

Indiana Legal Services, Inc

Using the law to fight poverty, empower clients, and improve access to justice.

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Your Rights Under the Family and Medical Leave Act

What is the Family and Medical Leave Act (FMLA)?

This is a federal law that gives some employees up to 12 weeks off from work because of:

- the birth or adoption of a child (or getting a foster child);
- a serious health condition that makes the employee unable to do his or her job; OR
- a serious health condition of a child, spouse, or parent that requires the employee to take care of that family member.

The law does NOT guarantee that you will be paid during this time off. That is up to your employer. Your employer can require you to use your sick and vacation time as part of your FMLA. Your employer can also choose to give you more than 12 weeks off if you need it, but the law only requires your employer to give you 12 weeks.

When am I eligible for time off under the FMLA?

You must have worked for your employer for at least 12 months and you must have worked for at least 1,250 hours during the last year. The employer must have at least 50 or more employees within 75 miles of where you work.

What is a serious health condition?

A “serious health condition” is a physical or mental condition that involves the following:

1. It requires you or your family member to be hospitalized overnight; or
2. It requires continuing treatment by a doctor and requires 3 or more days off from work; or
3. It causes incapacity because it is chronic and requires periodic treatment over an extended period of time; or
4. It causes incapacity that is permanent or long-term and for which there may not be effective treatment (such as Alzheimer’s).

How much notice do I have to give my employer if I want to take time off under the FMLA?

You must give your employer at least 30 day advance notice for leave that can be planned such

as a birth, adoption or surgery. In emergency medical situations, you must give as much notice as possible.

Do I have to give my employer proof that I need the time off?

Maybe. If you need to take time off because of a serious health condition (either for you or for a family member), the employer can require you to get a written statement from a doctor.

This statement must tell the basic facts about the health condition, including when it began and how long it is expected to last. If your time off is due to your own health condition, the doctor's statement must also say that your health condition stops you from doing your job. If your time off is to care for a family member, the statement must say that you are needed to care for the family member. In these cases, your employer can require that you get a doctor's written statement every 30 days.

Before you return to work, your employer also can require you to provide a doctor's statement that you are now able to return to work, or that the family member's condition no longer requires your care.

Can I take my time off in shorter periods of time that add up to 12 weeks?

You may be able to take your 12 weeks off in shorter time periods. If your time off is for the birth or adoption of a child (or getting a foster child), it will be up to the employer to allow shorter periods of FMLA time off. If shorter periods of time off are medically necessary, the employer must allow it. For example, if you need weekly therapy for a medical condition, you should be able to take your time off on a weekly basis for your therapy. You should try to schedule your time off so it does not harm your employer.

Can I lose my job if I take FMLA leave time?


Generally, no. If you take FMLA leave time, you can return to the job that you had before the leave began, or to a job that is equal in terms of pay, benefits and other job conditions. Certain benefits, such as health insurance, must continue during your time off, just as if you were still working. You may have to make arrangements to pay your portion of the health insurance cost.


You also cannot lose any benefits that you have earned before taking time off, such as vacation and sick time. However, if you take FMLA leave time, your employer can make you use up all of your vacation and sick time as part of your FMLA leave.

What if I am eligible for FMLA leave time, but my employer won't let me take it or has fired me because I took it?

You may be able to sue your employer for money and/or to get your job back. You could also be awarded court costs and attorney's fees. If you are in this situation, you should contact a private attorney, your local Indiana Legal Services, or the U.S. Department of Labor.

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