

Taking Time Off Your Job for Health or Family Reasons

NELP

Fact Sheet for Workers

Advocating for the working poor and the unemployed

January 2002

Know Your Rights

Employment Law
Clinic for Low-Wage
and Immigrant
Workers

Free legal assistance
is available by
appointment. Call:

(212) 417-3800 on
Mondays &
Wednesdays

(888) 218-6974 on
Tuesdays & Thursdays

The clinic is a joint
project with the Legal
Aid Society and MFY
Legal Services

National
Employment
Law Project
www.nelp.org

The Basics: The Law Guarantees Time Off for Family and Medical Reasons

The Family and Medical Leave Act (known as the "FMLA") is a law that may protect you when you miss work because

- You can't work because you're sick;
- You need to care for a new child; or
- You need to care for a child, parent, or spouse who is sick.

The Limits of the Law: Eligibility Requirements

You are protected by the FMLA *only* if you meet *all* of the following requirements:

- You must have worked for your employer for *at least one year*.
- In the past year, you must have worked *at least 1,250 hours* for your employer (24 hours each week, on average).
- Your employer must employ *at least 50 employees* within 75 miles of where you work.

The Benefits: What You Get if You Are Covered

How Much Leave Can I Take?

If you are covered, you are entitled to *up to 12 weeks of leave* each year.

If you take leave because you or a family member gets sick, you can take your 12 weeks all at once, or spread it out over different parts of the year. Even taking off part of a single day can count as protected leave.

When Can I Take Leave?

The law allows you to take leave for any of the following reasons:

- You have a new child (by birth, adoption, or foster care placement).
- You have a **serious** health condition that prevents you from doing your job.
- You want to care for a son, daughter, husband, wife, or parent has a **serious** health condition.

Examples of a serious health condition can be:

- Any illness that requires someone to be admitted to a hospital.
- Any illness that
 - prevents someone from going to school or work for four or more calendar days in a row (including a weekend), and
 - requires repeated attention from a doctor or other health care provider.
- Any serious chronic illness, such as asthma or diabetes.
- Pregnancy.

- Drug or alcohol addiction.
 - You are **not protected** if you miss work because you get drunk or high.
 - You are **protected** if you miss work in order to get treatment.

What Do I Need to Do to Take Leave?

- You must tell your employer that you need to miss work because of a new child, your serious health condition, or your family member's serious health condition. If possible, you must give at least 30 days' advance notice. Otherwise, you must inform your employer as soon as possible. If there is an emergency, this may mean informing your employer after you leave work.
- You must provide a doctor's note if your employer requests it.

The Protections: What Your Employer Cannot Do

If you take leave covered by the FMLA, or request permission to be absent, it is illegal for your employer to:

- Fire you for taking leave
- Refuse to give you back your job when you return from leave
 - Even if your position has been filled by someone else, your employer usually must still give you an equivalent position.
- Harass you for taking leave
- Deny your request for leave
- Penalize you for taking or requesting leave
- Stop paying for your health insurance while you are on leave

Unfortunately, the FMLA guarantees only **unpaid** leave. This means that your employer does not have to pay you for the time you miss on FMLA leave, except in some circumstances where your employer already offers workers paid leave (like sick time or personal time).

Examples of How the Family and Medical Leave Act Can Help You

You Missed Work Because You Got Sick:

Brenda worked full-time for over a year at a large bank. When she woke up on Friday feeling very sick, she called the bank to say that she couldn't come in because she was sick. That afternoon, she went to see her doctor, who told her that she had bronchitis and told her how to take care of herself over the weekend. The doctor also told her to call back and speak with a nurse practitioner on Monday morning. On Monday, Brenda still felt sick, and when she called the nurse, she was told that she should rest and try not to go to work. When Brenda called in sick again and explained the diagnosis and care she had received, she was told that she had missed too much work and was fired.

Brenda probably could use the FMLA to get her job back.

You Missed Work To Take Your Child to the Doctor:

Luis worked 25 hours a week for over a year at a grocery store in a large chain. Just before he left for work on Tuesday morning, his daughter Laura started having an asthma attack. Luis rushed Laura to the health clinic where she had received treatment in the past. From the clinic, Luis called his employer to explain that he was going to be several hours late because of Laura's asthma, something the employer knew had been a problem in the past. He was told that he was being suspended for one week for missing work.

Luis probably could use the FMLA to get back the money he lost on the days he was suspended, but he could *not* get back the money from the day he took Laura to the clinic.

What You Can Do If Your Rights Were Violated

If you think that your FMLA rights might have been violated and want free legal assistance, call the number for the Employment Law Clinic on the front of this fact sheet.

You can also file a complaint with the United States Department of Labor. The relevant office to contact is
 U.S. Department of Labor, Wage & Hour Division
 26 Federal Plaza, Room 3838
 New York, NY 10278
 (212) 264-8185