

Medical Leaves of Absence Desk Aid (with cites)*

LAW • WHO'S COVERED	COVERED MEDICAL CONDITION	REQUEST PROCEDURE	LEAVE ENTITLEMENT	PAY & BENEFIT CONTINUATION	REINSTATEMENT RIGHTS
<p>Family and Medical Leave Act, 29 U.S.C. §§ 2601 et seq.</p> <ul style="list-style-type: none"> Employers: Private employers with 50 or more employees at or within 75 miles of the requesting employee's worksite; governmental employers. 29 U.S.C. § 2611(2)(B), (4)(A). Employees: Employed at least 12 months (not necessarily consecutive) and worked at least 1250 hours in the previous 12-month period. 29 U.S.C. § 2611(2)(A); 29 C.F.R. § 825.110(b). 	<ul style="list-style-type: none"> A "serious health condition" that makes the employee unable to perform the functions of the position. 29 U.S.C. § 2612(a)(1)(D). Care for employee's spouse, son, daughter, or parent who has a "serious health condition." 29 U.S.C. § 2612(a)(1)(C). A "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves a) inpatient care in a hospital, hospice, or residential medical care facility, or b) continuing treatment by a health care provider. 29 U.S.C. § 2611(11). 	<ul style="list-style-type: none"> Employee provides sufficient information about the need for leave to enable employer to determine that FMLA applies; employee need not mention FMLA. 29 C.F.R. § 825.302(c). When leave is foreseeable based on planned medical treatment, employee shall provide at least 30 days' notice or such notice as is practicable if treatment is sooner than 30 days. 29 U.S.C. § 2612(e)(2)(B). Employer may require certification from a healthcare provider supporting the need for the 	<ul style="list-style-type: none"> Up to 12 work weeks of leave during a 12-month period. 29 U.S.C. § 2612(a)(1). Employer may choose among four methods of determining 12-month period. 29 C.F.R. § 825.200. Leave for a "serious health condition" may be intermittent or on reduced work schedule when medically necessary. 29 U.S.C. § 2612(b)(1). Employer may temporarily transfer employee on intermittent or reduced work leave to another position with equivalent pay and benefits. 29 U.S.C. § 	<ul style="list-style-type: none"> Leave may be unpaid. 29 U.S.C. § 2612(c). Employer must continue to pay its normal share to cover employee under group health plan. 29 U.S.C. §2614(c)(1). But it may recover these payments if employee fails to return from leave for reasons other than a continued serious health condition or other circumstances beyond the employee's control. 29 U.S.C. § 2614(c)(2)(B). Continuation of other benefits (e.g., life insurance, 	<ul style="list-style-type: none"> On return from leave, employee must be restored to the same position with the same pay and benefits as when the leave commenced <u>or</u> to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. 29 U.S.C. § 2614(a)(1). Except for some highly compensated employees. 29 U.S.C. § 2614(b). Special rules apply to local educational entities. 29 U.S.C. § 2618.

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<ul style="list-style-type: none"> Special rules apply to airline flight crews. 29 U.S.C. § 2611(2)(D). 		leave. 29 C.F.R. § 825.305.	2612(b)(2). <ul style="list-style-type: none"> Special rules apply to local educational entities. 29 U.S.C. § 2618. 	disability insurance) is subject to terms of employer's established policy, or, if none, agreement. 29 C.F.R. §§ 825.209(h), 825.215(d)(3). <ul style="list-style-type: none"> Unpaid FMLA leave need not be treated as credited service for purposes of benefit accrual, vesting, and eligibility to participate. 29 U.S.C. § 2614(a)(3)(A); 29 C.F.R. § 825.215(d). 	
Maine's Family and Medical Leave Requirement , 26 M.R.S. §§ 843 et seq.	<ul style="list-style-type: none"> A "serious health condition" of the employee. 26 M.R.S. § 843(4)(A). A child, domestic partner's child, parent, domestic partner, 	<ul style="list-style-type: none"> Employee must give at least 30 days' notice of the intended date upon which leave will commence and terminate, unless 	<ul style="list-style-type: none"> Up to 10 work weeks in any 2 years. 26 M.R.S. § 844(1). Manner of determining 2-year period unspecified. 	<ul style="list-style-type: none"> May be unpaid. 26 M.R.S. § 844(2). Employer is not required to continue to pay its normal share of 	<ul style="list-style-type: none"> On return from leave, employee must be restored to same position or one with equivalent seniority status, employee benefits,

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<ul style="list-style-type: none"> • Employers: Private employers with 15 or more employees at the requesting employee's permanent work site; State of Maine; cities and towns with 25 or more employees total and 15 or more employees at the requesting employee's permanent work site. 26 M.R.S. §§ 843(3), 844(1). • Employees: Employed for 12 or more consecutive months (no minimum hours requirement). 26 M.R.S. § 844(1). 	<ul style="list-style-type: none"> sibling (if jointly responsible for common welfare), or spouse with a serious health condition. 26 M.R.S. § 843(4)(D), (8). • The donation of an organ for a human organ transplant. 26 M.R.S. § 843(4)(E). • The definition of "serious health condition" is the same as FMLA. 26 M.R.S. § 843(6). 	<ul style="list-style-type: none"> prevented by medical emergency from giving that notice. 26 M.R.S. § 844(A). • Employer may require certification from a physician supporting the need for the leave, or from an accredited practitioner of prayer or spiritual treatment (if applicable). 26 M.R.S. § 844(1)(B). 	<ul style="list-style-type: none"> • Leave for a "serious health condition" or organ donation may be intermittent or on reduced work schedule when medically necessary. 26 M.R.S. § 844(3). • With intermittent or reduced work leave, employer may temporarily transfer employee to another position with equivalent pay and benefits. 26 M.R.S. § 844(3)(B). 	<p>employee benefits (including group life insurance, health insurance, disability insurance, and pensions) during the leave but must allow the employee to continue them at the employee's expense. 26 M.R.S. § 845(2).</p>	<p>pay, and other terms and conditions of employment. 26 M.R.S. § 845(1).</p>
<p>Maine Human Rights Act, 5 M.R.S. §§ 4551 et seq.</p> <ul style="list-style-type: none"> • Employers: All 	<ul style="list-style-type: none"> • A physical or mental impairment that: (1) substantially limits one or more of a person's major life activities; (2) significantly impairs 	<ul style="list-style-type: none"> • Employee requests leave for a reason related to a covered disability. • Employer may need to initiate an 	<ul style="list-style-type: none"> • Employer must provide amount and type of leave that constitutes a "reasonable accommodation," 	<ul style="list-style-type: none"> • Unspecified. • Employer must provide leave on the same terms as for employees without 	<ul style="list-style-type: none"> • Unspecified. • Reinstatement to same position unless it would pose an "undue hardship," in which case other

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<p>public and private employers regardless of number of employees. 5 M.R.S. § 4553(4).</p> <ul style="list-style-type: none"> • Employees: An individual with a physical or mental disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds. 5 M.R.S. § 4553(8-D). 	<p>physical or mental health; or (3) requires special education, vocational rehabilitation or related services. 5 M.R.S. § 4553-A(1)(A).</p> <ul style="list-style-type: none"> • Per se physical or mental disabilities. 5 M.R.S. § 4553-A(1)(B). • A record of either of the above. 5 M.R.S. §4553-A(1)(C). 	<p>informal, interactive process with the individual with a physical or mental disability to identify the precise limitations resulting from the physical or mental disability and potential reasonable accommodations that could overcome those limitations. MHRC Reg. Ch. 3, Sec. 2(17)(C).</p>	<p>unless it would impose an “undue hardship.” 5 M.R.S. § 4553(2)(E).</p> <ul style="list-style-type: none"> • A “reasonable accommodation” is a modification that enables a qualified individual with a disability to perform the essential functions of her position. MHRC Reg. Ch. 3, Sec. 2(17)(A)(2). • “Undue hardship” means an action requiring undue financial or administrative hardship. 5 M.R.S. § 4553(9-B). • A medical leave of absence may be a “reasonable accommodation.” <i>See, e.g., Willingham v. Town of Stonington</i>, 847 F.Supp.2d 164, 188 	<p>disabilities. <i>See</i> 5 M.R.S. § 4572(1)(A).</p>	<p>positions may be considered. <i>See</i> 5 M.R.S. § 4553(2)(E).</p>

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			(D.Me. 2012). • “Reasonable accommodation” also includes a part-time or modified work schedule. 5 M.R.S. § 4553(9-A)(B).		
<p>Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.</p> <ul style="list-style-type: none"> • Employers: Private employers with 15 or more employees; governmental employers. 42 U.S.C. § 12111(5). • Employees: An individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds. 	<ul style="list-style-type: none"> • A physical or mental impairment that substantially limits one or more of a person's major life activities. 42 U.S.C. § 12102(1)(A). • A record of such an impairment. 42 U.S.C. § 12102(1)(B). 	<ul style="list-style-type: none"> • Employee requests leave for reason related to a covered disability. • Employer may need to initiate an informal, interactive process with the individual with a physical or mental disability to identify the precise limitations resulting from the physical or mental disability and potential reasonable accommodations that could overcome those limitations. 29 C.F.R. § 1630.2(o)(3). 	<ul style="list-style-type: none"> • Employer must provide amount and type of leave that constitutes a “reasonable accommodation,” unless it would impose an “undue hardship.” 42 U.S.C. § 12112(b)(5)(A). • A “reasonable accommodation” is a modification that enables a qualified individual with a disability to perform the essential functions of her position. 29 C.F.R. § 1630.2(o)(1)(ii). 	<ul style="list-style-type: none"> • Unspecified. • Employer must provide leave on the same terms as for employees without disabilities. <i>See</i> 42 U.S.C. § 12112(a); EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act § 21. 	<ul style="list-style-type: none"> • Unspecified. • Reinstatement to same position unless it would pose an “undue hardship,” in which case other positions may be considered. <i>See</i> 42 U.S.C. § 12112(b)(5)(A); EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act § 21.

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42 U.S.C. § 12111(8).			<ul style="list-style-type: none"> • “Undue hardship” means an action requiring undue financial or administrative hardship. 42 U.S.C. § 12111(10). • A medical leave of absence may be a “reasonable accommodation.” <i>See, e.g., Willingham v. Town of Stonington</i>, 847 F.Supp.2d 164, 188 (D.Me. 2012). • “Reasonable accommodation” also includes a part-time or modified work schedules. 42 U.S.C. § 12111(9). 		
Rehabilitation Act of 1973 , 29 U.S.C. § 794. <ul style="list-style-type: none"> • Employers: those receiving “federal financial assistance.” 29 	<ul style="list-style-type: none"> • Same as ADA. 29 U.S.C. § 794(d). 	<ul style="list-style-type: none"> • Same as ADA. 29 U.S.C. § 794(d). 	<ul style="list-style-type: none"> • Same as ADA. 29 U.S.C. § 794(d). 	<ul style="list-style-type: none"> • Same as ADA. 29 U.S.C. § 794(d). 	<ul style="list-style-type: none"> • Same as ADA. 29 U.S.C. § 794(d).

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<p>U.S.C. § 794.</p> <ul style="list-style-type: none"> • Employees: same as ADA. 29 U.S.C. § 794(d). 					
<p>Workers' Compensation Act, 39-A M.R.S. §§ 101 et seq.</p> <ul style="list-style-type: none"> • Employers: All employers enrolled in Workers' Comp. 39-A M.R.S. § 401. 	<ul style="list-style-type: none"> • Reinstatement rights apply if absence from work was due to a "compensable injury." 39-A M.R.S. § 218(1). • A compensable injury occurs when an employee receives a personal injury arising out of and in the course of employment or is disabled by occupational disease. 39-A M.R.S. § 201(1). 	<ul style="list-style-type: none"> • To have a compensable injury, employee must give notice of injury to employer within 30 days of injury. 39-A M.R.S. § 301. • Employee must specifically request reinstatement when seeking it. 39-A M.R.S. § 218(1). 	<ul style="list-style-type: none"> • Employer may not "discriminate" against an employee for asserting a claim under the Act. 39-A M.R.S. § 353. Therefore, it is risky for an employer to treat an injured employee who is unable to work due to a work injury (and has asserted a claim for benefits) worse than others who are unable to work for other reasons. • Employee is entitled to reinstatement up to 2 years after the date of injury, or 3 years in the case of an employer with over 200 	<ul style="list-style-type: none"> • Employer is not obligated to continue benefits during leave, but cost might be included in "average weekly wage." <i>See</i> 39-A M.R.S. § 102(4)(H); <i>Ciampi v. Hannaford Bros. Co.</i>, 681 A.2d 4, 8 (Me. 1996). 	<ul style="list-style-type: none"> • Reinstatement to former position if available and suitable to employee's physical condition. If former position is not available or suitable, employee has right to reinstatement to any other position that is available and suitable. 39-A M.R.S. § 218(1). • Employer must make reasonable accommodations for the physical condition of the employee unless the employer can demonstrate that no reasonable accommodation exists or that the accommodation

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			<p>employees. 39-A M.R.S. § 218(3).</p> <ul style="list-style-type: none"> • Employers may create light duty work pools to encourage return-to-work of injured employees. 39-A M.R.S. § 219. 		<p>would impose an undue hardship on the employer. 39-A M.R.S. § 218(2).</p> <ul style="list-style-type: none"> • Reinstatement rights do not apply to supervisory or confidential positions as defined by the National Labor Relations Act, 29 U.S.C. § 152. 39-A M.R.S. § 218(4)(A).
<p>Employment Leave for Victims of Violence, 26 M.R.S. § 850.</p> <ul style="list-style-type: none"> • Employers: Any private or public employer regardless of number of employees. 26 M.R.S. § 850(4). 	<ul style="list-style-type: none"> • Leave must be needed because the employee or the employee's daughter, son, parent or spouse is a victim of violence, assault, sexual assaults under Title 17-A, chapter 11, stalking or any act that would support an order for protection under Title 19-A, chapter 101. 26 M.R.S. § 850(1). • Leave must be to prepare for and attend 	<ul style="list-style-type: none"> • Employee must request leave for a covered reason within a reasonable time under the circumstances. 26 M.R.S. § 850(2)(B). • Employee must provide the employer in a timely manner with the information necessary for the employer to make an informed decision on the 	<ul style="list-style-type: none"> • Employer must provide leave that is “reasonable and necessary,” unless it would impose an “undue hardship” or is “impractical, unreasonable, or unnecessary.” 26 M.R.S. § 850(1), (2). 	<ul style="list-style-type: none"> • May be unpaid. 26 M.R.S. § 850(1). • Unspecified whether employer must continue benefits on same terms as if leave had not commenced. <i>See</i> 26 M.R.S. § 850(1). 	<ul style="list-style-type: none"> • Reinstatement rights unspecified, although “an employer may not sanction an employee or deprive an employee of pay or benefits for exercising a right granted by this section.” 26 M.R.S. § 850(1).

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	<p>court proceedings; receive medical treatment or attend to medical treatment for a victim who is the employee's daughter, son, parent or spouse; or obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking. 26 M.R.S. § 850(1).</p>	<p>request. DOL Reg. Ch. 10, Sec. IV(a)(2).</p> <ul style="list-style-type: none"> • An employer may require an employee to provide reasonable documentation of the family relationship, which may include a statement from the employee, a birth certificate, a court document or similar documents. 26 M.R.S. § 850(1-A). 			
<p>Maine's Family Sick Leave Law, 26 M.R.S. § 636. Employer: Public or private employers with 25 or more employees. 26 M.R.S. § 636(1)(A).</p>	<ul style="list-style-type: none"> • To care for the requesting employee's child, spouse, or parent who is "ill." 26 M.R.S. § 636(2). 	<ul style="list-style-type: none"> • Employer may require employee to specify that leave is taken pursuant to this section. 26 M.R.S. § 636(3). • Employer may require notice or verification of illness for leave taken pursuant to this section if such notice or 	<ul style="list-style-type: none"> • If employer provides paid leave, then it shall allow an employee to use the paid leave for the care of an immediate family member who is ill. 26 M.R.S. § 636(2). • Requirement applies up to 40 hours of earned paid leave time per 	<ul style="list-style-type: none"> • Leave is paid. 26 M.R.S. § 636(2). 	<ul style="list-style-type: none"> • Discrimination for exercising rights is prohibited generally; reinstatement is not specifically addressed. 26 M.R.S. § 636(5).

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		verification is required when an employee takes leave because of the employee's own illness. 26 M.R.S. § 636(3).	12-month period. 26 M.R.S. § 636(2), (3).		

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