

MEMORANDUM #003-HR12

Date: January 5, 2012

TO: Agency Administrators

FROM: Bobbie Chappell, Director of Human Resources

VIA: Rip Colvin, Executive Director

RE: FMLA Presentation with Notes and Authorization for Disclosure of HIPPA Information

The Justice Administrative Commission appreciates everyone's participation during the last two webinars on the *Family Medical Leave Act* and *Military Family Leave Act*. It is our hope that you found them informative.

We are providing you another copy of the PowerPoint Presentation, but this time it includes the notes that we developed for the presentation as an added resource and a quick reference guide.

As promised, we have also attached a copy of the HIPPA Authorization Form, for those times when you deem it necessary to contact the Health Care Provider. You must get this form signed by the employee and a copy of the signed form must be provided to the Health Care Provider. Before this occurs, you must give the employee a chance to cure any deficiencies on the medical certification. Please remember that this should be a rarity and not the norm.

If you have any further questions please do not hesitate to contact Andy Snuggs at SnuggsA@justiceadmin.org or myself. You may also reach either of us by phone at (850) 488-2415.

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Attachments



JUSTICE ADMINISTRATIVE
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Family Medical Leave Act and Military Family Leave

Andy Snuggs, Senior Human Resources Coordinator
Bobbie Chappell, Director of Human Resources



Webinar Objectives

The objective of this workshop is to provide an overview of the key changes in the Family Medical Leave Act and Military Family Leave

- FMLA
 - Background Information
 - Required Posting
 - Required Employer Notices
 - Required Employee Notice
 - Certification Forms
 - Clarification and Authentication
 - Genetic Information Non-discrimination Act (GINA)
 - Changes to FMLA – New Certification, Fitness for Duty, Light Duty, Compensatory Leave, and Overtime



Webinar Objectives (continued)

- Military Family Leave
 - Qualifying Exigency Leave
 - Military Caregiver Leave
- Questions



Background Information

- Eligibility for FMLA
 - 12 months of employment during the past seven years
 - 1,250 hours worked in the 12 months immediately preceding the date leave is to begin
- Maximum Length of Leave
 - Up to 12 weeks of medical and/or qualifying exigency FMLA Leave in a fiscal year
 - Up to 26 weeks of military caregiver leave in a 12 month period
 - Continuous, intermittent, or reduced schedule leave

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Used to be, an employee could work for an employer for 12 months, terminate employment and then reestablish employment 10 years later and be eligible for FMLA coverage as long as they met the 1,250 hour requirement.

Now however, any time worked after a break in service of over seven years need not be considered by the employer as contributing to the twelve month requirement unless the break in service is due to military service or if there is a written agreement reflecting an employer's intention to rehire the employee after the break in service (this includes a collective bargaining agreement)



Background Information

- Qualifying Reasons for FMLA Leave
 - Birth of a son or daughter and to care for the newborn child
 - Placement of a son or daughter for adoption or foster care
 - Care for the employee's spouse, son, daughter or parent with a serious health condition
 - Serious health condition that makes the employee unable to perform the functions of the employee's job
 - Qualifying exigency for covered military member (new)
 - Care for ill or injured covered service member (new)

Background Information

- Continuing Treatment – Changes to definitions
 - Incapacity of more than 3 calendar days and treatment
- Treatment Parameters
 - Two or more times by health care provider within 30 days of the first day of incapacity
 - Treatment by health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of a health care provider
 - First visit – within 7 days of the first day of incapacity
- Chronic conditions
 - 2 or more visits to a health care provider per year



•In particular, incapacity in excess of three consecutive calendar days plus treatment has become problematic because non-serious health conditions often meet that portion of the criteria. Therefore, the new regulations clarify that in order to qualify for FMLA leave under the “incapacity in excess of three days,” prong, an employee must make two doctor’s visits within 30 days, the first of which must be within seven days of the incapacity.

•They would not be covered for the flu or a common cold.

•A serious health condition can be considered chronic when the ee has 2 or more visits to a health care provider per year.

Required Posting (new)

Employee Rights And Responsibilities Under The Family And Medical Leave Act

- Provided to each employee when hired
- Printed and posted for employees that do not have access to computers at work

IMPLEMENTATION RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

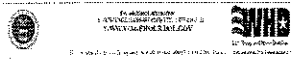
For Your Information:
 The Commission is providing you with a copy of the Family and Medical Leave Act (FMLA) and its implementing regulations. The Act and regulations are intended to provide you with information regarding your rights and responsibilities under the Act and regulations. The Act and regulations are intended to provide you with information regarding your rights and responsibilities under the Act and regulations.

What You Should Know:
 The Act and regulations apply to all employees who are employed by a covered employer. The Act and regulations apply to all employees who are employed by a covered employer. The Act and regulations apply to all employees who are employed by a covered employer.

Employer Responsibilities:
 The Act and regulations require employers to provide certain benefits to their employees. The Act and regulations require employers to provide certain benefits to their employees. The Act and regulations require employers to provide certain benefits to their employees.

Employee Responsibilities:
 The Act and regulations require employees to provide certain information to their employers. The Act and regulations require employees to provide certain information to their employers. The Act and regulations require employees to provide certain information to their employers.

Additional Information:
 The Act and regulations provide for certain exceptions and limitations. The Act and regulations provide for certain exceptions and limitations. The Act and regulations provide for certain exceptions and limitations.



This must be posted in conspicuous place at the worksite. Here at the JAC we have it posted in the breakroom and one other high traffic area.

It must be provided to new hires; this can be achieved by providing a copy of this document or if you have it in your employee handbook, to make sure they receive one. If you haven't been doing that, this is a good time to email the document out to all of your employees.


The document goes over everything from an employees Basic Leave Entitlements, Benefits and Protections, Eligibility Requirements and Employer Responsibilities.

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Required Employer Notices (new)

Two New Notices

- **Notice of Eligibility, Rights, and Responsibilities**
 - Provided to an employee within **5 business days** of the date
 - An employee requests FMLA
 - Employer becomes aware that an employee's leave may be FMLA-qualifying
- **Designation Notice**
 - Provided to an employee once the employer has sufficient information to determine FMLA-coverage eligibility
 - Employee must be notified within **5 business days** that the leave has been designated as FMLA



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Notice of Eligibility

which is now required within five business days of receiving a request for FMLA leave or learning leave may be FMLA protected leave (previously it was required within two days of the request). However, the new regulations require more content to be included in the eligibility notice. In order to meet these requirements the DOL have provided a form that we can use that covers the eligibility requirements (if they meet them or not) and employee's rights and responsibilities.

You do not have to use the form provided but you need to make sure whatever form of notification you use has the information provided in this document.

Designation Notice

It must state whether or not the leave is designated as FMLA leave and the amount of leave that will be designated, if known. If the amount of FMLA leave is unknown at the time of designation (e.g. intermittent leave), the employer must notify the employee of the periods designated as FMLA by the next pay day after an employee's request for such information.

Required Employee Notice

- Family and Medical Leave Application
 - Sufficiently explain reasons for leave
- Calling in sick is not considered sufficient notice
- Leave may be denied if the employee fails to adequately explain the reason for leave
- Employee must inform you if the leave is for a reason which was previously certified



The new regulations also bring some changes to the responsibilities of employees in providing notice of intent to use FMLA leave. Previously, an employer was able to require an employee to comply with the usual and customary notice and procedural requirements for using leave, but an employer was not permitted to deny or delay leave to an employee because of the failure to follow procedures. **Now, employees are required to provide at least 30 days notice of intent to use FMLA leave for foreseeable reasons and in the event the employee does not provide 30 days notice, the employer may ask the employee to explain reasons why providing such notice was not practicable. Employees must provide "sufficient information" for employers to decide if FMLA leave is warranted. Employers may now deny or delay leave if the employee fails to follow this requirement.** For example if the employee provides 10 days notice when the employee could have reasonably provided 30 days notice, the employer may delay the start of FMLA leave for 20 days

An employee may be covered under FMLA if they meet one of six definitions of a serious health condition. Currently, inpatient care, incapacity in excess of three consecutive calendar days plus treatment; pregnancy; chronic conditions; multiple treatments and long-term conditions may all qualify an employee for coverage under FMLA.

Family Member Medical Certification Form (new)

Certification of Health Care Provider for Family Member's Serious Health Condition (WH-380-F)

- Asks for detailed information about the family members' condition
- Amount of time the employee might need to care for the family member

Employee allowed 7 calendar days to provide additional information if the certification is incomplete or insufficient



Department of Health Care Provider
Family Member's Serious Health Condition
(WH-380-F)

U.S. Department of Labor
WHD

INSTRUCTIONS TO EMPLOYERS: This form is to be completed by the health care provider for the family member of an employee who is unable to work because of a serious health condition. The form is used to certify the employee's absence from work. The form is used to certify the employee's absence from work. The form is used to certify the employee's absence from work. The form is used to certify the employee's absence from work.

EMPLOYEE INFORMATION: Name of employee: _____ Title: _____

HEALTH CARE PROVIDER INFORMATION: Name of provider: _____ Title: _____

DATE OF CERTIFICATION: From: _____ To: _____

REASON FOR ABSENCE: _____

ADDITIONAL INFORMATION: _____

DATE OF RETURN TO WORK: _____

EMPLOYER'S SIGNATURE: _____

HEALTH CARE PROVIDER'S SIGNATURE: _____

Go over the form...again remind the ee to make sure all applicable entries are filled out. Just like with the previous form, they must be given a minimum of 15 calendar days to return the documentation to you.



Clarification and Authentication

- Employer may contact the health care provider to
 - Clarify information on medical certification form
 - Authenticate medical certification form
- Limited to contacting health care provider to
 - understand handwriting on the certification
 - understand the meaning of a response
 - request verification that information on the certification form was completed and/or authorized by the health care provider who signed the document
- No additional medical information may be requested

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Previously, an employer was permitted to contact an employee's health care provider with the employee's permission only for purposes of obtaining authentication of the certification. The new regulations, however, allow an employer to contact the employee's health care provider without the employee's consent to authenticate a medical certification

If you are inquiring on additional medical information then you cannot do that without the ee's permission because of HIPPA.



Clarification and Authentication

- HIPAA requirements must be satisfied when employee's health information is shared with an employer by a HIPAA-covered health care provider
- Employee's responsibility to provide complete and sufficient certification and clarifications if necessary
- If employee does not provide a required HIPAA release; does not authorize employer to clarify the certification with the health care provider; and does not otherwise clarify the certification, FMLA Leave may be denied

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If an employer requires additional medical information (HIPAA protected) in order to determine FMLA designation, an employer may contact the employee's health care provider with the employee's consent if the employee has been given a chance to cure any deficiencies on the medical certification. If the employee has been given a chance to cure any deficiencies on the medical certification and still refuses to give consent to allow the employer to contact the health care provider directly, the employer may deny FMLA leave.



Clarification and Authentication

- Employer contact must be made by
 - Health care professional
 - Human resources professional
 - Leave administrator
 - Management official

As determined by the employing department

- **Under no circumstances may the employee's direct supervisor contact the employee's health care provider**

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This should be seen as last resort and not the norm. The ee must be given time (minimum 7 calendar days) to remedy the situation themselves.

For our purposes, if the employer needs to contact the health care provider, it needs to either be the FMLA Coordinator (if you have one) or the HR Administrator/Director/Designee. It should NEVER be the employee's supervisor.

At this point it probably a good time to briefly go over Genetic Nondiscrimination in Employment, better know as GINA.



Genetic Information Nondiscrimination (GINA)

- Title II – Genetic Nondiscrimination in Employment
- What is genetic information?
- Title II of GINA prohibits:
 - Discrimination
 - Harassment
 - Retaliation
- Confidentiality of Genetic Information

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Under Title II of the Genetic Information Nondiscrimination Act of 2008 or better known as GINA prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers covered by Title II, and strictly limits the disclosure of genetic information in health insurance.

Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e. an individual's family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

Just like with FMLA and the ADA as it pertains to medical information, GINA prohibits the following:

Discrimination:

The law forbids discrimination on the basis of genetic information when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment. *An employer may never use genetic information to make an employment decision because genetic information doesn't tell the employer anything about someone's current ability to work.*

Harassment:

Under GINA, it is also illegal to harass a person because of his or her genetic information. Harassment can include, for example, making offensive or derogatory remarks about an applicant or employee's genetic information, or about the genetic information of a relative of the applicant or employee. Harassment is illegal when it is so severe or pervasive that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee, such as a client or customer.

Retaliation:

Under GINA, it is illegal to fire, demote, harass, or otherwise 'retaliate' against an applicant or employee for filing a charge of discrimination, participating in a discrimination proceeding (such as a discrimination investigation or lawsuit), or otherwise opposing discrimination.

Confidentiality:

It is also unlawful for an employer to disclose genetic information about applicants or employees. Employers must keep genetic information confidential and in a separate medical file. (Genetic information may be kept in the same file as other medical information in compliance with the Americans with Disabilities Act.) There are limited exceptions to this non-disclosure rule.



New Medical Certifications

- Approval is on leave year basis
- If the need for leave lasts beyond the leave year, employee can be required to provide a new medical certification in each subsequent leave year
 - Second opinion (paid by employer) can be requested on new certification
- EXAMPLE:
John provides a certification for intermittent leave on May 1st. The duration is “unknown”; leave is approved to the end of the leave year (December 31). John can be required to provide a new certification at the start of the new leave year on January 1 and a second opinion can be requested.

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Again, the employer must notify the employee of the medical certification requirement and the consequences for not meeting the requirement within five days of an employee request and the employer must allow 15 days for an employee to provide medical certification. The new regulations now allow for annual medical certifications for conditions lasting more than one year, including chronic conditions. **Currently, the law allows for recertification in connection with an absence for a chronic or long-term illness or pregnancy every 30 days.** This is unchanged in the new regulations. **However, recertification may be requested every six months for extended leaves, no matter what the duration listed on the medical certification. Recertification may be sought in less than 30 days if the employee asks for an extension of leave, if circumstances have changed, or if an employer doubts an employee’s status.**

The employer pays for the second opinion and a third opinion if the first two opinions conflict. This should be a rarity not the norm to request a second or third opinion.



Fitness for Duty

- Employer may require a fitness-for-duty certification
- May require the certification to specifically address:
 - employee’s ability to perform the essential functions of their position
- The employee must be provided with a list of essential functions of the employee’s job no later than when the Designation Notice is provided to the employee.

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“Fitness for duty” reexamination is recommended to employers as a Best Practice by HR Professional Organizations.

The law has always allowed the employer to require fitness for duty certifications before an employee could return to work, **however it prohibited employers from requiring fitness for duty certifications from employees that used FMLA leave intermittently. Under the new regulations, an employer may now require fitness for duty certifications every 30 days if intermittent leave is used and “reasonable” concerns for safety exist.** The employer may also provide a list of essential job duties that are listed in the designation notice and ask the health care provider to identify those that an employee can perform.

Light Duty

- Time that an employee spends working light duty does **not** count toward the 12 week FMLA entitlement during the leave year
- Employee is entitled to job restoration for the remainder of the leave year



Some recent court interpretations had allowed employers to count time spent on light duty assignments against an employee's twelve week entitlement of FMLA leave. **In the new regulations, however, legislative intent was articulated to prohibit employers from counting light duty assignments against an employee's FMLA leave entitlement. Instead, if an employee voluntarily accepts a light duty assignment, the employee maintains any FMLA leave balance not used and the employee's right to job restoration is held in abeyance (temporary inactivity or suspension) until the employee is able to return to regular duty.**



Accrued Leave

- Employees may request or may be required to use accrued leave during periods of FMLA Leave
 - Accrued Compensatory Leave
 - Sick Leave
 - Annual Leave

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An employer has always been permitted to allow substitution of paid leave benefits, such as vacation or sick days, while on FMLA leave, but now an employer may require an employee to substitute paid leave for unpaid FMLA leave or require an employee who requests paid leave substitution to comply with the terms and conditions of the employer's paid time off policy so long as it applied consistently among employees. The employer must inform the employee of the terms and conditions of the policy and if the employee does not meet the conditions, the employee is still entitled to unpaid FMLA leave, but must forego paid leave benefits.

They have made this easy to provide because it is within the Notice of Eligibility (page 2). You can indicate on the form what types of leave they will be required to use while on FMLA.



Inability to Work Overtime

- Missed overtime must be counted against an employee's FMLA entitlement if the employee would have been required to work overtime but for their FMLA condition

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Under the old regulations, employers were prohibited from counting any overtime that an employee would have been required to work against their twelve week FMLA leave entitlement. For example, if a standard week consisted of 48 hours for an employee but they had medical certification that they could only work 20 hours a week, only 20 hours may have counted against their FMLA entitlement. With the new regulations, if an employer can demonstrate that the employee would have been required to work overtime, the overtime hours may be counted against the leave entitlement. In this example, the employee would be considered to have used 28 hours of FMLA leave as opposed to 20.

FMLA CHECKLIST

- If they are on intermittent leave then you might not have a return date.
- You want to make sure to give the ee a copy of the FMLA poster when they go out on FMLA. This will probably answer a lot of their questions.
- PAR's:
 - These will only be needed if:
 - EE goes out on LWOP while on FMLA
 - If the ee going out on FMLA is an attorney or Senior Management
 - We recommend that you provide a PAR to record the info in People First
 - The reason: If they exhaust all of their accrued leave and FMLA they would be eligible for Disability Leave



Military Family Leave (new)

- **Qualifying Exigency Leave**
 - Leave taken by an eligible employee for any qualifying exigency arising out of the fact that a covered military member (National Guard or Reserve) is on active duty or call to active duty status
- **Military Caregiver Leave**
 - Leave taken by an eligible employee to care for a covered servicemember with a serious injury or illness

	Qualifying Exigency Leave	Military Caregiver Leave
Parent	X	X
Spouse	X	X
Son	X	X
Daughter	X	X
Next of Kin		X

Military Family Leave

Eligibility Requirement for Military Family Leave

- 12 months of employment in the past 7 years
- 1,250 hours worked in the 12 months immediately preceding the date leave is to begin



The same general baseline eligibility requirements apply to both types of leave in that the employer is considered a covered employer with 50 or more employees and the employee must have at least 12 months of service with the employer and have worked at least 1,250 hours in the previous 12 months, but the regulations add some additional eligibility qualifiers and some new leave protections.

Son or Daughter

- Son or daughter of a covered servicemember
 - Biological, adopted, foster or stepchild, legal ward, or child for whom the service member stood *in loco parentis*
 - Of any age
- Son or daughter on active duty or call to active duty
 - Employee's biological, adopted, foster or step child, legal ward, or child for whom the employee stood *in loco parentis*
 - On active duty or call to active duty status
 - Of any age



In loco parentis means: A person or institution that assumes parental rights and duties for a minor.

Qualifying Exigency

- Qualifying Exigencies Include
 - Short-notice deployment – up to 7 days
 - Military events and related activities
 - Childcare and school activities – not routine child care
 - Financial and legal arrangements – up to 90 days after service ends
 - Counseling
 - Rest and recuperation – short-term only, up to 5 days
 - Past-deployment activities – up to 90 days after service ends
 - Additional activities – as agreed upon by employer and the employee



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Short-notice deployment – To address any issues that arise 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 for this purpose may only 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

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 or 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.

Childcare and school activities – To arrange for alternative childcare when the active duty or call to active duty status of a covered military member necessitates a change in the existing childcare arrangement; to provide childcare on urgent, immediate need basis (but not on a routine, regular basis) when the need to provide such care arises out of the active duty or call to active duty status of a covered military member; to enroll in or transfer a child to a new school or day care facility when enrollment or transfer is necessitated by the active duty or call to active duty status of a covered military member; and 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 of a covered military member

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 such as preparing and executing financial and healthcare powers of attorney or transferring bank account signature or authority; and 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 status and for a period of 90 days following the termination of the covered military member's active duty status

Counseling – To attend counseling provided by someone other than a healthcare provider for oneself, for the covered military member, or for the child of a covered military member provided that the need for counseling arises from the active duty or call to active duty status of a covered military member

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.

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 or to address issues that arise from the death of a covered military member while on active duty status, such as making funeral arrangements.

Additional activities – To address other events which may arise out of the covered military member's active duty or call to active duty status, provided that the employer and employee agree on timing and duration of such leave.



Qualifying Exigency Leave

- Maximum Length of Leave
 - 12 weeks of qualifying exigency leave
- Covered Military Member
 - Employee's spouse, son, daughter or parent who is on active duty or call to active duty
- Active Duty or Call to Active Duty Status
 - A member of the National Guard or Reserves
 - Under a call or order to active duty in support of a contingency operation
 - Not regular armed forces
- No recertification is required

This does not cover members of Regular Armed Forces. Only those that are members of the National Guard or Reserves.

Request Qualifying Exigency Leave (new)

Certification of Qualifying Exigency for Military Family Leave (Form WH-384)

Continuation of Qualifying Exigency for Military Family Leave (Family and Medical Leave Act)

U.S. Department of Labor
BUREAU OF LABOR RELATIONS

WH-384

INSTRUCTIONS FOR EMPLOYERS AND EMPLOYEES

FOR THE EMPLOYER: This form is to be completed by the employer. It is to be filled out for each period of leave for which the employee is requesting leave. The employer should complete this form for each period of leave for which the employee is requesting leave. The employer should complete this form for each period of leave for which the employee is requesting leave. The employer should complete this form for each period of leave for which the employee is requesting leave.

FOR THE EMPLOYEE: This form is to be completed by the employee. It is to be filled out for each period of leave for which the employee is requesting leave. The employee should complete this form for each period of leave for which the employee is requesting leave. The employee should complete this form for each period of leave for which the employee is requesting leave.

SECTION 1: EMPLOYEE INFORMATION

1. Name of employee: _____

2. Title: _____

3. Department: _____

4. Address: _____

5. City: _____ State: _____ Zip: _____

6. Telephone: _____

7. E-mail: _____

8. Date of birth: _____

9. Social Security Number: _____

10. Date of hire: _____

11. Date of last day of service: _____

12. Date of this certification: _____

13. Signature of employee: _____

14. Title of employee: _____

15. Date of signature: _____

16. Signature of employer: _____

17. Title of employer: _____

18. Date of signature: _____

19. Signature of third party: _____

20. Title of third party: _____

21. Date of signature: _____

22. Signature of witness: _____

23. Title of witness: _____

24. Date of signature: _____

An employee must provide notice of the need for qualifying exigency leave as soon as practicable.

An employer may require an employee to provide a copy of the covered military service member's active duty orders the first time the employee requests exigency leave. The employee, however, only needs to provide this information once for each call to active duty. In order to substantiate the need for qualifying exigency leave, an employer may require an employee to provide certification which includes the following information:

A description, signed by the employee, describing facts supporting the leave request and including any available documentation such as a copy of a meeting announcement, appointment, or a copy of a bill for service;

The approximate date the qualifying exigency leave commenced or will commence;

The beginning and end dates for the absence if the request is for a single period of time;

An estimate of the frequency and duration of the exigency leave if the request is for leave on an intermittent or reduced schedule; and

Contact information for the third party or entity and a brief description of the purpose of the meeting if the exigency leave involves meeting with a third party (such as a teacher conference).



Military Caregiver Leave

- Serious Injury or Illness
 - Injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.

The NDAA actually extends additional leave protection for covered employees that require leave to care for a covered military service member.



Military Caregiver Leave

- Covered Servicemember
 - Member of Armed Forces (including National Guard or Reserve)
 - Undergoing medical treatment, recuperation, or therapy
 - In outpatient status
 - Temporary disability retired list
 - Serious injury or illness
 - Incurred in the line of duty on active duty

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An employee who is the spouse, son, daughter, parent, or next of kin of a covered military servicemember may use up to 26 weeks of unpaid leave during a single 12 month period to care for the servicemember's serious illness or injury. A covered servicemember is defined as one who is undergoing medical treatment, recuperation, or therapy, who is otherwise in outpatient status, or is otherwise on the temporary disability list (TDRL), for a serious injury or illness. The serious injury or illness is covered only if it was incurred while in the line of duty and renders the servicemember medically unfit to perform military duties.



Next of Kin

- Nearest blood relative other than spouse, parent, son, or daughter, in order of priority:
 - Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions
 - Brothers and sisters
 - Grandparents
 - Aunts, uncles and first cousins
- Unless service member has designated a single blood relative as next of kin

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Next of kin is defined in the regulations as the nearest blood relative of the servicemember, other than the servicemember's spouse, parent, son, or daughter in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins. However, any specific designation of next of kin by the servicemember for purposes of military caregiver leave takes priority. When there is no designation made and more than one family member with the same level of relationship (e.g. two sisters), all such family members are considered to be next of kin by the regulations and are all eligible for military caregiver leave under the FMLA. When a specific designation is made, the person designated by the servicemember shall be considered the servicemember's only next of kin. The employer may require confirmation of the employee's relationship to the covered servicemember.



Military Caregiver Leave

- Maximum Length of Leave
 - Up to 26 weeks of military caregiver leave in a 12 month period
 - 12 month period starts on the first day the employee takes military caregiver leave
 - Any combination of absences in the 12 month period, including medical FMLA, may not exceed 26 weeks
- Use of Leave - “per member” and “per injury”
 - Use leave to care for the same family member with different illness or injury or
 - Use leave for a different family member

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A total of 26 weeks of unpaid leave are available to an employee to care for a covered servicemember in any single 12 month period. The 12 month period is measured by counting forward from the first day of military caregiver leave use. The use of military caregiver leave does not preclude the use of traditional 12-week caregiver leave; **however an employee is limited to a total amount of 26 weeks of FMLA leave in a single twelve month period.** Use of military caregiver leave does not prevent an employee from using another 26 weeks of leave for a separate illness or injury for the same covered servicemember or for another covered servicemember, since leave is on a per-covered servicemember, per injury or illness basis. Therefore, circumstances may exist where an employee takes multiple leaves totaling, but not to exceed, 26 workweeks in each 12-month period.

For example:

You could have an employee who took 6 hours of FMLA leave for a serious health condition and if they need to care for a covered servicemember then they would only be eligible to take 20 weeks of leave.

Also, you could have an employee who already cared for a servicemember for 13 weeks and they need to care for another covered servicemember. They would only be eligible to take 13 weeks for that family member.


Request Military Caregiver Leave (new)

Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave (Form WH-385)

- Must provide 30 days advance notice for planned medical treatment for a serious injury or illness of a covered servicemember.
- When 30 days advance notice is not possible, the employee must provide notice as soon as practicable
- When the need for leave is unforeseeable, an employee must comply with an employer's normal notice or call-in procedures, absent unusual circumstances.

Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (Family and Medical Leave Act)

U.S. Department of Labor
Department of Justice



EMPLOYEE'S CERTIFICATION: I hereby certify that the following is true to the best of my knowledge and belief. I am a covered employee under the Family and Medical Leave Act (FMLA) and I am requesting FMLA leave for the care of a covered servicemember. I am requesting FMLA leave for the care of a covered servicemember who is unable to perform his or her duties because of a serious injury or illness. I am requesting FMLA leave for the care of a covered servicemember who is unable to perform his or her duties because of a serious injury or illness. I am requesting FMLA leave for the care of a covered servicemember who is unable to perform his or her duties because of a serious injury or illness.

EMPLOYER'S CERTIFICATION: I hereby certify that the following is true to the best of my knowledge and belief. The employee is requesting FMLA leave for the care of a covered servicemember who is unable to perform his or her duties because of a serious injury or illness. I am requesting FMLA leave for the care of a covered servicemember who is unable to perform his or her duties because of a serious injury or illness. I am requesting FMLA leave for the care of a covered servicemember who is unable to perform his or her duties because of a serious injury or illness.

EMPLOYER'S CERTIFICATION: I hereby certify that the following is true to the best of my knowledge and belief. The employee is requesting FMLA leave for the care of a covered servicemember who is unable to perform his or her duties because of a serious injury or illness. I am requesting FMLA leave for the care of a covered servicemember who is unable to perform his or her duties because of a serious injury or illness. I am requesting FMLA leave for the care of a covered servicemember who is unable to perform his or her duties because of a serious injury or illness.





Questions

**Authorization to Use and/or Disclose
Personal Health Information**

Health Information to be Used or Disclosed.

Describe in a specific and meaningful way the information to be disclosed. Example descriptions include medical records relating to your appendectomy, laboratory results, and medical records from [date] to [date], or the results of an MRI performed in [month] [year].

I, _____, **authorize** _____
(Print your name) *(Print name of health information custodian)*

to disclose

my personal health information consisting of:

(Describe the personal health information to be disclosed)

to

(Print name and address of person requiring the information)

I understand the purpose for disclosing this personal health information to the person noted above. I understand that I can refuse to sign this consent form.

My Name: _____ **Address:** _____

Home Tel.: _____ **Work Tel.:** _____

Signature: _____ **Date:** _____

Witness Name: _____ **Address:** _____

Home Tel.: _____ **Work Tel.:** _____

Signature: _____ **Date:** _____

Under HIPAA, you have the right to authorize the release of all information or to describe and limit the information to be released.