



FMLA

# North Carolina

## Federal vs. North Carolina 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, North Carolina has leave laws regarding (1) parental involvement leave and (2) domestic violence leave.</p> <p><b>Parental involvement leave:</b> All employers.</p> <p><b>Domestic violence leave:</b> All employers.</p>
<b>Employees Eligible</b>	<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>Parental involvement leave:</b> All employees who are a parent, guardian or person standing in loco parentis of a school-aged child.</p> <p><b>Domestic violence leave:</b> All employees who are seeking a protective order or other relief under North Carolina domestic violence law.</p>
<b>Leave Amount</b>	<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</p>	<p><b>Parental involvement leave:</b> Up to four hours of leave per year.</p> <p><b>Domestic violence leave:</b> A reasonable amount of time to obtain a protective order or other relief.</p>

	<p>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>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>Parental involvement leave:</b> Unpaid leave to attend or otherwise be involved at a child’s school. “School” includes any public school, private church school, church of religious charter or nonpublic school that regularly provides a course of grade school instruction, a preschool or a child care facility.</p> <p><b>Domestic violence leave:</b> Unpaid leave to obtain a protective order or other relief under North Carolina domestic violence law.</p>
<p><b>Serious Health Condition/Serious Injury or Illness</b></p>	<p><b>Serious Health Condition:</b>          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</p>	<p>No specific provision</p>

	<p>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 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</p>	
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	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.	
<b>Health Care Provider</b>	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.	No specific provision
<b>Intermittent Leave</b>	Permitted for serious health condition, for care of covered service member when medically necessary and for active duty leave.  Not permitted for care of newborn or new placement by adoption or foster care, unless employer agrees.	No specific provision
<b>Substitution of Paid Leave</b>	Employees may elect, or employers may require, accrued paid leave to be	No specific provision

	substituted in some cases. Employee must follow terms and conditions of employer's normal paid leave policies.	
<b>Reinstatement Rights</b>	Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.	<p><b>Parental involvement leave:</b> Employer may not discharge, demote or otherwise take an adverse employment action against an employee who requests or takes parental involvement leave.</p> <p><b>Domestic violence leave:</b> Employer may not discharge, demote, deny a promotion or discipline an employee for taking domestic violence leave.</p>
<b>Key Employee Exception to Reinstatement Rights</b>	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.	No specific provision
<b>Maintenance of Health Benefits During Leave</b>	Health insurance must be continued under same conditions as prior to leave.	No specific provision
<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>Parental involvement leave:</b> Employer may require at least 48 hours' written notice before the time desired for leave. Leave must be at mutually agreed upon time.</p> <p><b>Domestic violence leave:</b> Unless the leave is taken for an emergency, employers may require that employees follow usual time off policies.</p>

<p><b>Certification Requirement</b></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><b>Parental involvement leave:</b> Employer may require that the employee furnish written verification from child's school that the employee attended or was otherwise involved at that school during the time of leave.</p> <p><b>Domestic violence leave:</b> An employer may require documentation of any emergency that prevented the employee from complying with the employer's usual time-off policy, or any other information which supports the reason for being absent.</p>
<p><b>Executive, Administrative, and Professional Employees</b></p>	<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>	<p>No provision</p>
<p><b>Statutes</b></p>	<p>29 USC 2601</p>	<p>N.C. Gen. Stat. § 95-28.3 (parental involvement leave; § 50B-5.5 (domestic violence leave)</p>

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