



# Family and Medical Leave

## *Military FMLA Q & A*

### **Q1: Who can use Military Family and Medical Leave?**

- A. Employees who have met all of the following criteria are eligible for military Family and Medical Leave:
1. Worked for the State for at least 12 months;
  2. Worked at least 1,250 hours in the 12 months prior to the date the requested leave begins;
  3. Have not already exhausted their Family and Medical Leave entitlement; and,
  4. Have a qualifying reason for the leave – either a “qualifying exigency” related to a spouse, child, or parent’s covered active military duty OR a need to care for a covered service member with a serious illness/injury incurred or aggravated in the line of active duty (“Military Caregiver Leave”).

### **Q2: What is “Qualifying Exigency Leave”?**

- A. Qualifying exigency leave is a category of leave that qualifies for FMLA protection. It is available to eligible employees whose *spouse, parent, or child* is a military service member who is deployed or has been notified of impending deployment to a foreign country for “covered active duty.” Eligible employees may use this FMLA entitlement for up to 12 workweeks in a 12-month period for qualifying exigencies (i.e., activities related to the deployment).

Qualifying exigency leave does not cover the absence of **an employee** who is called into military service. Rather, it covers the time off an employee needs for activities related to the family member’s military service.

### **Q3: What is “covered active duty”?**

- A. Qualifying Exigency FMLA is available to eligible employees with a spouse, parent, or child in one of the following military statuses:
- On “covered active duty,”
  - In call to “covered active duty” status,
  - On notice of an impending call or order to “covered activity duty.”

**“Covered active duty”** means:

*For members of the regular Armed Forces:* duty during deployment to a foreign country.



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*For members of the reserve components of the Armed Forces (members of the National Guard and Reserves):* duty during deployment to a foreign country under a call or order to active duty in support of a contingency operation. Contingency operations typically occur during a war or declared national emergency.

**“Deployment to a foreign country”** means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States. “Deployment to a foreign country” includes deployment to international waters.

**Q4: If an employee’s military family member is on covered active duty, for what “qualifying exigencies” may the employee take Family and Medical Leave?**

A. There are nine “qualifying exigencies” for which an employee can take FMLA leave:

- 1) To address any issues arising from the military family member receiving short-notice of deployment (7 days or less advanced notice). Leave for this reason can be taken for up to 7 calendar days, beginning on the day the military family member receives notice of deployment.
- 2) To make or update financial and legal arrangements arising from the military family member’s covered activity duty. Examples include preparing and executing powers of attorney, obtaining military ID cards, transferring bank signature authority, or acting as the military family member’s representative in arranging for military service benefits.
- 3) To attend counseling from someone other than a healthcare provider when the need arises from the military family member’s covered active duty.
- 4) To attend military events, programs, family support or assistance activities, and/or informational briefings related to the military family member’s covered activity duty.
- 5) To spend time with a military family member who is on “Rest and Recuperation” leave during a covered active duty. “Rest and Recuperation” leave is a military term of art which refers to a specific leave from military active duty. An employee may take up to fifteen (15) calendar days of leave for this reason.
- 6) To address certain childcare and related activities concerning the military family member’s child that arise from the military family member’s covered active duty. Examples include:



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- Arranging for alternative childcare;
- Providing childcare temporarily on an urgent, non-routine, and immediate basis;
- Enrolling in or transferring a child to a new school or day care facility; and,
- Attending meetings at the child's school or day care facility.

This provision does not allow employees to take leave to perform routine childcare.



**Note:** The employee does not have to be related to the child. Rather, the military family member must be the employee's spouse, parent, or child, and the child for whom the leave is taken must be the child of the employee's military family member.

7) To address certain activities related to the care of the military family member's parent who is incapable of self-care. Examples include:

- Arranging for alternative parental care;
- Providing care temporarily on a non-routine and urgent basis;
- Admitting or transferring the parent to a different care facility; and,
- Attending meetings at a care facility or with hospice staff.



**Note:** The employee does not have to be related to the military family member's parent. However, the military family member must be the employee's spouse, parent, or child, and the parent for whom the leave is taken must be the parent of the military family member.

8) To attend post-deployment activities for up to 90 calendar days following the end of the military family member's covered active duty. Examples include: attending reintegration briefings and other official military ceremonies or programs, and addressing issues arising from the death of a military family member, including attending funeral services.

9) Any other events related to the military duty that you agree with your employee are qualifying exigencies. You and your employee would agree on the timing and duration of the leave.



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### **Q5: May you require certifying documentation of your employee who is taking leave for a qualifying exigency?**

A. Yes. If an employee requests Family and Medical Leave for a qualifying exigency, you may require:

- A copy of the military family member's active duty orders (or other official documentation issued by the military) which indicates the military family member is on covered active duty or call to covered active duty.



**Note:** You may only require a copy of the active duty orders once per deployment. You may also contact the Department of Defense to request verification that the military family member is on covered active duty.

- A statement or description of the appropriate facts regarding the qualifying exigency. This may include information on the type of leave needed and any available written documentation (for example, a copy of a meeting or ceremony announcement, appointment confirmation with a counselor or school official, a copy of a bill for legal services, or Rest and Recuperation orders).
- The approximate date on which the leave began (or will begin) and an estimate of how long and/or how often the employee will need to take leave.
- The contact information for any third party the employee is meeting. Examples include the name, title, organization, address, telephone number, fax number, and email address of the third party and a brief description of the purpose of the meeting.



**Note:** You may contact the third party ONLY to confirm the nature of the meeting. The employee's permission is not required to contact the third party, but you may not request any additional information during the contact.

### **Q6: What is "Military Caregiver Leave"?**

A. Military Caregiver Leave is a category of leave that qualifies for FMLA protection. It is available to an eligible employee who is the spouse, parent, child, or next of kin of a covered service member in need of care for a serious injury or illness incurred or aggravated in the line of active duty. An eligible employee may use this FMLA entitlement for up to **26 workweeks** during a single 12 month period. Military Caregiver Leave offers more protected time off in a single year than other types of



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Family and Medical Leave. FMLA coverage for reasons other than Military Caregiver Leave is limited to no more than 12 workweeks in a 12-month period.

### **Q7: Who qualifies as “next of kin”?**

- A. “Next of kin” is the nearest blood relative to a covered service member, other than the spouse, parent, son, or daughter, in the following order of priority:
- 1) A blood relative who has been designated in writing by the covered service member for purposes of FMLA Military Caregiver Leave;
  - 2) Blood relatives who have been granted legal custody of the covered service member;
  - 3) Brothers and sisters;
  - 4) Grandparents;
  - 5) Aunts and uncles;
  - 6) First cousins

When a covered service member has not designated the next of kin and more than one family member has the same level of relationship that would qualify as “next of kin,” then all such family members (if otherwise eligible) may take FMLA to care for the service member.

### **Q8: Who is a “covered service member”?**

- A. A “covered service member” can either be a current member or a veteran of the Armed Forces.

#### **Current member of the Armed Forces:**

To be considered a “covered service member,” a current member of the Armed Forces (including a member of the National Guard or Reserves) must be:

- Undergoing medical treatment, recuperation, or therapy;
- Otherwise in outpatient status; or,
- On the temporary disability retired list

for a “serious injury or illness.”

*“Serious injury or illness”* for a current member of the Armed Forces means an injury or illness that was incurred or aggravated in the line of duty on active duty that may



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render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating.

### **Veteran of the Armed Forces:**

To be considered a “covered service member,” a veteran of the Armed Forces (including a member of the National Guard or Reserves) must be undergoing medical treatment, recuperation, or therapy for a “serious injury or illness.” Dishonorably discharged veterans, and veterans who were discharged more than five (5) years prior to the beginning of Military Caregiver Leave, do not qualify as “covered service members.”



**Note:** FMLA regulations provide that the period between October 28, 2009, and March 8, 2013, does not count toward this (5) year period.

The definition of “*serious injury or illness*” for a veteran differs from that for a current member of the Armed Forces. For veterans, the injury or illness must have been incurred or aggravated in the line of duty on activity duty in the Armed Forces **and** be either:

- A continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member’s office, grade, rank, or rating; or
- A physical or mental condition for which the veteran has received a Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50% or greater; or
- A physical or mental condition that substantially impairs the veteran’s ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or
- An injury, including a psychological injury, that is the basis of a veteran’s enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Any one of these definitions will meet the FMLA definition of serious injury or illness for a veteran regardless of whether the injury or illness manifested before or after the individual became a veteran.



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**Q9: When does the single 12-month period during which an employee can take 26 workweeks to care for a covered service member begin?**

- A. The “single 12-month period” for leave to care for a covered service member (both current service member and veteran) begins on the first day the employee takes leave for that reason and ends 12 months later. This 12-month period is different from the 12-month period adopted by the State for other types of FMLA leave. For all types of Family and Medical Leave, other than Military Caregiver Leave, eligible employees may have up to 12 workweeks of FMLA protection during a rolling 12-month period measured backward from the date the employee uses the leave.

Employees using Military Caregiver Leave are entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the “single 12-month period.” Employees using FMLA protection for any FMLA-qualifying reason OTHER THAN to care for a covered service member during the “single 12-month period” remain limited to a total of no more than 12 workweeks for that reason. Using FMLA protection for reasons other than Military Caregiver Leave during the “single 12-month period” reduces the time available for the employee to care for the covered service member. For example, an employee who uses 10 weeks of FMLA leave for her own serious health condition is limited to a total of 16 workweeks of FMLA leave to care for a covered service member.

**Q10: May an employee take Military Caregiver Leave for multiple instances within the single 12-month period?**

- A. Yes. Military Caregiver Leave is available to an employee on a PER service member/ PER serious injury or illness basis. Therefore, time may be taken for two or more separate service members’ injuries or illnesses OR for multiple different injuries or illnesses of the same service member. However, employees are limited to a total of 26 workweeks of Military Caregiver Leave in a single 12-month period.

**Q11: May you require certifying documentation of your employee who is taking Military Caregiver Leave?**

- A. Yes. You may require an employee requesting Military Caregiver Leave to provide certification supporting the leave request that includes:
- Contact information for the authorized health care provider completing the certification, the type of medical practice or specialty, and affiliation with the military, if any;
  - Whether the injury or illness was incurred or aggravated by service in the line of duty on active duty, when it began or was aggravated, and its likely duration;



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- A statement of appropriate facts regarding the service member's health condition sufficient to support the need for FMLA leave;
- Information that supports the service member's need for care and the estimated period and dates of treatment or recovery needed;
- If care is needed intermittently or on a reduced schedule, the schedule of treatments or appointments, or an estimate of the frequency and duration of periodic care;
- The employee's name, the name of the covered service member, and the employee's relationship to the service member; and,
- The service member's branch, rank, and unit assignment or the veteran's date and type of separation.



**Note:** You may request a second or third opinion concerning a covered service member's serious injury or illness only when a certification is provided by a non-military-affiliated health care provider. Recertification is NOT permitted for a certification for Military Caregiver Leave.