NEED TIME?

The Employee's Guide to

MILITARY FAMILY LEAVE

Under the Family and Medical Leave Act

WHD

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Please reference "The Employee's Guide to the Family and Medical Leave Act" for general information about taking FMLA leave.

An Introduction to Military Family Leave under the Family and Medical Leave Act

Military families can find themselves facing great challenges. Caring for an injured servicemember, arranging for alternative childcare when a spouse is deployed to a foreign country, or attending arrival ceremonies when a loved one returns from a deployment may present family members with difficult decisions about time spent at work versus with family.

The Family and Medical Leave Act (FMLA) may be able to help. Since 1993, the FMLA has provided unpaid, job-protected leave for those living with a serious health condition, or caring for a family member with a serious health condition.

The Military Family Leave provisions, first added to the FMLA in 2008, afford FMLA protections ***specific to the needs of military families***.

This guide provides you a simple overview of how the FMLA may benefit military families. In your time of need, sometimes you just *need time*.

This Guide Will Explain:

- Who Can Use Military Family Leave?
- What are the FMLA Military Family Leave Entitlements?
- 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
- Web Site Resources

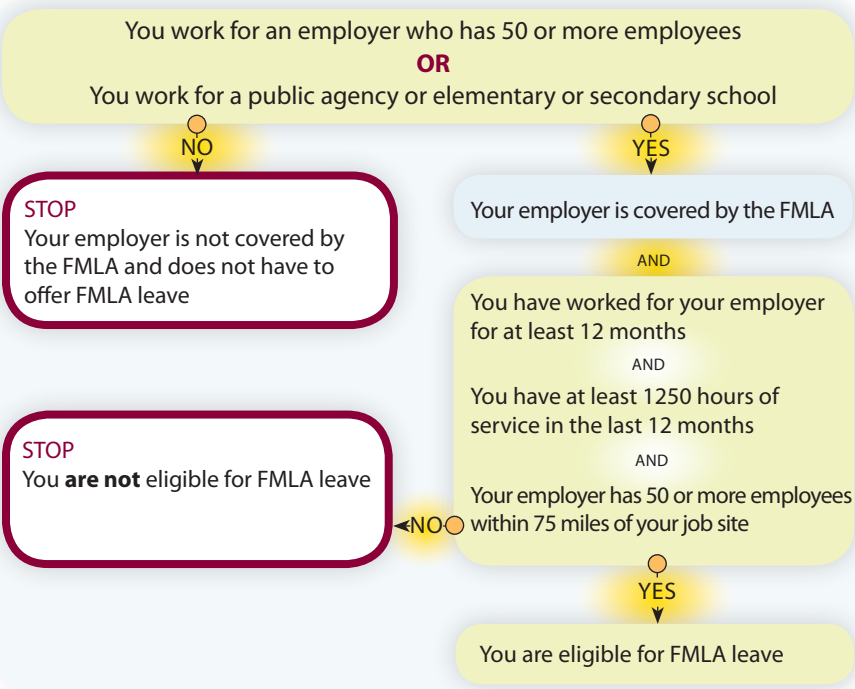
Who Can Use Military Family Leave?

In order to take FMLA leave, you must first work for a covered employer. Generally, private employers with at least 50 employees are covered by the law. Private employers with fewer than 50 employees are not covered by the FMLA, but may be covered by state family and medical leave laws. Government agencies (including local, state and federal employers), and elementary and secondary schools are covered by the FMLA, regardless of the number of employees.

If you work for a covered employer, you need to meet additional criteria to be eligible to take FMLA leave. You must:

- Have worked for your employer for at least 12 months;
- Have at least 1250 hours of service with your employer in the 12 months before you take leave*; and
- Work at a location where your employer has at least 50 employees within 75 miles of your worksite.

* Special rules apply to airline flight crew employees.



An Introduction to the Military Family Leave Provisions

QUALIFYING EXIGENCY LEAVE

When a family member is deployed to a foreign country with the Armed Forces, your life can change very quickly. Many of these changes can require your prompt attention. Even though no one is ill or injured, you may need time away from work to address these issues.

If your spouse, parent, son or daughter is a military member who is deployed or has been notified of an impending deployment to a foreign country, and you work for a covered employer and are an eligible employee, you may be entitled to qualifying exigency leave. Qualifying exigency leave allows you to take up to a total of 12 workweeks of FMLA leave for qualifying exigencies, such as making different day care arrangements for the military member's children or attending official military ceremonies as your family member prepares to deploy. See page 4 for more information on qualifying exigency leave under the FMLA.

MILITARY CAREGIVER LEAVE

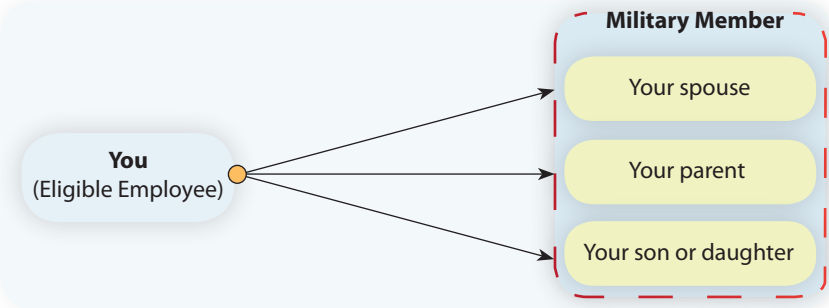
When faced with caring for an injured or seriously ill servicemember or veteran, the FMLA may be able to help ease the burden of worrying about your job during an already troubling time.

If you are the spouse, parent, son, daughter, or next-of-kin of a covered servicemember, you work for a covered employer, and are an eligible employee, you may be entitled to military caregiver leave. Military caregiver leave allows you to take up to a total of 26 workweeks of unpaid leave during a single 12-month period to take care of your military relative if he or she has a qualifying serious injury or illness. See page 10 for more information on military caregiver leave under the FMLA.

Qualifying Exigency Leave

Who can take Qualifying Exigency Leave?

To take qualifying exigency leave, the military member must be your *spouse*, *parent*, *son or daughter*.



- **Parent**

  Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to you when you were a child. This term does not include parents "in law."

- **Son or daughter**

  For qualifying exigency leave, son or daughter means your biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom you stood in loco parentis, and who is of any age.

In Loco Parentis

A person stands in loco parentis if that person provides day-to-day care or financial support for a child. A person who has no biological or legal relationship with a child may nonetheless stand or have stood in loco parentis to the child for purposes of FMLA leave. (See Administrator's Interpretation No. 2010-3 and Fact Sheets 28B and 28C).

For example, if an employee stood in loco parentis to a military member when that military member was a child, the employee may exercise his or her FMLA rights to take qualifying exigency leave for exigencies arising out of that military member's deployment to a foreign country.

Covered Active Duty

Once you have determined that you are an eligible employee, you must determine whether your spouse, parent or child who is serving in the military is on "covered active duty" or call to "covered active duty" status (or has been notified of an impending call or order to "covered active duty").

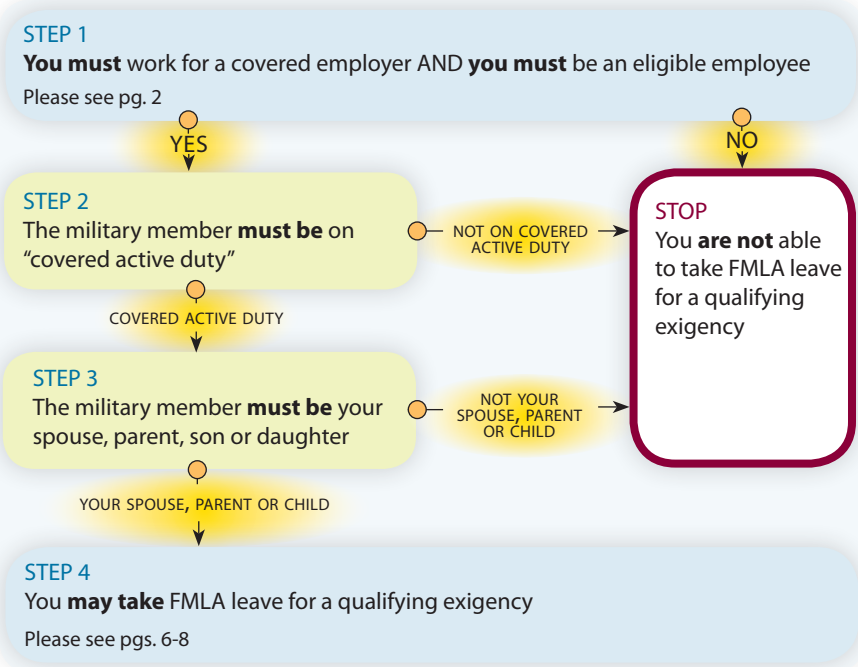
"Covered Active Duty" means:

For members of the **regular Armed Forces**, duty during deployment of the member with the Armed Forces to a foreign country.

For members of the **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.

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, including international waters.

Qualifying Exigency Leave Taken for a Military Member



Qualifying Exigency Leave

If your military relative is on covered active duty, you may be able to take FMLA leave for the following qualifying exigencies:

- To address any issues arising from the military member's short-notice deployment (i.e., deployment within seven or less days of notice). You may take leave for up to seven calendar days, beginning on the day the military member receives notice of deployment, to attend to any issue arising from the short-notice deployment.

- To make or update financial and legal arrangements arising from the military member's covered active duty. This could include preparing and executing financial and healthcare powers of attorney, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or acting as the military member's representative in arranging for military service benefits.

- To attend counseling for yourself, the military member, or the child of the military member, when the need for that counseling arises from the military member's covered active duty and is provided by someone other than a health care provider.

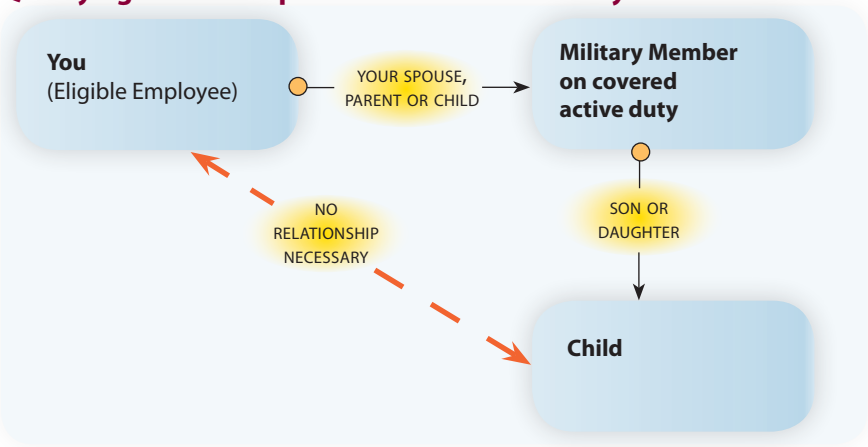
- To attend military events and related activities. These could include official military ceremonies, military programs, family support programs, and/or informational briefings sponsored or promoted by the military or military service organizations that are related to the military member's covered active duty.

- To spend up to fifteen calendar days with a military member who is on Rest and Recuperation leave during covered active duty. (Note: You may only use this leave during the military member's R & R leave.)

- To address certain childcare and related activities concerning the military member's child that arise from the military member's covered active duty. These could include arranging for alternative childcare; providing childcare on a non-routine, urgent, immediate need basis; enrolling in or transferring a child to a new school or day care facility; and attending certain meetings at a school or a day care facility. This provision allows for the **arrangement** of alternative childcare. It does not allow you to take leave for routine childcare, such as to become the primary caregiver while the military member is on covered active duty.

Note: You do not need to be related to the military member's child. But, (1) **the military member** must be your spouse, parent or child, and (2) the child for whom you are taking leave must be the child of **the military member**.

Qualifying Relationship to the Child of the Military Member



Qualifying Exigency Leave

(Continued)

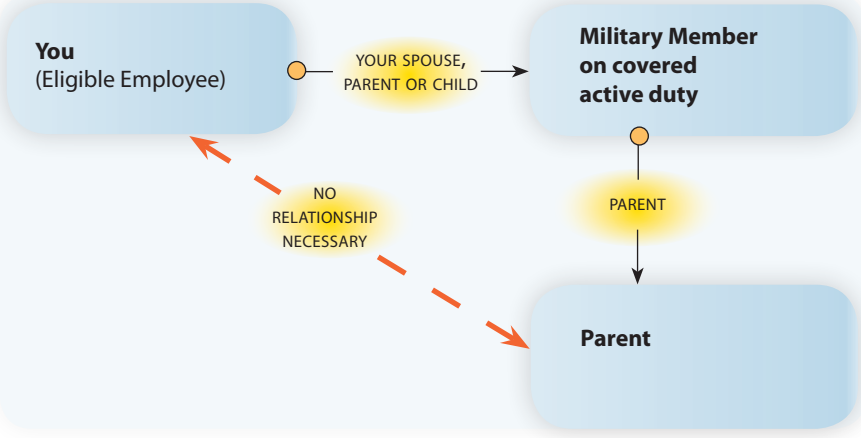
- To attend post-deployment activities for up to **90 days** following the termination of the military member's covered active duty, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military, and to address issues arising from the death of a military member, including attending funeral services for the military member.

- Any other event that you and your employer agree is a qualifying exigency and agree to the timing and duration of the leave.

- To address certain activities related to the care of the military member's parent who is incapable of self-care. These could include arranging for alternative parental care; providing care on a non-routine, urgent, immediate need basis; admitting or transferring the parent to a new care facility; and attending certain meetings at a care facility or with hospice staff.

Note: You do not need to be related to the military member's parent. But, (1) **the military member** must be your spouse, parent or child, and (2) the parent for whom you are taking leave must be the parent of **the military member**.

Qualifying Relationship for Parental Care Leave



What are the certification requirements for qualifying exigency leave?

If you are requesting leave for a qualifying exigency, your employer may require:

1) a copy of the military member's active duty orders (or other official documentation issued by the military) which indicates the military member is on covered active duty or call to covered active duty status;

   - You only need to provide a copy of the active duty orders or other appropriate documentation once per deployment.
   - Your employer may contact the Department of Defense to request verification that the military member is on covered active duty.

2) a statement or description of the appropriate facts regarding the qualifying exigency;

   - Facts may include information on the type of leave needed and any available written documentation (for example, copy of meeting announcement, appointment confirmation with counselor or school official, copy of bill for legal or financial arrangements, or R & R orders).

3) the approximate date on which the leave began (or will begin); and

   - You may also be asked to provide an estimate of how long and/or how often you will need leave.

4) the contact information for any third party you are meeting.

   - For example, the name, title, organization, address, telephone number, fax number, and e-mail address of the third party, as well as a brief description of the purpose of the meeting.
   - Your employer may contact the third party to confirm the nature of the meeting. Your permission is not required for this contact — however, your employer may NOT request additional information from the third party during this contact.

Military Caregiver Leave

Who can take Military Caregiver Leave?

To take military caregiver leave, you must be the spouse, parent, son or daughter, or next of kin of the covered servicemember.

- **Parent**

  For military caregiver leave, parent means the servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the servicemember. This term does not include parents "in law."

- **Son or daughter**

  For military caregiver leave, son or daughter means the servicemember's biological, adopted, or foster child, stepchild, legal ward, or child for whom the covered servicemember stood in loco parentis, and who is of any age.

In Loco Parentis

A person stands in loco parentis if that person provides day-to-day care or financial support for a child. A person who has no biological or legal relationship with a child may nonetheless stand or have stood in loco parentis to the child for purposes of FMLA leave. (See Administrator's Interpretation No. 2010-3 and Fact Sheets 28B and 28C).

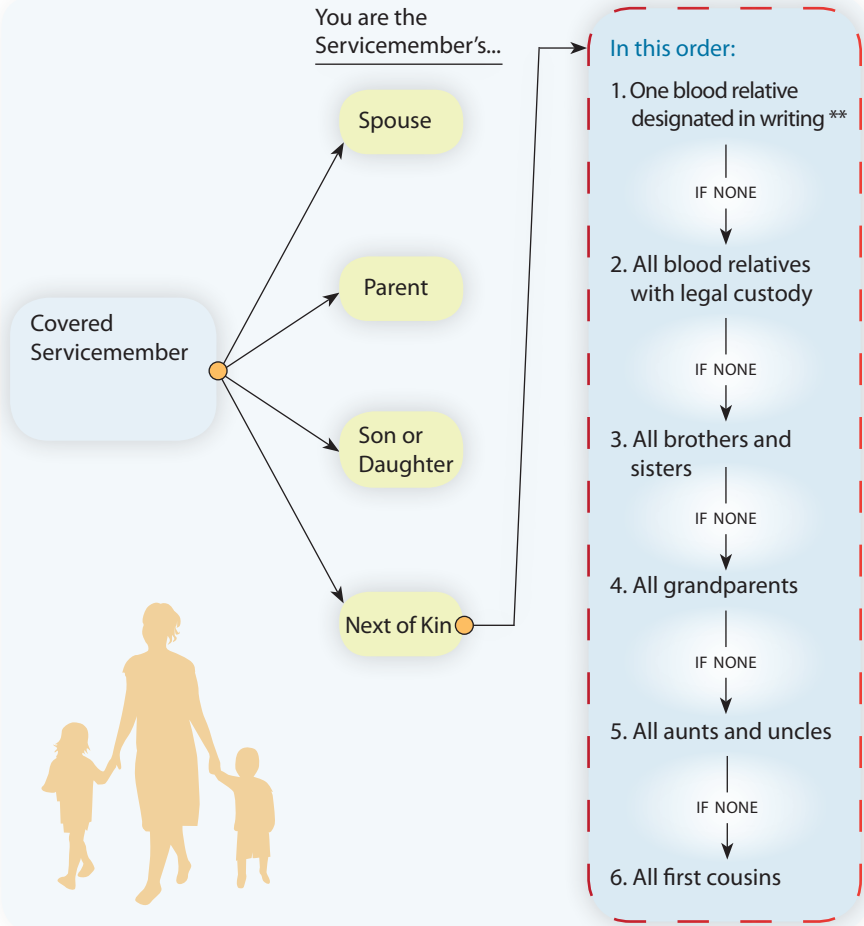
For example, an uncle who raised his niece may exercise his FMLA rights to take military caregiver leave if the niece is a covered servicemember.

- **Next of Kin**

  Next of kin is the nearest blood relative, other than the spouse, parent, son, or daughter, in the following order of priority:

  1) a blood relative who has been designated in writing by the servicemember for purposes of FMLA military caregiver leave
  2) blood relatives who have been granted legal custody of the servicemember
  3) brothers and Sisters
  4) grandparents
  5) aunts and uncles
  6) first cousins

Qualifying Family Relationship Under Military Caregiver Leave



** If the servicemember designates a next of kin in writing for purposes of FMLA military caregiver leave, that relative is the only next of kin for FMLA leave purposes. If the servicemember makes no such designation, all the family members sharing the same level of family relationship to the servicemember are considered the next of kin. For example, if a servicemember has three siblings, and no other blood relative has been designated in writing as next of kin for FMLA purposes or granted legal custody, all three siblings may take military caregiver leave as the next of kin (either simultaneously or consecutively).

Military Caregiver Leave

Military caregiver leave may be taken to care for a "covered servicemember" with a serious injury or illness. A covered servicemember may be either a current servicemember OR a veteran of the Armed Forces. (Please see pg. 14 if you need leave to care for a veteran.)

Current Servicemember

Who is a covered servicemember?

A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a *serious injury or illness*.

What is a serious injury or illness of a current servicemember?

For a current servicemember, a serious injury or illness is one that was incurred by a servicemember 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 serious injury or illness also includes injuries or illnesses that existed before the servicemember's active duty and that were aggravated by service in the line of duty on active duty.

Military Caregiver Leave Taken for a Current Servicemember

STEP 1
You must work for a covered employer AND **you must** be an eligible employee

Please see pg. 2

NO →

STOP
You **are not** able to take FMLA military caregiver leave

YES ↓

STEP 2
The servicemember **must be** a current member of the Armed Forces

AND

The servicemember **must be** undergoing medical treatment, recuperation, or therapy; in outpatient status; or on the temporary disability retired list

AND

The servicemember **must have** a "serious injury or illness"

YES ↓

NO ↓

STEP 3
You must be the spouse, parent, child or next of kin of the servicemember

Please see pg. 10

NO →

STOP
You **are not** able to take FMLA military caregiver leave

YES ↓

STEP 4
You may take FMLA military caregiver leave

Veteran of the Armed Forces

* Military caregiver leave is not available to care for a veteran until March 8, 2013, the effective date of the 2013 FMLA regulations.

Who is a covered servicemember?

A covered servicemember is a veteran discharged under conditions other than dishonorable within the five-year period before you first take military caregiver leave to care for that veteran who is undergoing medical treatment, recuperation, or therapy for a *serious injury or illness*.

For any veteran who was discharged prior to March 8, 2013, the period of time between October 28, 2009 and March 8, 2013 will not count as part of the five-year period. For example, if your family member became a veteran on October 28, 2009 then you may begin to use your military caregiver leave entitlement at any time up until March 8, 2018. As long as your military caregiver leave begins within five years of the veteran's discharge, the 12-month period may extend beyond the five-year period.

What is a serious injury or illness of a veteran?

For a veteran, a serious injury or illness is one that was incurred by the veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran's active duty and was aggravated by service in the line of duty on active duty, and that is either:

- a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

- a physical or mental condition for which the veteran has received a Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater. (The rating may be based on multiple conditions).

- a physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or

- an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Any **one** of these definitions meets the FMLA's definition of a serious injury or illness for a veteran regardless of whether the injury or illness manifested before or after the individual became a veteran.

The "Single 12-Month Period"

The single 12-month period for leave to care for a covered servicemember (both current servicemembers and veterans) with a serious injury or illness begins on the first day you take leave for this reason and ends 12 months later, regardless of the 12-month period established by your employer for other types of FMLA leave.

You are entitled to a *combined* total of 26 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period." (Up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than to care for a covered servicemember. For example, if you use 10 weeks of FMLA leave for your own serious health condition, you still have up to 16 weeks of FMLA leave left to care for a covered servicemember.)

Multiple Instances of Military Caregiver Leave

Military caregiver leave is available to you once per servicemember per serious injury or illness. However, if you take leave to care for your family member when he or she is a current servicemember, you may be able to take another 26 weeks of military caregiver leave, in a different 12-month period, to care for that same family member when he or she becomes a veteran, even if he or she continues to suffer from the same serious injury or illness.

You may take an additional 26 weeks of leave in a different 12-month period to care for the same servicemember if he or she subsequently has a different serious injury or illness. For example, if you take caregiver leave to care for a covered servicemember who sustained severe burns, you may be entitled to an additional 26 weeks of caregiver leave in a different 12-month period if the same servicemember is later diagnosed with a traumatic brain injury that was incurred in the same incident as the burns. It is possible for you to take military caregiver leave to care for more than one servicemember with a serious injury or illness at the same time. In any event you are limited to a total of 26 weeks of military caregiver leave in a 12-month period.

Military Caregiver Leave

Military Caregiver Leave Taken for a Veteran

STEP 1
You must work for a covered employer AND **you must** be an eligible employee

Please see pg. 2

NO →

STOP
You **are not** able to take FMLA military caregiver leave

YES ↓

STEP 2
The servicemember **must be** a veteran discharged within the five year period before you first take military caregiver leave

AND

The veteran **must be** undergoing medical treatment, recuperation, or therapy

AND

The veteran **must have** a "serious injury or illness"

YES ↓

NO ↓

STEP 3
You **must be** the spouse, parent, child or next of kin of the veteran

Please see pg. 10

NO →

STOP
You **are not** able to take FMLA military caregiver leave

YES ↓

STEP 4
You may take FMLA military caregiver leave

What are the certification requirements for military caregiver leave?

If you request military caregiver leave, your employer can require that you provide certification supporting your leave request that includes:

1) contact information for the authorized health care provider completing the certification, the type of medical practice or specialty, and affiliation with the military, if any;

2) whether the injury or illness was incurred or aggravated by service in the line of duty on active duty, when it began or was aggravated, and its likely duration;

3) a statement of appropriate facts regarding the servicemember's health condition sufficient to support the need for FMLA leave;

4) information to show that the servicemember needs care and estimates for the period and dates of treatment or recovery needed;

5) if care is needed intermittently or on a reduced schedule, the schedule of treatments or appointments, or an estimate of the frequency and duration of periodic care;

6) your name, the name of the covered servicemember, and your relationship to the servicemember; and

7) information on the servicemember's branch, rank, and unit assignment or the veteran's date and type of separation.

If your family member is a current servicemember who needs care, you may present a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family for certification for the time specified on the ITO/ITA.

If your family member is a veteran with a serious injury or illness, you may provide a copy of a VASRD rating determination or the enrollment notice from the VA's Program for Comprehensive Assistance for Family Caregivers for certification of the veteran's serious injury or illness. The enrollment notice may be issued to any member of the veteran's family. However, you may need to provide additional information to support your leave request.

An authorized health care provider may be a DOD, VA, TRICARE network, non-network TRICARE, or non-military-affiliated health care provider. An employer may request a second and third opinion of a covered servicemember's serious injury or illness only when a certification is provided by a non-military-affiliated health care provider. Recertification is not permitted for a certification for military caregiver leave.

The FMLA Leave Process

This flowchart provides general information to walk you through your initial request for FMLA leave. It is a step-by-step guide that will help you navigate the sometimes complicated FMLA process.

Please note, it is ESSENTIAL that you are familiar with your employer's leave policy. There are several instances throughout the FMLA leave process where you will need to comply with BOTH the FMLA regulations AND your employer's leave policy.

PLEASE REFERENCE "THE EMPLOYEE'S GUIDE TO THE FAMILY AND MEDICAL LEAVE ACT" FOR GENERAL INFORMATION ABOUT TAKING FMLA LEAVE.

START HERE

STEP 1
You must notify your employer when you know you need leave

STEP 2
Your employer must notify you whether you are eligible for FMLA leave within 5 business days

NOT ELIGIBLE

STOP
You **are not** able to take FMLA Military Leave
(You may request leave again in the future. Employee eligibility can change.)

ELIGIBLE

Your employer must provide you with your FMLA rights & responsibilities, as well as any request for certification

CERTIFICATION REQUESTED

STEP 3
You must provide sufficient information to your employer to certify your need for leave within 15 calendar days

CERTIFICATION NOT REQUESTED

Qualifying Exigency Leave

Please see pg. 9 for qualifying exigency certification

Military Caregiver Leave

Please see pg. 17 for military caregiver certification

NOT DESIGNATED

STOP
You **are not** able to take FMLA Military Leave
(You may request leave again in the future.)

STEP 4
Your employer must notify you whether your leave has been designated as FMLA within 5 business days

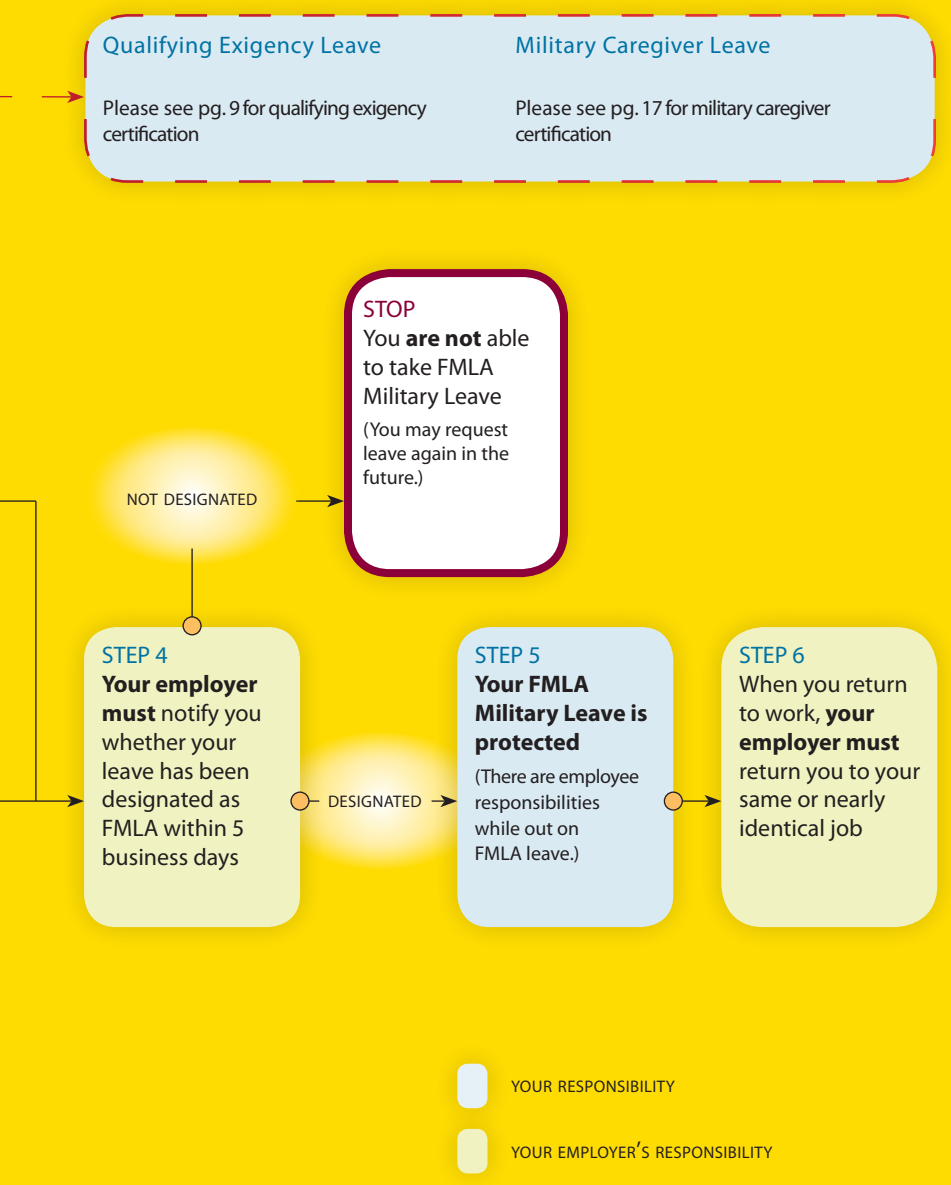
DESIGNATED

STEP 5
Your FMLA Military Leave is protected
(There are employee responsibilities while out on FMLA leave.)

STEP 6
When you return to work, **your employer must** return you to your same or nearly identical job

YOUR RESPONSIBILITY

YOUR EMPLOYER'S RESPONSIBILITY



General FMLA Rights and Responsibilities

If you take FMLA leave, your employer must continue your health insurance as if you were not on leave (you may be required to continue to make any normal employee contributions).

FMLA leave is unpaid leave. However, if you have sick time, vacation time, personal time, etc., saved up with your employer, you may use that leave time, along with your FMLA leave so that you continue to get paid. In order to use such leave, you must follow your employer's normal leave rules such as submitting a leave form or providing advanced notice. Even if you do not want to use your paid leave, your employer can require you to use it during your FMLA leave.

To take FMLA leave, you must provide your employer with appropriate notice. When you need FMLA leave unexpectedly (for example, if a servicemember is injured in the line of duty), you MUST inform your employer as soon as you can. You must follow your employer's usual notice or call-in procedures unless you are unable to do so. Time off under the FMLA may not be held against you in employment actions such as hiring, promotions or discipline.

When you return to work, the FMLA requires that your employer return you to the same job that you left, or one that is nearly identical. If you are not returned to the exact same job, the new position must:

- involve the same or substantially similar duties, responsibilities and status;
- include the same general level of skill, effort, responsibility and authority;
- offer identical pay, including equivalent premium pay, overtime and bonus opportunities;
- offer identical benefits (such as life insurance, health insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.); and
- offer the same general work schedule, and be at the same (or nearby) location.

Please keep in mind that if you exhaust your FMLA leave entitlement and are unable to return to work, your employer is not required to restore you to your position.

How to File a Complaint

The U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for administering and enforcing the Family and Medical Leave Act for most employees.

If you have questions, or you think that your rights under the FMLA have been violated, you can contact WHD at 1-866-487-9243. You will be directed to the WHD office nearest you for assistance. There are over 200 WHD offices throughout the country staffed with trained professionals to help you.

The information below is useful when filing a complaint with WHD:

- your name;
- your address and phone number (how you can be contacted);
- the name of the company where you work or worked;
- location of the company (this may be different than the actual job site where you worked);
- phone number of the company;
- manager or owner's name; and
- the circumstances of your FMLA request and your employer's response.

Your employer is prohibited from interfering with, restraining, or denying the exercise of or the attempt to exercise FMLA rights, retaliating against you for filing a complaint and cooperating with the Wage and Hour Division, or bringing a private action to court. You should contact the Wage and Hour Division immediately if your employer retaliates against you for engaging in any of these legally-protected activities.

To contact the Wage and Hour Division office nearest you, visit: www.dol.gov/whd/america2.htm.

Web Site Resources

Visit the Wage and Hour Division web site at **www.dol.gov/whd/fmla** for resources containing information about the FMLA, including:

- Key News
- General Guidance
- The Employee's Guide to The Family and Medical Leave Act
- Fact Sheets
- e-Tools
- Posters
- Forms
- Interpretive Guidance
- Law
- Regulations

U.S. Department of Labor
Wage and Hour Division

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(1-866-487-9243)
www.dol.gov/whd

WH-1513 FEBRUARY 2013