

In the Eligibility Notice, Employers must advise the employee whether leave is still available and if not, why not. An employee must be advised where he/she has not worked enough months or hours or has exhausted the amount leave for which he/she would otherwise be eligible. The Eligibility Notice also must explain whether and when medical certifications will be required, payment of insurance premiums for continuing coverage, job restoration rights, and the right to substitute and/or supplement unpaid leave with paid leave.

If a medical certificate is going to be needed before the employee can return to work, then at the time the Designation Notice is given, he/she must be notified of the requirement and given a functional job description so that his/her doctor can be aware of what the job entails.

Time spent in “light duty” work will not count against an employee’s FMLA leave entitlement. Further, the employee’s job restoration rights are held in abeyance during the period of light duty. If an employee is voluntarily doing light duty work, he or she is not on FMLA leave.

Employers may permit an employee to substitute accrued paid leave for unpaid FMLA leave and provided that the substitution occurs in accordance with employer’s paid leave policies. If the employer requires advance notice of the use of vacation time, then the same time period must be complied with in order for the employee seeking FMLA or on FMLA leave to substitute unpaid time for paid time. Notice of this requirement must be included in the notice of rights and responsibilities that is included with the Eligibility Notice.