



Siblings and The Family and Medical Leave Act

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The Family and Medical Leave Act (FMLA) allows eligible employees to take job-protected unpaid leave for qualified medical and family reasons. Siblings have never been explicitly included in the FMLA, which lists eligible family members as a parent, spouse, son, or daughter. After working closely with the Sibling Leadership Network, the Department of Labor has released updated Fact Sheets and FAQs detailing the instances when siblings may be covered under the FMLA. This SLN Fact Sheet explains the history of FMLA and the new way that siblings may be protected, according to the Department of Labor.

The Family and Medical Leave Act

President Clinton signed the Family and Medical Leave Act into law on February 5, 1993. The Act allows eligible employees to take up to 12 workweeks of unpaid leave during any 12-month period to attend to the serious health condition of themselves or their parent, spouse or child. In order to be eligible for FMLA leave, an employee must have been at the business at least 12 months, and worked at least 1,250 hours over the past 12 months, and work at a location where the company employs 50 or more employees within 75 miles. ([Fact Sheet 28](#))

Siblings Qualify under *In Loco Parentis*

The Department of Labor (DOL) Wage and Hour Division is responsible for implementing and enforcing the FMLA, and has further specified the definitions and circumstances of FMLA protections.

The Department has specified the definition of “son or daughter” in two important ways for sibs. First, in addition to children under age 18, it also includes someone who is 18 years of age or older and “incapable of self-care because of a mental or physical disability” as a “child” ([Fact Sheet 28K](#)). Second, it includes those individuals for whom the employee is acting *in loco parentis*. *In loco parentis* means “in the place of a parent.” The Department further explains that “persons who are *in loco parentis* include those with day-to-day responsibilities to care for or financially support a child” ([Fact Sheet 28B](#)) Under these definitions, siblings may be acting *in loco*

parentis for their brothers and sisters with disabilities who meet the definition of “child” based on their disability. See more in this [Frequently Asked Question](#) about caring for a sibling.

In [Fact Sheet 28B](#) the Department specifically explains when siblings are included. “Although no legal or biological relationship is necessary, grandparents or other relatives, such as siblings, may stand in loco parentis to a child under the FMLA as long as the relative satisfies the in loco parentis requirements.” By including the word siblings, the Department makes clear that siblings who provide support (including day-to-day care and/or financial support) for their brothers and sisters with disabilities are eligible for job-protected leave under FMLA, as long as their job meets the other FMLA requirements (such as number of employees and hours worked).

Clarification and Details

While “legal ward” is one of the examples listed for FMLA coverage, guardianship, conservatorship, power of attorney, or any other legal relationship is **not required** for siblings to be eligible for FMLA under *in loco parentis*. Some factors that courts have considered in determining *in loco parentis* status include the degree to which the “child” is dependent on the person, the amount of financial support provided, and the extent to which the person performs duties commonly associated with parenthood.

Finally, the Department also uses *in loco parentis* to describe cases where an employee may take leave to care for a person who acted like a parent to the employee when the employee was a child. This is a different and separate use of *in loco parentis* than what is described above, but look out because the two are often confused. This situation may also apply to siblings, and the Department includes this instance in [Fact Sheet 28C](#).

Continued Need for the Legislative Change to the Family and Medical Leave Act

The Sibling Leadership Network is extremely pleased with the new clarifications from the Department of Labor. We hope that many more siblings will be able to take advantage of job-protected leave to care for their families.

However, we continue to support legislative efforts to expand the family relationships covered by the Family and Medical Leave Act that will settle the issue of coverage for siblings once and for all. For example, the Family & Medical Leave Inclusion Act, introduced by Senator Durbin and Representative Maloney in 2013, would explicitly include siblings in the law. We strongly support this bill and other efforts to ensure that siblings are always included in the protections of FMLA.