



Inflammatory Bowel Disease

&

# The Family and Medical Leave Act



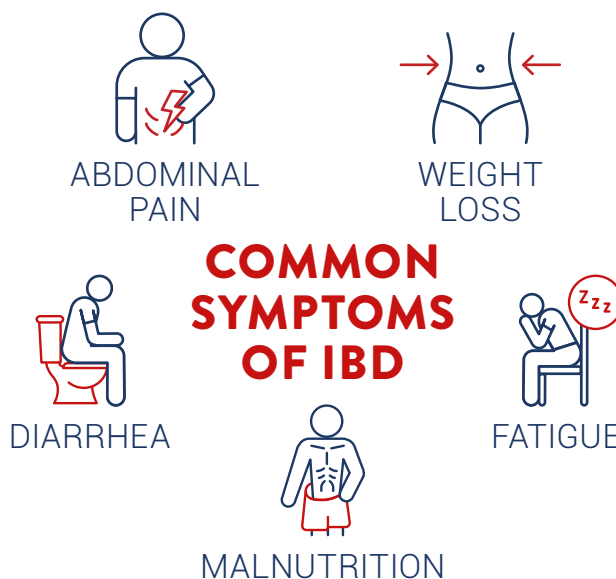
This fact sheet provides an overview of inflammatory bowel disease (IBD); explains the workplace challenges faced by employees with IBD; and describes employees' rights and employers' responsibilities regarding job protections under the federal Family and Medical Leave Act (FMLA) that may allow employees with IBD to take unpaid time away from work to address their health care needs.

## WHAT IS INFLAMMATORY BOWEL DISEASE?

IBD is a term used to describe chronic inflammation in the digestive tract. IBD encompasses two similar but distinguishable conditions: Crohn's disease (CD) and ulcerative colitis (UC).<sup>1</sup> While these conditions share similar symptoms, they affect different areas of the gastrointestinal tract.<sup>2</sup> Common symptoms of IBD include abdominal pain, diarrhea, weight loss, malnutrition, and fatigue.<sup>3</sup>

While there is no cure for IBD, there are treatments available to help reduce and relieve IBD symptoms.<sup>4</sup> IBD treatments can include medication, surgery, or a combination of the two. Finding a treatment that works for each individual with IBD is important, as untreated IBD can increase an individual's risk of developing colon cancer.<sup>5</sup> Additionally,

ensuring patients have access to a treatment that works for them helps patients stay in remission and reduce flare-ups in which their symptoms can return or worsen.



## How does IBD affect life in the workplace?

Approximately 1.6 million Americans have IBD, and there are as many as 70,000 new cases of IBD diagnosed each year.<sup>6</sup> Given the prevalence of IBD, both employees and employers should be aware of how IBD can impact an individual in the workplace.

When an employee with IBD is experiencing symptoms, they may have difficulty completing daily activities or concentrating throughout the workday. Employees with IBD may frequently need to take a break from work to use the restroom, which can be difficult if there is not a restroom close to their workspace.

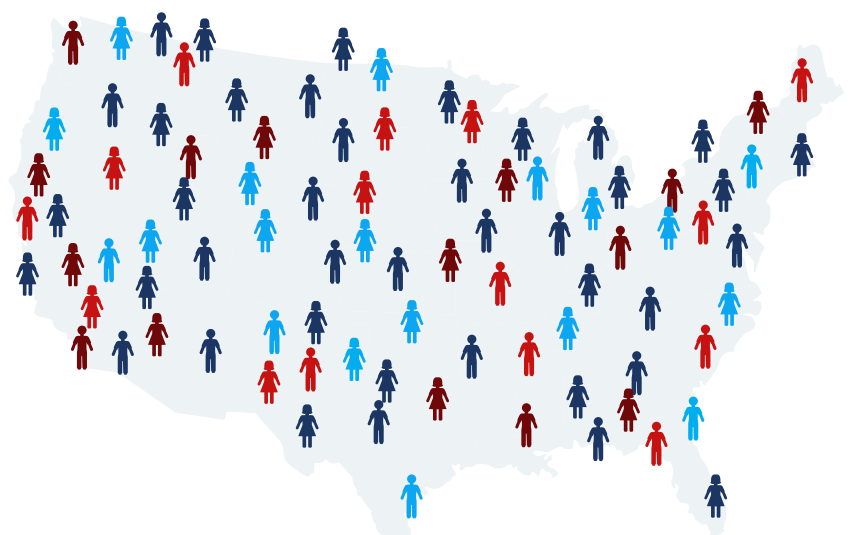
Additionally, employees with IBD may require time away from work to manage their disease. For instance, surgery is considered a common treatment for IBD, with up to 80 percent of patients with CD and 20 percent of patients with UC undergoing surgery at some point in their lifetime.<sup>7</sup> One study published in the *Journal of Medical Economics* found that employees with IBD experienced higher levels of medical-related absenteeism compared to those in the study population without IBD (approximately nine days per year absent versus five days). The study factored in time away from work due to emergency room visits, inpatient admissions, and outpatient care.<sup>8</sup>

While many employees with IBD can effectively control their IBD symptoms through treatments or surgery, this does not always prevent flare-ups. Flare-ups

can be caused by a variety of factors such as changes in medication, infections, traveling, emotional stress, or tobacco use.<sup>9</sup> Flare-ups can occur at any time, without any warning.

These challenges can negatively impact the careers of those with IBD. Some individuals with IBD may even refuse job offers or promotions out of concern that they may not meet the demands of the new position due to the requirements of managing their disease.<sup>10</sup> Others may have concerns that the stress of a new position could lead to flare-ups.<sup>11</sup>

Therefore, employers should proactively help employees address their health care needs so that they can consistently meet their job responsibilities. Employers and employees should work together and communicate about the challenges presented by IBD and how federal laws and programs, such as the FMLA, can help support employees in addressing their health care needs.



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# WHAT IS THE FAMILY AND MEDICAL LEAVE ACT?

The FMLA is a federal law that permits eligible employees to take job-protected unpaid leave for up to 12 weeks per year for specific medical reasons.<sup>12</sup> If you are an eligible employee on leave, your employer cannot discharge, retaliate, or discriminate against you for using the FMLA.<sup>13</sup> Furthermore, during the leave period, an employer must continue to provide you with any group health insurance coverage under the same terms and conditions as if you were not on leave.<sup>14</sup>

Specific eligibility requirements under the FMLA are discussed in more detail below.

## How can the FMLA help employees with IBD and their caregivers?

The FMLA can be used by eligible employees to take unpaid time away from work to address their own medical needs or the medical needs of a loved one without fear of

losing their jobs. Over 20 million people use the FMLA to take leave from their jobs every year, with 55 percent of employees taking time to care for their own medical condition and 18 percent of employees taking time to care for a child, spouse, or parent with a serious health condition.<sup>15</sup>

As explained in more detail herein, under the FMLA, eligible employees can take up to 12 work weeks of leave in a 12-month period for qualifying family and medical reasons, including certain "serious medical conditions." IBD may be considered a serious medical condition. As such, if you are an employee with IBD or a caregiver for someone else with IBD you may be able to use the FMLA to take time off for IBD-related medical care, including inpatient and outpatient care.

You should discuss with your employer whether you qualify for leave under the FMLA.

### During the leave period,

An employer must continue to provide you with any group health insurance coverage under the same terms and conditions as if you were not on leave.



## Does the FMLA apply to all employers?

No. The FMLA applies only to “covered” employers.<sup>16</sup> A covered employer can be a private employer, public agency, or public or private elementary or secondary school.<sup>17</sup> Specifically, private-sector employers with 50 or more employees over the last 20 weeks within the current or previous year are covered by the FMLA.<sup>18</sup> Public agencies, including local, state, and federal government agencies, are covered regardless of the number of employees employed. Likewise, public and private elementary and secondary schools are covered even if they have less than 50 employees.<sup>19</sup>

## Who can take protected leave under the FMLA?

The FMLA protects eligible employees.<sup>20</sup> You are considered an eligible employee if you:



Work for a covered employer, as described above;



For at least 12 months;



For at least 1,250 hours during the last 12 months; and



Work at a location where the employer has at least 50 employees within 75 miles.<sup>21</sup>

You do not have to work for 12 months consecutively but must have worked for the employer for at least 12 months. Additionally, if you work at a public entity or school that has less than 50 employees you will not be eligible

for FMLA because while your employer is considered an FMLA regulated entity, you are not considered an eligible employee.<sup>22</sup>

Due to their non-traditional schedules, airline flight attendants or flight crew employees have unique rules for qualifying for FMLA.<sup>23</sup> Special rules for airline flight crew employees can be found here. In short, such employees must have worked for at least 12 months for their employer, been paid at least 60 percent of their applicable monthly guarantee, and worked at least 504 hours in the last 12 months.<sup>24</sup>

## When can I take leave under the FMLA?

If you are an eligible employees may take leave for up to 12 weeks for:

- The birth or adoption of a child or the placement of a child with you from foster care;
- To care for a spouse, child, or parent who has a serious health condition;
- A serious health condition that makes you unable to perform the essential functions of his or her job; and
- Any qualifying exigency arising out of a spouse, child, or parent is a military member on covered active duty or call to covered active duty status.<sup>25</sup>

You may also take up to 26 workweeks of unpaid leave during one 12-month period to care for a child, spouse, or parent that is a service member with a serious injury or illness.<sup>26</sup>



## What is considered a serious health condition?

A serious health condition is defined as “an illness, injury, impairment or physical or mental condition that involves:

- Inpatient care in a hospital, hospice, or residential medical care facility; or
- Continuing treatment by a health care provider.”<sup>27</sup>

Continuing treatment by a health care provider includes conditions or illnesses that require you to miss work on a recurring basis for treatment or recovery.<sup>28</sup> IBD may require such continuing treatment. Typically, small surgical procedures that do not require hospitalization are not considered a serious health condition; however, if there are surgical complications from the minor procedures, those may amount to a serious health condition covered by FMLA.<sup>29</sup>

For children, parents, or spouses, a serious health condition is also considered a condition that makes the relative unable to attend or participate in school or regular activities.<sup>30</sup>

## Is leave under the FMLA paid or unpaid?

Leave under the FMLA is **unpaid**. However, some states have passed laws to provide paid family leave. As of 2021, California, Colorado, Connecticut, District of Columbia, Massachusetts, Maryland, New Jersey, New York, Oregon, Rhode Island, and Washington have passed paid family leave programs.<sup>31</sup>

Each state program may be called something different and there will be different application processes and program requirements for each program. For example, Colorado provides up to 12 weeks of paid family medical leave under the “Family and Medical Leave Insurance Program” (FAMLI).<sup>32</sup> Qualifications for the FAMLI differ from FMLA. Under the FAMLI, individuals are eligible for paid leave if they have earned at least \$2,500 in wages within the last year.<sup>33</sup> Similarly, the District of Columbia provides paid family leave through the Office of Paid Family Leave. Depending on the reason for taking leave, eligible employees can take a maximum of two to eight weeks off.<sup>34</sup>

If you are interested in applying for a state-based paid leave program, make sure to identify the specific program requirements under your state paid leave program, including eligibility requirements for employees and the types of employers that the program applies to.



## Is the FMLA the same thing as short-term and long-term disability?

The FMLA is not the same thing as short and long-term disability. The FMLA is a federal law that allows eligible employees to take unpaid leave from work under certain circumstances.<sup>35</sup> Short-term disability is a type of insurance that you can either purchase separately or as part of your employment benefits.<sup>36</sup> Unlike the FMLA, short-term disability provides partial paid leave benefits depending on the terms and conditions of the policy, and some policies can provide paid leave for up to 26 weeks.<sup>37</sup> Short-term disability policies also have different qualification criteria, which vary based on the terms and conditions of the specific contract; however, typical short-term disability plans only require employees to work a minimum of 90 days before qualifying for short-term disability.<sup>38</sup> Long-term disability insurance is like short-term disability insurance but typically covers a longer duration of leave, such as two to 10-years depending on the policy.<sup>39</sup>

## Does the FMLA only allow me to take time off for my own qualifying medical or familial needs?

The FMLA allows you to take time off if you or a relative has a serious health condition.<sup>40</sup> The relative must be a spouse, child, or parent with a serious health condition.<sup>41</sup> The FMLA also allows you to take time off if you need to take time off to care for a child for whom you have “in loco parentis” responsibility.<sup>42</sup> An employee has in loco parentis responsibility when they have day-to-day responsibilities

to care for or financially support a child, including a child with whom the employee has no legal or biological relationship.<sup>43</sup> Similarly, parents under the FMLA include biological, adoptive, step or foster parents, and any other individual who stood in loco parentis to the employee when the employee was a child.<sup>44</sup> However, the FMLA does not cover taking time off to care for parental-in-laws, such as a mother-in-law or father-in-law.<sup>45</sup>

The Family and Medical Leave Act (FMLA) is a federal law that allows **eligible employees to take unpaid leave from work** under certain circumstances

## Do I have to provide my employer with any notice before taking leave under the FMLA?

If you want to take leave, you must provide your employer with at least 30-days' notice.<sup>46</sup> However, if providing 30 days' notice is not practicable because of uncertainty as to when leave must begin, a medical emergency, or a change in circumstances, you must provide the employer with notice as soon as practicable.<sup>47</sup> “As soon as practicable” means as soon as it is both possible and practical, which is typically either the day you learn you need to take leave or the following business day.<sup>48</sup>





## What type of documentation do I need to submit to my employer before taking leave?

When taking leave under the FMLA, an employer may request a note from a health care provider explaining the need to take leave for a serious health condition for you or a covered family member.<sup>49</sup> An employer cannot request such documentation when you are taking leave to bond with a newborn child, an adopted child, or a foster child that has been placed in your home.<sup>50</sup>

Typically, documentation from a health care provider must be submitted within 15 days of requesting FMLA leave.<sup>51</sup> Documentation from a health care provider can be considered incomplete or insufficient if one or more relevant entries have not been completed or if the information is vague, unclear, or non-responsive.<sup>52</sup> If the documentation is incomplete or insufficient, the employer must

provide you with written notice of the problems and provide you with seven days to resolve such problems.<sup>53</sup> The employer cannot contact your health care provider directly and request additional information, but they may contact the health care provider to authenticate or clarify any documentation already provided.<sup>54</sup>

If an employer has reason to doubt the validity of a health care provider's documentation, the employer may request that another health care provider issue a certification. If an employer requests a second health care provider's documentation, the employer is responsible for paying for the cost of the visit and travel expenses.<sup>55</sup> If still dissatisfied after the second health care provider's certification, the employer may request that you receive a certification by a third health care provider. The third health care provider's certification must be accepted by the employer, and the employer must pay the cost and travel expenses for the third assessment.<sup>56</sup>



## What happens when I return to work after taking leave under the FMLA?

When you return to work after taking leave, the employee must be reinstated to the same job or to an "equivalent job."<sup>57</sup> An equivalent job is a position that has virtually the same terms and conditions of employment as the original job, such as the same pay, benefits, shift, and location.<sup>58</sup> Upon returning from leave, you must still be eligible for the same pay raises, shifts, changes, and opportunities for overtime that you were entitled to prior to taking FMLA leave.<sup>59</sup>

The employee must be reinstated to the **same job or to an "equivalent job."**

However, there are limitations to FMLA protections. When returning from leave you are not protected under the FMLA from employment actions that would have affected you if you were not on FMLA leave. For example, if the employer eliminates an entire work shift or reduces overtime for all employees, upon your return you are not entitled to work that shift or the previous overtime hours.<sup>60</sup> Additionally, the FMLA does not protect you from being laid off, so long as the reason for the layoff is not based on your use of FMLA.<sup>61</sup>

If you are considered a "key employee," meaning you are in a salaried position and among the top ten percent of highest paid employees, you are also not entitled to being reinstated at your previous position if the employer can establish doing so would cause a "substantial and grievous economic injury" to the business's operations.<sup>62</sup>

## What do I do if my employer mistreats me for requesting FMLA leave or denies my FMLA request?

It is illegal for an employer to interfere with, deny, or limit your ability to exercise your rights under the FMLA.<sup>63</sup> Examples of prohibited conduct include refusing to allow an FMLA eligible employee to take leave; discouraging an employee from taking FMLA leave; using the request for FMLA leave as the basis for an adverse employment action; and manipulating the employee's hours and terms of employment to avoid FMLA responsibilities.<sup>64</sup>

Additionally, employers are prohibited from retaliating against you for requesting or taking FMLA leave.<sup>65</sup> Retaliation occurs if an employee experiences an adverse employment action as a result of exercising their FMLA rights.<sup>66</sup> An adverse employment action can take the form of a wide variety of employment changes, such as "hiring, firing, failing to promote, reassignment with significant job responsibilities or a decision causing a significant change in benefits."<sup>67</sup> If an employer has violated your FMLA rights, you may either file a complaint with the U.S. Department of Labor's Wage and Hour Division, or you may file a private lawsuit against their employer.<sup>68</sup>



## How do I file a complaint if I think my employer has violated FMLA?

If you think you have been retaliated against or believe your employer is wrongfully interfering with your FMLA rights, you can file a complaint with the Wage and Hour Division at the U.S. Department of Labor.<sup>69</sup> A complaint must be filed within two years of the employer's alleged unlawful conduct.<sup>70</sup> It does not cost you any money to file a complaint with the Wage and Hour Division and all discussions with the Division are confidential.<sup>71</sup> When filing a complaint with the Division, you will need to provide your name, address, and phone number; the employer's name, location, and contact information; the name of the manager or owner; the type of work conducted; frequency of pay; and other relevant information relating to the employer's conduct.<sup>72</sup> For additional information about filing a complaint, you can call **the Wage and Hour Division at 1-866-487-9243.**<sup>73</sup>

## What happens after I file a complaint with the Wage and Hour Division?

After you file a complaint with the Wage and Hour Division of the Department of Labor, an investigator from the Wage and Hour Division will determine whether the FMLA applies to your employer and whether the employer is complying with the law.<sup>74</sup> As part of this investigation, the investigator may conduct either unannounced or prescheduled visits to the employer's office.<sup>75</sup> The investigator may also interview employees in private and conduct additional fact-finding measures to determine if the law has been violated.<sup>76</sup> After the investigation has been completed, the investigator will meet with the employer and explain to the employer whether any laws have been violated and the corrective action that needs to be taken to remedy the violation.<sup>77</sup>

## WHERE CAN I LEARN MORE ABOUT MY RIGHTS UNDER THE FMLA?



**U.S. Department of Labor**  
**Wage and Hour Division**

<https://www.dol.gov/whd>  
1-866-487-9243



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