



**Family Medical Leave Act and Caring for Elderly Parents**  
**Area of Specialization: Employment Law**  
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As single parent and two income households become more the norm and less the exception, balancing work and family responsibilities become more difficult -- especially when circumstances require an employee to care for young children or elderly parents, or both. It is not uncommon for employees caring for children or elderly parents to need and request extended periods of time away from work. To address these issues, Congress enacted the Family and Medical Leave Act (FMLA) in 1993.

The FMLA is designed to help employees balance their work and family responsibilities by allowing them to take unpaid leave for certain family and medical reasons. The FMLA provides certain employees with up to twelve (12) weeks of unpaid, job-protected leave per year. It also requires that their group health benefits be maintained during the leave.

The FMLA applies to all public agencies, all public and private elementary and secondary schools, and companies with fifty (50) or more employees. These employers must provide an eligible employee with up to twelve (12) weeks of unpaid leave each year: (1) for the birth and care of the newborn child; (2) for placement with the employee of a child for adoption or foster care; (3) to care for an immediate family member (spouse, son, daughter, or parent) with a serious health condition; or (4) to take medical leave when the employee is unable to work because of a serious health condition. Employees are eligible for leave if they have worked for their employer at least twelve (12) months, at least one thousand two hundred fifty (1,250) hours over the past twelve (12) months, and work at a location where the company employs fifty (50) or more employees within seventy five (75) miles.

This article focuses on FMLA leave taken to care for a son, daughter or parent. Under the FMLA, a son or daughter means a biological, adopted or foster child, a step child, a legal ward, or a child of a person standing in loco parentis who is either under eighteen (18) or over the age of eighteen (18) and incapable of self care because of mental or physical disability. The term, "parent", means a biological parent or an individual who has stood in loco parentis to an employee when the employee was a child. In loco parentis individuals are those whose day-to-day responsibilities were to care for and financially support the employee when the employee was a child. The most common family members meeting the in loco parentis test are grandparents. As more and more families have become non-traditional, it is more common for employees to have been raised by their grandparents, or another adult who was not the employee's parent.

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Under the FMLA regulations “needed care for” a parent includes both physical and psychological care. Examples of covered care include situations where, because of a serious health condition, a son, daughter or parent is unable to provide for his or her own basic medical, hygienic or nutritional needs or safety or is unable to transport himself or herself to the doctor. The term also includes psychological comfort and reassurance to a son, daughter or parent receiving inpatient or home care. The term also includes situations in which an employee is needed to fill in for those caring for the son, daughter or parent, or to make arrangements for changes in care, such as transfer to a nursing home.

FMLA leave may be taken intermittently or on a reduced leave schedule when medically necessary for medical treatment of a serious health condition, or for recovery from treatment or recovery from a serious health condition. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time. If an employee needs intermittent leave or leave on a reduced leave schedule, the employer may require the employee to temporarily transfer to an available alternative position for which the employee is qualified and which better accommodates the requested leave.

At the conclusion of leave, an employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits and working conditions. If the employee exhausts his/her twelve (12) week leave period and cannot return to work, the employee will not be entitled to job restoration. The taking of FMLA leave cannot result in the loss of any benefit that accrued prior to the start of the leave. Employers are prohibited from retaliating against employees for exercising any right under the FMLA.

The FMLA is a valuable tool to assist employees in balancing their family and work responsibilities. Employees who believe their rights have been violated may enforce FMLA rights through civil actions in state or federal courts or through an administrative process by lodging a complaint with the U.S. Department of Labor.

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Mary Elizabeth (Betsy) Davis began her legal career as a law clerk to the Hon. Dennis J. Smith, Fairfax County Circuit Court. Joining Spotts Fain Chappell & Anderson, P.C. in 1998, Betsy became a shareholder and director of the firm in 2005. She is a member of the litigation section and focuses her practice in the areas of employment law, intellectual property and commercial litigation.



In her employment practice, Betsy advises management in all areas of labor and employment law. She also represents employers in state and federal courts in the areas of Title VII, age discrimination, fair labor standards, family and medical leave, wrongful discharge, covenants not to compete, and employment contracts and handbooks, as well as other state and federal employment issues.

Her intellectual property practice includes both litigation and the registration of copyrights and trademarks. She works closely with the firm's business section in order to assist the firm's clients to create, protect, defend and prevent infringement of trademarks, copyrights, service marks, trade names and trade dress rights. She also advises businesses regarding internet and domain name issues. When disputes arise, she counsels and represents clients in alternative dispute resolution, proceedings before the Trademark Trial and Appeal Board, and infringement and dilution litigation in state and federal courts.

Betsy received her B.A. from the University of Virginia in 1994 and her J.D. *cum laude* from the University of Richmond, T.C. Williams School of Law in 1997.

An active member of the Virginia State Bar Young Lawyer's Conference, Betsy is the Regional Chairperson of "No Bills Night". She is also a member of the American Bar Association Section of Intellectual Property, the Lewis F. Powell, Jr. American Inn of Court, the Richmond Bar Association and the Junior League of Richmond. Betsy was named in the Virginia Business magazine's Legal Elite list in 2004 and 2005 in the Young Lawyers Category.

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