

DIOCESE OF DES MOINES
Catholic Schools Policies/Regulations

STAFF PERSONNEL

Family Medical Leaves of Absence

It shall be the policy of the Diocese of Des Moines Catholic Schools Office, under the aegis of the Bishop, that all schools comply with the requirements of the Family Medical Leave Act.

The employer must provide, in a manner that all can read or view, the Fact Sheet #28: The Family and Medical Leave Act of 1993 and/or Fact Sheet #28A: The Family and Medical Leave Act Military Family Leave Entitlements. Schools should contact Diocese of Des Moines Human Resources for assistance, including forms, for Family Medical Leave Act. (See also Regulations 430.4-430.9)

PART A. Employees Who Qualify for a Leave Under the Family and Medical Leave Act of 1993

The Catholic schools within the Diocese of Des Moines will grant a leave of absence to regular full-time and regular part-time employees (who meet the requirements described below) for:

- ***The care of a child after birth or placement with the employee for adoption or foster care.*** An employee's entitlement to leave for a birth or placement for adoption or foster care expires at the end of a 12-month period beginning on the date of birth or placement.
- ***The care of a family member with a serious health condition.*** A covered family member is a spouse; a biological, adoptive, step or foster parent, but not an "in law"; a biological, adoptive, step or foster child, or legal ward who is under age 18, or who is 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.
- ***An employee's own serious health condition*** that makes the employee unable to perform the essential functions of the employee's job, or incapacity due to the employee's pregnancy or prenatal medical care. An employee who must be absent to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.
- ***Any qualifying exigency (emergency, need, urgency, demand) arising out of the fact that a family member (a spouse, child or parent) is serving in any branch of the Armed Forces,*** including a member of the National Guard or Reserves on active duty or has been notified of an impending call or order to active duty in support of a contingency operation; or
- ***The care of a service member with a serious injury or illness*** if the employee is the spouse, child, parent or next of kin of the service member.

Leaves will be granted for a period of up to twelve weeks (or up to 26 weeks in the case of care for a service member, as discussed below) in any twelve-month period. The twelve-month period is a rolling period, measured from the date qualifying leave is first taken.

Please note that special rules apply to “instructional employees” of the Diocese. An instructional employee is one whose principal function is to teach and instruct students in a class, small group or individual setting. It includes not only teachers, but also athletic coaches, driving instructors and special education assistants such as signers for the hearing impaired.

An employee must have completed at least twelve months of service with the Diocese *and* have worked a minimum of 1,250 hours in the twelve-month period preceding the leave to be eligible for such leave. Service prior to a break in service of less than seven years will be counted in determining whether the employee has completed at least twelve months of service with the Diocese.

Employees who do not meet these requirements may apply for a leave of absence subject to the conditions described in Part B of this policy.

Scope of Military Exigency Leave

A qualifying military exigency means: (a) short-notice deployment (up to seven days of leave if the military member receives seven or less days’ notice of a call to active duty); (b) military events and related activities; (c) certain temporary or alternative childcare arrangements and school activities (excluding ongoing regular childcare); (d) making or updating financial and legal arrangements to address the service member’s absence resulting from active duty status; (e) counseling by a non-medical counselor, such as a member of the clergy, arising from the active duty or call to active duty; (f) rest and recuperation (up to five days of leave when the military member is on short-term, temporary rest and recuperation leave); and/or (g) post-deployment military activities.

Serious Health Condition Defined

The Family & Medical Leave Act broadly describes a serious health condition as an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider.

The term "continuing treatment" is defined in the Department of Labor regulations as including five different scenarios:

- A period of incapacity of more than three full consecutive calendar days involving two or more treatments within 30 days of the first day of incapacity (absent extenuating circumstances), by or under the orders of a health care provider, or treatment by a health care provider on at least one occasion that results in a supervised regimen of continuing treatment (for example, prescription medications or specialized therapy). Treatment by a health care provider requires an in-person visit with the health care provider, the first (or only) in-person treatment visit taking place within seven days of the first day of incapacity;
- Pregnancy (including severe morning sickness) and time needed for prenatal visits;
- A chronic health condition, such as asthma, diabetes, or epilepsy, which require at least two visits for treatment by a healthcare provider per year;
- A long-term condition such as Alzheimer's, a severe stroke, or the terminal stages of a disease, for which treatment may not be effective; and

- Restorative surgery after an accident or other injury, or a condition that is likely to result in a period of incapacity of more than three full consecutive calendar days if left untreated, such as physical therapy for severe arthritis or chemotherapy for cancer.

(Note: any period of incapacity that is the result of pregnancy or a chronic serious health condition, such as morning sickness or an asthma attack, qualifies for FMLA leave even if the employee does not receive treatment from a health care provider or the absence does not last more than three full, consecutive days.)

Service Member Family Leave

An eligible employee who is the spouse, son, daughter, parent, or next of kin (usually, the nearest blood relative) of a covered service member shall be entitled to a total of 26 work weeks of leave during a twelve (12) month period to care for the service member. The leave described in this paragraph shall be available only during a single 12-month period. A “covered service member” means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious illness or injury. A “covered service member” also includes a veteran in any of the same statuses, or who is otherwise on the permanent disability retired list, at any time during the period of 5 years proceeding the date on which the veteran undergoes the medical treatment, recuperation or therapy. For purposes of this paragraph only, the term “serious illness or injury” means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or that pre-existed active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating. This leave entitlement is applied on a *per-covered-service-member, per-injury basis*.

Leave Entitlement and Schedule

Eligible employees are entitled to leave for up to twelve weeks (or up to 26 weeks in the case of care for a service member as discussed above) in any twelve-month period (or longer if required by applicable state or local law or, in the case of a leave for an employee's serious health condition, where a leave extension is requested and approved).

Leave taken to care for a child after birth or placement in your home for adoption or foster care must be taken in consecutive workweeks. Leave taken for the employee's or a covered family member's (or nearest blood relative in the case of service member leave) serious health condition may be taken consecutively, intermittently, or on a reduced work/leave schedule based on certified medical necessity.

To accommodate an intermittent or reduced schedule FMLA leave when the leave is foreseeable based on planned medical treatment for the employee or a covered family member, the employee may be transferred on a temporary basis to an alternative position for which the employee is qualified. The alternative position will have equivalent pay, benefits, and terms and conditions of employment.

Combined Leave Total

If an eligible employee qualifies in the applicable 12 month period for leave to care for a service member and leave for one of the other purposes described above, that employee shall be entitled to a combined total of 26 work weeks of leave. If both a husband and wife are employed by the same employer in the Diocese and are eligible for service member family leave, then they are entitled to take only a combined total of 26 work weeks of leave during the single 12-month period.

When an eligible husband and wife are both employed by the same employer within the Diocese, and are not eligible for service member family leave, they may take only a combined total of 12 weeks during the

applicable twelve month period if the leave is taken (1) for the birth of a child and to care for such child; (2) for the placement of a child for adoption or foster care and to care for such child; or (3) to care for his/her own parent (not an “in-law”) with a serious health condition.

Special Rules for Instructional Employees

If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member or covered service member with a serious health condition, or for the employee’s own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, then the employer may require the employee to choose either to take leave for the duration of the planned treatment or transfer temporarily to an equivalent position which better accommodates recurring periods of leave. If an instructional employee does not give required notice of foreseeable FMLA leave, then the employer may require the employee to delay the taking of leave until the notice provision is met.

- 1) If an instructional employee begins leave more than five weeks before the end of a term, the employer may require the employee to continue taking leave until the end of the term if the leave will last at least three weeks and the employee would return to work during the three week period before the end of the term.
- 2) If an instructional employee begins leave during the five week period before the end of a term for any reason other than qualifying military exigency or the employee’s own serious health condition (except childbirth or placement of a child from adoption or foster care), the employer may require the employee to continue taking leave until the end of the term if the leave will last more than two weeks and the employee would return to work during the two week period before the end of the term.
- 3) If an instructional employee begins leave during the three week period before the end of a term for any reason other than qualifying military exigency or the employee’s own serious health condition (except childbirth or placement of a child from adoption or foster care), the employer may require the employee to continue taking leave until the end of the term if the leave will last more than five working days.
- 4) Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee’s FMLA entitlement.

Reinstatement Rights

Eligible employees are entitled on return from leave to be reinstated to their former position or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Exceptions to this provision may apply if business circumstances have changed (e.g., if the employee's position is no longer available due to a job elimination). In addition, employees on a leave extension are not guaranteed reinstatement.

Policy Adopted: March 19, 1979
Policy Revised: September 20, 2010
Policy Reviewed: March 25, 2013
Policy Revised: July 30, 2021

Family Medical Leave Act Regulation 430.1

Procedures:

1. **Notification Requirements.** If the leave is planned in advance, you must provide the school with at least thirty (30) days' notice prior to the anticipated leave date, using the Diocese of Des Moines FMLA Request Form (Regulation 430.2). In the case of leave arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) of the armed forces in support of a contingency operation, the employee shall provide such notice to the school as is reasonable and practical. Verbal notice of the need for leave is sufficient, but it is preferred that you provide notice by filing the Diocese of Des Moines FMLA Request Form

If the leave is unexpected, you should notify the principal as far in advance of the anticipated leave date as is practicable. (Normally, this should be the same day or the next business day after you become aware of your need for the leave.) Verbal notice of the need for leave is sufficient, but it is preferred that you provide notice by filing the Diocese of Des Moines FMLA Request Form.

1. **Designation of Leave as FMLA-qualifying.** The school will provide a written notice through the FMLA Designation Notice (Regulation 430.4) to the employee designating the leave as "FMLA-qualifying" within five (5) business days after the school has enough information to determine whether the leave is being taken for a FMLA-qualifying reason, absent extenuating circumstances. The school may delay final leave designation until a required medical certification form, the FMLA Certification of Health Care Provider for Employee's Serious Health Condition (Regulation 430.3) has been returned.

2. **Certification of the Need for Leave.** The school will require you to provide certification of the need for leave as follows:

- Employees requesting a leave to care for a child after birth or after placement in your home for adoption or foster care must provide documentation to support the leave request.
- Employees requesting a leave to care for a covered family member (including as a next of kin in the case of service member leave, as discussed above) with a serious health condition (or serious injury or illness, in the case of service member leave) will be required to provide medical certification from the family or service member's
- physician attesting to the nature of the serious health condition, probable length of time treatment will be required, and the reasons that the employee is required to care for this family or service member.
- Employees requesting a leave due to his or her own serious health condition will be required to provide medical certification from his or her health care provider attesting to the nature of the serious health condition, probable length of time leave will be required, and the inability of the employee to perform the functions of his or her position due to the serious health condition.

- Employees requesting leave due to a military exigency will be required to provide certification that the covered family member is a member of the Armed Forces, including a member of the National Guard or Reserves who is on active duty or called to active duty in support of a contingency operation. The employee will also be required to provide a statement, including available written support documentation, about the nature and details of the specific exigency, the amount of leave needed and the employee's relationship to the military member.

Employees are required to provide the requested certification (FMLA Certification of Health Care Provider for Employee's Serious Health Condition (Regulation 430.3) within fifteen (15) calendar days of the school's request for certification. If the school fails to receive the certification, FMLA leave may be denied. If the school receives incomplete, vague, ambiguous or non-responsive medical certifications, the school will notify you of the problems with the certification and provide you seven (7) days to cure any deficiency unless not practicable under the circumstances. If the deficiencies are not cured within that time frame, the school may contact the health care provider directly for clarification or authentication purposes or the FMLA leave may be denied.

If management determines that a second medical opinion is required, management may, at its own expense, require you to obtain a second opinion from a health care provider designated by the school. If the first and second opinions do not agree, management may, at its own expense, require you to obtain a third opinion from a health care provider agreed upon by both you and management. The opinion of the third health care provider is final.

1. **Recertification.** While on leave under this policy, management may request recertification of medical necessity every thirty (30) days, or if the medical certification indicates the minimum duration of the condition is more than 30 days, then at the end of the minimum duration. You may also be requested to provide recertification in less than 30 days if you request a leave extension, the circumstances described by the earlier certification have changed substantially, or the school receives information that casts doubt upon the employee's stated reason for the absence. The school may also require periodic reports on your status and intent to return to work. Where a serious health condition of either an
2. employee or that of a family member lasts beyond a single leave year, the school may require employees to provide a new medical certification each subsequent leave year.
3. **Substitution of Paid Leave.** Employee will be required to use all accrued, unused sick days, vacation days, discretionary holiday, and personal days during

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the leave period. When leave is taken on an intermittent or reduced leave schedule, the minimum increment of substituted paid leave used will not be less than one hour, but your FMLA leave entitlement will not be reduced by more than the amount of leave actually taken. Once such benefits are exhausted, the balance of the leave will be without pay. FMLA leave because of an employee's own serious health condition will run concurrently with worker's compensation leave, when applicable.

4. **Continuation of Benefits.** All school benefits that operate on an accrual basis (e.g., vacation and personal days) will cease to accrue during the leave period. All group health benefits (e.g., major medical, hospitalization, and dental insurance) will continue

during the leave provided you continue regular employee contributions to these plans.
(Other benefits will be governed in accordance with the terms of each benefits plan.)

Regulation Adopted: May 17, 2004
Regulation Revised: September 20, 2010
Regulation Reviewed: March 25, 2013
July 30, 2021

Family Medical Leave Act Regulation 430.2

Fact Sheet #28: The Family and Medical Leave Act of 1993

U.S. Department of Labor Employment Standards Administration Wage and Hour Division

(Revised January 2009)

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employee and some federal employees. Most federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of personnel management or the congress.

The FMLA became effective on August 5, 1993 for most employers and entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. Amendments to the FMLA by the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, expanded the FMLA to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any "qualifying exigency" arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a "single 12-month period" to care for a covered service member with a serious injury or illness.

EMPLOYER COVERAGE

FMLA applies to all public agencies, including state, local and federal employers, local education agencies (schools), and private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee **must**:

- work for a covered employer;
- have worked for the employer for a total of 12 months;
- have worked at least 1,250 hours over the previous 12 months; and
- work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

While the 12 months of employment need not be consecutive, employment periods prior to a break in service of **seven** years or more need not be counted unless the break is occasioned by the employee's fulfillment of his or her National Guard or Reserve military obligation (as protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA)), or a written agreement, including a collective bargaining agreement, exists concerning the employer's intention to rehire the employee after the break in service. *See, special rules for returning reservists under USERRA.*

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of **12 workweeks** of **unpaid** leave during any 12-month period for one or more of the following reasons:

- for the birth and care of a newborn child of the employee:

- for placement with the employee of a son or daughter for adoption or foster care;
- to care for a spouse, son, daughter, or parent with a serious health condition;
- to take medical leave when the employee is unable to work because of a serious health condition; **or**
- for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation.

A covered employer also must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness up to a total of **26 workweeks of unpaid** leave during a “single 12-month period” to care for the service member. *See* Fact Sheet 28A for specific information regarding military family leave.

Spouses employed by the same employer are limited in the **amount of** family leave they may take for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition to a combined total of 12 weeks (or 26 weeks if leave to care for a covered service member with a serious injury or illness is also used). Leave for birth and care, or placement for adoption or foster care, must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently – taking leave in separate blocks of time for a single qualifying reason – or on a reduced leave schedule – reducing the employee’s usual weekly or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer’s operation. If FMLA leave is for birth and care, or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.

Under certain conditions, employees **or** employers may choose to “substitute” (run concurrently) accrued **paid** leave (such as sick or vacation leave) to cover some or all of the FMLA leave. An employee’s ability to substitute accrued paid leave is determined by the terms and conditions of the employer’s normal leave policy.

“**Serious health condition**” means an illness, injury, impairment, or physical or mental condition that involves either:

- Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (*i.e.*, inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; **or**
- Continuing treatment by a health care provider, which includes:
 - (1) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:
 - treatment two or more times by or under the supervision of a health care provider (*i.e.*, in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); **or**
 - one treatment by a health care provider (*i.e.*, an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (*e.g.*, prescription medication, physical therapy); **or**
 - (2) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; **or**
 - (3) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; **or**

(4) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; **or**

(5) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave. In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to **before** using FMLA leave, nor be counted against the employee under a "no fault" attendance policy. If a bonus or other payment, however, is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, payment may be denied unless it is paid to an employee on equivalent leave status for a reason that does not qualify as FMLA leave.

An employee has no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed.

NOTICE AND CERTIFICATION

Employee Notice

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day. When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the employer's usual and customary notice and procedural requirements for requesting leave.

Employees must provide sufficient information for an employer reasonably to determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, and/or that the employee or employee's qualifying family member is under the continuing care of a health care provider.

When an employee seeks leave for a FMLA-qualifying reason for the **first** time, the employee need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the employer has previously provided the employee FMLA-protected leave, the employee **must** specifically reference either the qualifying reason for leave or the need for FMLA leave.

Employer Notice

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$110 for each separate offense. Additionally, employers must either include this general notice in employee handbooks or other written guidance to employees concerning benefits, or must distribute a copy of the notice to each new employee upon hiring.

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When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA purpose, the employer must notify the employee of his or her eligibility to take leave, and inform the employee of his/her rights and responsibilities under FMLA. When the employer has enough information to determine that leave is being taken for a FMLA-qualifying reason, the employer must notify the employee that the leave is designated and will be counted as FMLA leave.

Certification

Employers may require that an employee's request for leave due to a serious health condition affecting the employee or a covered family member be supported by a certification from a health care provider. An employer may require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition. An employer may use a health care provider, a human resource professional, a leave administrator, or a management official – but not the employee's direct supervisor – to authenticate or clarify a medical certification of a serious health condition. An employer may have a uniformly-applied policy requiring employees returning from leave for their own serious health condition to submit a certification that they are able to resume work. If reasonable safety concerns exist, an employer may, under certain circumstances, require such a certification for employees returning from intermittent FMLA leave.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also be able to bring a private civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules apply to intermittent leave or when leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to an "eligible" employee's use of leave required by FMLA.

For additional information, visit our Wage and Hour Division Website:

<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

**Family Medical Leave Act
Regulation 430.3**

Fact Sheet #28A: The Family and Medical Leave Act Military Family Leave Entitlements

U.S. Department of Labor Employment Standards Administration
Wage and Hour Division
(January 2009)

The National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, amended the FMLA to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any “qualifying exigency” arising out of the active duty or call to active duty status of a spouse, son, daughter or parent. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a “single 12-month period” to care for a covered service member with a serious injury or illness. These two new types of FMLA leave are known as the military leave entitlements.

EMPLOYER COVERAGE

FMLA applies to all public agencies, including state, local and federal employers, local education agencies (schools), **and** private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including joint employees and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee **must**:

- work for a covered employer;
- have worked for the employer for a total of 12 months;
- have worked at least 1,250 hours over the previous 12 months; and
- work at a location where at least 50 employees are employed by the employer within 75 miles

MILITARY FAMILY LEAVE ENTITLEMENTS

Military Caregiver Leave:

A covered employer must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered service member with a serious injury or illness up to a total of **26 workweeks of unpaid** leave during a “single 12-month period” to care for the service member. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is 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. A serious injury or illness is one that was incurred by a service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating. The “single 12-month period” for leave to care for a covered service member with a serious injury or illness 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.” (Only 12 of the 26 weeks total may be for a FMLA-qualifying reason other than to care for a covered service member.)

Qualifying Exigency Leave:

A covered employer must grant an eligible employee up to a total of **12 workweeks** of **unpaid** leave during the normal 12-month period established by the employer for FMLA leave for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. Under the terms of the statute, qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves; it does not extend to family members of military members in the Regular Armed Forces.

Qualifying exigencies include:

- Issues arising from a covered military member's short notice deployment (i.e., deployment in seven or less days of notice) for a period of **seven** days from the date of notification;
- Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
- Making or updating financial and legal arrangements to address a covered military member's absence;
- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
- Taking up to **five** days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member;
- Any other event that the employee and employer agree is a qualifying exigency (situation).

Spouses employed by the same employer are limited to a **combined** total of 26 workweeks in a "single 12-month period" if the leave is to care for a covered service member with a serious injury or illness, and for the birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.

FMLA leave may be taken intermittently whenever **medically necessary** to care for a covered service member with a serious injury or illness. FMLA leave also may be taken intermittently for a qualifying exigency (situation) arising out of the active duty status or call to active duty of a covered military member. When leave is needed for planned medical treatment, the employee must make reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

Under certain conditions, employees **or** employers may choose to “substitute” (run concurrently) accrued leave (such as sick or vacation leave) to cover some or all of the FMLA leave. An employee’s ability to substitute accrued paid leave is determined by the terms and conditions of the employer’s normal leave policy.

NOTICE REQUIREMENTS

Employee Notice

Employees seeking to use military caregiver leave must provide 30 days advance notice of the need to take FMLA leave for planned medical treatment for a serious injury or illness of a covered service member. If leave is foreseeable but 30 days advance notice is not practicable, the employee must provide notice as soon as practicable – generally, either the same or next business day. An employee must provide notice of the need for foreseeable leave due to a qualifying exigency (situation) as soon as practicable. When the need for military family leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Generally, it should be practicable to provide notice for unforeseeable leave within the time prescribed by the employer’s usual and customary notice requirements.

An employee does not need to specifically assert his or her rights under FMLA, or even mention FMLA, when providing notice. The employee must provide “sufficient information” to make the employer aware of the need for FMLA leave and the anticipated timing and duration of the leave. Depending on the situation, such information may include, as applicable:

- that the requested leave is for a particular qualifying exigency (situation) related to the active duty or call to active duty status of a covered military member and the anticipated duration of the leave;
- that the leave is for a qualifying family member who is a covered service member with a serious injury or illness and the anticipated duration of the leave.

When an employee seeks leave due to a FMLA-qualifying reason for which the employer has previously provided the employee FMLA-protected leave, the employees **must** specifically reference either the qualifying reason for leave or the need for FMLA leave.

Employer Notice

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. Additionally, employers must either include this general notice in employee handbooks or other written guidance to employees concerning benefits, or must distribute a copy of the notice to each new employee upon hiring.

When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA purpose, the employer must notify the employee of his or her eligibility to take leave, including a reason for non-eligibility if the employee is determined not to be eligible. Such eligibility notice may be oral or written and should, generally, be given within five business days of the request for FMLA leave. Subsequent eligibility notice in the same 12-month leave period may be required when an employee’s eligibility status changes. Employers also must inform employees of their rights and responsibilities under FMLA, including giving specific written information on what is required of the employee.

When the employer has enough information to determine that leave is being taken for an FMLA-qualifying reason, the employer must notify the employee that the leave is designated and will be counted as FMLA leave. The employer must designate leave that qualifies as **both** leave to care for a covered service member with a serious injury or illness **and** leave to care for a qualifying family member with a serious health condition as leave to care for a covered service member in the first instance. The designation notice must be in writing and, generally, must be given within five business days of the determination. An employer also must notify the employee of the number of hours, days, or weeks that will be counted against the employee’s FMLA entitlement.

CERTIFICATION REQUIREMENTS

Employers may require that an employee's request for military family leave be supported by an appropriate certification. An employer may require that:

- leave for a qualifying exigency (situation) be supported by a copy of the covered military member's active duty orders and certification providing the appropriate facts related to the particular qualifying exigency (situation) for which leave is sought, including contact information if the leave involves meeting with a third party;
- leave to care for a covered service member with a serious injury or illness be supported by a certification completed by an authorized health care provider **or** by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family.

Second and third opinions and recertification are not permitted for certification of a covered service member's serious injury or illness or of a qualifying exigency (situation). An employer may use a health care provider, a human resource professional, a leave administrator, or a management official – but not the employee's direct supervisor – to authenticate or clarify a medical certification of a serious injury or illness, or an ITO or ITA. Additionally, an employer may contact the individual or entity named in a certification of leave for a qualifying exigency (situation) for purposes of verifying the existence and nature of the meeting.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

The Wage and Hour Division investigates complaints.

If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also be able to bring a private civil action against an employer for violations.

For additional information, visit our Wage and Hour Division Website:

<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).