



FMLA Nebraska

Federal vs. Nebraska Family & Medical Leave Laws

	FEDERAL ELEMENTS	STATE ELEMENTS
Employers Covered	<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, Nebraska has leave laws regarding (1) adoptive parent leave, (2) family military leave (contained in the Family Military Leave Act) and (3) bone marrow donation leave.</p> <p>Adoptive parent leave: All private and public employers.</p> <p>Family military leave: Employers with 15 or more employees.</p> <p>Bone marrow donation leave: All employers.</p>
Employees Eligible	<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>Adoptive parent leave: Employees who are adoptive parents.</p> <p>Family military leave: Employees who are the spouse or parent of a person called to military service lasting 179 days or longer, who have worked for the employer for at least 12 months, and who have worked at least 1,250 hours during the 12 months preceding leave. Excludes independent contractors.</p> <p>Bone marrow donation leave: Employees who seek to undergo a medical procedure to donate bone marrow.</p>

<p>Leave Amount</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>Adoptive parent leave: If the employer allows an employee to take leave upon the birth of a child, an employee who is an adoptive parent is entitled to the same leave on the same terms when a child is placed for adoption. Leave is <u>not</u> required if the child being adopted:</p> <ul style="list-style-type: none"> • Is a special needs child over age 18; • Is not a special needs child and over age 8; • Is a stepchild being adopted by a stepparent or a foster child being adopted by a foster parent; or • Was originally under a voluntary placement for a purpose other than adoption which later resulted in a petition for the child’s adoption by the person with whom the voluntary placement was made. <p>Family military leave:</p> <ul style="list-style-type: none"> • If employer has between 15-50 employees, up to 15 days of leave when deployment orders are in effect. • If employer has more than 50 employees, up to 30 days of leave when deployment orders are in effect. <p>Bone marrow donation leave: Employers are encouraged, but not required, to provide paid leave to employees who seek to undergo a medical procedure to donate bone marrow.</p>
<p>Type of Leave</p>	<p>Unpaid leave for:</p> <ul style="list-style-type: none"> • Birth of employee’s newborn child; • Placement of child with employee for adoption or foster care; • Providing care for employee's parent, child or spouse with serious health condition; • Employee’s own serious health condition; • Any qualifying exigency when employee’s spouse, child or parent is 	<p>Adoptive parent leave: Whenever an employer allows an employee to take leave upon the birth of a child, an adoptive parent, following the commencement of parent-child relationship, is entitled to the same leave on the same terms (subject to the exceptions noted above).</p> <p>Family military leave: Unpaid leave for covered family members of a person called to military service when deployment orders are in effect.</p> <p>Bone marrow donation leave: Employers are encouraged, but not required, to provide paid leave to employees who seek to undergo a medical procedure to donate bone marrow.</p>

	<p>on active duty or is notified of impending call or order to active duty in Armed Forces; or</p> <ul style="list-style-type: none"> • Caring for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness. 	
<p>Serious Health Condition/Serious Injury or Illness</p>	<p>Serious Health Condition:</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"> • A health condition lasting more than three consecutive full calendar days and involving a certain level of treatment; • A chronic serious health condition or a permanent or long-term condition for which treatment may be ineffective; • 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 • Any incapacity related to pregnancy or for prenatal care. <p>Serious Injury or Illness:</p> <p>In the case of a member of the Armed Forces, including a member of the National Guard</p>	<p>No specific provision</p>

	<p>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 perform the duties of the member's office, grade, rank or rating.</p> <p>For a veteran of the Armed Forces, including a veteran of the National Guard or Reserves, an injury or illness incurred by the member in the 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) and that manifested itself either before or after the member became a veteran.</p>	
<p>Health Care Provider</p>	<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</p>	<p>No specific provision</p>

	to practice in a country other than the United States.	
Intermittent Leave	<p>Permitted for serious health condition, for care of covered service member when 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>Adoptive parent leave: No specific provision</p> <p>Family military leave: Allowed</p> <p>Bone marrow donation leave: No specific provision</p>
Substitution of Paid Leave	<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>Adoptive parent leave: Same leave on the same terms as leave provided to employees upon the birth of a child (certain exceptions apply).</p> <p>Family military leave: No specific provision</p> <p>Bone marrow donation leave: Employers are encouraged, but not required, to provide paid leave to employees who seek to undergo a medical procedure to donate bone marrow. No provision regarding substitution of another type of leave.</p>
Reinstatement Rights	<p>Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.</p>	<p>Adoptive parent leave: Same leave on the same terms as leave provided to employees upon the birth of a child (certain exceptions apply).</p> <p>Family military leave: Similar to federal FMLA</p> <p>Bone marrow donation leave: No provision</p>
Key Employee Exception to Reinstatement Rights	<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 employer and other conditions met.</p>	<p>No specific provision</p>
Maintenance of Health Benefits	<p>Health insurance must be continued under same</p>	<p>Adoptive parent leave: Same leave on the same terms as leave provided to employees upon the birth of a child (certain exceptions</p>

<p>During Leave</p>	<p>conditions as prior to leave.</p>	<p>apply).</p> <p>Family military leave: Employer must make it possible for employees to continue benefits during leave at the employee's expense.</p> <p>Bone marrow donation leave: No provision</p>
<p>Leave Requests</p>	<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>Adoptive parent leave: Same leave on the same terms as leave provided to employees upon the birth of a child (certain exceptions apply).</p> <p>Family military leave: For leave consisting of five or more consecutive work days, an employee must provide at least 14 days' advance notice. For leave consisting of fewer than five days, an employee must provide advance notice as is practicable. If possible, the employee must consult with the employer to schedule leave so as to not unduly disrupt the employer's operations.</p> <p>Bone marrow donation leave: No provision</p>
<p>Certification Requirement</p>	<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>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>Adoptive parent leave: Same leave on the same terms as leave provided to employees upon the birth of a child (certain exceptions apply).</p> <p>Family military leave: Employer may require certification from the proper military authority to verify the employee's eligibility for leave.</p> <p>Bone marrow donation leave: No provision</p>
<p>Executive, Administrative, and Professional</p>	<p>These individuals are entitled to FMLA benefits. However, their use of FMLA leave does not</p>	<p>No specific provision</p>

Employees	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.	
Statutes	29 USC 2601	NE RS § 48-234 (adoptive parent leave); §§ 55-501 to 55-507 (family military leave); § 71-4820 (bone marrow donation leave)

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