

DEFINITION OF "SERIOUS HEALTH CONDITION" FEDERAL FAMILY AND MEDICAL LEAVE ACT

A "Serious Health Condition" means an illness, injury impairment, or physical or mental condition that involves one or more of the following six categories:

Category 1: Hospital Care: Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity¹.

Category 2: Absence Plus Treatment:

(a) A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

(1) Treatment² two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment³ under the supervision of the health care provider.

Category 3: Pregnancy: Any period of incapacity due to pregnancy, or for prenatal care.

Category 4: Chronic Conditions Requiring Treatments: A chronic condition which:

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)

Category 5: Permanent / Long-term Conditions Requiring Supervision: A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

Category 6: Multiple Treatments (Non-Chronic Conditions): Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

DEFINITION OF "FAMILY MEMBERS" FEDERAL FAMILY AND MEDICAL LEAVE ACT

Spouse: Spouse means a husband or wife as defined or recognized under law for purposes of marriage in the state where the employee resides, including "common law" marriage and same-sex marriage.

Parent: Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child.

Son or daughter: Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

In Loco Parentis: The FMLA regulations define in loco parentis as including those with day-to-day responsibilities to care for or financially support a child. Employees who have no biological or legal relationship with a child may, nonetheless, stand in loco parentis to the child and be entitled to FMLA leave. Similarly, an employee may take leave to care for someone who, although having no legal or biological relationship to the employee when the employee was a child, stood in loco parentis to the employee, even if they have no legal or biological relationship.

¹ "Incapacity", for purposes of the federal FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, or related treatment or recovery, or subsequent treatment in connection with or consequent to such inpatient care

² Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

³ A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.