



# FMLA Maine

## Federal vs. Maine Family & Medical Leave Laws

	FEDERAL ELEMENTS	STATE ELEMENTS
<b>Employers Covered</b>	<p>Private employers with 50 or more employees in at least 20 weeks of the current or preceding year.</p> <p>Public agencies, including state, local and federal employers.</p> <p>Local education agencies covered under special provisions.</p>	<p>In addition to the federal FMLA, Maine has leave laws regarding (1) family medical leave, (2) family sick leave, (3) leave for victims of violence, and (4) family military leave.</p> <p><b>Family medical leave:</b> Any employer with 15 or more employees at one location; the state, all branches, departments or agencies; any city, town or municipal agency with 25 or more employees; and any agent of an employer, the state or a political subdivision.</p> <p><b>Family sick leave:</b> Any public or private employer with 25 or more employees.</p> <p><b>Leave for victims of violence:</b> Any public or private employer, including the state and its political subdivisions.</p> <p><b>Family military leave:</b> Any employer with 15 or more employees, including the state, a county, a municipality or any political subdivision.</p>

<p><b>Employees Eligible</b></p>	<p>Worked for employer for at least 12 months (which need not be consecutive); worked at least 1,250 hours for employer during 12 months preceding leave; and employed at a worksite with 50 or more employees within 75 miles of worksite.</p>	<p><b>Family medical leave:</b> Worked for employer for at least 12 consecutive months (regardless of the number of hours worked) and work at a permanent worksite with 15 or more employees. Excludes independent contractors. Employees of school administrative units who have worked at least 900 hours in the previous 12-month period are eligible for family medical leave under the same terms and conditions as leave provided to eligible employees under the FMLA.</p> <p><b>Family sick leave:</b> Employees who have earned paid time off.</p> <p><b>Leave for victims of violence:</b> All employees who are victims of violence, assault, sexual assault or stalking, or who have a family member who is such a victim. Family members include a daughter, son, parent or spouse.</p> <p><b>Family military leave:</b> Spouses, domestic partners or parents of a Maine resident who is deployed for military service for more than 180 days; worked for employer for at least 12 consecutive months; and worked at least 1,250 hours for employer during 12 months preceding leave.</p>
<p><b>Leave Amount</b></p>	<p>Generally, up to a total of 12 weeks during a 12-month period.</p> <p>Up to 26 weeks during a single 12-month period to care for spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</p> <p>However, leave for birth, adoption, foster care, care for a parent with a serious health condition or care for a covered service member with a serious injury or illness must be shared by spouses working for same employer.</p>	<p><b>Family medical leave:</b> Up to 10 weeks in a two-year period. No provision regarding spousal sharing of leave. Employees of school administrative units who have worked at least 900 hours in the previous 12-month period are eligible for family medical leave under the same terms and conditions as leave provided to eligible employees under the FMLA.</p> <p><b>Family sick leave:</b> Up to 40 hours in a 12-month period.</p> <p><b>Leave for victims of violence:</b> Reasonable and necessary leave, unless employer would sustain undue hardship from employee's absence or the requested leave is impracticable, unreasonable or unnecessary based on facts known to the employer.</p>

		<p><b>Family military leave:</b> Up to 15 days per deployment, during deployment or during the 15 days immediately before or after deployment.</p>
<p><b>Type of Leave</b></p>	<p>Unpaid leave for:</p> <ul style="list-style-type: none"> <li>• Birth of employee’s newborn child;</li> <li>• Placement of child with employee for adoption or foster care;</li> <li>• Providing care for employee's parent, child or spouse with serious health condition;</li> <li>• Employee’s own serious health condition;</li> <li>• Any qualifying exigency when employee’s spouse, child or parent is on active duty or is notified of impending call or order to active duty in Armed Forces; or</li> <li>• Caring for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</li> </ul>	<p><b>Family medical leave:</b> Similar to federal FMLMA, except:</p> <ul style="list-style-type: none"> <li>• Adoption leave permitted only if child is 16 years old or younger;</li> <li>• No foster care provision;</li> <li>• “Family member” includes domestic partner, domestic partner’s child, grandchild, domestic partner’s grandchild, and sibling;</li> <li>• Includes leave for death or serious health condition of employee’s family member while on active military duty;</li> <li>• Includes leave to be an organ donor.</li> </ul> <p><b>Family sick leave:</b> Employees may use paid sick time, vacation time or compensatory time off to care for a sick child, parent or spouse.</p> <p><b>Leave for victims of violence:</b> Reasonable and necessary paid or unpaid leave for employees who are victims (or whose family member is a victim) of violence, assault, sexual assault, stalking or any act that would support an order for protection, to prepare for and attend court proceedings, receive medical treatment, or obtain services to remedy a crisis caused by domestic violence, sexual assault or stalking. Does not apply if employee’s absence would cause undue hardship to the employer.</p> <p>Employers may not sanction or deprive employees of pay or benefits for exercising their right to leave.</p> <p><b>Family military leave:</b> Unpaid leave to visit a spouse, domestic partner or child during leave from active duty deployment or during the 15 days immediately before or after deployment.</p>

<p style="text-align: center;"><b>Serious Health Condition/Serious Injury or Illness</b></p>	<p><b>Serious Health Condition:</b></p> <p>Illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital, hospice, or residential medical-care facility, or continuing treatment by a health care provider involving a period of incapacity due to:</p> <ul style="list-style-type: none"> <li>• A health condition lasting more than three consecutive full calendar days and involving a certain level of treatment;</li> <li>• A chronic serious health condition or a permanent or long-term condition for which treatment may be ineffective;</li> <li>• Absences to receive multiple treatments (including recovery periods) for a restorative surgery or for a condition that if left untreated likely would result in incapacity of more than three days; or</li> <li>• Any incapacity related to pregnancy or for prenatal care.</li> </ul> <p><b>Serious Injury or Illness:</b></p> <p>In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to</p>	<p><b>Family medical leave:</b> Similar to federal FMLA, but without specificity regarding length of incapacity; does not include definition for “serious injury or illness.”</p> <p>No provision for family sick leave, leave for victims of violence or family military leave.</p>
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<b>Health Care Provider</b>	<p>Doctors of medicine or osteopathy authorized to practice medicine or surgery; podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under state law and consistent with the scope of their authorization; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; any provider so recognized by the employer or its group health plan's benefits manager; and any health provider listed above who practices and is authorized to practice in a country other than the United States.</p>	<p><b>Family medical leave:</b> Doctor of medicine or osteopathy who is licensed in state or any other person determined by the Secretary of Labor to be capable of providing health care services; see below regarding certification by practitioner of spiritual healing arts.</p> <p>No provision for family sick leave, leave for victims of violence or family military leave.</p>
<b>Intermittent Leave</b>	<p>Permitted for serious health condition, for care of covered service member when</p>	<p><b>Family medical leave:</b> Similar to federal FMLA, except military leave provisions; also permitted for employee’s organ donation. Employer may require employee to temporarily transfer to an available</p>

	<p>medically necessary and for active duty leave.</p> <p>Not permitted for care of newborn or new placement by adoption or foster care, unless employer agrees.</p>	<p>alternative position that the employee is qualified for, has equivalent pay and benefits and better accommodates recurring periods of leave.</p> <p><b>Family sick leave:</b> Must be treated the same as leave for a sick employee. Thus, if the employer permits intermittent leave for a sick employee, it must permit intermittent leave for a sick family member.</p> <p><b>Leave for victims of violence:</b> Permitted as needed.</p> <p><b>Family military leave:</b> Employees may only take leave during the service member's leave from active duty deployment or during the 15 days immediately before or after deployment. Employee must schedule leave so as not to unduly disrupt the employer's operations.</p>
<b>Substitution of Paid Leave</b>	<p>Employees may elect, or employers may require, accrued paid leave to be substituted in some cases. Employee must follow terms and conditions of employer's normal paid leave policies.</p>	<p><b>Family medical leave:</b> If the employer provides paid family medical leave for fewer than 10 weeks, the additional weeks of leave added to attain the total of 10 weeks may be unpaid.</p> <p><b>Family sick leave:</b> Employees may use paid sick time, vacation time or compensatory time off to care for a sick child, parent or spouse.</p> <p>No provisions for leave for victims of violence or family military leave.</p>
<b>Reinstatement Rights</b>	<p>Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.</p>	<p><b>Family medical leave:</b> Similar to federal FMLA</p> <p>No provision for family sick leave or leave for victims of violence.</p> <p><b>Family military leave:</b> Similar to federal FMLA.</p>
<b>Key Employee Exception to Reinstatement Rights</b>	<p>Limited exception for salaried employees if among highest paid 10 percent of workforce within 75 miles of worksite, restoration would lead to grievous economic harm to</p>	<p>No specific provision</p>

	employer and other conditions met.	
<b>Maintenance of Health Benefits During Leave</b>	Health insurance must be continued under same conditions as prior to leave.	<p><b>Family medical leave:</b> Employer must make it possible for employee to continue employee benefits at employee's expense during leave.</p> <p>No provision for family sick leave or leave for victims of violence.</p> <p><b>Family military leave:</b> Employer must make it possible for employee to continue employee benefits at employee's expense during leave.</p>
<b>Leave Requests</b>	<p>To be made by employee at least 30 days prior to date leave is to begin where need is known in advance or, where not foreseeable, as soon as practicable.</p> <p>If due to a planned medical treatment or for intermittent leave, the employee, subject to health care provider's approval, shall make a reasonable effort to schedule it in a way that does not unduly disrupt employer's operations.</p> <p>If due to foreseeable active duty of family member, notice must be made as soon as practicable.</p>	<p><b>Family medical leave:</b> Employee must give at least 30 days' advance notice of the intended date that leave will begin, unless prevented by medical emergency.</p> <p><b>Family sick leave:</b> Employer may require notice of family sick leave if the employer requires notice for leave taken because of the employee's own illness. Employer may require employee to specify leave as family sick leave.</p> <p><b>Leave for victims of violence:</b> Employee must request leave within a reasonable time under the circumstances.</p> <p><b>Family military leave:</b> Employee must give at least 14 days' notice of the intended date that leave will begin if leave will consist of 5 or more consecutive work days. If leave is taken for fewer than 5 consecutive work days, employee must give as much advance notice as is practicable. Employee must schedule leave so as not to unduly disrupt the employer's operations.</p>
<b>Certification Requirement</b>	<p>Employer may require certification for the following:</p> <p>Request for leave because of serious health condition or to care for covered service member with a serious illness or injury.</p>	<p><b>Family medical leave:</b> Employer may require certification from physician to verify amount of leave requested by employee; may be provided by accredited practitioner relying on prayer or spiritual means. No provision regarding fitness to return to work.</p> <p><b>Family sick leave:</b> Employer may require certification of illness for family sick leave if</p>

	<p>Request for qualifying exigency leave because of family member's active duty or call to active duty in the Armed Forces.</p> <p>To demonstrate employee's fitness to return to work from medical leave where employer has a uniformly applied practice or policy requiring such certification.</p>	<p>the employer requires certification for leave taken because of the employee's own illness.</p> <p><b>Leave for victims of violence:</b> Employer may require reasonable documentation of the family relationship (such as a statement from employee, birth certificate, court document or other similar document).</p> <p><b>Family military leave:</b> Employer may require certification from the proper military authority to verify employee's eligibility for leave.</p>
<b>Executive, Administrative, and Professional Employees</b>	<p>These individuals are entitled to FMLA benefits. However, their use of FMLA leave does not change their status under the Fair Labor Standards Act (FLSA), i.e., an employer does not lose its exemption from the FLSA's minimum wage and overtime requirements.</p>	No specific provision
<b>Other</b>		<p>Registered domestic partners must be treated the same as spouses for most purposes under Maine law, including for employee leave purposes.</p>
<b>Statutes</b>	29 USC 2601	<p>26 M.R.S.A. §§ 843 to 848 (family medical leave); § 636 (family sick leave); § 850 (leave for victims of violence); § 814 (family military leave).</p>

**SPECIAL NOTE:** Maine employers with 11 or more employees are required to provide up to 40 hours of **earned paid leave** annually to their employees. Leave accrues at the rate of one hour of paid leave for every 40 hours worked. Accrual of leave begins at the start of employment, but the employer is not required to permit use of the leave before the employee has been employed by that employer for 120 days during a one-year period. Certain seasonal workers and collectively bargained employees are ineligible for leave.

**Maine Department of Labor**  
 54 State House Station  
 Augusta, ME 04333  
 PH: (207) 623-7900  
[www.state.me.us/labor](http://www.state.me.us/labor)