

Fact Sheet # 28K: “Son or Daughter” 18 years of age or older under the Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles an eligible employee to take up to 12 workweeks of job-protected, unpaid leave during a 12-month period to care for a “son or daughter” with a serious health condition. This fact sheet provides general information concerning the definition of a “son or daughter” 18 years of age or older (adult child) under the FMLA.

Coverage of adult children under the FMLA

In general, an employee may not take FMLA leave to care for a son or daughter who is 18 years of age or older. However, an employee may take FMLA leave to care for a biological, adopted, or foster child, a stepchild, a legal ward, or a child to whom the employee stands in loco parentis, who is 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.

Mental or physical disability

Under the FMLA, a disability is a mental or physical impairment that substantially limits one or more of the major life activities of an individual. To define these terms and determine if a condition is a disability, the FMLA uses the Equal Employment Opportunity Commission’s regulations under the Americans with Disabilities Act (ADA).

The ADA definition of disability is inclusive and provides broad coverage. Major life activities include, but are not limited to, activities such as caring for oneself, performing manual tasks, seeing, eating, standing, reaching, breathing, communicating, and interacting with others, as well as major bodily functions, such as functions of the brain or immune system, or normal cell growth. Use of medical supplies or medications to lessen the effects of the disability, other than the use of ordinary eyeglasses or contact lenses, may not be considered in determining if a disability exists. Other aids that should not be considered include hearing aids, prosthetics, and assistive technology.

Conditions that are episodic or in remission are considered disabilities if the condition would substantially limit a major life activity when active. For example, cancer in remission or conditions with episodic periods of illness, such as multiple sclerosis, asthma, epilepsy, diabetes, or post-traumatic stress disorder (PTSD), would be considered disabilities even when symptoms of the condition are not currently manifesting.

The disability of the son or daughter does not have to have occurred or been diagnosed prior to the age of 18. The onset of a disability may occur at **any age** for purposes of the definition of a “son or daughter” under the FMLA.

Incapable of self-care

Under the FMLA, for an adult son or daughter with a disability to be “incapable of self-care” means that the individual requires **active assistance or supervision** to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc. These lists of ADLs and IADLs are not exhaustive and additional activities should also be considered in determining whether an adult son or daughter is incapable of self-care due to a disability.

The determination of “incapable of self-care” is fact-specific and must be made based on the individual’s condition at the time of the leave. Whether an adult child needs active assistance or supervision in three or more ADLs or IADLs must be determined based on all relevant factors, including, for example, the current effect of any episodic impairment. While “disability” must be broadly construed under the ADA, in order to qualify as an adult “son or daughter” under the FMLA, an individual must also be “incapable of self-care” because of the disability.

Taking FMLA leave to care for an adult child

If an adult son or daughter is determined to be incapable of self-care because of a disability, he or she will be considered a “son or daughter” under the FMLA. In order for a parent to take FMLA leave to care for an adult child, the son or daughter must also:

1. have a serious health condition, and
2. need care because of the serious health condition.

Serious health condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. (See [The Employee’s Guide to the Family and Medical Leave Act](#) or the FMLA regulations at [29 C.F.R. 825.113-115](#) for additional information.) Although an adult child’s serious health condition need not be directly related to his or her disability, the same condition may satisfy both the ADA definition of disability and the FMLA definition of serious health condition. However, the terms “disability” and “serious health condition” must be analyzed individually.

Needed to care

A parent may be needed to care for his or her son or daughter if, for example, the adult child is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, because of the serious health condition. “Needed to care” also includes providing psychological comfort and reassurance that would be beneficial to an adult child with a serious health condition who is receiving inpatient or home care.

Example

An eligible employee’s daughter has been diagnosed with cancer at age 19. The daughter’s cancer would meet the ADA’s definition of disability. Even if the daughter’s cancer goes into remission, it will continue to meet the ADA’s definition of disability because the active condition substantially limits a major life activity—normal cell growth. In order for her parent to qualify for FMLA leave, however,

(1) the cancer must cause the daughter to be incapable of self-care (based on her condition at the time the FMLA leave commences), (2) the daughter must have a serious health condition under the FMLA, (related to the cancer or not), and (3) the parent must be needed to care for the daughter because of the serious health condition.

- If the daughter suffers from the effects of cancer or chemotherapy that render her unable to perform activities of daily living (such as bathing, eating, and dressing), she will qualify as a “daughter” under the FMLA because she is incapable of self-care due to a disability. Her cancer would meet the FMLA’s definition of a serious health condition if it required her to receive inpatient care or continuing treatment by a doctor. The parent could demonstrate that the daughter is in need of care if, for instance, she needed to be driven to her radiation treatments. In these circumstances, the parent would be entitled to take FMLA-protected leave to provide care for the daughter.
- Alternatively, if the daughter has cancer that is in remission and she is **not** incapable of self-care, she still will meet the ADA’s definition of disability but will not meet the FMLA’s definition of “son or daughter.” In this instance, the parent would not qualify for FMLA-protected leave to care for the daughter even if she had a serious health condition.

In all instances, determinations under the FMLA depend upon all the facts of a particular situation. The determination of whether an adult child qualifies as a “son or daughter” under the FMLA does not change the law’s other requirements. An employee requesting FMLA leave to care for an adult child must meet FMLA coverage and eligibility requirements, must provide his or her employer with notice of the need for leave, and must submit medical certification of a serious health condition if required by the employer.

For additional information, 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.

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U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)