

COMPLIANCE OVERVIEW

Provided by Clarke & Company Benefits, LLC

FMLA Rights for Military Families

The Family and Medical Leave Act (FMLA) allows eligible employees to take unpaid, job-protected leave for certain family and medical reasons. Eligible employees are entitled to two types of FMLA leave related to a qualifying family member's military service. This type of FMLA leave is called military family leave.

The military family leave provisions of the FMLA entitle eligible employees of covered employers to take FMLA leave for the following two reasons:

- ✓ **Qualifying Exigency Leave**—For a “qualifying exigency” arising from the foreign deployment of the employee's spouse, son, daughter or parent with the Armed Forces; or
- ✓ **Military Caregiver Leave**—To care for a covered service member with a serious injury or illness if the employee is the service member's spouse, child, parent or next of kin.

LINKS AND RESOURCES

- The DOL's FMLA [web page](#), which includes links to the DOL's model FMLA forms and compliance resources
- DOL's [final regulations](#) on military family leave
- [The Employer's Guide to the FMLA](#), a publication of the DOL's Wage and Hour Division

HIGHLIGHTS

QUALIFYING EXIGENCY LEAVE

An eligible employee may take qualifying exigency leave when the employee's spouse, son, daughter or parent who is a member of the Armed Forces (including the National Guard and Reserves) is on covered active duty or has been notified of an impending call or order to covered active duty.

MILITARY CAREGIVER LEAVE

Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member with a serious injury or illness to take up to a total of 26 workweeks of unpaid leave during a single 12-month period to provide care for the service member.



FMLA OVERVIEW

The FMLA applies to private-sector employers that employed **50 or more employees** in 20 or more workweeks in the current or preceding calendar year. It also applies to all public agencies, including local, state and federal employers, and public and private elementary and secondary schools.

The FMLA generally provides that covered employers must:

- Allow an eligible employee to take up to 12 weeks of unpaid leave during any 12-month period for certain reasons, or up to 26 weeks in a single 12-month period to care for a covered service member with a serious injury or illness;
- Continue the employee's group health benefits while on leave; and
- Restore the employee to the same or equivalent job upon return from leave.

MILITARY FAMILY LEAVE

The FMLA's military family leave provisions entitle eligible employees of covered employers to take FMLA leave:

- ✓ For any **"qualifying exigency"** arising from the foreign deployment of the employee's spouse, son, daughter or parent with the Armed Forces; or
- ✓ To **care for a service member with a serious injury or illness**, if the employee is the service member's spouse, son, daughter, parent or next of kin.

Both qualifying exigency leave and military caregiver leave may be taken on an intermittent basis or on a reduced leave schedule basis. In addition, an employer may require that an employee's request for either type of military family leave be supported by a **certification** completed by an authorized health care provider.

QUALIFYING EXIGENCY LEAVE

Qualifying exigency leave was created to help eligible employees manage their affairs when family members are called to covered active duty, or serving in covered active duty, with the Armed Forces.

A covered employer must grant an eligible employee up to **12 workweeks** of unpaid, job-protected leave during any 12-month period for qualifying exigencies that arise when the employee's spouse, son, daughter or parent who is a member of the Armed Forces (including the National Guard and Reserves) is on covered active duty or has been notified of an impending call or order to covered active duty.

For **members of a regular component of the Armed Forces**, "covered active duty" is defined as duty under a call or order to active duty during deployment to a foreign country. For **members of a Reserve component of the Armed Forces**, "covered active duty" means duty under a call or order to active duty during deployment to a foreign country in support of a contingency operation.

Qualifying Exigency Categories

An eligible employee with a family member on covered active duty may take FMLA leave for the following qualifying exigencies:

- ✓ Issues arising from short notice deployment (that is, deployment on seven or less calendar days of notice), for a period of seven calendar days beginning on the date the covered military member is notified of a call to active duty;
- ✓ Military events and related activities, such as attendance at official ceremonies, programs/events, family support or assistance programs and informational briefings;
- ✓ Childcare and school activities, such as arranging for alternative childcare when the active duty requires a change to the existing childcare or temporary childcare, enrolling or transferring to a new school or day care or attending school meetings;
- ✓ Financial and legal arrangements, such as addressing or updating financial and health care powers of attorney or wills or appearing before agencies regarding military benefits;
- ✓ Attending counseling, arising from the active duty status;
- ✓ Taking up to 15 days of leave to spend time with a covered military member who is on short-term, temporary rest and recuperation leave during deployment;
- ✓ Care for the parent of a military member, or someone who stood *in loco parentis* to the military member, when the parent is incapable of self-care and the need for leave arises out of the military member's covered active duty or call to covered active duty status;
- ✓ Attending to certain post-deployment activities, such as attending arrival ceremonies or any other official ceremony or program for a period of 90 days following the termination of active service, and addressing issues arising from the death of a covered military member; and
- ✓ Additional activities that the employer and employee agree qualify as an exigency, such as, for example, attending to household emergencies that would have normally been handled by the military family member.

Certification for Qualifying Exigency Leave

When an eligible employee requests qualifying exigency leave, the employer may request the following information and documentation:

- A copy of the military member's active duty orders (or other official documentation issued by the military) that indicate the military member is on covered active duty or call to covered active duty status;
- A statement or description of the appropriate facts regarding the qualifying exigency;

- The approximate date on which the leave began (or will begin) and how long or how often leave will be needed; and
- The contact information for any meeting with a third party and a brief description of the purpose of the meeting.

Certification Rules for Employers

For qualifying exigency leave, an employer is not permitted to require second and third opinions or recertifications. However, when the leave involves meeting with a third party, an employer may contact the third party to confirm that the meeting is taking place and the nature of the meeting, but no additional information may be requested. An employer may also contact the Department of Defense (DOD) to verify a military member's covered active duty status.

An employer may choose to use the DOL's [model certification form for qualifying exigency leave](#). Alternatively, an employer may create its own version of the certification containing the same basic information; however, no additional information can be requested.

MILITARY CAREGIVER LEAVE

Military caregiver leave was created to help eligible employees care for covered service members with serious illnesses or injuries. A covered employer must grant an eligible employee up to **26 workweeks** of unpaid, job-protected leave during a single 12-month period to care for a qualifying relative (parent, spouse, child or next of kin) who:

- ✓ Is a **current member** of the Armed Forces (including the Reserves or National Guard) who is undergoing medical treatment, recuperation or therapy, is in outpatient status or is on the temporary disability retired list for a serious illness or injury; or
- ✓ Is a **veteran** who is undergoing medical treatment, recuperation or therapy for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the veteran.

For a current service member, a "serious injury or illness" is an injury or illness that was incurred by the service member in the line of duty on active duty (or existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) and that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.

For a veteran, a "serious injury or illness" means an injury or illness that was incurred by the service member in the line of duty on active duty (or existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) and that manifested itself either before or after the service member became a veteran and is:

- 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 medically unfit to perform the duties of his or her office, grade, rank or rating;
- A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave;
- A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
- An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Single 12-Month Period

The “single 12-month period” for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by the employer for other types of FMLA leave.

An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period. Up to 12 of the 26 workweeks may be for an FMLA-qualifying reason other than to care for a covered service member.

Certification for Military Caregiver Leave

An employer may require that a request for military caregiver leave be supported by a certification. The certification may be completed by a DOD, Veterans Affairs (VA) or TRICARE health care provider, or by a private health care provider. Second and third opinions and re-certifications are not permitted for certification of a serious injury or illness of a covered service member when the service member is treated by a DOD, VA, or TRICARE health care provider. However, if the covered service member is seeking care from a private health care provider, the employer may request a second or third opinion.

An employer may choose to use the DOL’s model certification forms for military caregiver leave ([current service member](#) and [veteran](#)). Alternatively, an employer may create its own version of the certification containing the same information; however, no additional information can be requested.