

The Family and Medical Leave Act (FMLA)

- Highlights of Changes -

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Agenda

- FMLA
 - Background Information
 - Required Posting
 - Required Employer Notices
 - Required Employee Notice
 - Certification Forms
 - Clarification and Authentication
 - Changes to FMLA – New Certification, Fitness for Duty, Light Duty, Compensatory Leave, Overtime, Attendance Bonuses
- Military Family Leave
 - Qualifying Exigency Leave
 - Military Caregiver Leave
- Questions

Background Information

- Effective Dates
 - Medical FMLA
 - August 5, 1993 – Non-contract
 - February 5, 1994 – Contract-covered

 - Military Family Leave
 - January 28, 2008 – Military Caregiver
 - January 16, 2009 – Qualifying Exigency

Background Information

- Eligibility for FMLA
 - 12 total months of employment – unless preceded by a break in service of more than 7 years
 - 1,250 hours worked in the 12 months immediately preceding the date leave is to begin
 - 50 employees at or within 75 miles of worksite
- Maximum Length of Leave
 - Up to 12 weeks of medical and/or qualifying exigency FMLA leave in a leave year
 - Up to 26 weeks of military caregiver leave in a 12 month period
 - Continuous, intermittent or reduced schedule leave

Background Information

■ Qualifying Reasons for FMLA Leave

- Birth of a son or daughter and to care for the newborn child
- Placement of a son or daughter for adoption or foster care
- Care for the employee's spouse, son, daughter 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 servicemember



Background Information

- Continuing Treatment – Changes to definitions
 - Incapacity of more than 3 full consecutive calendar days and treatment
- Treatment
 - Two or more times by health care provider within 30 days of the first day of incapacity
 - 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
 - First/only visit – within 7 days of the first day of incapacity
- Chronic conditions
 - 2 or more visits to a health care provider per 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 that 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 or 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 with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation 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-employment reintegration 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 a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in equivalent status; or is on the temporary disability retired list.

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 position 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 one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

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 to 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.

Employee 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;
- Discourage 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 (25 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.

For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-888-5827
WWW.WAGEHOUR.DOL.GOV

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

WHD
U.S. Wage and Hour Division
WHD Publications 1409 Revised January 2009



Required Employer Notices

Two New Notices

1. Notice of Eligibility and Rights & Responsibilities

- Provided to an employee with 5 business days of the date
 - An employee requests FMLA
 - Employer becomes aware that an employee's leave may be FMLA-qualifying

2. Designation Notice

- Provided to an employee once employer has sufficient to determine that is FMLA-covered
- 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
Employment Standards Administration
Wage and Hour Division



OMB Control Number: 1215-0181
Regulation: 1215-0181

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 protection 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. §§ 825.305-825.308. 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. § 1650.14(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)(2). 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. 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: (____) _____

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Family Member Medical Certification Form

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

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

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

WH-380-F
U.S. GOVERNMENT PRINTING OFFICE: 2009

OMB Control Number: 1215-0181
Expires: 12/31/2011

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 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 benefits 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 _____

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- 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

Clarification and Authentication

- Employer may contact the 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 health information is shared with an employer by a HIPAA-covered health care provider
- Employee's responsibility to provide complete and sufficient certification and to clarify if necessary
- If employee does not provide a required HIPAA release, and;
- If employee 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 officialAs determined by the employing department

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

New 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 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 (Dec. 31). John can be required to provide a new certification at the start of the new fiscal year on Jan. 1 and a second opinion can be requested.

Fitness for Duty

- Employer may require a fitness-for-duty certification
- May require the certification specifically address the 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

Compensatory Leave

- Employees may request or may be required to use
 - Accrued compensatory leave (public sector)
 - Sick Leave
 - Vacation Leave

During periods of FMLA 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

Attendance Bonuses

- 825.215(c)(2)
- FMLA leave can keep an employee from qualifying
- Assumes other forms of leave treated equally



Military Family Leave

- **Qualifying Exigency Leave**

- Leave taken by an eligible employee for any qualifying exigency arising out of the fact that a covered military member (only National Guard or Reserve) is on active duty or call to active duty status

- **Military Caregiver Leave**

- Leave taken by an eligible employee to care for a covered servicemember with a serious injury or illness

	Qualifying Exigency Leave	Military Caregiver Leave
Parent	✓	✓
Spouse	✓	✓
Son	✓	✓
Daughter	✓	✓
Next of Kin		✓

Military Family Leave

Eligibility Requirement 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
- 50 employees at or within 50 miles of worksite

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 5 days
 - Post-deployment activities – up to 90 days after service ends
 - 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 Federal Call to Active Duty Status
 - A member of the National Guard or Reserves
 - Under a call or order to active duty in support of a contingency operation
 - Not regular armed forces
- No recertification



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
Employment Standards Administration
Wage and Hour Division

WHD
U.S. Department of Labor

OMB Control Number 1215-0181
Expires 12/31/2011

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 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.

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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

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
 - 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
- No second or third opinion



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
Employment Standards Administration
Wage and Hour Division

WHD

OMB Control Number: 1216-0181
Expires: 12/31/2011

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(d). 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.

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Questions

