

**TECHNICAL NOTE:
ESTIMATING ELIGIBILITY UNDER THE FAMILY AND MEDICAL LEAVE ACT (FMLA) FOR WORKING
PARENTS**

This technical note describes how diversitydatakids.org estimates FMLA eligibility among working parents. First we present the official FMLA eligibility criteria, secondly we describe how we estimate FMLA eligibility among working parents, following the official FMLA eligibility criteria as closely as possible, and lastly we discuss data limitations that affect our FMLA eligibility estimates. Note that diversitydatakids.org FMLA indicators represent estimates of working parents' eligibility for FMLA leave, not actual use of FMLA leave.

Official FMLA eligibility criteria

According to legislation in the Family and Medical Leave Act, to be eligible for job-protected unpaid leave under the FMLA, an employee must (1) work for an FMLA-covered employer and (2) meet specific requirements around hours and job tenure (e.g. number of months) with that employer.

FMLA-covered employers

The legislation specifies which types of employers are FMLA-covered. These employers are legally obligated to provide job-protected unpaid leave to eligible employees. The following types of employers are covered under the FMLA:

- All public sector agencies, including local, state or federal government agencies.
- All public or private elementary and secondary schools.
- Private employers with at least 50 employees in at least 20 workweeks in the current or prior calendar year.

FMLA-eligible employees

In order to be eligible for FMLA leave, an employee must meet the following criteria:

- Work for an FMLA-covered employer.
- Work at a worksite where the employer has at least 50 employees within 75 miles.
 - For example, if an employer has two worksites within 75 miles of each other, and each has 25 employees, then all 50 employees meet this criteria for FMLA eligibility. However, if an employer has one worksite with 100 employees, and 200 miles away, a smaller worksite with just 25 employees, then only the employees at the larger worksite meet this criteria for FMLA eligibility.
- Have worked for at least 12 months for the employer. These 12 months do not have to be continuous.
- Have worked for the employer for at least 1,250 hours during the 12 months immediately before FMLA leave begins (about 24 hours a week, over 52 weeks).

diversitydatakids.org estimation of FMLA eligibility among working parents:

To estimate FMLA eligibility among working parents, we use the Current Population Survey (CPS) Annual Social and Economic Characteristics Supplement (ASEC). The CPS ASEC survey is administered every March and asks respondents a rich array of questions about their employment, their employers, and their job characteristics in the prior year. We use these data to determine whether a working parent met FMLA eligibility criteria (including working for a FMLA-covered employer). Specifically, given the data available in the CPS, we define a working parent as FMLA eligible if they:

- Worked in the public sector, or worked in the private sector (including self-employment) for a firm with at least 50 employees,
- Worked at least 50 weeks and at least 1,250 hours in the prior year,
- Worked for only one employer in the prior year. This means the employee did not switch employers over the course of the year.

Note that the first bullet is meant to capture whether a working parent is employed with an FMLA-covered employer, while the second two bullets are meant to capture eligibility criteria around employee hours and job tenure.

Data limitations in estimates of FMLA-eligibility among working parents:

Although the CPS ASEC provides a great deal of information about workers, the available data are not a perfect match with FMLA eligibility criteria. As a result, we are unable to replicate FMLA eligibility criteria perfectly, which limits our ability to calculate an exact estimate of FMLA eligibility among working parents. These data limitations can possibly lead to an over- or underestimate of FMLA eligibility. This means that our indicator may actually report fewer qualified employees – or it may report more qualified employees – than actually exist. Below, we discuss these limitations and how they may affect our estimates.

Data limitation: 12 months of total employment:

FMLA eligibility criteria require that a worker have 12 months total employment with a covered employer. These 12 months do not have to be in a row. However, the CPS does not ask respondents about their total employment with a particular employer. As a result, we are unable to precisely estimate if an employee worked for a FMLA-covered employer for a total of 12 months or more. As a proxy for this criteria, our estimate of FMLA eligibility only includes workers with at least 50 weeks of employment with the same employer* in the past year (the CPS ASEC provides no employment information prior to last year). However, some employees may have worked for an employer for a total of 12 months, but not 12 months in a row or maybe not at all in the past year. Because of this limitation, our estimate misses these employees in our estimate of working parents eligible for FMLA leave, potentially leading to an underestimate of true FMLA eligibility. Nevertheless, this decision is consistent with the Department of Labor’s 2012 report on FMLA implementation,¹ which is also subject to this limitation and acknowledges that it may result in a slight underestimate of FMLA eligibility.

*Note that the CPS ASEC survey asks how many weeks and hours an employee worked last year, but it does not ask how many weeks or hours an employee worked *for each employer*. Therefore, to ensure that the 50 weeks of job tenure (as well as the 1,250 required hours) are with a single employer (thus best simulating the requirement of 12 months of employment with an FMLA-covered employer), we consider working parents as FMLA eligible only if they did *not* have multiple consecutive employers in the past year. In other words, we consider a worker to be FMLA eligible if they are employed by a FMLA-covered firm and worked at least 50 weeks and at least 1,250 hours without switching employers during the year. Note, however, that this correction in itself is also limited because it may wrongly exclude as ineligible a worker who has 12 months total employment with an FMLA-covered employer, but who switched to a new employer at the end of last year.

Data limitation: 1,250 hours worked in the last 12 months:

FMLA also specifies that an employee must work for a covered employer for at least 1,250 hours in the last year to be eligible for FMLA leave. Limitations with correctly estimating this requirement are similar to those discussed above. The CPS survey questions on hours worked per week do not specify whether these hours were all with a single employer or with multiple** employers (i.e. if an employee works two or more jobs at the same time). This limitation could potentially lead to an overestimate of true FMLA eligibility, since workers who worked at least 1,250 hours last year, but split among multiple employers, would be estimated as FMLA eligible under our definition when in reality they would not be.

**Note that the term ‘multiple employers’ is distinct from ‘multiple consecutive’ employers. By ‘multiple employers,’ we mean that a worker worked for two or more employers *simultaneously*. By ‘multiple consecutive employers,’ we mean that a worker worked first for one employer, and then switched to a second employer, but did not work for them at the same time. CPS data allow us to account for multiple consecutive employers and how this can affect FMLA job tenure and annual hours requirements, but they do not allow us to account for multiple simultaneous employers. Employee with multiple simultaneous employers may be wrongly defined as FMLA eligible because they may work for two employers at the same time for the full 52 weeks -- and therefore appear to meet the 1,250 hours requirement -- when in fact they did not work 1,250 hours for either employer individually.

Data limitation: Worksite distance and workweek requirements for FMLA eligibility:

We are not able to account for the following FMLA criteria in our estimate of FMLA eligibility (in italics):

- An employee must work at a worksite with 50 employees *within 75 miles*, and
- An employer must have 50 employees *for at least 20 workweeks in the current or past year* to be FMLA-covered.

Because the CPS ASEC does not provide information that would address these requirements, we may overestimate true FMLA eligibility among working parents. For example, if an employer has one worksite with 100 employees, and 200 miles away, a smaller worksite with just 25 employees, then only

the 100 employees at the larger worksite meet the actual criteria for FMLA eligibility, but all 125 would be considered FMLA eligible according to our CPS estimation methods. The 2012 Department of Labor report on FMLA implementation faces a similar limitation,¹ as they were also unable to consider the 20 workweeks requirement in their estimate of FMLA eligibility.

¹ Klerman, J.A., Daley, K., & Pozniak, A. (2012). *Family and medical leave in 2012: Technical report*. Cambridge, MA: Abt Associates. (p.18). Retrieved from <http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>.