

## Family and Medical Leave Act of 1993

The Family and Medical Leave Act of 1993 (FMLA) was passed to allow employees to balance their work and family life by taking reasonable unpaid leave for certain family and medical reasons. For example, a covered employer must grant an eligible employee a total of 12 weeks of unpaid leave to care for a newborn child. While an employee is on FMLA leave, an employer is required to maintain group health insurance (arrangements will need to be made for the employee to pay his or her share of the premiums). Upon return from FMLA leave, an employee (unless a key employee) must be restored to his or her original job, or to an equivalent job (one that is virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions). The law covers only certain employers and affects only those employees eligible for the protections of the law. As will be seen below, FMLA will have a minimal effect on agriculture.

### How the Law Applies to Agricultural Employment

Table 8 summarizes FMLA provisions and how they apply to agricultural employment. The basis for

coverage has been limited by the way the law defines terms and by U.S. Department of Labor regulations. While there are no specific exemptions for agricultural employment, the provisions apply to only the largest employers.

### Definitions

Definitions presented in this section are restricted to key terms. Readers seeking more detailed information should contact the nearest office of the Wage and Hour Division, U.S. Department of Labor, and should consult *29 Code of Federal Regulations* and *Title 29 United States Code*.

*Covered employer* refers to all “public agencies, including State, local, and Federal employers, local education agencies (schools), and private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year and who are engaged in commerce or in any industry or activity affecting commerce—including joint employers and successors in interest to a covered employer” (2). As a practical matter, this limits FMLA’s effect on agricultural employers to only the largest employers.

**Table 8--Family and Medical Leave Act of 1993: Summary of applicability to agriculture and penalties for violations**

Provisions	Exemptions for agriculture	Basis for agricultural exemptions	Enforcement
<p><b>Leave Entitlement</b> A covered employer must grant an eligible employee a total of 12 workweeks of unpaid leave in a 12-month period for one of the following reasons:</p> <ol style="list-style-type: none"> <li>1. For the birth of a son or daughter and to care for newborn child;</li> <li>2. For the placement with employee of a child for adoption or foster care, and to care for the newly placed child;</li> <li>3. To care for an immediate family member (spouse, child, parent, but not a parent-in-law) with a serious health condition; and</li> <li>4. When the employee is unable to work because of a serious health condition.</li> </ol>	None	None	<p><b>Responsible agency</b> Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.</p> <p><b>Penalties</b> If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also bring a private civil action against an employer for violations.</p>

Source: Compiled by USDA, ERS from *29 CFR, Part 825, The Family and Medical Leave Act of 1993: Final Rule*.

*Joint employment* may occur when two or more businesses exercise some control over the work or working conditions of the employee. Where the employee performs work, which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship will generally be considered to exist; for example:

- (1) Where there is an arrangement between employers to share an employee's services or to interchange employees;
- (2) Where one employer acts directly or indirectly in the interest of the other employer in relation to the employee; or
- (3) Where the employers are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer (2).

The existence of a *successor in interest to a covered employer* (occurs when a business is sold) is determined by considering the following factors:

- (1) Substantial continuity of the same business operations;
- (2) Use of the same plant;
- (3) Continuity of the workforce;
- (4) Similarity of jobs and working conditions;
- (5) Similarity of supervisory personnel;
- (6) Similarity in machinery, equipment, and production methods;
- (7) Similarity of products or services; and
- (8) The ability of the predecessor to provide relief (2).

An *eligible employee* "is an employee of a covered employer who:

- (1) "Has been employed by the employer for at least 12 months, and

- (2) "Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, and

- (3) "Is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of the worksite (applies only to employees who are employed within any State of the United States, the District of Columbia or any Territory or possession of the United States)" (2).

*Leave entitlement* requires that a covered employer grant an eligible employee up to 12 workweeks of unpaid leave in a 12-month period for one or more of the following reasons:

- For the birth of a child and to care for the newborn child;
- For the placement with the employee of a child for adoption or foster care and to care for the newly placed child;
- To care for an immediate family member (spouse, child, or parent, but not a parent-in-law) with a serious health condition; and
- When the employee is unable to work because of a serious health condition.

However, leave to care for a newborn child or for a newly placed child must conclude within 12 months after the birth or placement. Also, spouses employed by the same employer may be limited to a combined total of 12 workweeks of family leave for the following reasons:

- Birth and care of a child;
- For the placement of a child for adoption or foster care and to care for the newly placed child; and
- To care for an employee's parent who has a serious health condition.

FMLA leave may be taken intermittently, and employees may choose to use, or employers may require the employee to use, accrued leave to cover some or all of the FMLA leave taken.

*Serious health condition* means "an illness, injury, impairment, or physical or mental condition that involves:

- Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- A period of incapacity requiring absence of more than three calendar days from work, school, or other regular activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
- Any period of incapacity due to pregnancy, or for prenatal care; or
- Any period of incapacity (or treatment therefor) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- A period of incapacity that is permanent or long term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or
- Any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.)” (2).

An employer may require that the need for leave for a serious health condition of the employee (or of an immediate family member) be supported by a certification issued by a health care provider. An employee must be allowed 15 days to obtain the

medical certificate. An employer may, at his or her own expense, require the employee to obtain a second medical certification from a health care provider. The regulations delineate a list of acceptable health care providers in the standard.

### **Enforcement**

The Family and Medical Leave Act is enforced by the U.S. Department of Labor's Wage and Hour Division. The Wage and Hour Division investigates complaints of violations. If the Wage and Hour Division determines that a violation has occurred and cannot be satisfactorily resolved, the Department can bring action in court to compel compliance. An eligible employee may bring a private civil action against an employer for violations without having to first file a complaint with the Wage and Hour Division.

### **Summary**

The Family and Medical Leave Act of 1993 (FMLA) was passed to allow employees to balance their work and family life by taking reasonable unpaid leave for certain family and medical reasons. Its coverage of agricultural employers is limited because the law applies only to private-sector employers who employ 50 or more people in 20 or more workweeks in the current or preceding calendar year, and who are engaged in commerce or in any industry or activity affecting commerce, including joint employers and successors in interest.