



The Family and Medical Leave Act



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Wage and Hour Division



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The Family and Medical Leave Act

Presented by the
U.S. Department of Labor
Wage and Hour Division



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Introduction to the FMLA

[§ 825.101](#)

- Purpose:
 - Balance work and family life
 - Promote economic security of families and serve national interest in preserving family integrity
- Shared Responsibilities:
 - Communication is key



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FMLA Works

- The FMLA has served as the cornerstone of the Department of Labor's efforts to promote work-life balance since President Clinton signed the legislation in 1993
- The best available evidence suggests that adopting flexible practices in the workplace potentially boosts productivity, improves morale, and benefits the economy



FMLA Works

- The Family and Medical Leave Act codified a simple and fundamental principle: Workers should not have to choose between the job they need and the family members they love and who need their care
- The significance of the FMLA is in its recognition that workers aren't just contributing to the success of a business, but away from their jobs they are contributing to the health and well-being of their families



Introduction to the FMLA

Topics of Discussion:

- Employer Coverage and Employee Eligibility
- Qualifying Reasons for Leave
- Amount of Leave
- Employer Rights and Responsibilities
- Employee Rights and Responsibilities
- Military Family Leave Provisions



Employer Coverage

[§ 825.104](#)

- Private sector employers with 50 or more employees
- Public Agencies
- Public and private elementary and secondary schools



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Employee Eligibility

§ 825.110

- Employed by covered employer
- Worked at least 12 months
- Have at least 1,250 hours of service during the 12 months before leave begins
- Employed at a work site with 50 employees within 75 miles



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Qualifying Leave Reasons

[§ 825.112](#)

- Eligible employees may take FMLA leave:
 - For the birth or placement of a child for adoption or foster care
 - 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)



Qualifying Family Members

§ 825.122

- **Parent** - A biological, adoptive, step or foster father or mother, or someone who stood *in loco parentis* to the employee when the employee was a son or daughter. Parent for FMLA purposes does not include in-laws.
- **Spouse** - A husband or wife as defined or recognized in the state where the employee was married and includes individuals in a same-sex marriage or common law marriage.
- **Son or Daughter** - *For leave other than military family leave*, a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is either under 18 years of age, or 18 or older and incapable of self-care because of a mental or physical disability.



Qualifying Leave Reasons – For the Birth or Placement of a Child

[§ 825.120-121](#)

- Both the mother and father are entitled to FMLA leave for the birth or placement of the child and/or to be with the healthy child after the birth or placement (bonding time)
- Employees may take FMLA leave before the actual birth, placement or adoption
- Leave must be completed by the end of the 12-month period beginning on the date of the birth or placement



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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



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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
- Pregnancy
- 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](#)

Pregnancy

- Incapacity due to pregnancy or prenatal care



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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](#)

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:
 - for the birth or placement of a child for adoption or foster care;
 - to care for a spouse, son, daughter, or parent with a serious health condition; and
 - for the employee's own serious health condition.

* Eligible airline flight crew employees are entitled to 72 days of FMLA leave



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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
- Leave to bond with a child after the birth or placement must be taken as a continuous block of leave unless the employer agrees to allow intermittent or reduced schedule leave



Amount of Leave – Intermittent Leave

§ 825.205

- In calculating the amount of leave, employer must use the shortest increment the employer uses to account for other types of leave, provided it is not greater than one hour *
- Shortest increment may vary during different times of day or shift
- Required overtime not worked may count against an employee's FMLA entitlement

* Special rules apply for calculating leave for airline flight crew employees



Amount of Leave – Special Rules

[§ 825.200 - 205](#)

- Physical impossibility
- Holidays
- Planned medical treatment
- Transfer to an alternative position
- Spouses may be limited to a combined total for certain leave reasons



12-Month Period

[§ 825.200](#)

Method determined by employer

- Calendar year
- Any fixed 12-month leave year
- A 12-month period measured forward (*The Jackson Public School District uses this method in accordance with Board Policy GADEA*)
- A rolling 12-month period measured backward



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Substitution of Paid Leave

§ 825.207

- “Substitution” means paid leave provided by the employer runs concurrently with unpaid FMLA leave and normal terms and conditions of paid leave policy apply
- Employees may choose, or employers may require, the substitution of accrued paid leave for unpaid FMLA leave
- Employee remains entitled to unpaid FMLA if procedural requirements for employer’s paid leave are not met



Substitution of Paid Leave – Limitations

§ 825.207

- Workers' compensation leave
 - may count against FMLA entitlement
 - “topping off” allowed if state law permits
- Disability leave
 - may count against FMLA entitlement
 - “topping off” allowed if state law permits
- Compensatory time off (public sector only)
 - may count against FMLA entitlement
 - subject to FLSA requirements



Employer Responsibilities

- Provide notice
- Maintain group health insurance
- Restore the employee to same or equivalent job and benefits
- Maintain records



Employer Responsibilities – Provide General Notice

[§ 825.300](#)

- Employers must inform employees of FMLA:
 - Post a General Notice, and
 - Provide General Notice in employee handbook or, if no handbook, distribute to new employees upon hire
- Electronic posting and distribution permitted
- Languages other than English required where significant portion of workforce not literate in English
- CMP for willful posting violation



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Employer Responsibilities – Provide Notice of Eligibility

[§ 825.300](#)

- Within five business days of leave request (or knowledge that leave may be FMLA-qualifying)
- Eligibility determined on first instance of leave for qualifying reason in applicable 12-month leave year
- New notice for subsequent qualifying reason if eligibility status changes
- Provide a reason if employee is not eligible
- May be oral or in writing (optional WH-381)



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Employer Responsibilities – Provide Notice of Rights and Responsibilities

[§ 825.300](#)

- Provided when eligibility notice required
- Must be in writing (optional WH-381)
- Notice must include:
 - Statement that leave may be counted as FMLA
 - Applicable 12-month period for entitlement
 - Certification requirements
 - Substitution requirements
 - Arrangements for premium payments (and potential employee liability)
 - Status as “key” employee
 - Job restoration and maintenance of benefits rights



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Employer Responsibilities – Provide Notice of Designation

§ 825.300

- Within five business days of having enough information to determine leave is FMLA-qualifying
- Once for each FMLA-qualifying reason per applicable 12-month period (additional notice if any changes in notice information)
- Include designation determination; substitution of paid leave; fitness for duty requirements
- Must be in writing (optional WH-382)
- If leave is determined not to be FMLA-qualifying, notice may be a simple written statement



Employer Responsibilities – Provide Notice of Designation

[§ 825.300 - .301](#)

- Employer must notify employee of the amount of leave counted against entitlement, if known; may be payroll notation
- If amount of leave is unknown (e.g., unforeseeable leave), employer must inform employee of amount of leave designated upon request (no more often than 30 days)
- Retroactive designation permitted provided that failure to timely designate does not cause harm to employee



Employer Responsibilities – Maintain Group Health Plan Benefits

[§ 825.209](#)

- Group health plan benefits must be maintained throughout the leave period
- Same terms and conditions as if employee were continuously employed



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Employer Responsibilities – Maintain Group Health Plan Benefits

§ 825.210 - .213

- Employee must pay his/her share of the premium
- Even if employee chooses not to retain coverage during leave, employer obligated to restore same coverage upon reinstatement
- In some circumstances, employee may be required to repay the employer's share of the premium if the employee does not return to work after leave



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Employer Responsibilities – Job Restoration

[§ 825.214 - .219](#)

- Same or equivalent job
 - equivalent pay
 - equivalent benefits
 - equivalent terms and conditions
- Employee has no greater right to reinstatement than had the employee continued to work
- Bonuses predicated on specified goal may be denied if goal not met
- Key employee exception



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
 - Provide fitness-for-duty certification



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](#)



Employee Responsibilities – Provide Certification

[§ 825.305](#)

- Medical Certification for serious health condition (optional WH-380-E and 380-F)
 - Submit within fifteen (15) calendar days
 - Employer must identify any deficiency in writing and provide seven (7) days to cure
 - Annual certification may be required
 - Employee responsible for any cost



Employee Responsibilities – Provide Certification

[§ 825.307](#)

- Employer (**not** employee's direct supervisor) may contact health care provider to:
 - **Authenticate:** Verify that the information was completed and/or authorized by the health care provider; no additional information may be requested
 - **Clarify:** Understand handwriting or meaning of a response; no additional information may be requested beyond what is required by the certification form
- Second and third opinions (at employer's cost)
 - If employer questions the validity of the complete certification, the employer may require a second opinion
 - If the first and second opinions differ, employer may require a third opinion that is final and binding



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Employee Responsibilities – Provide Certification

§ 825.308 & .313

- Recertification
 - No more often than every 30 days and with an absence
 - If the minimum duration on the certification is greater than 30 days, the employer must wait until the minimum duration expires
 - In all cases, may request every six months with an absence
 - More frequently than every 30 days if:
 - the employee requests an extension of leave, or
 - circumstances of the certification change **significantly**, or
 - employer receives information that casts doubt on the reason for leave
- Consequences of failing to provide certification
 - Employer may deny FMLA until certification is received



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Employee Responsibilities – Provide Periodic Status Reports

[§ 825.311](#)

Employee must respond to employer's request for information about status and intent to return to work



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Employee Responsibilities – Fitness-for-Duty Certification

[§ 825.312](#)

- For an employee's own serious health condition, employers may require certification that the employee is able to resume work
 - Employer must have a uniformly-applied policy or practice of requiring fitness-for-duty certification for all similarly-situated employees
- If state or local law or collective bargaining agreement is in place, it governs the return to work
- Not permitted for intermittent or reduced schedule leave unless reasonable safety concerns exist
- Authentication and clarification
- Employee responsible for any cost



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Other Issues

- Salaried employees:
[§ 825.206](#)
 - Deductions from certain “exempt” employees’ salaries
 - Deductions for employees paid overtime on a fluctuating workweek method
- Special rules for schools
[§ 825.600-.604](#)





MILITARY FAMILY LEAVE

Under the Family and Medical Leave Act



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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



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

* Eligible airline flight crew employees are entitled to 72 days



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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



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

* Eligible airline flight crew employees are entitled to 156 days



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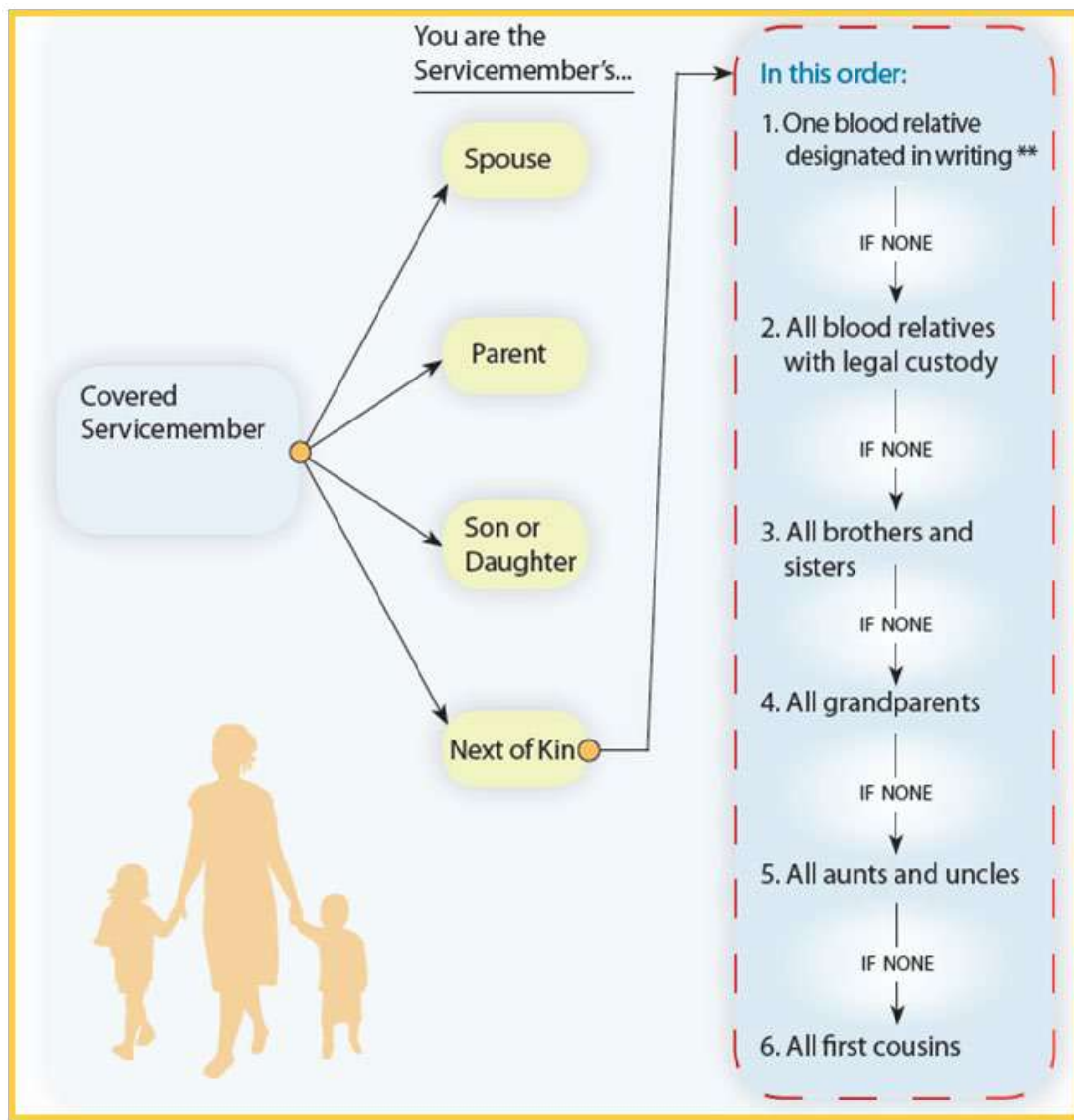
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Qualifying Family Relationships Under Military Caregiver Leave

§ 825.127

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



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Covered Servicemember

[§ 825.127](#)

A **covered servicemember** may be:

- a current member of the Armed Forces; **OR**
- a veteran of the Armed Forces.



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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



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



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



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



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



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



FMLA Enforcement Mechanisms

[§ 825.400](#)

- To enforce FMLA rights, employees may:
 - File a complaint with Wage and Hour Division
 - File a private lawsuit (Section 107(a))
- Action must be taken within two years after the last action which the employee contends was in violation of the Act, or three years if the violation was willful



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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



Additional Information

- Visit the WHD homepage at:
<http://www.wagehour.dol.gov>
- Call the WHD toll-free information and helpline at
1-866-4US-WAGE (1-866-487-9243)
- Call or visit the nearest Wage and Hour Division Office

