



JUSTICE ADMINISTRATIVE  
COMMISSION



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# Family Medical Leave Act and Military Family Leave

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Director of Human Resources

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# Objectives

- FMLA
  - Background Information
  - Required Posting
  - Required Employer Notices
  - Required Employee Notice
  - Certification Forms
  - Clarification and Authentication
  - Genetic Information Non-discrimination Act (GINA)
  - Certification, Fitness for Duty, Light Duty, Compensatory Leave, and Overtime
- Military Family Leave
  - Qualifying Exigency Leave
  - Military Caregiver Leave



# Eligibility and Limitations

- Eligibility for FMLA
  - Employed by the State (*any* state agency) for 12 months
  - 1,250 hours worked in the 12 months immediately preceding the date leave is to begin
- Maximum Length of Leave
  - Up to 12 weeks of medical and/or qualifying exigency FMLA leave within any 12 month period
  - Up to 26 weeks of military caregiver leave in a 12 month period
  - Continuous, intermittent, or reduced schedule leave



# Qualifying Reasons for FMLA Leave

- Birth of a son or daughter and to care for the newborn child (< 18 or >18 but incapable of self-care)
- Placement of a son or daughter for adoption or foster care in employee's home
- Care for the employee's spouse, son, daughter (< 18 or >18 but incapable of self-care) or parent with a serious health condition
- Serious health condition that makes the employee unable to perform the functions of the employee's job
- Qualifying exigency for covered military member
- Care for ill or injured covered service member

# Serious Health Condition

- Continuing Treatment – Changes to definitions
    - Incapacity of more than 3 calendar days and treatment
  - Treatment Parameters
    - Two or more times by health care provider within 30 days of the first day of incapacity (first visit – within 7 days of the first day of incapacity)
- OR*
- Treatment by health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of a health care provider
- Chronic conditions
  - 2 or more visits to a health care provider per year

# Continuing Treatment

- Pregnancy – includes prenatal care
- Chronic Conditions – can be episodic
- Permanent/Long-term – stroke, terminal illness, dementia

# Intermittent Leave

- In calculating the amount of leave, employer must use the shortest increment the employer uses to account for other types of leave, provided it is not greater than one hour
- Shortest increment may vary during different times of day or shift
- Required overtime not worked may count against an employee's FMLA entitlement



# 12 Month Period Options

Method determined by employer

- Calendar year
- Any fixed 12-month leave year
- A 12-month period measured forward
- A rolling 12-month period measured backward

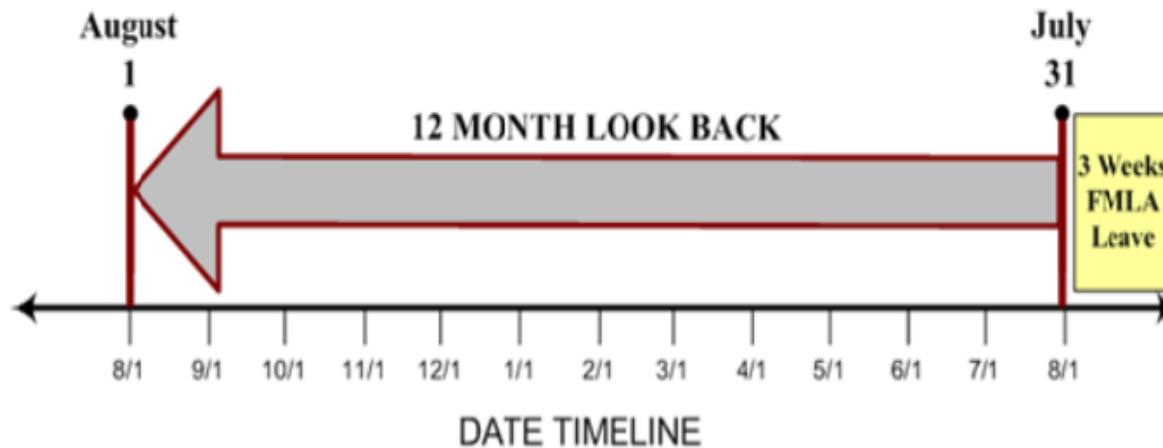


# Rolling 12 month period

- Example 1

a "rolling" 12-month period measured backward – 12-month period measured backward from the date an employee uses any FMLA leave. Under the "rolling" 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.

- *Example 1:* Michael requests three weeks of FMLA leave to begin on July 31st. The employer looks back 12 months (from July 31st back to the previous August 1st) to see if any FMLA leave had been used. Michael had not taken any previous FMLA leave, so he is entitled to the three weeks he requested and has nine more weeks available.

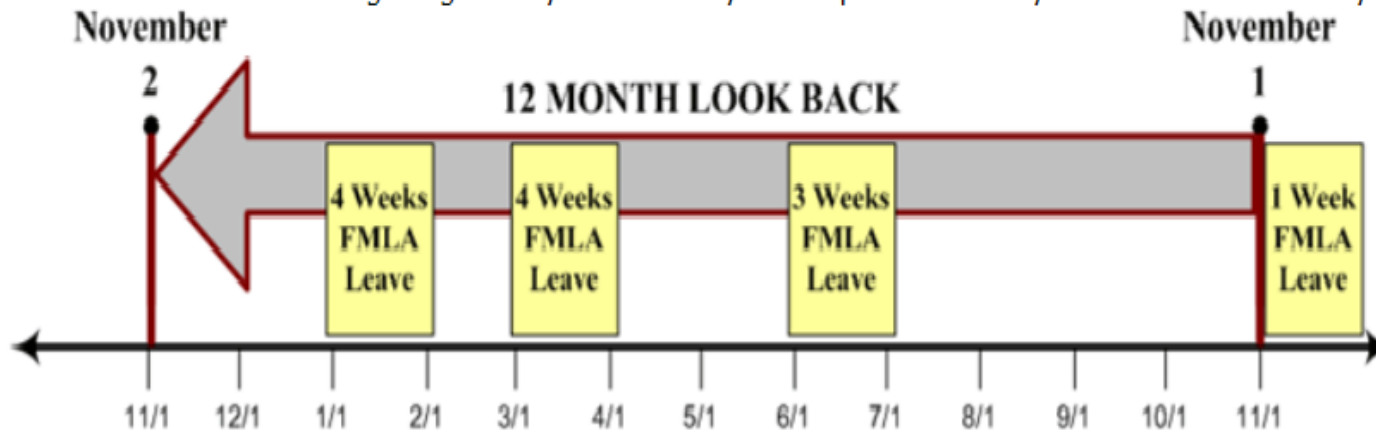


# Rolling 12 month period

## ■ Example 2

a "rolling" 12-month period measured backward – 12-month period measured backward from the date an employee uses any FMLA leave. Under the "rolling" 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.

- *Example 2:* Patricia requests two weeks of FMLA leave to begin on November 1st. The employer looks back 12 months (from November 1st back to the previous November 2nd) and sees that Patricia had taken four weeks of FMLA leave beginning January 1st, four weeks beginning March 1st, and three weeks beginning June 1st. Patricia has taken 11 weeks of FMLA leave in the 12-month period and only has one week of FMLA-protected leave available. After Patricia takes the one week in November, she can next take FMLA leave beginning January 1st as the days of her previous January leave "roll off" the leave year.



# Required Posting

## Employee Rights and Responsibilities Under The Family and Medical Leave Act

- Provided to each employee when hired
- Printed and posted for employees who do not have access to computers at work

### EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

#### Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

#### Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintroduction briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (1) 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\*; or (2) a veteran who 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 covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.\*

\*The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".

#### Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

#### Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months\*, and if at least 50 employees are employed by the employer within 75 miles.

\*Special hours of service eligibility requirements apply to airline flight crew employees.

#### Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and

a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

#### Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

#### Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

#### Employer Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

#### Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

#### Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA, and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

#### Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.306(a) may require additional disclosures.



For additional information:  
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5678  
[WWW.WAGEHOUR.DOL.GOV](http://WWW.WAGEHOUR.DOL.GOV)

U.S. Department of Labor | Wage and Hour Division



WHD Publication 1409 - Revised February 2013



# Required Employer Notices

- Notice of Eligibility, Rights, and Responsibilities
  - Provided to an employee within **5 business days** of the date that:
    - An employee requests FMLA
    - Employer becomes aware that an employee's leave may be FMLA-qualifying
- Designation Notice
  - Provided to an employee once the employer has sufficient information to determine FMLA-coverage eligibility
  - Employee must be notified within **5 business days** that the leave has been designated as FMLA

# Required Employee Notice

- Family and Medical Leave Application
  - Sufficiently explain reasons for leave
- Calling in sick is *not* considered sufficient notice
- Leave may be denied if the employee fails to adequately explain the reason for leave
- Employee must inform you if the leave is for a reason which was previously certified






# Employee Medical Certification Form

## Certification of Health Care Provider for Employee's Serious Health Condition ([Form WH- 380-E](#))

- Provides space for employee's essential job functions
- Check off to indicate that the employee's job description is attached

Employee allowed 7 calendar days to provide the additional information if the certification is incomplete or insufficient

Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act)

U.S. Department of Labor Wage and Hour Division 

OMB Control Number: 1235-0003 Expires: 2/28/2011

**SECTION I: For Completion by the EMPLOYER**

**INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies.

Employer name and contact: \_\_\_\_\_

Employee's job title: \_\_\_\_\_ Regular work schedule: \_\_\_\_\_

Employee's essential job functions: \_\_\_\_\_

Check if job description is attached:

**SECTION II: For Completion by the EMPLOYEE**

**INSTRUCTIONS to the EMPLOYEE:** Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections: 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 20 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b).

Your name: \_\_\_\_\_  
 First Middle Last

**SECTION III: For Completion by the HEALTH CARE PROVIDER**

**INSTRUCTIONS to the HEALTH CARE PROVIDER:** Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Please be sure to sign the form on the last page.

Provider's name and business address: \_\_\_\_\_

Type of practice / Medical specialty: \_\_\_\_\_

Telephone: ( \_\_\_\_\_ ) \_\_\_\_\_ Fax: ( \_\_\_\_\_ ) \_\_\_\_\_


Page 1 CONTINUED ON NEXT PAGE Form WH-380-E Revised January 2009

# Family Member Medical Certification Form

## Certification of Health Care Provider for Family Member's Serious Health Condition ([WH-380-F](#))

- Asks for detailed information about the family members' condition
- Amount of time the employee might need to care for the family member

Employee allowed 7 calendar days to provide additional information if the certification is incomplete or insufficient

Certification of Health Care Provider for Family Member's Serious Health Condition (Family and Medical Leave Act) U.S. Department of Labor Wage and Hour Division 

OMB Control Number: 1235-0003 Expires: 3/28/2012

**SECTION I: For Completion by the EMPLOYER**  
**INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies.

Employer name and contact: \_\_\_\_\_

**SECTION II: For Completion by the EMPLOYEE**  
**INSTRUCTIONS to the EMPLOYEE:** Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form to your employer. 29 C.F.R. § 825.305.

Your name: \_\_\_\_\_  
 First Middle Last

Name of family member for whom you will provide care: \_\_\_\_\_  
 First Middle Last

Relationship of family member to you: \_\_\_\_\_

If family member is your son or daughter, date of birth: \_\_\_\_\_

Describe care you will provide to your family member and estimate leave needed to provide care:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Employee Signature \_\_\_\_\_ Date \_\_\_\_\_

Page 1 CONTINUED ON NEXT PAGE Form WH-380-F Revised January 2009





# Clarification and Authentication

- Employer may contact health care provider to:
  - Clarify information on medical certification form
  - Authenticate medical certification form
- Limited to contacting health care provider to:
  - understand handwriting on the certification
  - understand the meaning of a response
  - request verification that information on the certification form was completed and/or authorized by the health care provider who signed the document
- No additional medical information may be requested

# Clarification and Authentication

- HIPAA requirements must be satisfied when employee's health information is shared with an employer by a HIPAA-covered health care provider
- It is employee's responsibility to provide complete and sufficient certification and clarifications, if necessary
- If employee does not provide a required HIPAA release, does not authorize employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, FMLA Leave may be denied



# Clarification and Authentication

- Employer contact must be made by:
  - Health care professional
  - Human resources professional
  - Leave administrator
  - Management official

(as determined by the employing department)

- **Under no circumstances may the employee's direct supervisor contact the employee's health care provider**

# Genetic Information Nondiscrimination Act (GINA)

- Title II – Genetic Nondiscrimination in Employment
- What is genetic information?
- Title II of GINA prohibits use of genetic information for purposes of:
  - Discrimination
  - Harassment
  - Retaliation
- Confidentiality of Genetic Information



# Medical Certifications

- Approval is on leave year basis
- If the need for leave lasts beyond the leave year, employee can be required to provide a new medical certification in each subsequent leave year
  - Second opinion (paid by employer) can be requested on new certification
- EXAMPLE:

John provides a certification for intermittent leave on May 1st. The duration is “unknown”; leave is approved to the end of the leave year (December 31). John can be required to provide a new certification at the start of the new leave year on January 1 and a second opinion can be requested.

# Fitness for Duty

- Employer may require a fitness-for-duty to specifically address:
  - employee's ability to perform the essential functions of their position
- The employee must be provided with a list of essential functions of the employee's job no later than when the Designation Notice is provided to the employee

## Light Duty

- Time that an employee spends working light duty does ***not*** count toward the 12 week FMLA entitlement during the leave year
- Employee is entitled to job restoration for the remainder of the leave year



# Accrued Leave

- Employees may request or may be required to use accrued leave during periods of FMLA Leave
  - Accrued Compensatory Leave
  - Sick Leave
  - Annual Leave



# Inability to Work Overtime

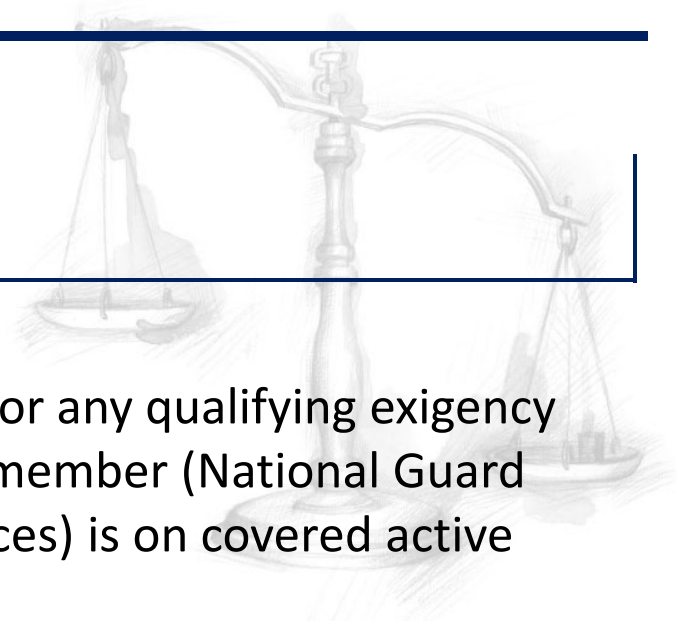
- Missed overtime must be counted against an employee's FMLA entitlement if the employee would have been required to work overtime but for their FMLA condition



# Personnel Action Requests

- Full calendar month
  - BOMS code 58 (Leave of Absence)
  - Comments: “authorized leave without pay - FMLA”
- Less than a full calendar month
  - BOMS code 98 (Miscellaneous Change)
  - Comments: “authorized leave with pay - FMLA”
- Critical to bring employee back from leave

# Military Family Leave



- **Qualifying Exigency Leave**
  - Leave taken by an eligible employee for any qualifying exigency arising out of the fact that a military member (National Guard and Reserves and Regular Armed Forces) is on covered active duty or call to active duty status
- **Military Caregiver Leave**
  - Leave taken by an eligible employee to care for a covered servicemember or certain veterans with a serious injury or illness

|             | Qualifying Exigency Leave | Military Caregiver Leave |
|-------------|---------------------------|--------------------------|
| Parent      | X                         | X                        |
| Spouse      | X                         | X                        |
| Son         | X                         | X                        |
| Daughter    | X                         | X                        |
| Next of Kin |                           | X                        |



## Eligibility for Military Family Leave

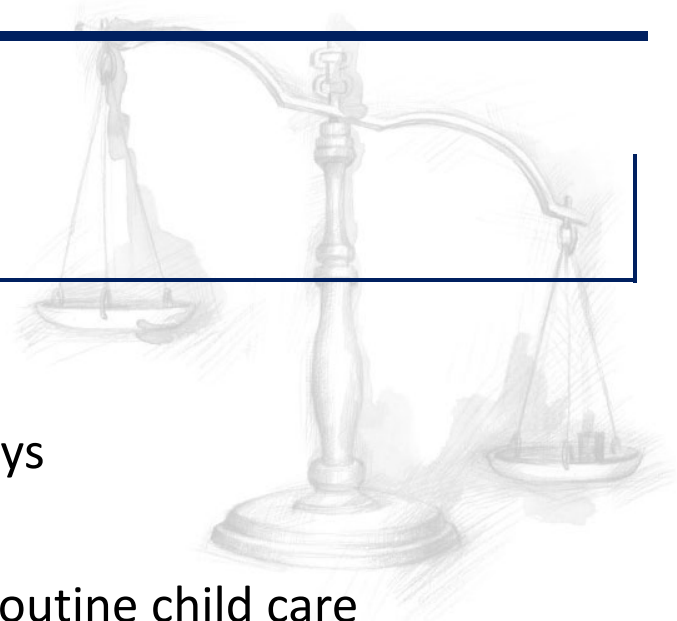
- 12 months of employment in the past 7 years
- 1,250 hours worked in the 12 months immediately preceding the date leave is to begin

# Son or Daughter

- Son or daughter of a covered servicemember
  - Biological, adopted, foster or stepchild, legal ward, or child for whom the service member stood *in loco parentis*
  - Of any age
- Son or daughter on active duty or call to active duty
  - Employee's biological, adopted, foster or step child, legal ward, or child for whom the employee stood *in loco parentis*
  - On active duty or call to active duty status
  - Of any age

# Qualifying Exigency

- Qualifying Exigencies Include
  - Short-notice deployment – up to 7 days
  - Military events and related activities
  - Childcare and school activities – not routine child care
  - Financial and legal arrangements – up to 90 days after service ends
  - Counseling
  - Rest and recuperation – short-term only, up to 15 days
  - Past-deployment activities – up to 90 days after service ends
  - Parental Care Leave
  - Additional activities – as agreed upon by employer and the employee





# Qualifying Exigency Leave

- Maximum Length of Leave
  - 12 weeks of qualifying exigency leave
- Covered Military Member
  - Employee's spouse, son, daughter or parent who is on active duty or call to active duty
- Active Duty or Call to Active Duty Status
  - A member of the Regular Armed Forces National Guard or Reserves
  - Under a call or order to active duty in support of a contingency operation
- No recertification is required






# Request Qualifying Exigency Leave

## Certification of Qualifying Exigency for Military Family Leave ([Form WH-384](#))

Certification of Qualifying Exigency For Military Family Leave (Family and Medical Leave Act)

U.S. Department of Labor Wage and Hour Division 

OMB Control Number: 1235-0003 Expires: 2/28/2012

**SECTION I: For Completion by the EMPLOYER**

**INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA leave due to a qualifying exigency to submit a certification. Please complete Section I before giving this form to your employee. Your response is voluntary, and while you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. § 825.309.

Employer name: \_\_\_\_\_

Contact information: \_\_\_\_\_

**SECTION II: For Completion by the EMPLOYEE**

**INSTRUCTIONS to the EMPLOYEE:** Please complete Section II fully and completely. The FMLA permits an employer to require that you submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a qualifying exigency. Several questions in this section seek a response as to the frequency or duration of the qualifying exigency. Be as specific as you can; terms such as "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Your response is required to obtain a benefit. 29 C.F.R. § 825.310. While you are not required to provide this information, failure to do so may result in a denial of your request for FMLA leave. Your employer must give you at least 15 calendar days to return this form to your employer.

Your Name: \_\_\_\_\_

First Middle Last

Name of covered military member on active duty or call to active duty status in support of a contingency operation: \_\_\_\_\_

First Middle Last

Relationship of covered military member to you: \_\_\_\_\_

Period of covered military member's active duty: \_\_\_\_\_

A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes written documentation confirming a covered military member's active duty or call to active duty status in support of a contingency operation. Please check one of the following:

- A copy of the covered military member's active duty orders is attached.
- Other documentation from the military certifying that the covered military member is on active duty (or has been notified of an impending call to active duty) in support of a contingency operation is attached.
- I have previously provided my employer with sufficient written documentation confirming the covered military member's active duty or call to active duty status in support of a contingency operation.

An employee must provide notice of the need for qualifying exigency leave as soon as practicable.

# Military Caregiver Leave

- Serious Injury or Illness
  - Injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating

# Military Caregiver Leave

- Covered Servicemember
  - Member of Armed Forces (including National Guard or Reserve)
  - Undergoing medical treatment, recuperation, or therapy
  - In outpatient status
  - Temporary disability retired list
  - Serious injury or illness
  - Incurred in the line of duty on active duty

# Military Caregiver Leave

- Covered Veteran
- Family members of certain veterans with a serious injury or illness incurred or aggravated in the line of duty on active duty and that manifested before or after the veteran left active duty
  - This expansion of the definition became effective March 8, 2013



# Next of Kin

- Nearest blood relative other than spouse, parent, son, or daughter, in order of priority:
  - Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions
  - Brothers and sisters
  - Grandparents
  - Aunts, uncles and first cousins
- Unless service member has designated a single blood relative as next of kin



# Military Caregiver Leave

- Maximum Length of Leave
  - Up to 26 weeks of military caregiver leave in a 12 month period
  - 12 month period starts on the first day the employee takes military caregiver leave
  - Any combination of absences in the 12 month period, including medical FMLA, may not exceed 26 weeks
- Use of Leave - “per member” and “per injury”
  - Use leave to care for the same family member with different illness or injury *or*
  - Use leave for a different family member






# Request Military Caregiver Leave

## Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave ([Form WH-385](#))

- Must provide 30 days advance notice for planned medical treatment for a serious injury or illness of a covered servicemember
- When 30 days advance notice is not possible, the employee must provide notice as soon as practicable
- When the need for leave is unforeseeable, an employee must comply with an employer's normal notice or call-in procedures, absent unusual circumstances

Certification for Serious Injury or Illness of Covered Servicemember -- for Military Family Leave (Family and Medical Leave Act)

U.S. Department of Labor  
Wage and Hour Division



OMB Control Number: 1215-0003  
Pages: 2/28/2012

**Notice to the EMPLOYER INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA leave due to a serious injury or illness of a covered servicemember to submit a certification providing sufficient facts to support the request for leave. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. § 825.310. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies.

**SECTION I: For Completion by the EMPLOYEE and/or the COVERED SERVICEMEMBER for whom the Employee is Requesting Leave INSTRUCTIONS to the EMPLOYEE or COVERED SERVICEMEMBER:** Please complete Section I before having Section II completed. The FMLA permits an employer to require that an employee submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a serious injury or illness of a covered servicemember. If requested by the employer, your response is required to obtain or retain the benefit of FMLA-protected leave. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to do so may result in a denial of an employee's FMLA request. 29 C.F.R. § 825.310(f). The employer must give an employee at least 15 calendar days to return this form to the employer.

**SECTION II: For Completion by a UNITED STATES DEPARTMENT OF DEFENSE ("DOD") HEALTH CARE PROVIDER or a HEALTH CARE PROVIDER who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; or (3) a DOD non-network TRICARE authorized private health care provider INSTRUCTIONS to the HEALTH CARE PROVIDER:** The employee listed on Page 2 has requested leave under the FMLA to care for a family member who is a member of the Regular Armed Forces, the National Guard, or the 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. For purposes of FMLA leave, a serious injury or illness is one that was incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

A complete and sufficient certification to support a request for FMLA leave due to a covered servicemember's serious injury or illness includes written documentation confirming that the covered servicemember's injury or illness was incurred in the line of duty on active duty and that the covered servicemember is undergoing treatment for such injury or illness by a health care provider listed above. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave.





# Request Military Caregiver Leave

## Certification for Serious Injury or Illness of Certain Veterans – for Military Family Leave ([Form WH-385V](#))

- Must provide 30 days advance notice for planned medical treatment for a serious injury or illness of certain veterans
- When 30 days advance notice is not possible, the employee must provide notice as soon as practicable
- When the need for leave is unforeseeable, an employee must comply with an employer’s normal notice or call-in procedures, absent unusual circumstances

Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave (Family and Medical Leave Act)

U.S. Department of Labor  
Wage and Hour Division



OMB Control Number: 1215-0003  
Expires: 2/28/2015

**Notice to the EMPLOYER**

The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking military caregiver leave under the FMLA leave due to a serious injury or illness of a covered veteran to submit a certification providing sufficient facts to support the request for leave. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 CFR 825.310. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 CFR 1630.14(c)(1), if the Americans with Disabilities Act applies.

**SECTION I: For completion by the EMPLOYEE and/or the VETERAN for whom the employee is requesting leave**

**INSTRUCTIONS to the EMPLOYEE and/or VETERAN:** Please complete Section I before having Section II completed. The FMLA permits an employer to require that an employee submit a timely, complete, and sufficient certification to support a request for military caregiver leave under the FMLA leave due to a serious injury or illness of a covered veteran. If requested by the employer, your response is required to obtain or retain the benefit of FMLA-protected leave. 29 U.S.C. 2613, 2614(c)(3). Failure to do so may result in a denial of an employee's FMLA request. 29 CFR 825.310(f). The employer must give an employee at least 15 calendar days to return this form to the employer.

(This section must be completed before Section II can be completed by a health care provider.)

**Part A: EMPLOYEE INFORMATION**

Name and address of employer (this is the employer of the employee requesting leave to care for a veteran):

Name of employee requesting leave to care for a veteran:

\_\_\_\_\_  
First Middle Last

Name of veteran (for whom employee is requesting leave):

\_\_\_\_\_  
First Middle Last

Relationship of employee to veteran:

Spouse  Parent  Son  Daughter  Next of Kin  (please specify relationship):

# Questions

