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Workplace Flexibility 2010, Georgetown University Law Center

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Overview of Job Protected Leave

Federal Job Protected Leave

Family Medical Leave Act (29 U.S.C. 2601 et seq.)¹

- **Covered Employer:** Employers with 50 or more employees within 75 miles (40% of private sector businesses are “covered” under the FMLA)²
- **Eligible Employee:** Employees with 1,250 hours of service in past 12 months³ (62% of employees in covered private sector businesses are eligible for FMLA leave)⁴
- **Leave:** 12 weeks,⁵ unpaid, job-protected time off (46.9% of private sector employees are eligible for FMLA leave)⁶

State Job Protected Leave

In the following states, employers with between 1-5 or more employees provide job protected leave:

- **California** (4 months pregnancy disability leave for all female employees working for employers with 5 or more employees)⁷
- **Iowa** (8 weeks pregnancy disability leave for all female employees working for employers with 4 or more employees)⁸
- **Montana** (“reasonable leave of absence” for pregnancy for all female employees working for employers with 1 or more employees)⁹
- **Ohio** (“reasonable period of time” for pregnancy leave for all female employees working for employers with 4 or more employees)¹⁰
- **Puerto Rico** (8 weeks *paid* pregnancy and adoption leave for all employees working for employers with 1 or more employees)¹¹
- **Washington** (15 days military family leave for employees working an average of 20 hours per week for employers with 1 or more employees)¹²

In the following states, employers with 6-15 or more employees are required to provide job protected leave:

- **Illinois** (15 days military family leave for employees working 1250 hours in past 12 months for employers with 15-50 employees)¹³
- **Maine** (10 workweeks for family medical leave, death of family member, and organ donation for employees employed for the past 12 months working for employers with 15 or more employees)¹⁴
- **Massachusetts** (8 weeks for birth or adoption leave for employees past employer-set probationary period or three full months employment working for employers with 6 or more employees)¹⁵
- **Maryland** (any employer provided leave may be used for medical leave to care for an immediate family member of any employee working for an employer with 15 or more employees)¹⁶
- **Nebraska** (15 days military family leave for employees working 1250 hours in past 12 months for an employer with 15 or more employees)¹⁷

- **Rhode Island** (15 days military family leave for employees working 1250 hours in past 12 months for an employer with 15-50 employees)¹⁸
- **Vermont** (12 weeks parental and family leave for employees working an average of 30 hours per week for the past 12 months for an employer with 10 or more employees for parental leave and 15 or more employees for family leave)¹⁹

In the following states, employers with between 20-25 or more employees provide are required to provide job protected leave:

- **District of Columbia** (16 weeks family and medical leave for employees working 1000 hours in the past 12 months for employers with 20 or more employees)²⁰
- **Louisiana** (“reasonable period of time” not to exceed 4 months for pregnancy disability leave for all female employees working for an employer with 20 or more employees)²¹
- **Minnesota** (6 weeks birth or adoption leave for employees with hours equal to half the fulltime equivalent position working for employers with 21 or more employees)²²
- **New York** (10 days military family leave for employees with an average of 20 hours or more per week working for employers with 20 or more employees)²³
- **Oregon** (12-24 weeks childcare leave for employees working for more than 180 days and family and medical leave for employees working for more than 180 days with an average of 25 hours or more per week for an employer with 25 or more employees)²⁴

In the following states, employers with 50 or more employees are required to provide job protected leave:

- **California** (12 weeks family and medical leave for employees with 1250 hours in the past 12 months)²⁵
- **Illinois** (30 days military family leave for employees with 1250 hours in past 12 months)²⁶
- **Nebraska** (30 days military family leave for employees with 1250 hours in past 12 months)²⁷
- **New Jersey** (12 weeks family and medical leave for employees with 1000 hours in past 12 months)²⁸
- **Rhode Island** (13 workweeks family and medical leave for employees who work an average of 30 hours a week for past 12 months; 30 days military family leave for employees with 1250 hours in past 12 months)²⁹
- **Washington** (12 weeks family and medical leave for employees with 1250 hours in past 12 months)³⁰
- **Wisconsin** (2 weeks for family and medical leave, 6 weeks for birth and placement of a child, and 8 weeks for any combination family for employees with 1000 hours in past 52 weeks and employed for any 52 consecutive weeks)³¹

In the following states, employers with 75-100 or more employees are required to provide job protected leave:

- **Connecticut** (16 weeks family and medical leave for employees with 1000 hours in the past 12 months working for an employer with 75 or more employees)³²
- **Hawaii** (4 weeks family and medical leave for employees employed for past 6 months with an employer with 100 or more employees)³³
- **Tennessee** (4 months adoption, pregnancy, and nursing leave for employees working “full-time” for past 12 months for an employer with 100 or more employees)³⁴

¹ FMLA leave may be used for the birth of a child or care of a newborn; placement of a child with the employee for adoption or foster care; employee's own serious health condition that makes the employee unable to perform duties of the job; the serious health condition of the employee's immediate family member; and a "qualifying exigency" arising from a family member called up to active duty from the Reserves or retirement. 5 U.S.C. § 6382(a); 5 C.F.R. § 1203(a). The FMLA defines "family member" as an employee's parent, son or daughter, and spouse. 29 U.S.C. § 2611(7), (12)-(13). "Parent" means "the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter." 29 U.S.C. § 2611(7). "Son or daughter" means "a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or 18 years of age or older and incapable of self-care because of a mental or physical disability." 29 U.S.C. § 2611(12). "Spouse" means "a husband or wife, as the case may be." 29 U.S.C. § 2611(13). Again, because of federal law defining the term "spouse," 1 U.S.C. §7, same-sex spouses do not receive the benefits of FMLA.

² Workplace Flexibility 2010, FMLA Scope, Coverage and Eligibility (citing National Partnership) at http://www.law.georgetown.edu/workplaceflexibility2010/law/fmlaFiles/fmla_ScopeEligibility_chart.pdf According to a 2000 study by the Department of Labor, only 10.8% of private sector business respondents were "covered" under the FMLA *Balancing the Needs of Families and Employers: Family and Medical Leave Surveys 2000 Update*, conducted by Westat for the U.S. Department of Labor, Washington, DC, 2000, <http://www.dol.gov/dol/asp/public/fmla/main.htm>. This report is based on two surveys, in mid-October of 2000 (Ch. 1, p.3). *The 2000 Survey of Establishments* surveyed private business establishments. It excluded government and quasi-governmental organizations (e.g., schools and post offices). (p. 4). See also Jane Waldfogel, *Family and Medical Leave: Evidence from the 2000 Surveys* (2001), at 19, available at <http://www.bls.gov/opub/mlr/2001/09/art2full.pdf>

³ Under the Family and Medical Leave Act, an eligible employee must have worked for his or her employer for at least 12 months, and provided at least 1,250 hours of service for that employer during the previous 12-month period. 29 U.S.C. § 2611(2).

⁴ *Balancing the Needs of Families*, supra note 2.

⁵ Employees who are the spouse, son, daughter, parent, or next of kin of a covered servicemember (a person in the regular Armed Forces or in the Reserves) who has a serious injury or illness, and who are providing care for that servicemember, are entitled to 26 weeks of job-protected, unpaid time off during a 12-month period. 29 U.S.C. § 2612(a)(1)(E); 29 C.F.R. § 825.126(b)(1) (Jan. 28, 2008). A "covered servicemember" means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in an outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness." 29 U.S.C. § 2611 (16).

⁶ Jane Waldfogel, *Family and Medical Leave: Evidence from the 2000 Surveys* (2001), at 20, available at <http://www.bls.gov/opub/mlr/2001/09/art2full.pdf>

⁷ Cal. Code § 12945.

⁸ Iowa Code § 216.6.

⁹ Mont. Code Ann. §§ 49-2-310 to 311.

¹⁰ Ohio Admin. Code § 4112-5-05.

¹¹ 29 L.P.R.A. §§ 467-474.

¹² Wash. Stat. § 49.77.010-040.

¹³ 820 I.L.C.S. § 151.1-99.

¹⁴ Me. Rev. Stat. Ann. 26 §§ 843-850.

¹⁵ Mass. Gen. Laws 149 § 105D.

¹⁶ Md. Code §§ 3-802.

¹⁷ Neb. Rev. Stat. § 55-503.

¹⁸ R.I. Gen. Laws § 30-33-1 to 6.

¹⁹ Vt. Stat. Ann. 21 §§ 470 to 474.

²⁰ D.C. Code §§ 32-501-517.

²¹ La. Rev. stat. Ann. § 23:341 to 342.

²² Minn. Stat. § 181.940 to 944.

²³ N.Y. C.L.S. § 202-i.

²⁴ Or. Rev. Stat. §§ 659A.150-174.

²⁵ Cal. Code § 12945.2.

²⁶ 820 I.L.C.S. 151/1 to 99.

²⁷ Neb. Rev. Stat. § 55-503.

²⁸ N.J. Stat. Ann. §§ 34:B-1 to 4; N.J. Admin. Code § 4A:6-1.21A.

²⁹ R.I. Gen. Laws §§ 28-48-1 to 10 and 30-33-1 to 6.

³⁰ Wash. Stat. §§ 49.78.0011 to 49.78.410.

³¹ Wis. Stat. § 103.10.

³² Conn. Gen. Stat. §§ 31-51kk to 31-51qq.

³³ Haw. Rev. Stat. §§ 398-1 to 29.

³⁴ Tenn. Code Ann. § 4-21-408.