

FMLA

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Vanessa A. Gonzalez

vgonzalez@bickerstaff.com

Bickerstaff Heath Delgado Acosta LLP

Two Barton Skyway

601 S. Mopac Expwy , Ste C400

Austin, Texas 78746

(512) 472-8021

www.bickerstaff.com

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Family and Medical Leave Act

- entitles eligible employees of covered employers
- to take 12 weeks of unpaid, job-protected leave for specified family and medical reasons
- with continuation of group health insurance coverage
- under the same terms and conditions as if the employee had not taken leave.

<https://www.dol.gov/agencies/whd/fmla/employer-guide>

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FMLA- Covered Employer

The Act covers public and private employers and educational agencies.

- Government entities and most schools are covered regardless of the number of employees.
- Private employers are covered if they employed 50 or more employees for 20 or more weeks in the current or preceding calendar year. The workweeks do not have to be consecutive.
- Employers can be a covered employer even if it does not have any eligible employees.
- Employers can be covered employers if they are integrated employers, joint employers or successor employers.

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FMLA- Eligible Employees

- works for a covered employer;
- has been employed by that employer for at least 12 months;
- has worked for the covered employer at least 1,250 hours during the 12-month period immediately preceding the commencement of leave; and
- has been employed at a work site where that employer has 50 or more employees within 75 miles of that site.

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Eligible Employees – 12 months of employment

- Part time, temporary, or seasonal work generally counts towards the 12 months of employment.
- If an employee is maintained on the payroll any part of a week, that week counts as a week of employment.
- A combination of 52 weeks equals 12 months. Does not have to be consecutive.
- If the employee has a break in employment that lasted seven years or more, the employer is not required to count the time worked prior to the break, unless:
 - The break in employment is due to service covered by USERRA, or
 - There is a written agreement, including a collective bargaining agreement, outlining the employer's intention to rehire the employee after the break in employment; or
 - An employer may voluntarily consider periods of employment prior to a break of more than seven years, but it must do so uniformly for all employees with similar breaks in employment.

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Eligible Employees – 12 month Leave Year

When an employee's need for FMLA leave extends beyond the 12-month leave year, any additional time the employee requests count against his or her entitlement for the next leave year. For FMLA leave (not the same for military caregiver leave) employer may select any one of the following to determine the 12-month period during which eligible employees may take up to 12 workweeks of leave:

1. The calendar year (January 1st through December 31st),
2. Any fixed 12 months, such as a fiscal year or a leave year beginning on the first day of an employee's employment,
3. A 12-month period measured forward from the first date an employee takes FMLA leave (the next 12-month period would begin the first time the employee takes FMLA leave after the completion of the prior 12-month period), or
4. A rolling 12-month period measured backward from the date an employee uses FMLA leave (each time an employee takes FMLA leave, the remaining leave is the balance of the 12 weeks not used during the immediately preceding 12 months).

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First appeared as part of the conference materials for the
2024 Essential Employment Law: A Practical Course in the Basics session
"Family Medical Leave Act (FMLA): The Other Major Entitlement Act"