

PRESENTED AT

**2024 Essential
Employment Law:
A Practical Course
in the Basics**

August 23, 2024
Austin, Texas

**FAMILY AND MEDICAL LEAVE ACT (FMLA): THE
OTHER MAJOR ENTITLEMENT ACT**

Presented by

**Vanessa A.
Gonzalez**

Vanessa A. Gonzalez
Bickerstaff Heath Delgado Acosta LLP
Two Barton Skyway
1601 S. Mopac Expwy., Ste C400
Austin, TX 78746
vgonzalez@bickerstaff.com

FAMILY & MEDICAL LEAVE ACT OVERVIEW

The Family and Medical Leave Act (FMLA) is a federal law that provides eligible employees of covered employers with unpaid, job-protected leave for specified family and medical reasons. Eligible employees may take up to 12 workweeks of leave in a 12-month period for one or more of the following reasons:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care, and to bond with the newborn or newly placed child;
- To care for a spouse, son, daughter, or parent who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care;
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job, including incapacity due to pregnancy and for prenatal medical care; or
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active-duty status.

An eligible employee may also take up to 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during the single 12-month period.

In addition to providing eligible employees an entitlement to leave, the FMLA requires that employers maintain employees' health benefits during leave and restore employees to their same or an equivalent job after leave. The law sets requirements for notice, by both the employee and the employer, and provides employers with the right to require certification of the need for FMLA leave in certain circumstances. The law protects employees from interference and retaliation for exercising or attempting to exercise their FMLA rights. The law also includes certain employer recordkeeping requirements.

FMLA Covered Employers and Eligible Employees

Covered Employers

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 (common management), joint employers (joint control over the work or working conditions) or successor employers.

Eligible Employees

Employees must meet eligibility requirements before they are entitled to leave. To be eligible, an employee must:

- work for a covered employer,
- worked for an employer for at least 12 months as of the date the FMLA leave is to start,
- worked at least 1250 hours over the 12-month period immediately before the leave is to start, and
- Work at a location where at least 50 employees are located within 75 miles.

12 Months of Employment

Employees are entitled to 12 weeks of FMLA leave during a 12-month period. The 12 months of employment do not have to be consecutive.

- 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.
- 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

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Family Medical Leave Act (FMLA): The Other Major Entitlement Act

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"