



Employment Rights Helpline at Equip for Equality

SELF-ADVOCACY ASSISTANCE ★ LEGAL ADVICE ABOUT EMPLOYMENT RIGHTS ★ SAMPLE LETTERS & FORMS ★ REFERRALS

FACT SHEET: Leave Under The ADA and The FMLA

	Americans with Disabilities Act (ADA)	Family and Medical Leave Act (FMLA)
Goal	<ul style="list-style-type: none"> Ensures that people with disabilities have equality of opportunity, full participation and integration, independence, economic self-sufficiency 	<ul style="list-style-type: none"> Allows employees to balance work and family life
Background	<ul style="list-style-type: none"> Title I requires employers to provide reasonable accommodations to employees in certain circumstances Leave can be a reasonable accommodation 	<ul style="list-style-type: none"> Leave entitlement law
Protects Employees	<ul style="list-style-type: none"> If you are a qualified individual with a disability Qualified: An individual who can perform the essential functions of their position with or without a reasonable accommodation Disability: An individual with a physical or mental impairment that substantially limits one or more major life activities or who has a record of such an impairment No tenure requirement 	<ul style="list-style-type: none"> If you or your family member has a serious health condition and meet the tenure requirement Serious health condition: An illness, injury or physical/mental condition involving: (1) Any period of incapacity or treatment connected with inpatient care in a hospital, hospice, or residential medical care facility; or (2) Any period for pregnancy or pre-natal care; or (3) Continuing treatment by or under the supervision of a health care provider. Tenure requirement: Must have worked at least 12 months and worked 1,250 hours

<p>Covered Employers</p>	<ul style="list-style-type: none"> • Private employers with 15+ employees • All state and local governments • Note: The Illinois Human Rights Act’s disability protections apply to all private employers in Illinois 	<ul style="list-style-type: none"> • Private employers with 50+ employees • All public agencies (federal, state, local government agencies) • All private or public elementary or secondary schools
<p>Eligible Reasons for Leave</p>	<ul style="list-style-type: none"> • Anything related to your own disability-related needs • Examples: Medical appointments, treatments, time to adjust to new medications 	<ul style="list-style-type: none"> • Own serious health condition • Care for an immediate family member (spouse, child, parent) with a serious health condition • Birth and care of newborn child • Placement with the employee of a child for adoption or foster care
<p>Length of Leave</p>	<ul style="list-style-type: none"> • It depends on whether the leave is reasonable; would pose an undue hardship; would be effective; or there is an alternate, effective accommodation • Note: In Illinois, a recent court case limited leave under the ADA to no more than two weeks to one month 	<ul style="list-style-type: none"> • 12 weeks in a 12-month period • Additional protections (up to 26 work weeks) for service members injured in the line of service and their family members • Note: The FMLA leave entitlement may be extended as a reasonable accommodation under the ADA
<p>Intermittent Leave</p>	<ul style="list-style-type: none"> • Intermittent leave may be a reasonable accommodation 	<ul style="list-style-type: none"> • Intermittent leave is required • You must make reasonable effort to schedule treatments to avoid disruptions to your employer • Your employer may require you to temporarily transfer to an available alternative position that better suits your reduced hours
<p>Whether Leave Must Be Granted</p>	<ul style="list-style-type: none"> • It depends on whether the leave is reasonable; would pose an undue hardship; would be effective; or there is an alternate, effective accommodation 	<ul style="list-style-type: none"> • Yes. If you are eligible, you are entitled to up to 12 weeks of unpaid leave • No reasonableness analysis

Maintenance of Health Benefits	<ul style="list-style-type: none"> • Only if your employer provides health benefits for other employees in the same leave or part-time status 	<ul style="list-style-type: none"> • Yes. But your employer may require you to pay your share of the premiums
Paid or Unpaid	<ul style="list-style-type: none"> • Unpaid • But you may choose <i>and</i> your employer may require you to take accrued paid leave concurrently 	<ul style="list-style-type: none"> • Unpaid • But you may choose <i>and</i> your employer may require you to take accrued paid leave concurrently
Requesting Leave	<ul style="list-style-type: none"> • Substance of request: You must tell your employer that you need leave due to a disability or medical condition • Tip: Use “magic words” such as “I am requesting leave under the ADA as a reasonable accommodation” • Tip: Request in writing, or follow up on conversation in writing • Tip: Review the Helpline’s fact sheet on Requesting a Reasonable Accommodation 	<ul style="list-style-type: none"> • Timing of request: Your employer may require foreseeable leave to be requested 30+ days in advance. Your employer may require unforeseeable leave to be requested as soon as practicable. • Substance of request – first leave: You must provide enough information for your employer to reasonably determine whether the FMLA may apply to a leave request, but no special words are required • Substance of request – subsequent leave: You must reference the qualifying reason <i>or</i> the FMLA
Employer’s Response	<ul style="list-style-type: none"> • Your request triggers your employer’s duty to engage in the interactive process to determine whether leave is a reasonable accommodation and, if not, whether any alternatives exist • No specific forms required 	<ul style="list-style-type: none"> • Your employer must provide you with specific notices regarding your eligibility, rights, responsibilities and designation • Employers use Department of Labor (DOL) forms
Required Medical Support	<ul style="list-style-type: none"> • Usually. Your employer may request medical documentation in support of a reasonable accommodation request, so long as your disability and need for leave are not obvious 	<ul style="list-style-type: none"> • Yes. Your employer will ask you to complete a DOL form to certify the serious health condition • If your documentation is insufficient, your employer must tell you and give you time to fix it

	<ul style="list-style-type: none"> Requested documentation must be limited to establishing your disability and need for accommodation 	<ul style="list-style-type: none"> Your employer may require additional medical opinions, but if so, must pay for it Your employer may require periodic reports and/or recertification
Privacy of Medical Records	<ul style="list-style-type: none"> Yes. Records must be kept confidential in a file separate from an employees' personnel file Limited exceptions: Supervisors on a need-to-know basis, first aid personnel, government officials investigating compliance 	<ul style="list-style-type: none"> Yes. FMLA regulations reference the ADA's confidentiality requirements and exceptions
Right to Return Following Leave	<ul style="list-style-type: none"> Yes, unless reinstatement would pose an undue hardship But if reinstatement would pose an undue hardship, your employer must consider reassigning you to a vacant position that you are qualified for 	<ul style="list-style-type: none"> Yes. You must be reinstated to your same position or a position virtually identical in terms of pay, benefits, working conditions and substantially similar duties and responsibilities There is no undue hardship defense Limited exception: Key employees need not be reinstated Key employee: Among the highest paid 10% of employees within 75 miles of a worksite and restoration to employment would cause substantial and grievous injury to employer. If you are a key employee, your employer must tell you when you request leave
Medical Support When You Return	<ul style="list-style-type: none"> Yes, but requests must be limited to information that is job-related and consistent with business necessity If documentation is insufficient, your employer should explain why and give you time to provide supplemental information 	<ul style="list-style-type: none"> Yes, but requests must be specific to the particular health condition that required the FMLA leave Your employer is not permitted to require a second or third opinion, so long as your certification is sufficient

<p>If You Are Unable to Do Job After Leave</p>	<ul style="list-style-type: none"> You can seek reasonable accommodations that will enable you to perform the essential functions of your current position. Please see the Employment Rights Helpline fact sheet about Requesting a Reasonable Accommodation to learn more If there are no accommodations that will enable you to stay in your current position, you can seek reassignment to a vacant position that you are qualified to do. Please see the Employment Rights Helpline fact sheet about Reassignment as a Reasonable Accommodation to learn more 	<ul style="list-style-type: none"> No reinstatement right if you are no longer able to perform the essential functions of your job FMLA regulations state that an employer may have an obligation under the ADA to accommodate you
<p>Protection Against Retaliation</p>	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> Yes
<p>Enforcement</p>	<ul style="list-style-type: none"> Before going to court, you must file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) or the Illinois Department of Human Rights (IDHR) Deadline: 180 days from the adverse action for the IDHR or 300 days from the adverse action for the EEOC Tip: Please see the Employment Rights Helpline fact sheet about How to File a Charge of Discrimination to learn more 	<ul style="list-style-type: none"> You do not need to file a charge with any agency before going to court Deadline for federal court: Two years, or three years for willful violation (a court will decide if the conduct is willful so it is always best to file within two years) You may file a complaint with the Department of Labor Note: Your deadline to file in federal court remains the same regardless of whether you file with DOL
<p>Additional Information</p>	<ul style="list-style-type: none"> EEOC, Employer-Provided Leave and the ADA: www.eeoc.gov/eeoc/publications/ada-leave.cfm 	<ul style="list-style-type: none"> DOL, Employee Guide to the FMLA: www.dol.gov/whd/fmla/employeeguide.pdf



DO YOU HAVE A QUESTION?

Contact Equip for Equality's Employment Rights Helpline

1-844-RIGHTS-9 (toll free) or (844) 744-4879

800-610-2779 (tty)

employment@equipforequality.org

www.equipforequality.org/employment

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities. The Employment Rights Helpline seeks to empower individuals with disabilities to advocate effectively.

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