

FMLA - Notice of Eligibility and Rights and Responsibilities

INSTRUCTIONS FOR THE EMPLOYER

When an employee requests Family and Medical Leave Act (FMLA) leave or when you learn that an employee's leave may be for a FMLA-qualifying reason, you must notify the employee of their eligibility to take FMLA leave within **five business days**, absent extenuating circumstances.

The *Notice of Eligibility and Rights and Responsibilities* must state whether the employee is eligible for leave. If the employee is not eligible for FMLA leave, the notice must state at least one reason why. For example, the notice may inform the employee that they're ineligible because the employee worked less than 1,250 hours in the preceding 12 months.

Any requirement for medical certification or certification of a qualifying exigency must be specified in the notice, along with the consequences for failing to provide the required certification.

The *Notice of Eligibility and Rights and Responsibilities* also details the specific expectations and obligations of the employee and explains consequences for not meeting those expectations and obligations. This information regarding rights and responsibilities is required by federal and state law.

Note: The *Notice of Eligibility and Rights and Responsibilities* addresses the FMLA's "Key Employee" exception in Section III, Part A. Under the FMLA, this narrow exception allows employers to refuse to reinstate key employees when doing so would cause substantial and grievous economic injury to your operations. This exception is applicable **only to FMLA**, not the California Family Rights Act (CFRA). As such, when employees are eligible for both CFRA and FMLA leave, which is the case in most circumstances, the key employee exception is **not** applicable. In the very narrow circumstances where an employee is eligible for FMLA but not CFRA, employers should consult with legal counsel before denying reinstatement under this exception.

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In general, to be eligible to take leave under the Family and Medical Leave Act (FMLA), an employee must have worked for an employer for at least 12 months, meet the hours of service requirement in the 12 months preceding the leave and work at a site with at least 50 employees within 75 miles. While use of this form is optional, completion of the form provides employees with the information required by 29 C.F.R. §§ 825.300(b),(c) which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Information about the FMLA may be found on the WHD website at www.dol.gov/agencies/whd/fmla.

From (Employer) _____ Date _____

To (Employee) _____

On _____ we learned that you need leave (*beginning on*) _____ for one of the following reasons: (*Select as appropriate*)

- ☐ The birth of a child, or placement of a child with you for adoption or foster care, and to bond with the newborn or newly-placed child.
- ☐ Your own pregnancy, childbirth or related medical condition (pregnancy disability leave running concurrently with FMLA).
- ☐ Your own serious health condition.
- ☐ You're needed to care for your family member due to a serious health condition. Your family member is your:
 - ☐ Spouse ☐ Parent ☐ Child
- ☐ A qualifying exigency arising out of the fact that your family member is on covered active duty or has been notified of an impending call or order to covered active duty status. Your family member on covered active duty is your:
 - ☐ Spouse ☐ Parent ☐ Child of any age
- ☐ You are needed to care for your family member who is a covered servicemember with a serious injury or illness. You are the servicemember's:
 - ☐ Spouse ☐ Parent ☐ Child ☐ Next of kin

Spouse means a husband or wife as defined or recognized in the state where the individual was married, including in a common law marriage or same-sex marriage. The terms "child" and "parent" include in loco parentis relationships in which a person assumes the obligations of a parent to a child. An employee may take FMLA leave to care for an individual who assumed the obligations of a parent to the employee when the employee was a child. An employee may also take FMLA leave to care for a child for whom the employee has assumed the obligations of a parent. No legal or biological relationship is necessary.

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SECTION I - NOTICE OF ELIGIBILITY

This Notice is to inform you that you are:

- ☐ **Eligible for FMLA Leave** (See Section II for any Additional Information Needed and Section III for information on your Rights and Responsibilities.)
- ☐ **Not eligible for FMLA leave** because: (Only one reason need be checked)
- ☐ You haven't met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you'll have worked approximately: _____ towards this requirement.
 - ☐ You haven't met the FMLA's 1,250 hours of service requirement. As of the first date of requested leave, you'll have worked approximately: _____ towards this requirement.
 - ☐ You're an airline flight crew employee and you haven't met the special hours of service eligibility requirements for airline flight crew employees as of the first date of requested leave (i.e. worked or been paid for at least 60 percent of your applicable monthly guarantee, and worked or been paid for at least 504 duty hours).
 - ☐ You don't work at and/or report to a site with 50 or more employees within 75-miles as of the date of your request.*

If you have any questions, please contact:

Name of Employer Representative

at:

Contact Information

SECTION II - ADDITIONAL INFORMATION NEEDED

As explained in Section I, you meet the eligibility requirements for taking FMLA leave. Please review the information below to determine if additional information is needed in order for us to determine whether your absence qualifies as FMLA leave. Once we obtain any additional information specified below we will inform you, **within 5 business days**, whether your leave will be designated as FMLA leave and count towards the FMLA leave you have available. **If complete and sufficient information isn't provided in a timely manner, your leave may be denied.**

(Select as appropriate)

- ☐ No additional information requested. If no additional information requested, go to Section III.
- ☐ We request that the leave be supported by a certification, as identified below.
- ☐ Health Care Provider for the Employee
 - ☐ Health Care Provider for the Employee's Family Member
 - ☐ Qualifying Exigency
 - ☐ Serious Illness or Injury (Military Caregiver Leave)

Select certification form is ☐ attached / ☐ not attached.

If requested, medical certification must be returned by _____ (Must allow at least 15 calendar days from the date the employer requested the employee to provide certification, unless it's not feasible despite the employee's diligent, good faith efforts.)

- ☐ We request that you provide reasonable documentation or a statement to establish the relationship between you and your family member, including *in loco parentis* relationships (as explained on page 1). The information must be returned to us by _____.
- ☐ Other information needed (e.g. documentation for military family leave): _____
The information requested must be returned to us by _____.

If you have any questions, please contact:

Name of Employer Representative

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SECTION III - NOTES OF RIGHTS AND RESPONSIBILITIES

Part A: FMLA Leave Entitlement

You have a right under the FMLA to take unpaid, job-protected FMLA leave in a 12-month period for certain family and medical reasons, including up to **12 weeks** of unpaid leave in a 12-month period for the birth of a child or placement of a child for adoption or foster care, for leave related to your own or a family member's serious health condition. You also have the right to take unpaid job protected leave up to twelve weeks for qualifying exigencies related to the deployment of a military member to covered active duty and up to 26 weeks of unpaid job protected leave to care for a covered servicemember with a serious injury or illness (*Military Caregiver Leave*).

The 12-month period for FMLA leave is calculated as: *(Select as appropriate)*

☐ The calendar year (January 1st - December 31st)

☐ A fixed leave year based on _____

(e.g. a fiscal year beginning on July 1 and ending on June 30)

☐ The 12-month period measured forward from the date of your first FMLA leave usage.

☐ A "rolling" 12-month period measured backward from the date of any FMLA leave usage. *(Each time an employee takes FMLA leave, the remaining leave is the balance of the 12 weeks not used during the 12 months immediately before the FMLA leave is to start.)*

If applicable, the single 12-month period for *Military Caregiver Leave* started on _____.

You (☐ are / ☐ are not) considered a key employee as defined under the FMLA. Your FMLA leave cannot be denied for this reason; however, we may not restore you to employment following FMLA leave if such restoration will cause substantial and grievous economic injury to us.

We (☐ have/ ☐ have not) determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. Additional information will be provided separately concerning your status as key employee and restoration.

Part B: Substitution of Paid Leave - When Paid Leave is Used at the Same Time as FMLA Leave

You have a right under the FMLA to request that your accrued paid leave be substituted for your FMLA leave. This means that you can request that your accrued paid leave run concurrently with some or all of your unpaid FMLA leave, provided you meet any applicable requirements of our leave policy. Concurrent leave use means the absence will count against both the designated paid leave and unpaid FMLA leave at the same time. If you do not meet the requirements for taking paid leave, you remain entitled to take available unpaid FMLA leave in the applicable 12-month period. Even if you do not request it, the FMLA allows us to require you to use your available sick, vacation, or other paid leave during your FMLA absence.

☐ **Some or all of your FMLA leave will not be paid.** Any unpaid FMLA leave taken will be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.

☐ **You have requested to use some or all of your available paid leave** (e.g., sick, vacation, PTO) during your FMLA leave. Any paid leave taken for this reason will also be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.

☐ **We are requiring you to use some or all of your available paid leave** (e.g., sick, vacation, PTO) during your FMLA leave. Any paid leave taken for this reason will also be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.

☐ **Other:** (e.g., short- or long-term disability, workers' compensation, state medical leave law, etc.) _____

Any time taken for this reason will also be designated as FMLA leave and counted against the amount of FMLA leave you have available to use in the applicable 12-month period.

The applicable conditions for use of paid leave include: _____

For more information about conditions applicable to sick/vacation/other paid leave usage, please refer to:

available at: _____

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Part C: Maintain Health Benefits

Your health benefits must be maintained during any period of FMLA leave under the same conditions as if you continued to work. During any paid portion of FMLA leave, your share of any premiums will be paid by the method normally used during any paid leave. During any unpaid portion of FMLA leave, you must continue to make any normal contributions to the cost of the health insurance premiums. To make arrangements to continue to make your share of the premium payments on your health insurance while you are on any unpaid FMLA leave, contact _____ at _____.

You have a minimum grace period of (☐ 30-days or ☐ _____ *indicate longer period, if applicable*) in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.

You may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave if you do not return to work following unpaid FMLA leave for a reason other than: the continuation, recurrence, or onset of your or your family member's serious health condition which would entitle you to FMLA leave; or the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or other circumstances beyond your control.

Part D: Other Employee Benefits

Upon your return from FMLA leave, your other employee benefits, such as pensions or life insurance, must be resumed in the same manner and at the same levels as provided when your FMLA leave began. To make arrangements to continue your employee benefits while you are on FMLA leave, contact _____ at _____.

Part E: Return-to-Work Requirements

You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. An equivalent position is one that is virtually identical to your former position in terms of pay, benefits, and working conditions. At the end of your FMLA leave, all benefits must also be resumed in the same manner and at the same level provided when the leave began. You do not have return-to-work rights under the FMLA if you need leave beyond the amount of FMLA leave you have available to use.

Part F: Other Requirements While on FMLA Leave

While on leave you (☐ will be / ☐ will not be) required to furnish us with periodic reports of your status and intent to return to work every _____
(Indicate interval of periodic reports, as appropriate for the FMLA leave situation)

Misuse or abuses of approved FMLA time is grounds for disciplinary action, up to and including termination.

If the circumstances of your leave change and you are able to return to work earlier than expected, you will be required to notify us at least two workdays prior to the date you intend to report for work.

Employers should retain a copy of this disclosure in their records for three years (29 U.S.C. 2616, 29 CFR825.500). DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION.

This form adapted for California use from U.S. Department of Labor WH-381 Revised June 2020 (OMB Control Number 1235-0003 Expires 6/30/2026)