and in certain circumstances may be eligible for FMLA for their own serious health condition to cope with the loss.

3. Does Idaho recognize common law marriage?

Beginning January 1, 1996 common law marriage is no longer recognized in Idaho:

<https://legislature.idaho.gov/statutesrules/idstat/title32/t32ch2/sect32-201/>

If common law marriage was established prior to January 1, 1996 they may qualify as a spouse under FMLA.

[Fact-sheets/28I-fmla-spouse](#)

4. Do parents from the same agency have to share FMLA hours for the birth of a child?

Only in rare circumstances would we require parents from the same agency to share FMLA hours. This can occur only when the agency deems the leave to be a hardship to have both employees absent for 12 weeks, such as when both parents are the only employees in one location, or both parents are in a small work unit, department, or agency, etc. (HRO's should consult with HR Managers in these instances)

5. What is an *in loco parentis* relationship?

In loco parentis refers to the type of relationship in which a person has put themselves in the situation of a parent by assuming and discharging the obligations of a parent to a child. Eligibility applies to both those individuals who provided such care to the employee when the employee was a child; or children who the eligible employee provides such care.

If an *in loco parentis* relationship has been established, an eligible employee is entitled to the same FMLA rights to care for such person.

[Fact-sheets/28C-fmla-eldercare-inlocoparentis.](#)