

THE FAMILY AND MEDICAL LEAVE ACT IN FLORIDA – HOW IT MAY HELP YOU

“Only an experienced Florida employment law attorney can provide you with individualized advice regarding your eligibility for leave under the FMLA; however, a better understanding of some of the basic concepts of benefits of the FMLA may be a good place to start.”



Richard Celler



Not too long ago in the United States, the concept of mandatory parental leave for a worker was only a dream. Likewise, a worker faced with a serious medical emergency or who needed to care for a loved one who was sick was equally out of luck. Most workers were faced with a choice between keeping a job and taking time off to care for a new baby or to care for themselves or a loved one facing a medical emergency. This typically created a “no win” situation for the worker. The passage of the Family and Medical Leave Act, or FMLA, in 1993 finally gave covered workers a better option – taking the necessary leave without losing their job. The complexity of the FMLA leads to a good deal of confusion on the part of workers who may wish to take advantage of the benefits offered by the act. Only an experienced Florida employment law attorney can provide you with individualized advice regarding your eligibility for leave under the FMLA; however, a better understanding of some of the basic concepts of benefits of the FMLA may be a good place to start.

WHO IS COVERED UNDER THE FAMILY AND MEDICAL LEAVE ACT?

As is often the case with federal employment related legislation, the FMLA does not cover all employees. The reason for this is that the proponents of the legislation were aware that requiring employers to allow employees to take leave time would potentially create workforce shortage, and therefore an economic burden, for small companies. Therefore, not all workers are entitled to FMLA leave. To be eligible, you must meet the following criteria:

- You must have been employed by your current employer for at least 12 months. The employment is not required to be consecutive. For example, if you work for a seasonal employer but have worked there for a number of years you would likely meet the 12 month requirement.
- You must have worked at least 1,250 hours during the preceding 12 months
- You must work at a location where your employer employs at least 50 workers within a 75 mile radius OR work for a public agency or a school regardless of the number of employees it employs.

WHEN CAN YOU USE FMLA LEAVE?

Assuming you qualify as a covered employee, you must also have a qualifying reason for taking FMLA leave. In most instances you will be entitled to 12 workweeks of leave in a 12 month period; however, certain circumstances qualify you for 26 workweeks of leave in a 12 month period. Qualifying reasons for 12 workweeks of FMLA leave include:

- The birth of a child and to care for the newborn child within one year of birth
- The placement of a child for adoption or foster care and to care for the newly placed child within one year of placement.
- To care for a spouse, child, or parent who has a serious health condition. Proof of the “serious health condition” may be requested from your employer.
- A serious health condition that makes you unable to perform the essential functions of your job. Proof of the “serious health condition” may be requested from your employer.
- Any qualifying exigency arising out of the fact that your spouse, son, daughter, or parent is a covered military member on “covered active duty”

Known as “military caregiver leave”, a total of 26 workweeks of leave is available to care for a covered service member with a serious injury or illness if you are the service member’s spouse, son, daughter, parent, or next of kin.

FULL-TIME, INTERMITTENT AND REDUCED HOUR LEAVE

One common misconception about FMLA leave is that an employee is required to use the leave consecutively, or all at one time. You may choose to take full-time FMLA leave; however, you may also be entitled to “intermittent” or “reduced hour” leave. These options are beneficial if the reason for the leave is to care for yourself or a loved one who is suffering from a serious health condition.

Intermittent leave allows you to spread out your leave over a longer period of time and only take leave as needed. For example, you might need to take two weeks for a surgical procedure now and then another two weeks several months later for a second procedure. Intermittent leave is also frequently used when a loved one’s medical condition fluctuates or goes through periods of remission.



Reduced hour leave, as the name implies, allows you to decrease the number of hours you work for an extended period of time. If you normally work a 40 hour work week, for instance, you might decrease your workweek to a 20 hour workweek. In essence, this would double the number of workweeks you are entitled to leave since you are only using half a week of leave each week. To use intermittent or reduced hour FMLA for the birth of a child your employer must agree.

Other covered reasons qualify for intermittent or reduced hour leave without employer approval. You must, however, provide your employer with reasonably notice when the need for the leave is foreseeable. In addition, you may be required to negotiate the terms of your intermittent or reduced hour leave with your employer. For example, your employer may request that you transfer to

another position in the company for the duration of your leave period to reduce the overall disruption to the company.

PAYMENT, BENEFITS, AND JOB RESTORATION DURING FMLA



While your employer may be required to grant FMLA leave to you, you are not entitled to be paid while on FMLA leave. If you have sick time or vacation time accrued you may be able to use that to provide you with income while on leave. In fact, you may be *required* to use paid vacation, paternity, or sick time before using FMLA leave. In that case, your FMLA leave doesn't actually start to accrue until after you have used up your paid leave.

Benefits, such as health care coverage, must continue to be provided under the same terms during FMLA leave. If your spouse or children have been covered under a group health insurance plan they must continue to be covered as well throughout your FMLA leave period.

Finally, your employer must restore you to the same job *or to a position with equivalent pay, benefits, and other terms and conditions of employment as the position you had prior to taking your FMLA leave.*

The Family and Medical Leave Act offers much needed benefits to eligible workers; however, the complexity of the Act can make it difficult to take advantage of those benefits. If you are confused about what benefits you are entitled to or you feel your employer is not honoring the benefits to which you are entitled, consult with an experienced Florida employment law attorney right away.

U.S. Department of Labor, [Family and Medical Leave Act](#)

U.S. Department of Labor, [Fact Sheet #28](#)

National Partnership for Women and Families, [Guide to the Family and Medical Leave Act](#)

About the Author



Richard Celler

Richard Celler is the Managing Partner of Richard Celler Legal, P.A., a/k/a the Florida Overtime Lawyer. He created this firm after having served as the Founding Member and Managing Partner of one of the largest employee/plaintiff side employment law divisions in the United States.

In November 2013, Mr. Celler left big firm life with the idea of reopening his own litigation firm with an emphasis on something most big firms cannot provide – a lower volume of cases, and more focus on the needs and attention of every single client.

Mr. Celler's practice focuses on all areas of the employment context from discrimination, harassment, and retaliation under the Florida Civil Rights Act, Title VII, the Family Medical Leave Act, and other employment related statutes. Additionally, Mr. Celler represents individuals in whistleblower and wage and hour litigation (overtime, minimum wage, commissions, final paychecks).

Many firms charge clients for an initial consultation to discuss their claims. Mr. Celler does not. You can call him or email him to discuss your case for free. If he elects to represent you, your case will be handled on a contingency basis, which means that he only gets paid, if you get paid. We encourage you to look at the remainder of our website for information on your rights and benefits in the workplace – www.floridaovertimelawyer.com.

Richard Celler Legal, P.A.

7450 Griffin Road, Suite 230

Davie, FL 33314

Phone: 866-344-9243

Email: richard@floridaovertimelawyer.com

Website: floridaovertimelawyer.com