

# Dartmouth College

## Information About the Family and Medical Leave Act

### *Frequently Asked Questions*

The following is a list of your **rights** and **benefits** as an **eligible** FMLA employee:

- 12 weeks of unpaid FMLA leave in a twelve month period
- Continuation of group health benefits during FMLA leave
- Restoration to the same or an equivalent job upon return to work
- Retention of accrued benefits
- Protection from discrimination as a result of taking FMLA leave

### *Q. What are valid reasons for taking Family/Medical Leave?*

The following is a list of valid reasons for leave:

- Birth of a son or daughter to the employee and in order to care for such son or daughter
- Placement of a son or daughter with the employee for adoption or foster care
- Family leave in order to care for a spouse, son, daughter, or parent of the employee if such spouse, son, daughter, or parent has a serious health condition
- A serious health condition that makes the employee unable to perform their job

### *Q: Which employees are eligible to take FMLA leave?*

Employees are eligible to take FMLA leave if they have worked for their employer for at least 12 months, and have worked for at least 1,250 hours over the previous 12 months, and work at a location where at least 50 employees are employed by the employer within 75 miles.

### *Q: Do the 12 months of service with the employer have to be continuous or consecutive?*

No. The 12 months do not have to be continuous or consecutive; all time worked for the employer is counted.

### *Q: Do the 1,250 hours include paid leave time or other absences from work?*

No. The 1,250 hours include only those hours actually **worked** for the employer. Paid leave and unpaid leave, including FMLA leave, are **not** included.

***Q: How do I determine if I have worked 1,250 hours in a 12-month period?***

Your individual record of hours worked would be used to determine whether 1,250 hours had been worked in the 12 months prior to the commencement of FMLA leave.

***Q: How much leave am I entitled to under FMLA?***

If you are an "eligible" employee, you are entitled to 12 weeks of leave for certain family and medical reasons during a 12-month period. The leave may be unpaid or paid, depending on the availability and use of vacation and/or personal leave accruals.

***Q: How is the 12-month period calculated under FMLA?***

Employers may select one of four options for determining the 12-month period. Dartmouth has elected to use 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 entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.

For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 2004, four weeks beginning June 1, 2004, and four weeks beginning December 1, 2004, the employee would not be entitled to any additional leave until February 1, 2005. However, beginning on February 1, 2005, the employee would be entitled to four weeks of leave, on June 1 the employee would be entitled to an additional four weeks, etc.

***Q: Does the law guarantee paid time off?***

No. The FMLA only **requires unpaid** leave. However, the law permits an employee to elect to use accrued paid leave, such as vacation or sick leave, for some or all of the FMLA leave period. When paid leave is substituted for unpaid FMLA leave, it may be counted against the 12-week FMLA leave entitlement if the employee is properly notified of the designation when the leave begins. Dartmouth does not require an employee to use his/her personal leave or vacation time concurrently with FMLA Leave.

***Q: Does workers' compensation leave count against an employee's FMLA leave entitlement?***

It can. FMLA leave and workers' compensation leave can run together, provided the employee is eligible for FMLA leave, the reason for the absence is due to a qualifying serious illness or injury, and the employer properly notifies the employee in writing that the leave will be counted as FMLA leave.

***Q: Can the employer count leave taken due to pregnancy complications against the 12 weeks of FMLA leave for the birth and care of my child?***

Yes. An eligible employee is entitled to a total of 12 weeks of FMLA leave in a 12-month period. If the employee has to use some of that leave for another valid reason, including a difficult pregnancy, it may be counted as part of the 12-week FMLA leave entitlement.

***Q: Can the employer count time on maternity leave or pregnancy disability as FMLA leave?***

Yes. Pregnancy disability leave or maternity leave for the birth of a child would be considered qualifying FMLA leave for a serious health condition and may be counted in the 12 weeks of leave so long as the employer properly notifies the employee in writing of the designation.

***Q: Who is considered an immediate "family member" for purposes of taking FMLA leave?***

Immediate family members for purposes of FMLA are:

- an employee's spouse;
- children (son or daughter); and
- parents.

The term "parent" does not include a parent "in-law". The terms "son or daughter" do not include individuals age 18 or over unless they are "incapable of self-care" because of mental or physical disability that limits one or more of the "major life activities" as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the [Americans With Disabilities Act \(ADA\)](#).

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

No. You do not have to provide medical records. The employer may, however, request that, for any leave taken due to a serious health condition, you provide a medical certification confirming that a serious health condition exists.

***Q: Under what circumstances is leave designated as FMLA leave and counted against the employee's total entitlement?***

In all circumstances, it is the employer's responsibility to designate leave taken for an FMLA reason as FMLA leave. The designation must be based upon information furnished by the employee. Leave may not be designated as FMLA leave after the leave has been completed and the employee has returned to work, **except if:**

- the employer is awaiting receipt of the medical certification to confirm the existence of a serious health condition;
- the employer was unaware that leave was for an FMLA reason, and subsequently acquires information from the employee such as when the employee requests additional or extensions of leave; or
- the employer was unaware that the leave was for an FMLA reason, and the employee notifies the employer within two days after return to work that the leave was FMLA leave.

***Q. Does FMLA leave have to be taken all at once, or can it be taken in parts?***

FMLA leave may be taken "intermittently or on a reduced leave schedule" under certain circumstances.

- **Intermittent leave** is FMLA leave taken in separate blocks of time due to a single qualifying reason.
- A **reduced leave schedule** is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.

A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time. When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. The employer's agreement is not required, however, for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition.

Intermittent leave may be taken for a serious health condition which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks.

Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even if he or she does not receive treatment by a health care provider.

There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced leave schedule. However, an employer may limit

leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave, provided it is one hour or less.

***Q. Does being on FMLA leave affect my group health benefits?***

While an employee is on FMLA leave, the employer is required to maintain the employee's group health benefits on the same terms as if the employee continued to work. An employee, while on **unpaid** FMLA leave, needs to make arrangements with the employer to pay the employee's portion of group health benefits premiums.

This requirement includes all group health benefits the employee has prior to the date leave begins. For example, if the employee has family coverage, it must be maintained; if the employee has dental or eye care, it must be maintained; if the employee has coverage for mental health counseling or drug abuse treatment, it must be maintained during periods of FMLA leave.

If benefit plans change or premiums decrease or increase while the employee is on FMLA leave, the employee must be given the opportunity to elect the benefit plan change, and must pay the changed benefit premium.

If for some reason the employee is dropped from coverage of the group health benefit plan while on FMLA leave (the employee may elect not to continue coverage while on unpaid leave, or may fail to make premium co-payments as required) at the time the employee returns to work the employer must restore the group health benefit plan to the employee.

The employer is not required to maintain a health insurance program the employee has purchased from an independent carrier where the employer's only role is to make payroll deductions for payment of employee's premiums.

***Q. Is my earned time/vesting affected while I am on FMLA leave?***

While on unpaid FMLA leave, the employee may, but is not entitled to, accrue any additional benefits or seniority. Any accrued paid leave the employee had prior to taking FMLA leave must be restored unless substituted for periods of unpaid FMLA leave. The employee's seniority at the time unpaid FMLA leave began remains in effect when the employee returns from leave. With regard to pension or other retirement plans, the taking of unpaid FMLA leave does not constitute a break in service for purposes of vesting and eligibility to participate.

***Q. Do I have to use all my vacation and personal leave time prior to taking FMLA leave?***

Employees are not required to use their vacation and personal leave time prior to beginning Family Medical Leave.