

Summary of Key Family and Medical Leave Changes effective January 16, 2009:

- **Eligible employees:** The final regulations allow for a break in service of up to seven years toward the 12 months of service requirement. Leaves (other than military leaves) do not count towards fulfilling the 1250 hour on pay status requirement, but do count towards fulfilling the 12 months of employment requirement.
- **Serious health condition:** Taking over-the-counter medications and a regime of bed rest, etc., can be initiated without a visit to a health care provider and as such do not count as “treatment” for FMLA purposes (“three consecutive full calendar days of incapacity plus a regimen of continuing treatment”).
- **Continuing treatment by a health care provider:** Has been clarified to require the two visits must occur within 30 days, and the first visit must take place within seven days of the first incapacity.
- **Periodic treatment of a chronic serious health condition:** Is defined as at least two visits to a health care provider per year.
- **Military Caregiver Leave:** Under the first of two new military family leaves, eligible employees who are family members of covered service members will be able to take up to 26 workweeks of leave in a single 12-month period to care for a covered service member with a serious illness or injury incurred in the line of duty on active duty.
- **Qualifying Exigency Leave:** The second new military leave helps families of members of the National Guard and Reserves manage their affairs while the member is on active duty in support of a contingency operation. The final rule defines “qualifying exigencies” as: short-notice deployment; military events and related activities; childcare and school activities; financial and legal arrangements; counseling; rest and recuperation; post-deployment activities; and additional activities.
- **Intermittent or reduced schedule leave:** Employees are required to make a “reasonable effort” (as opposed to an attempt) to schedule intermittent leave so as not to disrupt unduly the employer’s operations.
- **Substitution of paid leave:** Employers may apply their normal leave policies to the substitution of all types of paid leave for unpaid FMLA leave.
- **Light duty:** The time an employee voluntarily works in a light-duty assignment does not count as FMLA leave.
- **Employer notice requirements:** Employers must notify employees of their eligibility to take FMLA leave within five business days (was two), absent extenuating circumstances. Also, employers now have five business days in which to notify employees of whether or not a leave is designated as FMLA leave, absent extenuating circumstances.
- **Employee notice requirements:** Employers may require employees to follow their usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances, so long as the employer’s usual reporting procedure is not more stringent than the FMLA allows.
- **Medical certification:** Employers (e.g., HR professionals, leave administrators, management officials) may now contact the employee’s health care provider directly and without the employee’s consent; however, the employee’s direct supervisor is prohibited from making contact.