



Caregiver Rights in the Workplace

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Remaining gainfully employed while balancing responsibilities as a caregiver can be challenging. On the one hand, caregivers may feel the best chance to protect a job or career is to inform employers of their caregiving responsibilities and hope for understanding and empathy. On the other hand, caregivers may think that telling employers about their additional responsibilities could jeopardize promotions, desirable job assignments, or pay raises. Navigating the rules and deciding what to do can be difficult.

The Law

The most common employment protection available to a caregiver is the Family Medical Leave Act (FMLA). The Americans with Disabilities Act (ADA) also provides some



protections for caregivers concerning discrimination based on a relationship with a person with disabilities. However, the ADA addresses reasonable accommodations exclusively for the person with a disability, not for the caregiver.

Who is covered?

The law only covers businesses with 50 employees or more working within a 75-mile radius. For remote workers, the 75-mile limit applies to the work site where the employee reports; or the site that directs the work.

Covered employees must have worked at the company for at least 12 months and at least 1,250 hours during that 12-month period. The FMLA does not fully cover certain employees, such as airline attendants, teachers, and first responders, even when a company's other employees are fully covered.

Employers may deny reinstatement to workers among the 10% highest-paid employees at a worksite if they had to replace them with full-time permanent substitutes. Employers must inform such employees of their status and let them know their reinstatement is not guaranteed. However, before denying reinstatement, an employer must determine whether the company can fill the gap with a temporary employee.

Employers may require a doctor's certification with information they are entitled to have before approving leave. Once they receive the certification, employers must deny or approve the request within five days. The employer can ask for recertification every 30 days. The FMLA prohibits a caregiver's direct supervisor from receiving the certification or speaking to any medical provider. Caregivers should work directly with a company's human resources department if there is one or consult their employee handbook if there is no human resources office.

FMLA requires posted notice to inform employees of their rights and how to request leave.

How much leave is allowed?

A covered employee can take up to 12 weeks of protected leave during a designated 12-month time period. The 12-month period can be a calendar year or a rolling year, and employers are required to inform employees how they calculate it.

The number of protected hours allowable is determined according to the number of hours an employee normally works. For example, if an employee usually works 32 hours a week, they would be allowed up to 32 hours multiplied by 12 (the number of protected weeks); or



384 hours of protected leave within 12 months. Persons caring for a service member or veteran may be eligible for expanded leave.

Advance notice to take leave is usually required. However, employers must authorize FMLA leave when an unexpected medical issue arises without time for advance notice.

Employers may require caregivers to use part of their leave entitlement if the employer has adequate reason to believe the leave qualifies under FMLA. Additionally, an employer may require that employees take any paid leave available concurrently with FMLA leave.

Employees may take protected leave all at once or intermittently. Intermittently can mean as little as 15 minutes at a time, if that is how the employer calculates payroll. It can also mean working a reduced schedule, such as four hours a day or three days a week. When employees take intermittent leave, employers may move them to alternate jobs more amenable to sporadic schedules. However, the job must provide the same pay and benefits.

After a protected leave, employees must be reinstated with the same pay and benefits they had before their leave. Similarly, employees eligible for a promotion or raise retain their eligibility. If employers deny a promotion or take other adverse action because an employee took protected leave, there may be grounds for a claim of retaliation.

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