



*This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

## **The Family and Medical Leave Act and Nonprofits**

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Nonprofits may be subject to the Family and Medical Leave Act (FMLA). This article is intended to provide a general overview of the FMLA. Topics covered in this article are: 1. What is the FMLA?; 2. Who qualifies as a “covered” employer and an eligible employee; 3. Obligations of under the FMLA; 4. Qualifying reasons for FMLA leave; and 5. What employers are prohibited from doing under the FMLA.

### **1. What is the FMLA?**

The FMLA is a U.S. federal law (29 CFR Part 825) that offers employees up to 12 weeks of unpaid, protected job leave with health benefits. The 12 weeks of leave are not required to be taken consecutively. The time may be used throughout a 12-month period, as needed. The full text of the law can be found at <https://www.gpo.gov/fdsys/granule/CFR-2011-title29-vol3/CFR-2011-title29-vol3-part825>.

Many states have their own leave laws relating to time off for family and medical reasons in addition to the federal law. Georgia does not have a separate family and medical leave law.

### **2. Who qualifies**

#### ➤ **as a “covered” employer**

- A nonprofit is a “covered” employer and must provide FMLA benefits and protections to eligible employees if it has at least 50 employees for at least 20 weeks in the current or previous year. The 20 weeks do not need to be consecutive.

#### ➤ **as an eligible employee?**

- An employee who:
  - has been employed for at least 12 months as of the date the FMLA leave is to start;
  - has been employed for at least 1,250 hours of service in the previous 12 months; and
  - works at a location where the employer employs at least 50 employees within a 75-mile radius of that work place.

### **3. Obligations under FMLA**

#### ➤ **Nonprofits that are “covered” employers must:**

- Notify employees of their FMLA entitlement
  - Employer’s must display an informational poster (A form poster may be found at <https://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>)
  - Employers must provide each employee with a general notice about FMLA (this may be a provision in the employee handbook).

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If a significant number of employees speak a language other than English, the information must be provided in that language.

- Provide a notice of eligibility and rights and responsibilities to the employee after the employee requests leave. This document states whether or not the employee is eligible for FMLA leave. (A form notice may be found at <https://www.dol.gov/whd/forms/WH-381.pdf>)
- During the leave, retain the employee on the employer's health insurance plan under the same conditions that applied before the leave.
- After the leave, return the employee to an equivalent position with equal pay, benefits, and other employment terms and conditions at the end of the FMLA approved leave.
- Retain records for no less than three years (e.g. basic payroll data, dates of FMLA leave, copies of notices provided to employees, premium payments for employee benefits, and records of disputes).

➤ **An eligible employee must:**

- Provide notice of the need for FMLA leave.
  - Employees do not need to ask specifically for FMLA leave, but they must provide enough information for the employer to know that the leave may be covered by the FMLA.
  - The timing of an employee's notice is dependent upon whether the event is foreseeable or unforeseeable.
- Provide a certification to employer for the need for FMLA leave, if required by the employer.
  - Employers are not required to request certifications, but if a certification is required and the employee does not provide it, the employer may deny the request for FMLA leave. (Form certifications may be found at <https://www.dol.gov/whd/fmla/forms.htm>)
- Continue to make any contributions to the employee health plan that the employer was making during regular employment if the employee wishes to continue such coverage. Employees are responsible for the premium during the leave if they pay it during employment.

#### **4. Qualifying reasons for FMLA leave**

- The birth, adoption or foster care of a child including care for the child within one year of birth or placement.
- To care for the employee's spouse, son, daughter, or parent who has a serious health condition.
- A serious health condition that makes the employee unable to perform his or her job.
- A qualifying urgent need arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or called to covered active duty status.

Note there are additional guidelines around military family leave. (See The Employer's Guide to The Family Medical and Leave Act found at <https://www.dol.gov/whd/fmla/employerguide.pdf> for comprehensive employer guidance on the FMLA)

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## **5. What “covered” employers are prohibited from doing under the FMLA**

- Refusing to authorize FMLA leave.
- Discouraging an employee from using FMLA leave.
- Considering the taking of FMLA leave negatively in hiring and disciplinary decisions.
- Discharging an employee or retaliating or discriminating against an employee because that employee filed charges against the employer related to FMLA leave, or gave information or testified in a proceeding involving FMLA rights.

### **Conclusion**

This article is not intended to answer all questions about the FMLA. If you believe your organization is subject to FMLA, please seek legal assistance in order to ensure your organization is compliant with the FMLA. Nonprofits must also be aware of, and ensure compliance with, other applicable federal and state laws including anti-discrimination laws and workers’ compensation laws that may apply in addition to the FMLA.

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