



a program of Law Foundation of Silicon Valley

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Hospitalization and Employment

Concerned about the consequences your hospitalization may have on your employment? Federal and State law provides that certain employees may take unpaid leave from work for hospital stays without getting fired or demoted.

What do the family/medical leave laws provide? (29 C.F.R. 825.100)

If you qualify for unpaid family/medical leave under the law, then your employer:

- May not fire you for taking up to 12 weeks of leave;
- Must give you back the same or equivalent job after your leave;
- Must continue to pay for your health insurance benefits – if you have them – during your leave.

Who is covered under the family/medical leave laws? (29 C.F.R. 825.110)

- You must have worked for the employer at least 12 months and at least 1,250 hours during that time period
- Employer employs 50 or more employees
- You have a serious health condition that makes you unable to perform functions of job (a psychiatric hospitalization qualifies as a serious health condition)
(29 C.F.R. 825.112 and 825.114)

Are you required to notify your employer of your need to take family/medical leave?

(29 C.F.R. 825.302)

- If the leave is unforeseeable (like most psychiatric hospitalizations are), you must tell your employer as soon as practicable, usually within a few days.
- You should notify your employer in writing. Ask the nursing staff or your social worker at the hospital to assist you with this notice.
- You do not have to disclose your diagnosis, but you must give your employer enough information to understand that you have a serious health condition that prevents you from doing your job.

What information may your employer request about your leave? (29 C.F.R. 825.305)

1. Your employer may request a “medical certification” from your health care provider. You should obtain this certification as soon as possible. The Department of Labor publishes a form for this purpose. Or, your doctor can write a letter which includes:
 - Name, address, telephone number & fax number of medical practice;
 - Approximate date on which serious health condition began;
 - Probable duration of the condition;
 - Statement or description of condition that support your need for a leave of absence and facts to support inability to perform one or more of the functions of your job. (You should discuss the functions of your job with the doctor, and the doctor’s statement should reflect that discussion)
 - Probable length of time you may need to take medical leave of absence

- A statement verifying your need for intermittent leave or reduced work schedule, if applicable.
2. Your employer can't contact your doctor directly without your permission. Your employer must keep any medical information in a certification confidential.
 3. You do not need to provide this certification unless your employer requests it.

What can I do if my employer violated the family/medical leave laws?

You can file a complaint with your local office of the United States Department of Labor, Wage and Hour Division no later than two years after the first illegal incident. Check the US Government listings in the front of your local telephone book. Or, you can file a complaint with the California Department of Fair Employment and Housing no later than one year after the first illegal incident. Call 1-800-884-1684 for more information.

You may also sue your employer for violating family/medical leave laws. If you are successful, the court may reinstate you to your job and award you the wages that you should have been paid or a promotion you should have received, as well as reimbursement for legal costs.

Time limits apply. You should take action immediately if you think your rights have been violated.

Consult the appropriate agency or an attorney about your rights.

*** The California Family Rights Act (CFRA) mirrors the federal Family and Medical Leave Act (FMLA) cited above. For CFRA regs, see CCR, Title 2, §7286.0 et. Seq. ***

DISCLAIMER: This fact sheet is intended to provide accurate, general information regarding legal rights. It does not constitute legal advice. Because laws and legal procedures are subject to frequent change and differing interpretations, Mental Health Advocacy Project cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights for your particular case.