



FMLA

Pennsylvania

Federal vs. Pennsylvania 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, Pennsylvania has leave laws requiring: 1) pregnancy and childrearing or child care (contained in the Pennsylvania Human Relations Act and regulations issued by the Pennsylvania Human Relations Commission), and 2) organ donor leave.</p> <p>Pregnancy leave: Employers with four or more employees.</p> <p>Childrearing/child care leave: Employers with four or more employees.</p> <p>Organ donor leave: Employers subject to federal FMLA.</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>Pregnancy leave: Employees who are disabled due to pregnancy and childbirth.</p> <p>Childrearing/child care leave: All employees.</p> <p>Organ donor leave: Employees eligible for federal FMLA leave.</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>Pregnancy leave: Employers cannot discriminate on the basis of sex with respect to compensation, hire, tenure, terms, conditions or privileges of employment.</p> <p>Employment practices and policies regarding job benefits and job security, including the commencement and duration of leave and the availability of extensions, must be applied to disability due to pregnancy and childbirth on the same terms and conditions as they are applied to other temporary disabilities.</p> <p>Childrearing/child care leave: If an employer maintains an employment policy or practice that provides employees with leave for childrearing or child care, it must be applied equally to both male and female employees.</p> <p>Organ donor leave: The same leave the employee would be entitled to under the FMLA for their own serious health condition or that of a family member.</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 on active duty or is notified of impending call or order to active duty in Armed Forces; or • Caring for a spouse, child, parent or next of kin who is a covered 	<p>Pregnancy leave: Employers cannot discriminate on the basis of sex with respect to compensation, hire, tenure, terms, conditions or privileges of employment.</p> <p>Employment practices and policies regarding job benefits and job security, including the commencement and duration of leave and the availability of extensions, must be applied to disability due to pregnancy and childbirth on the same terms and conditions as they are applied to other temporary disabilities.</p> <p>An employer must accept the determination of a pregnant employee’s physician regarding pregnancy-related disabilities where it accepts the medical judgment regarding other disabilities.</p> <p>Childrearing/child care leave: If an employer maintains an employment policy or practice that provides employees with leave for childrearing or child care, it must</p>

	<p>service member with a serious injury or illness.</p>	<p>be applied equally to both male and female employees.</p> <p>Organ donor leave: Leave for necessary preparation and recovery for surgery related to organ or tissue donation by or for the employee, or their spouse, child or parent.</p>
<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 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</p>	<p>No provision</p>

	<p>authorized to practice in a country other than the United States.</p>	
<p>Intermittent Leave</p>	<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>Pregnancy leave: Employers cannot discriminate on the basis of sex with respect to compensation, hire, tenure, terms, conditions or privileges of employment.</p> <p>Employment practices and policies regarding job benefits and job security, including the commencement and duration of leave and the availability of extensions, must be applied to disability due to pregnancy and childbirth on the same terms and conditions as they are applied to other temporary disabilities.</p> <p>Childrearing/child care leave: If an employer maintains an employment policy or practice that provides employees with leave for childrearing or child care, it must be applied equally to both male and female employees.</p> <p>Organ donor leave: No provision</p>
<p>Substitution of Paid Leave</p>	<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>Pregnancy leave: Employers cannot discriminate on the basis of sex with respect to compensation, hire, tenure, terms, conditions or privileges of employment.</p> <p>Employment practices and policies regarding job benefits and job security, including the commencement and duration of leave and the availability of extensions, must be applied to disability due to pregnancy and childbirth on the same terms and conditions as they are applied to other temporary disabilities.</p> <p>Childrearing/child care leave: If an employer maintains an employment policy or practice that provides employees with leave for childrearing or child care, it must be applied equally to both male and female employees.</p> <p>Organ donor leave: No provision</p>

<p>Reinstatement Rights</p>	<p>Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.</p>	<p>Pregnancy leave: Employment practices and policies regarding job benefits and job security, including the commencement and duration of leave and the availability of extensions, must be applied to disability due to pregnancy and childbirth on the same terms and conditions as they are applied to other temporary disabilities.</p> <p>Childrearing/child care leave: If an employer maintains an employment policy or practice that provides employees with leave for childrearing or child care, it must be applied equally to both male and female employees.</p> <p>Organ donor leave: No specific provision</p>
<p>Key Employee Exception to Reinstatement Rights</p>	<p>Limited exception for salaried employees if among highest paid 10% of workforce within 75 miles of worksite, restoration would lead to grievous economic harm to employer and other conditions met.</p>	<p>No provision</p>
<p>Maintenance of Health Benefits During Leave</p>	<p>Health insurance must be continued under same conditions as prior to leave.</p>	<p>Pregnancy leave: Employers cannot discriminate on the basis of sex with respect to compensation, hire, tenure, terms, conditions or privileges of employment.</p> <p>Employment practices and policies regarding job benefits and job security, including the commencement and duration of leave and the availability of extensions, must be applied to disability due to pregnancy and childbirth on the same terms and conditions as they are applied to other temporary disabilities.</p> <p>Childrearing/child care leave: If an employer maintains an employment policy or practice that provides employees with leave for childrearing or child care, it must be applied equally to both male and female employees.</p> <p>Organ donor 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>Pregnancy leave: No specific provision, although nondiscrimination requirements would apply.</p> <p>Childrearing/child care leave: No specific provision, although nondiscrimination requirements would apply.</p> <p>Organ donor leave: An employer may require an eligible employee to submit written documentation regarding the preparation and recovery necessary for surgery.</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>Pregnancy leave: An employer must accept the determination of a pregnant employee's physician regarding pregnancy-related disabilities where it accepts the medical judgment regarding other disabilities.</p> <p>Organ donor leave: An employer may require an eligible employee to submit written documentation regarding the preparation and recovery necessary for surgery.</p>
<p>Executive, Administrative, and Professional Employees</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</p>	<p>No provision</p>

	FLSA's minimum wage and overtime requirements.	
Statutes	29 USC 2601	43 P.S. §§ 951-963; 16 Pa Code §§ 41.101 – 41.104 (pregnancy and child bearing/rearing leave); 35 P.S. § 6130.1 et seq. (organ donor leave)

SPECIAL NOTE: For tax years beginning on or after Dec. 31, 2010, eligible Pennsylvania employers that provide employees with paid leaves of absence for organ or bone marrow donation qualify for a special tax credit. Employers that earned tax credits under this paid leave program and did not use them in the taxable year during which the leave was granted are allowed to carry over the credits for three taxable years. Carryover credits may be used after 2010. Instructions on claiming the tax credit and the tax credit form (Rev-984) are available from the [Pennsylvania Department of Revenue](#).

SPECIAL NOTE: The laws included in this chart are statewide laws. Cities, towns and counties across the country have also passed employee leave ordinances, including sick leave ordinances in [Philadelphia](#), [Pittsburgh](#) and [Allegheny County](#). Employers must comply with both state and local laws where they apply.

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