

## **Fact Sheet #28C: The definition of “parent” as it applies to an individual who stood in loco parentis to an employee for FMLA “eldercare” protections.**

The Family and Medical Leave Act (FMLA) entitles an eligible employee to take up to 12 workweeks of job-protected unpaid leave to care for a spouse, son, daughter, or parent with a serious health condition. See [29 USC 2612\(a\)\(1\)](#). FMLA leave may be taken to provide care for any individual who is the employee’s “parent” as the term is defined in the statute and its regulations. See [29 USC 2611\(7\)](#).

In enacting the FMLA, Congress recognized the changing nature of the American population, including the growing number of elderly Americans and the growing need for wage earners to provide care both for their children and for their parents. For FMLA leave purposes, a “parent” is defined broadly as the biological, adoptive, step, or foster parent of an employee or an individual who stood *in loco parentis* to the employee when the employee was a son or daughter. See [29 C.F.R. § 825.122](#). “Parent” does not include the employee’s parents-in-law.

This Fact Sheet provides guidance on recognizing situations in which an eligible employee may take leave to care for an individual who stood *in loco parentis* to the employee when the employee was a child.

---

### **What does *in loco parentis* mean under FMLA?**

*In loco parentis* refers to the type of relationship in which a person has put themselves in the situation of a parent by assuming and discharging the obligations of a parent to a child. It exists when an individual intends to take on the role of a parent.

The FMLA regulations define *in loco parentis* as including persons with day-to-day responsibilities to care for or financially support a child. Courts have indicated some factors that determine *in loco parentis* status include:

- the age of the child;
- the degree to which the child is dependent on the person;
- the amount of support, if any, provided; and
- the extent to which duties commonly associated with parenthood are exercised.

An eligible employee is entitled to take FMLA leave to care for a person who provided such care to the employee when the employee was a child. If the individual stood *in loco parentis* to the employee when the employee was a child, the employee may be entitled to take FMLA leave even if he or she also has a biological, step, foster, or other parent, provided that the *in loco parentis* relationship existed between the employee and the individual when the employee met the FMLA’s definition of a “son or daughter.” Although no legal or biological relationship is necessary, grandparents or other relatives, such as siblings, may stand *in loco parentis* to a child under the FMLA as long as the relative satisfies the *in loco parentis* requirements.

**Note that, in all cases, conditions must be evaluated according to the specific facts.**

## **Examples of *in loco parentis* for leave to care for a parent**

An eligible employee may take leave to care for any individual who stood *in loco parentis* to the employee when the employee was a child regardless of any biological relationship of the two people. For example:

- An employee may take leave to care for his aunt with a serious health condition, if the aunt stood *in loco parentis* to him when he was a “son or daughter.”
- An employee may take leave to care for her grandmother with a serious health condition if the grandmother stood *in loco parentis* to her when she was a “son or daughter.”
- A “son or daughter” of a same-sex partnership may take leave to care for the non-adoptive or non-biological partner who stood *in loco parentis*.

Unless an *in loco parentis* relationship existed when the employee was a “son or daughter,” an employee is not entitled to take FMLA leave to care for a grandparent or an aunt with a serious health condition.

---

## **What may be required to document an *in loco parentis* relationship?**

The employer’s right to documentation of family relationship is the same for an employee who asserts the need to care for an individual who stood *in loco parentis* to the employee as it is for a biological, adoptive, or other parent. Such documentation is limited to the employee’s simple statement asserting the relationship. For an employee seeking leave to care for an individual who stood *in loco parentis* to the employee, such statement may include, for example, the name of the individual and the statement that this person stood *in loco parentis* to the employee when the employee was a child. An employee should provide sufficient information to make the employer aware of how the individual in need of care stood *in loco parentis* to the employee when the employee was a “son or daughter.” See [29 CFR § 825.122](#).

---

## ***In loco parentis* status and other FMLA requirements**

*In loco parentis* status under the FMLA does not change the law’s other requirements, such as those regarding coverage, eligibility, and qualifying reasons for leave. All requirements must be met for the FMLA protections to apply. An employee asserting rights to care for a parent who stood *in loco parentis* to the employee may be required to provide notice of the need for leave and to submit medical certification of a serious health condition consistent with the FMLA regulations.

For additional information about the FMLA, 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. You may also wish to review Administrator Interpretation No. 2010-3 for information specific to the *in loco parentis* issue.

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.

**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](#)