

# FMLA Leave for Baby Bonding



Baby bonding is one reason an employee may take FMLA leave. However, in many cases, it may not even need to be the employee's biological child for them to take leave. While unpaid FMLA leave can be taken to care for a newborn baby, it can also be used when adopting a baby or even caring for a foster child. However, there are some situations and caveats that employers should be aware of when such leave is requested.

In this [Businessmanagementdaily.com](https://www.businessmanagementdaily.com) article, we cover:

- Tips for parents taking FMLA baby bonding leave.
- Tips for employers and HR to properly handle FMLA baby bonding leave.
- The basics of the FMLA act(Family and Medical Leave Act).

## What is FMLA?

The federal Family And Medical Leave Act of 1993 is an employment law that secures 12 weeks of unpaid leave for government workers and employees of companies with over 50 employees. FMLA was put into place to protect worker's rights when they need to take unpaid medical leave from work and entitles them to return to their same, or a similar, position after leave is taken.

## FMLA leave can typically be used for:

- **Self-care.** Employees who suffer from a serious health condition may take up to 12 weeks of unpaid

FMLA leave. This is the so-called self-care provision.

- **Birth or adoption.** Employees can take FMLA leave following the birth, adoption, or foster care placement of a child.
- **Care for a spouse or immediate family member.** Employees may take FMLA leave to care for a spouse, parent, child, or other immediate family member suffering from a serious health condition.
- **Military deployment.** Employees whose spouse, son, daughter, or parent is called to active duty may take leave to assist with child care and tend to other related matters.
- **Military caregiver leave.** Employees can take up to 26 weeks to care for an ill or seriously injured service member.

It's important to note that after the 12 weeks of leave is over, employees are no longer protected by FMLA regulations if they do not return to work. However, they may also be protected under other laws like the Americans with Disabilities Act.

## **Can an employee take FMLA leave for the adoption of a child?**

Yes. Adoption is basically the same thing as baby bonding. Employees who adopt children might need some time to bond with the child they're adopting, therefore they also will need time to become accustomed to having a new child or foster child at home with them. FMLA leave can also be used in advance of an adoption or foster care arrangement to attend meetings, court hearings, and more.

Once the child is adopted or placed from foster care, an employee may take a block of FMLA leave for bonding. You are only required to permit employees to take such leave in one solid block of time, however intermittent leave would be a great option for adoption and foster care. This allows parents to spend the same amount of time, but broken up into smaller chunks over a longer period. While you're not required to, consider allowing intermittent leave to be taken for such purposes. This is a benefit to the employee, as it allows them to keep taking time without burning through it all immediately. However, the employer also benefits by having the employee in, perhaps a few days a week, to keep on top of vital work tasks, instead of having a prolonged period of absence.

If you let an employee take intermittent FMLA leave, just be sure that open communication is established and any protocols for notification are established in advance. Additionally, all such leave must be taken within a year of the qualifying event.



## Is paid family leave possible when requesting leave for FMLA baby bonding?

Employees *can* receive pay while they are out on leave, if they have paid sick and vacation time already. An employee may use this leave concurrently with their FMLA leave until it runs out. The employee will be paid for this time until such leave runs out and then will switch to unpaid leave. However, this does not extend the 12 week limit. For example, an employee with 2 weeks of vacation and 2 weeks of sick time, could take 4 weeks of FMLA leave paid, and then the remaining 8 weeks unpaid.

Employers may require, if they choose, that employees expend paid leave while taking FMLA leave before going into unpaid time. However, be certain that this policy is already established in your handbook well before any employee needs to take FMLA leave.

## Baby bonding laws vary by state

Be sure to take your local state laws into account when researching FMLA laws about having a newborn child.

For example, the [California Family Rights Act](#) (CFRA) is a separate law made for protecting Californians in childbirth that has a slightly different fine print but still allows for 12 weeks of unpaid or paid medical leave per year.

California also has the California Pregnancy Disability Leave (PDL) act that allows the same 12 weeks of unpaid leave for employees of companies of 5 employees and more.

## Who can qualify for FMLA baby bonding?

A biological parent may take leave for baby bonding, however, that is not the only case. A person in *loco parentis* may also qualify for FMLA leave. *Loco parentis* refers to the relationship between the individual and the child and can apply to anyone assuming the obligations of a parent to the child. A biological relation is not required, though in many cases a sibling, grandparent, or another relative may stand *in loco parentis* as long as they meet the requirements.

This is determined on a case by case basis typically. A child having two biological parents at home does not mean another family member may not qualify if they still function in a caregiver role on a regular basis. The primary factors included are:

- Age of the child.
- The degree to which the child is dependent on the person
- Amount of financial support, if any, provided.
- The extent to which duties commonly associated with parenthood are exercised.

Documentation may be required to prove a *loco parentis* relationship between a child and another individual. If such a relationship is established, then that employee is permitted to take FMLA leave assuming they qualify normally — all other FMLA rules and regulations still apply.

## **Can an employer deny leave for FMLA baby bonding?**

FMLA leave for baby bonding cannot be denied, however, an employer may deny job restoration to salaried eligible employees (key employees, as defined in [§825.217\(c\)](#)), if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer. However, in such a case it may be better to consider intermittent FMLA leave — allowing the employee to take some time off while still tending to any key business needs.

## **Is medical certification necessary when taking FMLA for baby bonding?**

While employers cannot request a medical certification for baby bonding, they may request other documentation to prove the relationship and need for leave. Such requests should be definitive but not overly burdensome on the employee.

## **FMLA terminology and basics**

### **An FMLA disclaimer should be in every covered employer's repertoire**

Let's remember that there have been supreme court cases because of the fact that an employer didn't specify unpaid leave as running concurrently with FMLA leave in their company's leave policy.

Can caregivers take FMLA baby bonding leave?

The employee doesn't have to be the primary caregiver for you to allow them to take leave for

### **Does health insurance/disability insurance/health benefits continue while on FMLA leave?**

The great thing about 12 weeks of unpaid leave is that employees are still covered on their health insurance programs.

### **When does FMLA leave reset?**

The FMLA allows most employers to choose from one of four calendaring methods. The chosen method must apply to all employees equally. Employers may change their [FMLA calendar year](#) method by giving 60-days-notice to all affected employees. If the change deprives an employee of leave time or other FMLA benefits, the employee is entitled to the time/benefits under the original calendaring method. Leave initiated during the 60-day notice period must be calculated on the method most beneficial to the employee.

The four FMLA calendaring methods are:

- The calendar year.
- Any fixed 12-month “leave year,” such as a fiscal year, a year required by state law, or a year starting on an employee’s “anniversary” date.
- The 12-month period measured forward from the date any employee’s first FMLA leave begins.
- A “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.

If the employer doesn’t choose a calendaring method, the employer must use the calendaring method most beneficial to the employee. So, if you haven’t already chosen a method, do so now. Otherwise, each time you process an FMLA leave request, you must calculate the entitlement four ways.

## **Avoiding lawsuits associated with FMLA**

Employers should be extremely careful about terminating employees on FMLA leave. Employees *can* be terminated while on FMLA leave, but you must prove that they were not terminated because they took leave. For example, if you can find proof of wrongdoing that would merit termination, then you can proceed. However, be sure you have enough documentation to prove that your case is not FMLA retaliation.

Additionally, if an employee is on FMLA leave for baby bonding, do not make the mistake in thinking that they cannot use such time for a variety of activities. For example, a new mother flying to Florida to stay with family and spend some time on the beach, is likely permitted to do so. In fact, an employee taking a newly placed adopted child on vacation for a week may also qualify as FMLA-protected leave as this could be a viable form of bonding. With this in mind, be sure not to overreact and take any hasty actions.

**Additional resource:** Read more about [FMLA requirements](#) and what they mean for your business.