

The Family and Medical Leave Act

INFORMATION FOR
ACTIVE DUTY AND VETERANS



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FMLA

The Family and Medical Leave Act

Workers should not have to choose between the job they need and the family members they love and who need their care

Workers should not have to choose between the job they need and their own personal care



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Employee Eligibility

§ 825.110

- Worked at least 12 months
- Have at least 1,250 hours of service during the 12 months before leave begins



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Qualifying Leave Reasons

[§ 825.112](#)

- Eligible employees may take FMLA leave:
 - To care for a spouse, son, daughter, or parent with a serious health condition
 - For their own serious health condition

– Military Family Leave

- Because of a qualifying reason arising out of the covered active duty status of a military member who is the employee's spouse, son, daughter, or parent (qualifying exigency leave)
- To care for a covered servicemember with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember (military caregiver leave)



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Qualifying Leave Reasons – Serious Health Condition

[§ 825.113](#)

Illness, injury, impairment or physical or mental condition involving:

- Inpatient Care, or
- Continuing Treatment by a Health Care Provider (To include VA Service Connected Disability Treatments)



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Serious Health Condition – Inpatient Care

[§ 825.114](#)

- An overnight stay in a hospital, hospice, or residential medical facility
- Includes any related incapacity or subsequent treatment



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Serious Health Condition – Continuing Treatment

[§ 825.115](#)

Continuing Treatment by a Health Care Provider

- Incapacity Plus Treatment
- Chronic Conditions
- Permanent/Long-term Conditions
- Absence to Receive Multiple Treatments



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Continuing Treatment by a Health Care Provider

[§ 825.115](#)

Incapacity Plus Treatment

- Incapacity of more than three consecutive, full calendar days that involves either:
 - Treatment two times by HCP (first in-person visit within seven days, both visits within 30 days of first day of incapacity)
 - Treatment one time by HCP (in-person visit within seven days of first day of incapacity), followed by a regimen of continuing treatment (e.g., prescription medication)



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Continuing Treatment by a Health Care Provider

§ 825.115

Chronic Conditions

- Any period of incapacity or treatment due to a chronic serious health condition, which is defined as a condition that:
 - requires periodic visits (twice per year) to a health care provider for treatment
 - continues over an extended period of time
 - may cause episodic rather than continuing periods of incapacity



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Continuing Treatment by a Health Care Provider

§ 825.115

PTSD is one example of a possible Chronic Condition

- PTSD can cause incapacity due to flareups or triggers on an intermittent basis
- PTSD requires periodic visits to a health care provider for treatment



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Continuing Treatment by a Health Care Provider

§ 825.115

Permanent/Long-Term Conditions

- A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective



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Continuing Treatment by a Health Care Provider

§ 825.115

Absence to Receive Multiple Treatments

- For restorative surgery after an accident or other injury, or
- For conditions that, if left untreated, would likely result in incapacity of more than three consecutive, full calendar days



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Amount of Leave

[§ 825.200, 825.205 & 825.802](#)

- Employee's workweek is basis for entitlement
- Eligible employees may take up to **12 workweeks*** of FMLA leave:
 - to care for a spouse, son, daughter, or parent with a serious health condition; and
 - for the employee's own serious health condition.



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Amount of Leave – Intermittent Leave

[§ 825.202](#)

- Employee is entitled to take intermittent or reduced schedule leave for:
 - Employee’s or qualifying family member’s serious health condition when the leave is medically necessary
 - Covered servicemember’s serious injury or illness when the leave is medically necessary
 - A qualifying exigency arising out of a military member’s covered active duty status



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12-Month Period

[§ 825.200](#)

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



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Prohibited Employment Actions

[§ 825.220](#)

Employers cannot:

- interfere with, restrain or deny employees' FMLA rights
- discriminate or retaliate against an employee for having exercised FMLA rights
- discharge or in any other way discriminate against an employee because of involvement in any proceeding related to FMLA
- use the taking of FMLA leave as a negative factor in employment actions



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Employer Responsibilities – Maintain Records

§ 825.500

- Basic payroll information
- Dates FMLA leave is taken
- Hours of leave if leave is taken in less than one full day
- Copies of leave notices
- Documents describing benefits/policies
- Premium payments
- Records of disputes



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Employee Responsibilities

- Provide sufficient and timely notice of the need for leave
- If requested by the employer:
 - Provide certification to support the need for leave
 - Provide periodic status reports



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Employee Responsibilities – Notice Requirements

[§ 825.302 - .303](#)

- Provide sufficient information to make employer aware of need for FMLA-qualifying leave
- Specifically reference the qualifying reason or the need for FMLA leave for subsequent requests for same reason
- Consult with employer regarding scheduling of planned medical treatment
- Comply with employer's usual and customary procedural requirements for requesting leave absent unusual circumstances



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Employee Responsibilities – Notice Requirements

- Timing of Employee notice of need for leave:
- Foreseeable Leave - 30 days notice, or as soon as practicable
[§ 825.302](#)
- Unforeseeable Leave - as soon as practicable
[§ 825.303](#)



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Employee Responsibilities – Provide Certification

§ 825.305

- Medical Certification for serious health condition (optional WH-380-E and 380-F)
 - Submit within fifteen calendar days
 - Employer must identify any deficiency in writing and provide seven days to cure
 - Annual certification may be required
 - Employee responsible for any cost



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Forms to Use for FMLA

- Form WH-380-F : Use this form if you are applying for FMLA to care for a spouse, son, daughter, or parent with a serious health condition
- Form WH-380-F : Use this form if you are applying for FMLA for your own serious health condition



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Example of WH-380-E

Section 1 to be completed by the Employer

- Employer name and contact information
- Employee' s job title
- Employee' s regular work schedule
- Employee' s essential job functions



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Example of WH-380-E

Section 2 to be completed by the Employee

- First, Middle, and Last name



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Example of WH-380-E

Section 3 to be completed by the Employee's Health Care Provider (Civilian or Veteran)

- Provider's name and contact information
- Provider's type of medical practice
- The form will then ask a series of health related questions.



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Example of WH-380-E

Two of the questions for the Health Care Provider are:

- Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? _____ No _____ Yes.
- Is it medically necessary for the employee to be absent from work during the flare-ups? _____ No Yes_____. If so, explain:

On the next slide I will discuss this as it relates to PTSD



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- PTSD treatment and flareups usually result in the Health Care Provider saying Yes to these two questions.
- This allows the Employee to take FMLA leave whenever they receive PTSD treatment or when PTSD flareups cause them to be unable to report to work.



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NEED TIME?



MILITARY FAMILY LEAVE Under the Family and Medical Leave Act



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Covered Servicemember – Veteran

[§ 825.127](#)

- A veteran of the Armed Forces is a covered servicemember if he or she:
 - is undergoing medical treatment, recuperation, or therapy for a serious injury or illness; and
 - was discharged under conditions other than dishonorable within the five-year period before the employee first takes military caregiver leave*
- * Special rules may apply if the servicemember was discharged before March 8, 2013



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FMLA Military Family Leave

The FMLA military family leave provisions include:

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

Generally, FMLA rules and requirements continue to apply



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Qualifying Exigency Leave

[§ 825.126](#)

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

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



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Qualifying Exigency Leave – Covered Active Duty

[§ 825.126](#)

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



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Qualifying Exigencies

§ 825.126

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



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Employee Responsibilities – Provide Certification

[§ 825.309](#)

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



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Military Caregiver Leave

[§ 825.127](#)

- Eligible employees may take up to 26 workweeks* of FMLA leave in a “single 12-month period” to care for a “covered servicemember” with a “serious injury or illness” if the employee is the covered servicemember’s spouse, parent, son, daughter, or next of kin
- For military caregiver leave, son or daughter refers to a son or daughter of any age
- All FMLA leave is limited to a combined total of 26 workweeks during the “single 12-month period”; no more than 12 workweeks can be taken for other leave reasons



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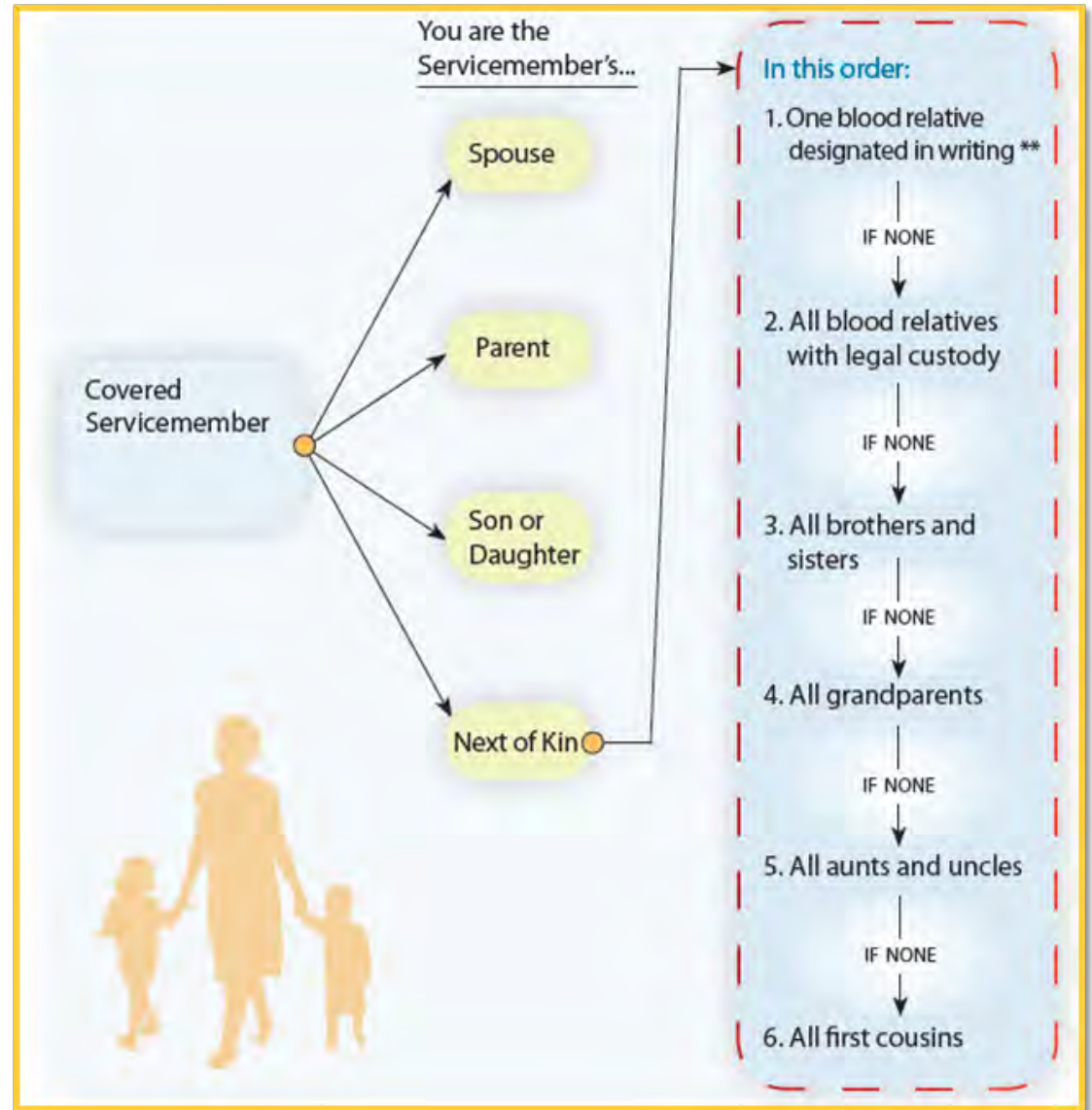
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Qualifying Family Relationships Under Military Caregiver Leave

§ 825.127

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



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Covered Current Servicemember

[§ 825.127](#)

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

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



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Current Servicemember – Serious Injury or Illness

[§ 825.127](#)

- A serious injury or illness is one that:
- was incurred by a servicemember in the line of duty on active duty; or
- existed before the servicemember's active duty and that was aggravated by service in the line of duty on active duty; and
- may cause the servicemember to be medically unfit to perform the duties of his or her office, grade, rank, or rating



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Employee Responsibilities – Certification for a Current Servicemember

[§ 825.310](#)

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



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Veteran Serious Injury or Illness

[§ 825.127](#)

- An injury or illness that was incurred or aggravated by service in the line of duty on active duty in the Armed Forces, that manifested before or after the servicemember became a veteran, and that is either:
 1. a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces; or



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Veteran Serious Injury or Illness

[§ 825.127](#)

(continued)

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



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Employee Responsibilities – Certification for a Veteran

[§ 825.310](#)

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



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Employee Responsibilities – Certification for a Veteran

§ 825.310

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



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Military Caregiver Leave – Application of Leave

[§ 825.127](#)

- “Single 12-month period”
- Per covered servicemember, per injury
- Limitations on leave
 - 26 workweeks for all qualifying reasons
 - Designation of caregiver leave
 - Spouses working for same employer



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FMLA Compliance Assistance Materials

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



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