

- Family Medical Leave Act (FMLA) - Frequently Asked Questions

Q #1: What is FMLA?

A: The Family and Medical Leave Act (FMLA) provides eligible employees with up to 12 work weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons, and up to 26 weeks for certain military related reasons.

Q #2: Is family and medical leave (FMLA) paid?

A: No. The FMLA only requires unpaid leave. Under the regulations, an employee may choose to substitute accrued paid leave for unpaid FMLA leave if the employee complies with the terms and conditions of the employer's applicable paid leave policy. However, the law permits the employer to require the employee to use any available accrued paid leave as a substitute for unpaid leave. The regulations also clarify that substituting paid leave for unpaid FMLA leave means that the two types of leave run concurrently, with the employee receiving pay pursuant to the paid leave policy and receiving protection for the leave under the FMLA.

NOTE: Unless specified differently as terms of a Collective Bargaining Agreement, Black Hawk County's FMLA policy does require employees to substitute accrued paid leave (dependent on the type of FMLA leave, and as directed by County or department policy, the type of leave may be sick and/or vacation) and run concurrently with any certified FMLA certified leave.

Q #3: Who is eligible for Family and Medical Leave?

A: You are eligible for FMLA leave if:

- You have been employed by Black Hawk County for at least twelve (12) months (Note: The months do not have to be consecutive, and are inclusive of all time worked for Black Hawk County provided there has not been a seven year gap in employment with Black Hawk County), and
- You have worked at least 1,250 hours for Black Hawk County during the 12 month period immediately preceding the start of the leave.

Q #4: For what reasons can I use FMLA leave?

A: Eligible employees can use FMLA leave for the following reasons:

- The employee's serious health condition
- The birth and care of the employee's child
- Placement with the employee of a child for adoption or foster care
- Care of the employee's spouse, child or parent with a serious health condition
- Military exigency leave for eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.
- Special military leave that permits eligible employees to care for a covered service member who has a serious injury or illness incurred in the line of duty on active duty

Q #5: What is the definition of a serious health condition?

A. A “serious health condition” is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. The “continuing treatment” test for a serious health condition under the regulations may be met through (1) a period of incapacity of more than three consecutive, full calendar days plus treatment by a health care provider twice, or once with a continuing regimen of treatment, (2) any period of incapacity related to pregnancy or for prenatal care, (3) any period of incapacity or treatment for a chronic serious health condition, (4) a period of incapacity for permanent or long-term conditions for which treatment may not be effective, or (5) any period of incapacity to receive multiple treatments (including recovery from those treatments) for restorative surgery, or for a condition which would likely result in an incapacity of more than three consecutive, full calendar days absent medical treatment.

The regulations specify that if an employee asserts a serious health condition under the requirement of a “period of incapacity of more than three consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition,” the employee’s first treatment visit (or only visit, if coupled with a regimen of continuing treatment) must take place within seven days of the first day of incapacity. Additionally, if an employee asserts that the condition involves “treatment two or more times,” the two visits to a health care provider must occur within 30 days of the first day of incapacity. Finally, the regulations define “periodic visits” for treatment of a chronic serious health condition as at least twice a year.

Q #6: What is not considered a serious health condition?

A: The following would not be considered to be a serious health condition:

- Conditions where the employee has not had an office visit with a bona fide healthcare provider.
- Conditions that only require taking over-the-counter medications, such as aspirin and antihistamines, do not qualify for FMLA protection;
- Conditions that require drinking plenty of fluids or any similar activities that can be initiated without a visit to a health care provider, unless something more serious is involved;
- Routine dental problems and periodontal disease;
- The common cold, flu, earache, upset stomach, minor ulcer, and headache (other than migraine); and
- Cosmetic treatments (such as for acne or plastic surgery), unless inpatient hospital care is required or complications develop.

Certification of Need for FMLA Leave

Q #7: Do I have to give my employer my medical records for leave due to a serious health condition?

A: No. An employee is not required to give the employer his or her medical records. The employer, however, does have a statutory right to request that an employee provide medical certification containing sufficient medical facts to establish that a serious health condition exists.

Q #8: What if I do not want my employer to know about my medical condition?

A: If an employer requests it, an employee is required to provide a complete and sufficient medical certification in order to take FMLA-protected leave due to a serious health condition.

Q #9: What happens if I do not submit a requested medical certification?

A. If an employee fails to timely submit a properly requested medical certification (absent sufficient explanation of the delay), FMLA protection for the leave may be delayed or denied. If the employee never provides a medical certification, then the leave is not FMLA leave, and Black Hawk County is under no obligation to provide employees with any unpaid, job-protected leave. In such cases, the employee's leave will be governed solely by Black Hawk County (or applicable department) policies regarding use of vacation, sick leave, and unpaid leave of absences.

If an employee fails to submit a properly requested fitness-for-duty certification, the employer may delay job restoration until the employee provides the certification. If the employee never provides the certification, he or she may be denied reinstatement.

Q #10: Can employers require employees to submit a fitness-for-duty certification or release to return to work statement before returning to work after being absent due to a serious health condition?

A: Yes. As a condition of restoring an employee who was absent on FMLA leave due to the employee's own serious health condition, an employer may have a uniformly applied policy or practice that requires all similarly situated employees who take leave for such conditions to submit a certification from the employee's own health care provider that the employee is able to resume work. Under the regulations, an employer may require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the position if the employer has appropriately notified the employee that this information will be required and has provided a list of essential functions. Additionally, an employer may require a fitness-for-duty certification up to once every 30 days for an employee taking intermittent or reduced schedule FMLA leave if reasonable safety concerns exist regarding the employee's ability to perform his or her duties based on the condition for which leave was taken.