

FAMILY, MEDICAL, SERVICEMAN,
EXIGENCY, AND MATERNITY LEAVE REGULATIONS

I. Purpose

To define the procedures of LEARN for granting and processing leave under the federal Family and Medical Leave Act (“FMLA”) and Connecticut’s Fair Employment Practices Act (FEPA), both as amended.

II. Where to go for more Information

Employees who have any questions regarding any part of these regulations, when and how they may take leave should contact the Personnel Coordinator or the Director of Executive Services.

III. Family and Medical Leave

A. The Leave: LEARN grants family and medical leave consistent with federal Family and Medical Leave Act. This is known as “FMLA” leave. FMLA leave allows an eligible employee to take leave for the following:

- Care of the employee's child after birth or placement for adoption for foster care;
- Care of the employee's son, daughter, spouse, or parent with a serious health condition; or
- The employee’s own illness when a serious health condition makes the employee unable to do his or her job.

B. Servicemember and Exigency Leave: LEARN grants leave consistent with the federal Family and Medical Leave Act for servicemembers and their families. There are two types of leave that are applicable to servicemembers that are beyond the leave listed above. These two types of leave are:

- Leave to Care for a Servicemember.
- Qualifying Exigency Leave.

These two types of leave are described in more detail in a separate section below. If you have any questions regarding Servicemember Leave, please contact the Personnel Coordinator or the

Director of Executive Services.

C. Eligibility: In order for an employee to be eligible for FMLA leave the employee must have been employed by LEARN for twelve months, which need not be consecutive, and worked at least 1,250 hours in the twelve months just before the beginning of the leave.

Unless otherwise provided, the twelve months during which an employee may take twelve work weeks of FMLA leave will be that of the LEARN fiscal year. That is, from July 1st of any year through June 30th of the following year.

D. Serious Health Condition: A serious health condition is defined in several ways. These are summarized as follows:

- Inpatient Illness,
- Incapacity accompanied by treatment,
- Pregnancy or prenatal care,
- Chronic serious health condition,
- Permanent or long term conditions, and
- Conditions requiring multiple treatments.

If you need to know whether you have a health condition that would qualify you for FMLA leave, please contact the Personnel Coordinator or the Director of Executive Services.

In addition, a worksheet has been provided as Appendix 1 of these regulations to assist you in understanding whether you may have a serious health condition that would qualify you for FMLA leave.

E. Time Off: Federal law allows employees to request up to twelve work weeks of FMLA leave during a twelve-month period. Employees may request additional time off in order to care for a servicemember, which is described in more detail below.

The amount of FMLA leave an employee may use depends upon how much leave he or she has already used during the current twelve month period, described in Section B, above.

Time used for FMLA leave will not be counted as attendance for purposes of earning a perfect attendance award.

F. Advance notice: A request for FMLA leave must be made at least thirty (30) days before the date upon which the leave will begin or as soon as practicable after learning of the need to take leave. Under most circumstances, it should be practicable to notify LEARN on the same day or next business day after learning of the need to take leave.

If the need for FMLA leave is not foreseeable, the request must be made in a manner consistent with LEARN policy generally and the notice requirements of your position specifically. Exceptions will be made only in extraordinary circumstances.

G. Medical Certification: An employee taking an FMLA leave for a medical reason, maternity leave, or sick leave of more than five (5) consecutive work days must submit a written request and medical certification, unless otherwise provided by collective bargaining agreement. If you need to take such leave, you will be provided with forms that you and your health care provider must fill out. These forms must be returned to LEARN.

Upon receiving these forms, LEARN may ask you for your permission to contact your health care provider. You need not grant permission but if you do not, your leave may be denied. If you grant permission, then by law LEARN is only allowed to ask your health care provider for clarification of information on the form and/or authentication of the form.

LEARN may require an employee to obtain a second or third opinion at LEARN's expense. This will be considered on a case-by-case basis.

When FMLA/Servicemember leave is taken for the care of someone other than the employee, LEARN may require medical certification for the son, daughter, spouse, or parent of the employee, or of the next of kin of an individual in the case of Servicemember leave. Forms will be provided for this purpose, which must be returned to LEARN.

H. Other Medical Certification: While an employee is out on leave, LEARN may require additional reports regarding the employee's status and intent to return to work, which may include recertification(s) from a health care provider.

An employee who took leave because of his or her own serious health condition may be required to provide a fitness-for-duty certification (medical clearance) before returning to work. Typically, this will be required when an employee was absent from work for more than five (5) consecutive work days. Under some circumstances the executive director may require medical clearance after a shorter absence. This will occur at the executive director's discretion and factors will include but not be limited to, the nature of the employee's health condition, the functions of the employee's position, the nature of the employee's initial medical certification(s) and evidence of abuse of leave entitlements.

I. Using Paid Leave Concurrently with FMLA Leave: You have the option of taking paid time off at the same time you are using FMLA leave. In any case where you decide to take paid time concurrently with FMLA leave, you will be counted as having used accrued paid leave and FMLA leave in the same amount. For vacation, personal, and sick leave, leave may be used as follows:

- *Vacation and personal* leave may be used concurrently with leave taken to care for an employee's child after birth or placement for adoption or foster care and/or care of the employee's son, daughter, spouse, or parent with a serious health condition.
- *Vacation, personal, sick, and, if applicable, Connecticut statutory paid sick* leave may be used concurrently with leave taken for a serious health condition that makes an employee unable to do his or her job.

In all other cases where an employee is eligible for both paid leave and FMLA leave, including situations where an employee may receive pension, disability or workers' compensation benefits, the paid leave will be used consecutively with the paid leave.

In the event that no paid leave of any sort is available to an employee to use concurrently with FMLA leave, FMLA leave will be unpaid.

In all cases where an employee is taking unpaid child rearing leave, unpaid special leave, or other unpaid leave granted at the discretion of LEARN, and such leave would also qualify as FMLA leave, the leave will be counted against an employee's FMLA entitlement.

LEARN will notify you that paid leave is being used concurrently with, and counted against, FMLA leave. LEARN will normally notify you in writing or confirm oral notification in writing.

J. Intermittent Leave and Leave near the end of an Academic Term: The FMLA has special rules affecting the taking of intermittent leave, leave on reduced leave schedule, or leave near the end of an academic term.

Leave may be taken intermittently or on a reduced work schedule for medical reasons only, not for child rearing purposes. In all cases of individuals taking intermittent leave, FMLA leave will be credited against an employee's FMLA entitlement in units no larger than one hour. That is, an employee taking two and one-half hours leave as intermittent FMLA leave, would be credited three hours of FMLA leave taken. These regulations will have no effect on any collective bargaining agreement provisions that may provide differently for the crediting of other leave.

Unless a collective bargaining agreement provides otherwise, if LEARN determines that the intermittent leave would be disruptive to LEARN operations, LEARN may require the employee to transfer to a temporary alternative job for which the employee is qualified and that better accommodates the intermittent or reduced hours leave. The temporary position will have rank, pay, and benefits equivalent to the employee's regular job.

Special rules apply to instructional employees. Instructional employees are those employees whose principal function is to teach and instruct students, which includes not only teachers, but coaches, special instructors and some assistants and aides.

Some instructional employees requesting intermittent leave or a reduced scheduled leave may be required to choose between taking leave for the entire period of the intermittent leave or transferring temporarily to an alternative position for which the employee is qualified. This will occur in those situations where the intermittent leave would involve the employee being absent for more than twenty (20%) percent of the working days during the period over which the leave extends.

An instructional employee requesting leave near the end of an academic term may be required to remain on leave through the end of the term. Whether an instructional employee will be required to do so will depend on when the leave is requested and the number of weeks remaining in the

term. Instructional employees requesting intermittent leave, reduced schedule leave, or leave near the end of an academic term and having questions regarding these restrictions should contact Personnel Coordinator or the Director of Executive Services.

K. Health Benefits: Group health insurance benefits will continue during an employee's FMLA leave. Employees making co-pay contributions to their health insurance must continue to do so. If paid leave is used concurrently with FMLA leave, any co-pay contributions will be paid by the method used prior to their leave (e.g., payroll deduction). If FMLA leave is unpaid, insurance payments must be paid in the manner designated by LEARN. The employee will be notified in writing of the terms and conditions by which these payments must be made. If an employee chooses not to return to work after taking FMLA leave, the employee will be required to reimburse LEARN for premiums paid by LEARN to maintain the employee's health coverage.

L. Returning to the Job: An employee returning from FMLA leave will be returned to the employee's same position or to an equivalent position. If the employee would not have been employed at the time he or she returned from work, then LEARN need not reinstate the employee (e.g., an employee would have been laid off or the employee's shift was eliminated during the FMLA leave).

Employees who are unable to return to work after exhausting their FMLA leave entitlement, or who would not otherwise have been employed, or have not been granted an extension of their leave of absence will be separated from employment.

IV. Servicemember and Exigency Leave

A. Service Member Leave. An eligible employee who is the spouse, son, daughter, parent (but not parent-in-law), or next of kin of a covered service member may take time off from work to care for the servicemember. "Next of kin" means the nearest blood relative of that individual -- other than spouse, parent, son or daughter.

1. **Covered Servicemember:** A Covered Servicemember is,
 - a. a member of the Armed Forces, including a member of the National Guard or Reserves, or
 - b. a veteran who, at any time in the five (5) years prior to his or her medical treatment, was a member of the Armed Forces, including the National Guard or Reserves, and
 - c. 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.
2. The following are what these terms mean in the paragraphs above:
 - a. "Outpatient Status" means the Servicemember is assigned to a military medical treatment facility as an outpatient or a unit established for the purpose of

providing command and control of members of the Armed Forces receiving medical care as outpatients.

- b. “Serious injury or illness”, means,
 - i. an injury or illness incurred by the member before the member’s active duty and was aggravated by service in the line of duty while on active duty, or
 - ii. an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.
- 3. **Time Off:** An eligible employee otherwise entitled to this leave may take a total of 26 workweeks of leave during a 12-month period to care for the Servicemember.
- 4. **Limitations on Time Off:** Leave for care of a servicemember shall only be available during a single 12-month period. Exceptions to this rule may apply for new injuries incurred during later deployments and/or time needed to care for a second servicemember. If you think you may fall into one of these exceptions, please contact the Personnel Coordinator or the Director of Executive Services for more details.

B. Exigency Leave: Eligible employees may take FMLA leave for a qualifying exigency. In order to take this leave, an otherwise eligible employee must have a spouse, son, daughter, or parent who a member of the regular or reserve components of the Armed Forces and who is deployed to any foreign country.

- 1. **Types of Exigency Leave:** An eligible employee may take exigency leave for the following purposes:
 - a. Short notice deployment.
 - b. Military events and related activities.
 - c. Childcare and school activities.
 - d. Financial and legal arrangements.
 - e. Counseling.
 - f. Rest and recuperation.
 - g. Post-deployment activities.
 - h. Additional activities.

A worksheet has been provided as Appendix 2 of this policy to assist you in understanding whether you may be entitled to take exigency leave. If you have any questions regarding exigency leave, please contact the Personnel Coordinator or the Director of Executive Services.

- 2. **Time Off:** An eligible employee otherwise entitle to this leave may take a total of 12 workweeks of leave during a 12-month period for Exigency Leave.

C. Servicemember, Exigency, and other Leave. At times, Servicemember, Exigency, traditional FMLA, or other types of leave may occur at the same time.

1. **Combining Servicemember leave with other Types of FMLA leave:** During the single 12-month period allowed for Servicemember Leave, an eligible employee may take only a combined total of 26 workweeks of leave, regardless of whether such leave is just Servicemember leave or it is any combination of Servicemember, Exigency and other FMLA leave.
2. **Using Paid Leave Concurrently with Servicemember or Exigency Leave:** You have the option of taking paid time off at the same time you are using Servicemember or Exigency leave leave.
 - a. In any case where you decide to take paid time concurrently with Servicemember or Exigency leave leave, you will be counted as having used accrued paid leave and Servicemember or Exigency leave leave in the same amount.
 - b. In the event that no paid leave of any sort is available to an employee to use concurrently with Servicemember or Exigency leave, the leave will be unpaid.
 - c. LEARN will notify you that paid leave is being used concurrently with, and counted against, Servicemember or Exigency leave. LEARN will normally notify you in writing or confirm oral notification in writing.
3. **Advance Notice:** In any case in which the necessity for Servicemember or exigency leave is unforeseeable, the employee shall provide such notice to the LEARN as soon as is reasonable and practicable.
5. **Intermittent Leave:** Servicemember and Exigency leave may be taken intermittently, consistent with the FMLA intermittent leave described above.

V. Maternity Leave and Transfer

A. The Basic Entitlement: Employees are entitled to a reasonable leave of absence for disability resulting from pregnancy. This includes disability occurring both before and after the birth of the child. An employee taking such leave must provide a medical certification from a health care provider in the same manner and under the same timeframes as she would for FMLA leave.

B. Interaction with the FMLA: When an employee's disability also qualifies as a serious health condition under the FMLA, the two types of leave will run at the same time. When this happens, the leave will be counted against the employee's FMLA leave entitlement.

C. Health Benefits: While on maternity leave, an employee will be eligible to receive the same

disability benefits as an employee on a medical leave of absence. In the event no paid days are available, leave will be unpaid. When an employee indicates her intent to return to work her original job or an equivalent position will be made available to her.

D. Potential Injury: If a pregnant employee reasonably believes that continued work in her current position might cause injury to herself or the fetus, she should give written notice to LEARN. LEARN will make a reasonable effort to transfer the pregnant employee to a suitable temporary position. Such an employee will not be eligible for a transfer without providing LEARN with written notice. LEARN's decision regarding the request for transfer may be appealed to the Connecticut Commission on Human Rights.

Appendix 1 - Serious Condition Checklist

Always check with Human Resources to see if you are eligible for leave

1. Inpatient care

In order to qualify for FMLA leave as inpatient care, you must meet the following criteria:

- ☐ Had an overnight stay in a hospital, hospice, or residential medical care facility, and
- ☐ Experienced any period of incapacity, which means the inability to work, attend school or perform other regular daily activities.

Or you need to have the following:

- ☐ Subsequent treatment in connection with this inpatient care.

Appendix 1 - Serious Condition Checklist

Always check with Human Resources to see if you are eligible for leave

2. Incapacity Accompanied by Treatment

In order to qualify for FMLA leave because of incapacity accompanied by treatment, you must meet the following criteria:

- ☐ You must have had a period of incapacity of more than three (3) consecutive, full calendar days.

In addition, you need to have experienced at least one of the following and it must be related to the same condition:

- ☐ Two or more treatments within 30 days of the first day of incapacity.
 - The treatments must be by one of the following:
 - A health care provider,
 - A nurse under direct supervision of a health care provider, or
 - A provider of health care services (*e.g.*, physical therapist) under orders of, or on referral by, a health care provider.
- ☐ At least one treatment by a health care provider that results in a regimen of continuing treatment under the supervision of the health care provider.

In addition, the following requirements must be met:

- ☐ Treatment by a health care provider must be an in-person visit to the health care provider.
- ☐ The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.

Additional Information

The requirement of two or more treatments occurring within 30 days is subject to extenuating circumstances. “Extenuating circumstances” means circumstances beyond the employee’s control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a set of circumstances are extenuating depends on the facts. If you have any questions regarding extenuating circumstances, please contact the Personnel Coordinator or the Director of Executive Services.

Appendix 1 - Serious Condition Checklist

Always check with Human Resources to see if you are eligible for leave

3. Pregnancy or prenatal care

You are eligible for FMLA leave for any period of incapacity due to pregnancy or prenatal care.

Additional Information

Absences for this type of leave qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days.

For example, an employee who is pregnant may be unable to report to work because of severe morning sickness.

Appendix 1 - Serious Condition Checklist

Always check with Human Resources to see if you are eligible for leave

4. Chronic Serious Health Condition

In order to qualify for FMLA leave because of chronic serious health conditions, you must have a condition that meets the following criteria¹:

- ☐ It requires periodic visits for treatment by a health care provider, or by a nurse under direct supervision of a health care provider.²
- ☐ It continues over an extended period of time, which includes recurring episodes of a single underlying condition.
- ☐ It may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

Additional Information

Absences for this type of leave qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days.

For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level.

¹ You can take this type of leave both for your incapacity resulting from the condition as well as your treatments for the condition.

² Periodic visits are defined as at least twice a year.

Appendix 1 - Serious Condition Checklist

Always check with Human Resources to see if you are eligible for leave

5. Permanent or long-term conditions.

In order to qualify for FMLA leave because of permanent or long term conditions, you must have a condition that meets the following criteria:

- ☐ You must have experienced a period of incapacity that is permanent or long-term
- ☐ The incapacity must be the result of a condition for which treatment may not be effective.
- ☐ You or your affected family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

Additional Information

Examples of a permanent or long-term condition include Alzheimer's, a severe stroke, or the terminal stages of a disease.

Appendix 1 - Serious Condition Checklist

Always check with Human Resources to see if you are eligible for leave

6. Conditions requiring multiple treatments.

In order to qualify for FMLA leave because of conditions requiring multiple treatments, you must have circumstances that meet the following criteria:

- ☐ You must have any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:
 - Restorative surgery after an accident or other injury; or
 - A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

This checklist is to assist you understand whether you may be eligible for FMLA Exigency Leave. On this checklist, the servicemember is referred to as the “covered military member,” which is the formal term used by the FMLA regulations.

1. **Basic FMLA Eligibility**

- ☐ Basic FMLA eligibility requirements met.

2. **Active Duty Eligibility**

- ☐ The eligible employee has a spouse, son, daughter, or parent is on active duty or a call to active duty status.
- ☐ If it is the eligible employee’s son or daughter on active duty or call to duty, the following criteria are met:
 1. The individual is the employee’s biological, adopted, or foster child, stepchild, legal ward, or
 2. The individual is a child for whom the employee stood in loco parentis, **and**
 3. The individual is of any age.

- ☐ The call to active duty refers to a Federal call to active duty.

(State calls to active duty are not covered unless under order of the President of the United States pursuant to one of the provisions of law listed in the next checklist item).

- ☐ The active duty or call to active duty status, which includes notification of an impending call or order to active duty involves deployment to a foreign country:
 - *Section 688 of Title 10 of the United States Code*, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service;
 - *Section 12301(a) of Title 10 of the United States Code*, which authorizes ordering all reserve component members to active duty in the case of war or national emergency;
 - *Section 12302 of Title 10 of the United States Code*, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty;
 - *Section 12304 of Title 10 of the United States Code*, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty;
 - *Section 12305 of Title 10 of the United States Code*, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components;
 - *Section 12406 of Title 10 of the United States Code*, which authorizes calling the National Guard into federal service in certain circumstances;
 - *Chapter 15 of Title 10 of the United States Code*, which authorizes calling the National Guard and state military into federal service in the case of insurrections and national emergencies;
 - Any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation.

- ☐ The covered military member is a member of one of the following:

- A member of a regular component of the Armed Forces.
- The reserve components (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve), or

- A retired member of the Regular Armed Forces or Reserve.

3. Exigency Leave Eligibility

Eligible employees may take FMLA leave for one or more of the following qualifying exigencies:

(1) Short-notice deployment.

- ☐ To address any issue that arises from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or less calendar days prior to the date of deployment.

(Leave taken for this purpose can be used for a period of seven calendar days beginning on the date a covered military member is notified of an impending call or order to active duty in support of a contingency operation).

(2) Military events and related activities.

- ☐ To attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of a covered military member.
- ☐ To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member

(3) Childcare and school activities.

- ☐ To arrange for alternative childcare to a child³ because the active duty or call to active duty status necessitated the change in the existing childcare arrangement.
- ☐ To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the active duty or call to active duty status.
- ☐ To enroll in or transfer to a new school or day care facility a child, when enrollment or transfer is necessitated by the active duty or call to active duty status.
- ☐ To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child, when such meetings are necessary due to circumstances arising from the active duty or call to active duty status.

(4) Financial and legal arrangements.

- ☐ To make or update financial or legal arrangements to address the covered military member's absence while on active duty or call to active duty status.
 - Examples include preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust.

³ As used in this checklist, "child" means a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of selfcare because of a mental or physical disability at the time that FMLA leave is to commence

- ☐ To act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on active duty or call to active duty status, and for a period of 90 days following the termination of the covered military member's active duty status.

(5) Counseling.

- ☐ To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for a child of the covered military member, provided that the need for counseling arises from the active duty or call to active duty status.

(6) Rest and recuperation.

- ☐ To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment.

(Eligible employees may take up to five days of leave for each instance of rest and recuperation).

(7) Post-deployment activities.

- ☐ To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status.
- ☐ To address issues that arise from the death of a covered military member while on active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements.

(8) Additional activities.

- ☐ To address other events which arise out of the covered military member's active duty or call to active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

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-deployment 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 outpatient 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 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 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 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.

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;
- 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.

Regulations 29 C.F.R. § 825.300(a) may require additional disclosures

For additional information: 1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627

WWW.WAGEHOUR.DOL.GOV U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division WHD Publication 1420 Revised January 2009