



# MILITARY FAMILY LEAVE

## Under the Family and Medical Leave Act



U.S. Department of Labor  
Wage and Hour Division



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# The Family and Medical Leave Act Military Family Leave Provisions

Presented by the  
U.S. Department of Labor  
Wage and Hour Division



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# Introduction to the FMLA Military Family Leave Provisions

## Purpose:

- Balance work and family life
- Promote economic security of families and serve national interest in preserving family integrity

## Shared Responsibilities:

- Communication is key



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# Introduction to the FMLA Military Family Leave Provisions

## Topics of Discussion:

- Employer Coverage
- Employee Eligibility
- Military Family Leave Provisions
  - Qualifying Exigency Leave
  - Military Caregiver Leave

\*This presentation specifically addresses the military leave provisions under the FMLA. For general FMLA information, please see the [FMLA General PowerPoint](#).



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# Employer Coverage

- Private sector employers with 50 or more employees
- Public Agencies
- Public and private elementary and secondary schools



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# Employee Eligibility

- Employed by covered employer
- Worked at least 12 months
- Have at least 1,250 hours of service during the 12 months before leave begins
- Employed at a work site with 50 employees within 75 miles



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# FMLA Military Family Leave

The FMLA military family leave provisions include:

- **Qualifying exigency leave**, which provides up to **12 workweeks** of FMLA leave to help families manage their affairs when a military member has been deployed to a foreign country; and
- **Military caregiver leave**, which provides up to **26 workweeks** of FMLA leave to help families care for covered servicemembers with a serious injury or illness

Generally, FMLA rules and requirements continue to apply



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# Qualifying Exigency Leave

Eligible employees may take up to **12 workweeks\*** of FMLA leave because of a qualifying reason that arises out of the fact that the employee's spouse, son, daughter, or parent is on, or has been notified of an impending call, to "covered active duty"

- For qualifying exigency leave, son or daughter refers to a son or daughter of any age
- Leave for this reason counts against an employee's normal FMLA entitlement for other leave reasons within the 12-month leave year

\* Eligible airline flight crew employees are entitled to 72 days



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# Qualifying Exigency Leave – Covered Active Duty

[§ 825.126](#)

- **Regular Armed Forces:**
  - duty during deployment of the member with the Armed Forces to a foreign country
- **Reserve components** of the Armed Forces (members of the National Guard and Reserves):
  - duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation



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# Qualifying Exigencies

- Short-notice deployment (up to seven days)
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Non-medical counseling
- Care of the military member's parent
- Rest and recuperation (up to fifteen days)
- Post-deployment activities (90-day period)
- Additional activities by agreement



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# Employee Responsibilities – Provide Certification

- An employer may require an appropriate certification with:
  - a copy of the military member’s active duty orders
  - a qualifying exigency certification (optional Form WH-384)
    - Statement of facts
    - Dates of leave
    - Frequency and duration of intermittent leave
    - Contact information for any third party meeting
- The employer may verify meetings with a third party and may contact DOD to verify the military member’s covered active duty status



# Military Caregiver Leave

Eligible employees may take up to **26 workweeks\*** of FMLA leave in a “single 12-month period” to care for a “covered servicemember” with a “serious injury or illness” if the employee is the covered servicemember’s spouse, parent, son, daughter, or next of kin

- For military caregiver leave, son or daughter refers to a son or daughter of any age
- All FMLA leave is limited to a combined total of 26 workweeks during the “single 12-month period”; no more than 12 workweeks can be taken for other leave reasons

\* Eligible airline flight crew employees are entitled to 156 days



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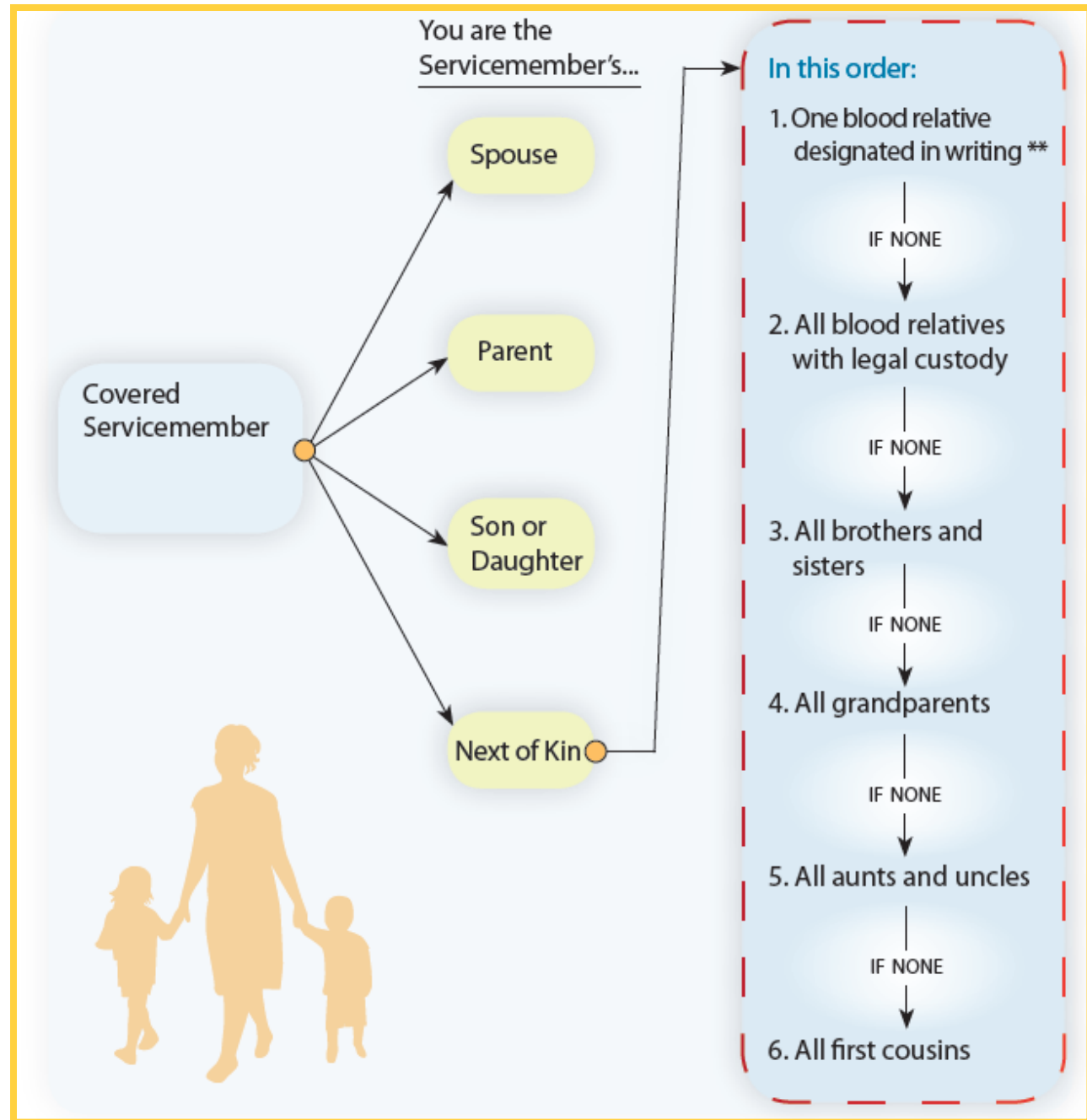


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# Qualifying Family Relationships Under Military Caregiver Leave

[§ 825.127](#)



\*\*Designated for purposes of military caregiver leave under the FMLA.

# Covered Servicemember

A **covered servicemember** may be:

- a current member of the Armed Forces; **OR**
- a veteran of the Armed Forces.



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# Covered Current Servicemember

A **current member of the Armed Forces**, including a member of the National Guard or Reserves:

- undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness



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# Current Servicemember – Serious Injury or Illness

[§ 825.127](#)

A serious injury or illness is one that:

- was incurred by a servicemember in the line of duty on active duty; or
- existed before the servicemember's active duty and that was aggravated by service in the line of duty on active duty;

**and**

- may cause the servicemember to be medically unfit to perform the duties of his or her office, grade, rank, or rating



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# Certification for a Current Servicemember

- An employer may require that leave to care for a covered servicemember be supported by a certification completed by an authorized health care provider (optional WH-385), or an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA)
- Authentication and clarification
- Limited second and third opinions



# Covered Servicemember - Veteran

A **veteran of the Armed Forces** is a covered servicemember if he or she:

- is undergoing medical treatment, recuperation, or therapy for a serious injury or illness; and
- was discharged under conditions other than dishonorable within the five-year period before the employee first takes military caregiver leave\*

\* Special rules may apply if the servicemember was discharged before March 8, 2013



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# Veteran Serious Injury or Illness

An injury or illness that was incurred or aggravated by service in the line of duty on active duty in the Armed Forces, that manifested before or after the servicemember became a veteran, and that is either:

- 1) a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces; *or*



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# Veteran Serious Injury or Illness

(continued)

- 2) a condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater (the rating may be based on multiple conditions); **or**
- 3) a condition that substantially impairs the veteran's ability to work because of a disability related to military service, or would do so absent treatment; **or**
- 4) an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers



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# Employee Responsibilities – Certification for a Veteran

[§ 825.310](#)

- An employer may require that leave to care for a veteran be supported by a certification completed by an authorized health care provider (optional WH-385-V)
- Authentication and clarification
- Limited second and third opinions



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# Employee Responsibilities – Certification for a Veteran

- An employee may submit a copy of a VASRD rating determination or enrollment documentation from the VA Program of Comprehensive Assistance for Family Caregivers to support the veteran’s serious injury or illness
- Additional information may be needed to establish the other requirements for a complete certification such as:
  - confirmation of family relationship;
  - documentation of discharge date



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# Military Caregiver Leave – Application of Leave

§ 825.100,  
825.127

- Employee's workweek is basis of entitlement
- "Single 12-month period"
- Per covered servicemember, per injury
- Limitations on leave
  - 26 workweeks for all qualifying reasons
  - Designation of caregiver leave
  - Spouses working for same employer



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# Military Caregiver Leave – Application of Leave

[§ 825.200,](#)  
[825.205 &](#)  
[825.207](#)

- Intermittent Leave
- Substitution of Paid Leave
  - “Substitution” means paid leave provided by the employer runs concurrently with unpaid FMLA leave and normal terms and conditions of paid leave policy apply
  - Employees may choose, or employers may require, the substitution of accrued paid leave for unpaid FMLA leave



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# Employer Responsibilities

§ 825.300,  
825.301,  
825.209,  
825.210-213,  
825.214-219  
& 825.500

- Provide notice
  - General Notice
  - Notice of eligibility
  - Rights & responsibilities
  - Provide notice of designation
- Maintain group health insurance
- Restore the employee to same or equivalent job and benefits
- Maintain Records



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# Employee Responsibilities

- Notice requirements
  - Foreseeable leave
  - Unforeseeable leave
- Provide certification
- Provide periodic status reports



# Other FMLA Leave Reasons

## Eligible employees may take FMLA leave:

- For the birth or placement of a child for adoption or foster care
- To care for a spouse, son, daughter, or parent with a serious health condition
- For their own serious health condition



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# FMLA Enforcement Mechanisms

- To enforce FMLA rights, employees may:
  - File a complaint with Wage and Hour Division
  - File a private lawsuit (Section 107(a))
- Action must be taken within two years after the last action which the employee contends was in violation of the Act, or three years if the violation was willful



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# FMLA Compliance Assistance Materials

- Title I of the FMLA, as amended (29 U.S.C. 2601—2654)
- The Regulations (29 C.F.R. Part 825)
- The Employee’s Guide to the FMLA
- The Employee’s Guide to Military Family Leave under the FMLA
- FMLA Forms
- FMLA Fact Sheets
- FMLA Poster (WH-1420)
- FMLA Frequently Asked Questions
- FMLA elaws Advisor



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# Additional Information

- Visit the WHD homepage at: [www.wagehour.dol.gov](http://www.wagehour.dol.gov)
- Call the WHD toll-free information and helpline at  
1-866-4US-WAGE (1-866-487-9243)
- Call or visit the nearest Wage and Hour Division Office



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