

## **Fact Sheet #28L: Leave under the Family and Medical Leave Act for Spouses Working for the Same Employer**

The Family and Medical Leave Act (FMLA) entitles eligible employees who work for covered employers to take unpaid, job-protected leave for specified family and medical reasons. Generally, the FMLA entitles an employee to take up to 12 workweeks of FMLA leave in a 12-month period for certain family and medical reasons. The FMLA also entitles an employee to take up to 26 workweeks of FMLA leave in a single 12-month period for military caregiver leave.

When spouses work for the same employer and each spouse is eligible to take FMLA leave, the FMLA limits the combined amount of leave they may take for some, but not all, FMLA-qualifying leave reasons.<sup>1</sup> This fact sheet explains when and how the limitation applies.

For purposes of FMLA leave, spouse means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a common law or same-sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States, if the marriage could have been entered into in at least one state.

### **For which FMLA-qualifying leave reasons are spouses subject to the combined limitation?**

Eligible spouses who work for the same employer are limited to a combined total of 12 workweeks of leave in a 12-month period for the following FMLA-qualifying reasons:

- the birth of a son or daughter and bonding with the newborn child,
- the placement of a son or daughter with the employee for adoption or foster care and bonding with the newly-placed child, and
- the care of a parent with a serious health condition.

Eligible spouses who work for the same employer are also limited to a combined total of 26 workweeks of leave in a single 12-month period to care for a covered servicemember with a serious injury or illness (commonly referred to as “military caregiver leave”) if each spouse is a parent, spouse, son or daughter, or next of kin of the servicemember. When spouses take military caregiver leave as well as other FMLA leave in the same leave year, each spouse is subject to the combined limitations for the reasons for leave listed above.

### **Which FMLA-qualifying leave reasons are not subject to the combined limitation?**

The limitation on the amount of leave for spouses working for the same employer does not apply to FMLA leave taken for some qualifying reasons. Eligible spouses who work for the same employer are each entitled to up to 12 workweeks of FMLA leave in a 12-month period, without regard to the amount of leave their spouses use, for the following FMLA-qualifying leave reasons:

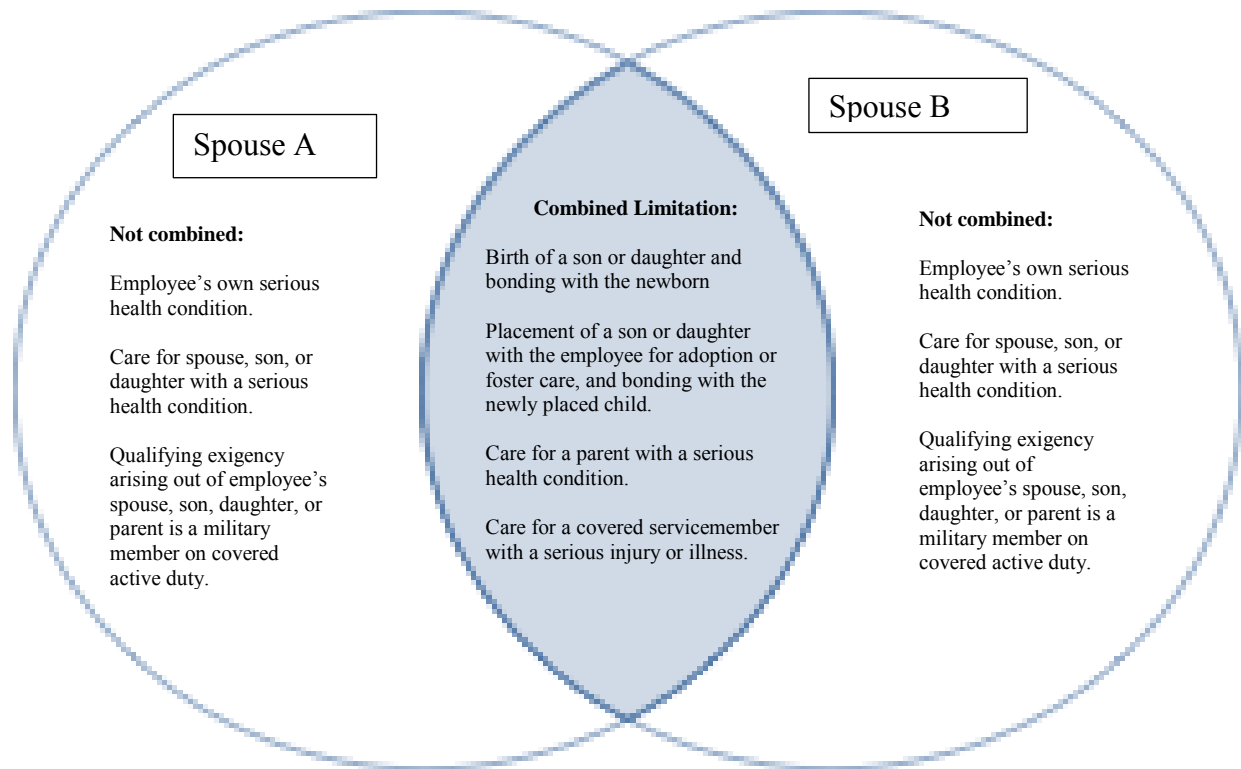
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<sup>1</sup> If one of the spouses is not eligible for FMLA leave, these limitations on the combined amount of leave do not apply. The spouse that is eligible for FMLA leave is entitled to the full amount of leave.

- the care of a spouse or son or daughter with a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job; and
- any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a military member on “covered active duty.”

**NOTE:** For more information on how employers establish the 12-month period, see [Fact Sheet #28H](#). For more information on the single 12-month period applicable to military caregiver leave, see [Fact Sheets #28M, 28M\(a\), and 28M\(b\)](#).

### Combined Limitation Chart



### Example 1:

Mary and Juan are married, FMLA-eligible employees, who work for the same employer. After Mary gives birth to their daughter, she uses six workweeks of FMLA for her own serious health condition and two workweeks of FMLA leave for bonding with her newborn baby, Anna. In the same 12-month period, Juan also wishes to use leave to bond with his infant daughter.

*How many workweeks of FMLA leave may Juan take?*

Birth and bonding with a child is a combined leave category for spouses who work for the same employer. Juan and Mary are limited to a combined total of 12 workweeks in a 12-month period for the birth of their daughter and for bonding with their child, and Mary has used two of the 12 workweeks of leave available to the couple for this leave reason.

*Juan may take up to 10 workweeks of FMLA leave for the birth of his daughter and to bond with his child.*

If Juan uses ten workweeks of FMLA leave available to bond with Anna, he may use up to two workweeks of leave for non-combined FMLA-qualifying leave reasons, such as caring for Mary if she has a serious health condition.

### **Example 2:**

Morgan and Taylor are married, FMLA-eligible employees, who work for the same employer. Taylor takes 11 workweeks of FMLA leave to care for her father who has a terminal illness. Later in the same 12-month period, Morgan learns that her mother will need several weeks of care while recovering from hip replacement surgery. Morgan has not used any FMLA leave during the 12-month period.

*How many workweeks of FMLA leave may Morgan take to care for her mother?*

Leave to care for a parent with a serious health condition is one of the combined leave categories for spouses who work for the same employer. Morgan and Taylor are limited to a combined total of 12 workweeks in a 12-month period for the purpose of caring for a parent. Taylor has already used 11 workweeks of FMLA leave to care for her father, leaving a balance of one workweek for Morgan to use to care for her mother.

*Morgan may take no more than one week of FMLA leave to care for her mother with a serious health condition.*

In this example, if Morgan uses one week to care for her mother, she would have 11 workweeks of FMLA leave available to use for non-combined qualifying FMLA leave reasons.

### **UNLAWFUL ACTS**

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA. See [Fact Sheet #77B](#).

### **ENFORCEMENT**

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring an action in court to compel compliance. Individuals may also bring a private civil action against an employer for violations.

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

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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