



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #28M: Using FMLA Leave Because of a Family Member's Military Service

Revised February 2023

The Family and Medical Leave Act (FMLA) provides workers with job-protected leave from work for certain family, medical, and military family leave reasons.

This fact sheet explains when workers may use leave to support or care for a family member because of their military service.

ABOUT THE FMLA

The FMLA provides eligible employees of covered employers with job-protected leave for qualifying family and medical reasons and requires continuation of their group health benefits under the same conditions as if they had not taken leave. FMLA leave may be unpaid or used at the same time as employer-provided paid leave. Employees must be restored to the same or a virtually identical position when they return to work after FMLA leave.

Eligible employees: Employees are eligible if they:

- Work for a covered employer for at least 12 months,
- Have at least 1,250 hours of service with the employer during the 12 months before their FMLA leave starts, and
- Work at a location where the employer has at least 50 employees within 75 miles.

Covered employers: Covered employers under the FMLA include:

- Private-sector employers who employ 50 or more employees in 20 or more workweeks in either the current calendar year or the previous calendar year,
- Public agencies, including Federal, State, and local government employers, regardless of the number of employees, and
- Local educational agencies, including public school boards, public elementary and secondary schools, and private elementary and secondary schools, regardless of the number of employees.

The FMLA protects leave for:

- The birth of a child or placement of a child with the employee for adoption or foster care,
- The care for a child, spouse, or parent who has a serious health condition,
- A serious health condition that makes the employee unable to work, and
- Reasons related to a family member's service in the military, including
- Qualifying exigency leave – leave for certain reasons related to a family member's foreign deployment, and

- Military caregiver leave – leave when a family member is a current servicemember or recent veteran with a serious injury or illness.

For more information about the FMLA generally, see [Fact Sheet #28](#).

QUALIFYING EXIGENCY LEAVE

An eligible employee may use up to 12 workweeks of FMLA leave for certain reasons, known as qualifying exigencies, when their spouse, child, or parent is on covered active duty or under an impending call to covered active duty.

Covered active duty means:

- For a member of the Regular Armed Forces, duty during deployment with the Armed Forces to a foreign country, or
- For a member of the National Guard or Reserves, duty during deployment with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.

Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any territory or possession of the United States. It also includes deployment to international waters.

Qualifying exigencies include, but are not limited to:

- Making childcare arrangements for the military member's child,
- Attending certain military ceremonies and briefings, or
- Making financial or legal arrangements to address a military member's absence.

For more information about taking qualifying exigency leave under the FMLA, see [Fact Sheet 28M\(c\)](#).

MILITARY CAREGIVER LEAVE

An eligible employee who is the spouse, child, parent, or next of kin of a covered servicemember may use up to 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness.

Covered servicemember means:

- A current servicemember or
- A veteran.

Current servicemember means:

- A current member of the Armed Forces, including members of the National Guard or Reserves,
- Undergoing medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list,
- For a serious injury or illness.

For a current servicemember, a serious injury or illness is an injury or illness incurred by the servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may cause the servicemember to be medically unfit to perform their military duties.

Veteran means:

- A veteran of the Armed Forces, including veterans of the National Guard or Reserves,
- Who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness, and
- Who was recently discharged – that is, within the previous five years before the employee first uses FMLA leave for the veteran's care.

For a veteran, a **serious injury or illness** is an injury or illness incurred in the line of duty when the veteran was on active duty in the Armed Forces, including any injury or illness that resulted from the aggravation of a preexisting condition in the line of duty on active duty. Additionally, the injury or illness must have made the veteran medically unfit to perform their military duties, or it must be an injury or illness that qualifies the veteran for certain benefits from the Department of Veterans Affairs or substantially impairs the veteran's ability to work.

For more information about taking FMLA leave as a caregiver for a military family member who is a current servicemember, see [Fact Sheet #28M\(a\)](#). For more information about taking military caregiver leave under the FMLA for a family member who is a recent veteran, see [Fact Sheet #28M\(b\)](#).

ADDITIONAL INFORMATION

Download the “Employee’s Guide to Military Family Leave Under the Family and Medical Leave Act” [in English or Spanish](#) for a simple overview of how the FMLA may benefit military families, including:

- Who can use FMLA leave,
- Leave related to the deployment of a military member (qualifying exigency leave),
- Leave related to a seriously injured or ill servicemember or veteran (military caregiver leave),
- General FMLA rights and responsibilities,
- How to file a complaint, and
- Web site resources.

ADDITIONAL PROTECTIONS

State Laws

Some States have their own family and medical leave laws. Nothing in the FMLA prevents employees from receiving protections under other laws. Workers have the right to benefit from all the laws that apply.

Protection from Retaliation

The FMLA is a federal worker protection law. Employers are prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right. Any violations of the FMLA or the FMLA regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA. For more information about prohibited employer retaliation under the FMLA, see [Fact Sheet #77B](#) and Field Assistance Bulletin 2022-2.

Enforcement

The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court. State employees may be subject to certain limitations in pursuit of direct lawsuits regarding leave for their own serious health conditions. Most Federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress.

Where to Obtain Additional Information

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

<http://www.dol.gov/agencies/whd> 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).

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