

Fact Sheet #28C: FMLA leave to care for a parent with a serious health condition on the basis of an *in loco parentis* relationship

The Family and Medical Leave Act (FMLA) entitles an eligible employee to take up to 12 workweeks of job-protected unpaid leave to care for a parent with a serious health condition. See [29 USC 2612\(a\)\(1\)\(C\)](#). In enacting the FMLA, Congress recognized the changing needs of the American family, including the growing need for wage earners to provide care both for their children and for their parents.

This Fact Sheet provides guidance on an employee's entitlement to FMLA leave to care for an individual who stood *in loco parentis* to the employee when the employee was a child. You may also wish to review [Fact Sheet #28B](#) on FMLA leave for birth, bonding, or to care for a child to whom an employee stands *in loco parentis*.

FMLA definition of "parent"

For FMLA leave purposes, "parent" is defined broadly as a biological, adoptive, step, or foster parent, or an individual who stood *in loco parentis* to an employee when the employee was a child. See [29 C.F.R. § 825.122\(b\)](#). An employee's parents-in-law are not included in the definition of "parent" for purposes of FMLA leave. The FMLA military leave provisions have a specific definition of parent for purposes of servicemember caregiver leave. See [29 C.F.R. § 825.122\(i\)](#).

What does *in loco parentis* mean under FMLA?

In loco parentis is commonly understood to refer to a relationship in which a person has put himself or herself in the situation of a parent by assuming and discharging the obligations of a parent to a child with whom he or she has no legal or biological connection. It exists when an individual intends to take on the role of a parent.

Under the FMLA, persons who are *in loco parentis* include those with day-to-day responsibilities to care for or financially support a child. Courts have indicated some factors to be considered in determining *in loco parentis* status include:

- the age of the child;
- the degree to which the child is dependent on the person;
- the amount of financial support, if any, provided; and
- the extent to which duties commonly associated with parenthood are exercised.

An eligible employee is entitled to take FMLA leave to care for a person who stood *in loco parentis* to the employee when the employee was a child. The fact that the employee also has a biological, adoptive, step, or foster parent, does not preclude a determination that another individual stood *in loco parentis* to the employee when the employee was a child. **The specific facts of each situation will determine whether an individual stood *in loco parentis* to the employee within the meaning of the FMLA.**

Examples of *in loco parentis*

Examples of situations in which FMLA leave to care for a parent may be based on an *in loco parentis* relationship include:

- An employee may take leave to care for his aunt with a serious health condition, if the aunt was responsible for his day-to-day care when he was a child.
- An employee may take leave to care for her grandmother with a serious health condition if the grandmother assumed responsibility for raising the employee after the death of her parents when the employee was a child.
- An employee who was raised by same-sex parents, only one of whom has a biological or legal connection with the employee, may take leave to care for the non-adoptive or non-biological parent on the basis of an *in loco parentis* relationship.

Unless an *in loco parentis* relationship existed when the employee was a child, an employee is not entitled to take FMLA leave to care for a grandparent, an aunt, or another non-covered relative with a serious health condition.

What may be required to document an *in loco parentis* relationship?

The employer's right to documentation of family relationship is the same for an employee who asserts the need to care for an individual who stood *in loco parentis* to the employee as it is for a biological, adoptive, step, or foster parent. Such documentation may take the form of a simple statement asserting the relationship. For an employee seeking leave to care for an individual who stood *in loco parentis* to the employee, such statement may include, for example, the name of the individual and a statement of the individual's *in loco parentis* relationship to the employee when the employee was a child. An employee should provide sufficient information to make the employer aware that the individual in need of care stood *in loco parentis* to the employee when the employee was a "son or daughter." See [29 CFR § 825.122](#).

***In loco parentis* status and other FMLA requirements**

In loco parentis status under the FMLA does not change the law's other requirements, such as those regarding coverage, eligibility, and qualifying reasons for leave. All requirements must be met for FMLA protections to apply. An employee asserting a right to FMLA leave to care for a parent who stood *in loco parentis* to the employee may be required to provide notice of the need for leave and to submit medical certification of a serious health condition consistent with the FMLA regulations.

Where to Obtain Additional Information

For additional information about the FMLA, visit the Wage and Hour Division Website, <http://www.wagehour.dol.gov> and/or call our toll-free helpline, 1-866-4-USWAGE (1-866-487-9243) available 8 a.m. to 5 p.m. in your time zone.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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