

AN OVERVIEW OF THE FAMILY MEDICAL LEAVE ACT'S MILITARY PROVISIONS

The Family Medical Leave Act ("FMLA") provides unpaid, job-protected time off to covered workers. Covered workers are allowed to take up to 12 weeks of unpaid leave a year to care for themselves or covered family members, and up to 26 weeks to care for covered servicemembers. This document provides information about the FMLA's new military family leave provisions.

Basic Coverage Under the Provisions of the Traditional FMLAⁱ

Enacted in 1993, the FMLA allows eligible employees to take up to 12 weeks per year of unpaid, job-protected leave for: (1) the birth or adoption of a child; (2) the "serious health condition" of the employee; or (3) the "serious health condition" of the employee's immediate family member. An "eligible employee" is someone who: **(A) works for a private employer with at least 50 employees, or for a government agency; (B) has worked for his employer for at least one year; and (C) has worked for over 1,250 hours during the previous 12-month period.**

FMLA leave need not be paid, but an employee may substitute any accrued paid leave for FMLA leave. In addition, the FMLA contains an anti-retaliation provision that prohibits employers from interfering with an employee's exercise of any right granted under the law. Further, employees who believe their FMLA rights have been violated may file a complaint with the Department of Labor ("DOL") or bring a lawsuit directly against an employer.

Recent Expansions to the FMLA Create Military Family Leave Protectionsⁱⁱ

Two new types of FMLA leave specifically designed to support military families have been created: (1) **qualifying exigency leave**, which allows eligible employees to take up to 12 weeks of job-protected time off to cope with the difficulties of having a deployed family member; and (2) **military caregiver leave**, which allows up to 26 weeks of time to care for a covered servicemember with a serious injury or illness. Employees may not take more than 26 workweeks of leave for any FMLA-qualifying reason.

What is Qualifying Exigency Leave?ⁱⁱⁱ

This provision allows eligible employees (subject to the FMLA's eligibility requirements listed above) to take up to **12 weeks** of FMLA leave. In addition to the other requirements, the employee must be the *spouse, son, daughter, or parent* of a servicemember *on active duty*. Qualified exigency leave is generally available to family of all members of the Guard and Reserve; it is not available to the family of servicemembers in the Regular Armed Forces.^{iv} The 12 weeks of allotted FMLA leave may be taken as needed by the employee, including in increments measured by hours instead of days or weeks.

A "qualifying exigency" includes:^v

- 1) *Short-notice deployments* of up to **7 days** to address issues arising from the notification of an impending call to active duty.
- 2) *Military events and related activities* such as ceremonies, programs, events, or information briefings related to active duty or a call to active duty.

- 3) *Childcare and school activities.*^{vi}
- 4) *Financial and legal arrangements.*^{vii}
- 5) *Counseling* related to active duty or the call to active duty provided by someone other than a health care provider.
- 6) *Rest and Recuperation* for up to **5 days** during deployment.
- 7) *Post-deployment activities* such as reintegration events up to **90-days after active duty terminates** or dealing with the death of a servicemember.
- 8) *Additional service related activities-* **as agreed to by employer.**

What is Military Caregiver Leave?^{viii}

This provision allows eligible employees (subject to the above FMLA eligibility requirements) to take up to **26 work weeks** off during a 12-month period to care for a servicemember. The employee must be the *spouse, son, daughter, parent, or next of kin* of a covered servicemember. A “covered servicemember” is one who is:

1. Undergoing medical treatment, recuperation, or therapy; or
2. Otherwise in outpatient status; or
3. Otherwise on the temporary disability list for a “serious injury or illness.” A “serious injury or illness” is one that is incurred in the line of duty and may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

A “covered servicemember” may include veterans who served within 5 years of the date of treatment, and have pre-existing injuries aggravated during active duty service.

What do I have to do to take FMLA leave?

Both types of military FMLA leave may be taken intermittently or on a reduced schedule. The employee must give notice of the need for leave **at least 30 days in advance or as soon as practicable**. The employee must also take reasonable efforts to schedule treatment at a time that does not unduly disrupt the business operations of the employer. In addition, an employer may ask for written proof of the need for leave.

Where can I find out more?

The Department of Labor enforces the FMLA and has user-friendly guides to explain its provisions at <http://www.dol.gov/whd/fmla/index.htm>. The fact sheet on the military FMLA provisions is available at <http://www.dol.gov/whd/regs/compliance/whdfs28a.pdf>.

ⁱ 9 U.S.C. §§ 2601–2654.

ⁱⁱ Pub. L. No. 111-84 § 565 (2009); Pub. L. No. 110-181 § 585 (2008).

ⁱⁱⁱ 29 U.S.C. § 2612(a)(1)(E); 29 C.F.R. § 825.126 (a).

^{iv} 29 U.S.C. § 2611(14); 29 C.F.R. § 825.126(b)(2)(i)-(ii). Caregivers of members of the Regular Armed Forces are ineligible. 29 C.F.R. § 825.126(b)(2)(i).

^v 29 C.F.R. § 825.126.

^{vi} This is for exigent needs from deployment only, including: (1) arranging for alternative care when the call to active duty requires change; (2) providing care on an urgent basis; (3) enrolling in or transferring to a new school or day care; or (4) attending meetings with a school or day care. 29 C.F.R. § 825.16(a)(3).

^{vii} FMLA leave may be requested to make financial and legal arrangements if: (1) it is necessary to make or update financial or legal arrangements to address the absence of the servicemember; or (2) to act as the servicemember’s representative for purposes of obtaining, appealing, or arranging for military benefits. See 29 C.F.R. § 825.16(a)(4).

^{viii} 29 U.S.C. § 2612(a)(3); 29 C.F.R. § 825.127.