

# The Family & Medical Leave Act Questions and Answers

## 1. Does the age of the child matter? Can it be an adult child?

In general, an employee may not take FMLA leave to care for a son or daughter who is 18 years of age or older. However, an employee may take FMLA leave to care for a biological, adopted, or foster child, a stepchild, a legal ward, or a child to whom the employee stands in loco parentis, who is 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.

Here is a link to the DOL's Fact Sheet on this topic: <https://www.dol.gov/agencies/whd/fact-sheets/28k-fmla-adult-children>

## 2. Do you know yet if the FFCRA (FMLA due to COVID) will continue after December 31, 2020?

Good question! So far, leave under the FFCRA will end on December 31, 2020. I anticipate that it will likely be extended but not until after President-elect Biden takes office.

## 3. In regard to your example of the 50 employee/75 mile rule, If the number of employees were below 50 within the 75 miles, would the answer to FMLA coverage be no?

If the County has less than 50 employees within a 75-mile radius--the employee would not be eligible for FMLA leave.

## 4. I have volunteer EMS units in my counties who may have day jobs; what can I tell them (if their employer meets the standards) what their options for using FMLA if they are receiving COVID-19 vaccine? There is potential 48 hours after receiving the vaccine where they may experience headaches, fatigue, mild flu symptoms, etc. Since it's less than the 3 days, are they not eligible?

I would agree that given your fact scenario, these employees would likely not qualify as having a "serious health condition." Keep in mind that to meet this definition:

More than three calendar—not work—days of incapacity plus two treatments by a healthcare provider (the first of which must occur within seven days of the first day of incapacity and the second within 30 days of the first day of incapacity) or

More than three calendar—not work—days of incapacity plus one treatment by a healthcare provider (which must occur within seven days of the first incapacity) plus continuing treatment (including prescription medication) under the supervision of a healthcare provider

## 5. Why are we still required to fill out the paperwork if the county does not qualify for FMLA

All counties are covered by the FMLA--so I believe that that the county must still complete the Notice of Eligibility to notify employees why they are not eligible (e.g., because they do not work at a worksite with 50 or more employees).

- 6. For employees who are receiving cash in lieu and not covered under the county insurance, when received FMLA and no pay check are they still entitle to the cash in lieu**

The FMLA requires employers to maintain an employee's group health insurance, but does not address cash in lieu of coverage. This would be up to the County's policy.

**7.**

- a. How do you handle an employee who says has cancer and treatments go into a second year?**

The employee will be entitled to 12 weeks of leave each year. So the employee will likely get another 12 weeks of leave if his/her need for leave is over two years.

- b. I am assuming all the paperwork would need to be completed for the second year.**

You are correct. You would also be able to get a new certification.

- 8. Can FMLA leave run concurrently with Workers' Compensation?**

Within 5 business days of the employee giving notice of the need for leave, employers may request a medical certification to support the need for leave for the serious health condition of the employee or the employee's immediate family member. The employer must allow the employee at least 15 calendar days to obtain the medical certification.

If the employer believes the certification is incomplete, the employer must advise the employee and allow the employee a reasonable opportunity to obtain the required information. The employer must state in writing what additional information is necessary to complete the certification and must allow the employee at least seven calendar days to obtain that information (unless seven days is not practicable under particular circumstances despite the employee's diligent good faith efforts).

If the employee fails to timely submit the medical certification (absent sufficient explanation of the delay), FMLA protection for the leave may be delayed or denied.

- 9. If an employee is on FMLA leave and has exhausted all forms of paid leave, the employee will not be receiving paycheck. How does the employee pay for their share of health insurance premiums or do we have to cover it all?**

Under FMLA, the employer must continue to provide health insurance coverage under the same terms and conditions as if the employee had not taken leave. Therefore, the employer only has to pay for the insurance premiums it would have paid if the employee was still working.

For collecting the premium payments from the employee, there is a variety of options—e.g., payment due at time deduction should have been made from payroll, payment due on same schedule as COBRA participants, or a prepaid arrangement. The key is to discuss the issue with the employee in advance and voluntarily agree to a method in advance. Employers should provide the employee with an advanced written notice of the agreement.

- 10. What if they request the day they are receiving vaccine plus the days following? Employers are being guided by the health department to stagger their employees for receiving vaccine, so if they choose to do that, not everyone would be out of their office at once.**

Likely won't qualify as FMLA leave, but may qualify as sick leave.

- 11. How does Workmen's Comp factor in to FMLA?**

An employee's FMLA leave entitlement may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a "serious health condition." If appropriate, the employer must designate the leave as FMLA-qualifying leave and give notice to the employee. If the employer fails to designate the leave as FMLA leave, the employee may still be entitled to FMLA leave in the future.

- 12. Does paid holidays count towards FMLA hours? Example, I have an employee out on FMLA, would I count FMLA hours for the 12/24 and 12/25?**

FMLA regulations state that if a holiday takes place during a full week taken as part of FMLA leave, the whole week is considered FMLA. On the other hand, if the FMLA leave is used as less than one week, the holiday is still a holiday and does not count against the FMLA entitlement, unless the employee was scheduled to work on the holiday.

- 13. Regarding birth of a child, did you say we should not do medical certification? We do send a Med Cert for the medical portion of the birth. Should we still send this?**

Employers may not request medical certification for leave to bond with a newborn child or child placed for adoption or foster care. Employer may require a certification for a mother who will need leave due to the birth of a child.

- 14. We have employees who have used the EPSL because of COVID-19. Does this time - up to 80 hours, come off the regular 12-week FMLA?**

No--EPSLA leave is not a form of FMLA leave.

- 15. What is EPSL?**

The Emergency Paid Sick Leave Act