

FMLA Eligibility Checklist

Checklist · 90 items · 11 sections

A practical Family and Medical Leave Act checklist for employees and HR teams. Walks through 29 CFR Part 825 employer coverage, the 12-month / 1,250-hour eligibility test, qualifying reasons, serious health condition definitions, WHD certification forms, and job restoration duties.

Open the editable, AI-powered version online:

<https://genechecklist.com/checklist/fmla-eligibility-checklist>

EMPLOYER COVERAGE CHECK

- Confirm employer is private sector with 50+ employees in 20+ workweeks in current or preceding calendar year (29 CFR 825.104)
HIGH
- For private employers, verify employee works at a worksite with 50+ employees within a 75-mile radius (29 CFR 825.111)
HIGH
- All public agencies (federal, state, local government) are covered regardless of employee count
HIGH
- All public and private elementary and secondary schools are covered regardless of employee count
HIGH
- Count joint employees correctly when temp agencies, PEOs, or staffing firms are involved (29 CFR 825.106)
- Count employees on leave, part-time, and on the payroll; exclude employees on layoff
- Verify the employer has posted the FMLA general notice poster (WH-1420) in a conspicuous location
- Confirm FMLA rights are included in the employee handbook or distributed to new hires

EMPLOYEE ELIGIBILITY (HOURS, TENURE, LOCATION)

- Verify employee has worked for the employer at least 12 months (need not be consecutive; breaks <7 years generally count) (29 CFR 825.110)
HIGH
- Confirm employee worked at least 1,250 hours in the 12 months immediately before leave start date
HIGH

- Use FLSA principles to count actual hours worked (paid leave, holidays, vacation do NOT count toward 1,250)
HIGH
- For airline flight crew, apply the alternative hours-of-service test (60% of monthly minimum and 504 hours)
HIGH
- Confirm 50+ employees are employed within 75 miles of the worksite (measured by surface miles, not radius)
HIGH
- For employees with no fixed worksite, use the worksite they report to or from which their work is assigned
- Reinstate USERRA-protected military service time toward 12-month and 1,250-hour eligibility calculations
- Document the eligibility determination calculation in the employee file

QUALIFYING REASONS

- Birth of a child and bonding within 12 months of birth (mothers and fathers equally entitled)
HIGH
- Placement of a child for adoption or foster care within 12 months of placement
HIGH
- Care for a spouse, son, daughter, or parent with a serious health condition (in-laws not covered)
HIGH
- Employee's own serious health condition making the employee unable to perform essential job functions
HIGH
- Qualifying exigency from a covered military member's active duty or call to covered active duty (29 CFR 825.126)
HIGH
- Servicemember caregiver leave for covered servicemember or veteran with serious injury/illness (up to 26 weeks)
HIGH
- Confirm 'son or daughter' includes biological, adopted, foster, stepchild, legal ward, or in loco parentis, under 18 (or 18+ if incapable of self-care due to disability)
- Confirm 'parent' includes biological, adoptive, step, foster, or in loco parentis (NOT parents-in-law for standard FMLA)
- Confirm 'spouse' includes same-sex spouses in lawful marriages regardless of state of residence (post-Obergefell)

WHAT COUNTS AS SERIOUS HEALTH CONDITION

- Inpatient care: overnight stay in hospital, hospice, or residential medical care facility (29 CFR 825.114)
HIGH
- Incapacity of more than 3 consecutive full calendar days PLUS continuing treatment by a healthcare provider (29 CFR 825.115)
HIGH
- Pregnancy or prenatal care (incapacity due to pregnancy qualifies without the 3-day rule)
HIGH
- Chronic conditions requiring periodic visits (at least twice yearly): asthma, diabetes, epilepsy
HIGH
- Permanent or long-term incapacity due to a condition where treatment may not be effective (Alzheimer's, terminal cancer, severe stroke)
HIGH
- Multiple treatments for restorative surgery, or conditions that would result in incapacity without treatment (cancer chemo, dialysis, severe arthritis PT)
- 'Continuing treatment' = either two in-person visits to a healthcare provider within 30 days, OR one visit plus a regimen of continuing treatment
- Cosmetic treatments, common cold, flu, earache, upset stomach, and routine dental work generally do NOT qualify absent complications

REQUIRED FORMS AND DOCUMENTATION

- WH-380-E: Certification of Health Care Provider for Employee's Serious Health Condition
HIGH
- WH-380-F: Certification of Health Care Provider for Family Member's Serious Health Condition
HIGH
- WH-381: Notice of Eligibility and Rights & Responsibilities (employer issues to employee)
HIGH
- WH-382: Designation Notice (employer's FMLA designation decision)
HIGH
- WH-384: Certification of Qualifying Exigency for Military Family Leave
HIGH
- WH-385: Certification for Serious Injury or Illness of Covered Servicemember (active duty)
HIGH
- WH-385-V: Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave
- WH-1420: FMLA general notice poster (must be displayed by all covered employers)

- Confirm all WHD forms used are the current OMB-approved version (forms expire and are reissued)

NOTICE TO EMPLOYER

- Provide at least 30 days advance written notice when need for leave is foreseeable (planned treatment, expected birth)

HIGH

- Provide notice 'as soon as practicable' (generally same or next business day) when unforeseeable

HIGH

- Employee need not mention 'FMLA' on first notice but must provide enough info for the employer to determine FMLA may apply

HIGH

- Follow the employer's usual call-in procedures for reporting absences (29 CFR 825.303)

- For intermittent or reduced schedule for planned treatment, make a reasonable effort to schedule treatment so it doesn't unduly disrupt operations

- Document the date, time, method, and substance of the notice given to the employer

CERTIFICATION PROCESS

- Employer must provide WH-381 within 5 business days of learning leave may be FMLA-qualifying

HIGH

- Employer may require medical certification (WH-380-E/F); must allow employee at least 15 calendar days to return it

HIGH

- Employer must issue WH-382 (Designation Notice) within 5 business days of receiving sufficient information

HIGH

- If certification incomplete/insufficient, employer must specify in writing what is lacking and give 7 calendar days to cure

- Employer may request authentication or clarification (HR/management cannot contact provider for additional info beyond clarification)

- Employer may require second opinion at employer's expense if it doubts the certification; third opinion is binding

- Recertification may be required no more than every 30 days in most cases, or every 6 months for chronic conditions

- Maintain FMLA medical records separately from regular personnel files per ADA confidentiality rules

DURING LEAVE (BENEFITS, PAY, TIME TRACKING)

- FMLA leave is unpaid; employer may require (or employee may elect) substitution of accrued paid leave (PTO, sick, vacation) concurrently
HIGH
- Group health insurance must continue on the same terms; employee continues to pay their share of premiums
HIGH
- Track leave in the smallest increment used for other leave, but not greater than one hour (29 CFR 825.205)
HIGH
- 12-month leave year may be calendar year, fixed 12 months, 12 months forward from first use, or rolling 12-month look-back (apply uniformly)
- Intermittent or reduced schedule leave allowed when medically necessary, or for any reason with employer agreement
- Spouses at same employer share combined 12 weeks for birth, adoption, or care of a parent (not for own serious health condition)
- Employees on FMLA cannot lose benefits accrued before leave; need not accrue new benefits during unpaid leave
- Employer may make reasonable inquiries about employee's intent to return to work

RETURN TO WORK / JOB RESTORATION

- Employee must be restored to the same position or equivalent (pay, benefits, terms) (29 CFR 825.214)
HIGH
- 'Equivalent' means virtually identical in pay, benefits, working conditions, status, worksite (within reasonable commuting distance), not identical
HIGH
- Employer may require fitness-for-duty certification before return, only if uniformly required and described in WH-381/382
HIGH
- Key employee exception: salaried top 10% pay within 75 miles may be denied restoration if it would cause 'substantial and grievous economic injury' (rare)
- Employees on intermittent leave must be returned to the same or equivalent position after each absence
- No-fault attendance policies cannot count FMLA absences against the employee
- Document the restoration offer in writing: position, pay, schedule, start date

FMLA INTERACTIONS

- FMLA runs concurrently with workers' compensation leave when the injury is also an FMLA serious health condition (employer must designate)
HIGH
- FMLA and ADA may both apply: analyze leave as FMLA-qualifying AND a reasonable accommodation
HIGH
- Apply the more generous of FMLA, state family/medical leave laws (CA CFRA, NY PFL, NJ FLA), and company policy
HIGH
- Pregnancy-related leave may also trigger Pregnant Workers Fairness Act (PWFA) accommodations beyond FMLA
- State Paid Family Leave benefits run concurrently with FMLA in most states (laws vary)
- USERRA-covered military leave does not reduce FMLA entitlement
- Coordinate with short-term disability (STD) policies for income replacement during the employee's own serious health condition leave

COMMON MISTAKES / COMPLIANCE PITFALLS

- Failing to issue WH-381 within 5 business days of learning leave may be FMLA-qualifying
HIGH
- Counting paid leave hours (PTO, vacation, holidays) toward the 1,250-hour eligibility test
HIGH
- Asking a healthcare provider for more information than the WH-380 certification authorizes (limited to clarification/authentication)
HIGH
- Disciplining or terminating an employee for FMLA-protected absences, including under no-fault attendance policies
HIGH
- Failing to designate qualifying leave as FMLA (employer cannot retroactively designate to deny entitlement)
HIGH
- Treating in-laws as covered family members (parents-in-law NOT covered for standard FMLA, only military caregiver via 'next of kin')
- Forgetting the 75-mile radius is measured by surface miles, not straight-line distance
- Requiring use of paid leave without notifying the employee in the rights and responsibilities notice

- Failing to maintain health insurance during unpaid FMLA leave or dropping coverage for nonpayment without proper 15-day notice
- Confusing the 12-week standard entitlement with the 26-week military caregiver entitlement (per single 12-month period, not renewable)
- Inadequate manager training, leading to retaliation claims based on stray comments about leave usage
- Failing to update FMLA policies and posters after WHD form revisions or court rulings