



employee relations **BULLETIN**

February 6, 2009

(Supplementing ER Bulletin dated October 29, 2002)

**To: Heads of All Departments
Departmental Personnel Directors**

**Subject: REVISED FAMILY AND MEDICAL LEAVE ACT PROVISIONS
AND NEW MILITARY FAMILY LEAVE ENTITLEMENTS**

Final U.S. Department of Labor (DOL) regulations governing recent changes to the Family and Medical Leave Act (FMLA) became effective January 16, 2009. These changes include various modifications to existing FMLA provisions, as well as new Military Family Leave Entitlements enacted under the National Defense Authorization Act, which amended the FMLA. The new and revised FMLA provisions that affect City employees are described in this Bulletin to assist departments in complying with and administering the new legislative mandates.

REVISED FMLA PROVISIONS

Employer Notice Obligations

There are three components of employer notice requirements that are distinguished in the final DOL regulations: general notice of the FMLA to all employees, notice of an employee's eligibility to use FMLA, and the actual designation of employee's leave as FMLA. Management's responsibilities are explained below.

General Notice

Compliance with the FMLA's "general notice" provision requires both of the following actions:

- (1) Posting a notice of the FMLA's provisions and information on filing complaints of violations with the Wage and Hour Division of the DOL. This requirement is met by posting on workplace bulletin boards the revised (January 2009) poster entitled "Employee Rights and Responsibilities under the Family and Medical Leave Act" attached to this bulletin. (The new Military Family Leave Entitlement provisions are also included in this revised poster.) Please discard older versions of FMLA posters and ensure that the new January 2009 poster is posted at all work sites. This poster may also be accessed online via the following website link:

<http://www.dol.gov/esa/whd/fmla/finalrule/FMLAPoster.pdf>

- (2) Providing this “general notice” (January 2009 FMLA poster) to each employee, by either including the poster in employee handbooks or in other written material provided to employees concerning benefits or leave rights, or by providing the poster to each new employee upon hire. A copy of the January 2009 FMLA poster, therefore, should be included in any Office manual section or Office policy on FMLA. The poster may also be provided in electronic form to employees using the above website link.

Although the City’s Family/Medical Leave benefit (which encompasses the California Family Rights Act and the Pregnancy Disability Leave provisions of the Fair Employment Housing Act in addition to the FMLA) is more generous than the federal FMLA in several aspects, the City is required nonetheless to provide notice and post the FMLA provisions as outlined above.

Eligibility Notice

Previously, Management’s notice to an employee that his/her leave may be FMLA-qualifying (regardless of whether or not the employee initiated a request for FMLA leave) could be given orally or in writing, but had to be communicated within two business days absent extenuating circumstances. This provision has been changed to allow employers up to five business days to provide notice of eligibility to the employee (that he/she has been employed, and worked, the requisite amount of time and has FMLA available to use).

This notice of eligibility is required, even if it is ultimately determined that the employee’s (or family member’s) condition does not qualify as a “serious health condition” under the FMLA, and therefore cannot be designated as FMLA. Further, the notice of eligibility must include notice of the employee’s rights and responsibilities, which is satisfied by including the revised January 2009 FMLA poster with the notice of eligibility. Form Gen. 192 (employer’s response and notices of eligibility and designation) has been revised to include this poster.

Actual designation of the leave as an FMLA leave may occur later if incomplete or insufficient medical certification information has been provided (an entry left blank and/or information provided is vague, ambiguous, or non-responsive). In the event that an employee has submitted a deficient medical certification, then Management must specify in writing to the employee what information is lacking, and give the employee seven (7) calendar days to cure the deficiency.

Designation Notice

Notice of an employee’s leave being designated as FMLA-qualifying and being counted against the employee’s annual FMLA allotment (18 weeks [720 hours] per the City’s Family and Medical Leave benefit), may occur at the same time notice of eligibility is provided if sufficient information (e.g., complete medical certification) is available at the time to make that determination. Management must provide notice of designation within five (5) business days absent extenuating circumstances.

If the notice is oral, it must be confirmed in writing no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). This provision remains unchanged in the final DOL regulations.

If the amount of leave needed is known at the time of designation (such as in the case of a continuous block of time off), the notice of designation must include the amount of time that will be counted against the employee's FMLA leave entitlement. In the case of intermittent FMLA leave, upon request by the employee, Management must provide to the employee the amount (weeks/days/hours) of FMLA leave being counted against the employee's annual FMLA entitlement, but provided no more often than once in a 30-day period and only if leave was taken during that period.

In addition, the notice of designation must advise the employee if a fitness-for-duty certification will be required in order to return to work and whether that fitness-for-duty certification must address the employee's ability to perform the essential functions of the employee's job. If a fitness-for-duty certification is required to address essential job functions, then Management must provide the employee with a list of the essential functions of his/her job with the notice of designation.

Retroactive Designations

The final DOL regulations have addressed an employer's ability to designate FMLA leave retroactively. Management may designate leave retroactively as FMLA leave with appropriate notice to the employee, provided that the "employer's failure to timely designate leave does not cause harm or injury to the employee." Also, Management and the employee may agree mutually that leave be designated retroactively as FMLA leave in situations where the employee is eligible and the leave qualifies as FMLA leave. However, in the absence of mutual agreement, the retroactive designation of FMLA may involve multiple complex issues and should be evaluated on a case-by-case basis.

In determining the appropriateness of retroactive FMLA designation in a particular situation, the City's Family and Medical Leave Coordinator in the Office of the City Administrative Officer (CAO's Office) is available to provide guidance in this area.

Fitness for Duty Certifications

Currently the FMLA regulations allow employers to require all similarly-situated employees (i.e., same occupation, same serious health condition) who take an FMLA leave to provide a "fitness-for-duty" certification that they are able to resume work. In the final DOL regulations, two changes have been made to the fitness-for-duty certification process. First, an employee may be required to provide a fitness-for-duty certification that addresses specifically the employee's ability to perform the essential functions of his/her job (see Designation Notice above). Second, where reasonable job safety concerns exist, an employee may be required to produce a fitness-for-duty certification before he/she may return to work when the employee takes intermittent leave.

Communicating with Employees' Health Care Providers

As noted above, under the final DOL regulations, if a medical certification submitted by an employee in support of a FMLA-qualifying leave is deemed to be incomplete or insufficient, the employer must specify in writing what information is lacking and allow the employee seven (7) calendar days to cure the deficiency.

In the event that it becomes necessary to contact the employee's health care provider, including for the purpose of authenticating certification forms, the person making the contact on behalf of the employer must be a health care provider, human resource professional, a leave administrator, or a management official, but in no case may it be the employee's direct supervisor. Furthermore, the employee's health care provider may not be asked questions that go beyond information solicited in the City's request for medical certification (Certification of Health Care Provider Form, Form Gen. 193).

Using these same guidelines, an employee's health care provider may also be contacted for purposes of clarifying and authenticating a fitness-for-duty certification. However, the employee's return to work may not be delayed while contact with the employee's health care provider is being pursued. If, on the other hand, Management has indicated in its designation notice that a fitness-for-duty certification will be required for the employee to return to work and no such certification is provided, then the employee's return to work may be delayed until such time that he/she submits a fitness-for-duty certification.

Medical Recertification

For ongoing conditions or when the duration of a condition is uncertain, in all cases (including intermittent FMLA leave) medical recertification of an employee's condition may be requested every six months under the new DOL regulations, rather than once each leave year. The current DOL regulation remains unchanged wherein generally an employer may request recertification no more than every 30 days unless a minimum duration of incapacity has been specified in the health care provider's certification and the duration specified has passed or been exceeded.

Employee Notice Requirements

When an employee has not provided advance notice (e.g., before an employee's shift starts) for an unscheduled absence, the final DOL regulations provide that an employee must follow the employer's usual and customary call-in procedures for reporting an absence, except under unusual circumstances. This situation may be most applicable to cases of FMLA intermittent leave. The current requirement has not changed wherein employees are to provide at least 30 days' advance notice when the need for the FMLA absence is foreseeable, or as soon as practicable when not foreseeable.

MILITARY FAMILY LEAVE ENTITLEMENTS

Summaries of the two new types of FMLA leave that pertain to employees with family members serving in the military are provided below.

Please refer to the attachment to this Bulletin entitled "FMLA – Military Caregiver and Qualifying Exigency Leaves" for a more detailed explanation of each new Military Family Leave entitlement. Medical certification forms developed by the DOL are also attached for use by employees in requesting either Military Caregiver Leave or Qualifying Exigency Leave. The forms may be accessed via the DOL's website at:

<http://www.dol.gov/esa/whd/forms/WH-385.pdf> (caregiver)

<http://www.dol.gov/esa/whd/forms/WH-384.pdf> (qualifying exigency)

The applicable medical certification form (WH-384 or WH-385), or a comparable alternative certification, must be submitted in conjunction with the employee's Request for Family or Medical Leave (Form Gen. 191) when this type of military-related FMLA leave is being requested.

Military Caregiver Leave

This new provision of the FMLA provides unpaid leave for up to a total of 26 work weeks in a single 12-month period for an employee to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. Earned or accrued paid leave may be substituted for the unpaid leave.

Qualifying Exigency Leave

This new provision of the FMLA provides up to 12 work weeks of unpaid leave in any 12-month FMLA period for an employee to spend time due to a "qualifying exigency" with his or her spouse, son, daughter, or parent who is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation. This applies only to family members who are reservists or retired members of the Regular Armed Forces or Reserve; not to family members who are in the Regular Armed Forces. Earned or accrued paid leave may be substituted for the unpaid leave.

REVISED FMLA FORMS

Forms Gen. 191, 192, and 193 have been revised to reflect the above changes in the final DOL regulations governing the FMLA as amended, and are attached to this Bulletin. For ongoing use, it is recommended that the forms be accessed via the City's intranet to ensure use of the most up-to-date version. (Go to "InsideLA," click on the link for "Citywide Electronic Forms" under "Citywide Services," and then use the term "FMLA" in the search box to get to the index/links for the FMLA forms, including federal forms WH-384 and WH-385.)

Any questions regarding this bulletin or attached forms may be directed to the City's Family/Medical Leave Coordinator in the CAO's Office, Employee Relations Division, at (213) 978-7676.

CEC:mbg93

Attachments:

FMLA – Military Caregiver and Qualifying Exigency Leaves

Form Gen. 191 - Employee Request for Family or Medical Leave

Form Gen. 192 - Employer Response to Employee Request for Family or Medical Leave, and Employer Notice of Eligibility and Notice of Designation of Family or Medical Leave

Form Gen. 193 - Certification of Health Care Provider

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

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

FMLA – MILITARY CAREGIVER AND QUALIFYING EXIGENCY LEAVES CITY OF LOS ANGELES

Military Caregiver Leave

1. What is Military Caregiver Leave?

An eligible employee may take 26 work weeks (1,040 hours) of unpaid leave during a single 12-month period to care for a covered servicemember with a serious injury or illness. An eligible employee may elect, or the employer may require the employee, to substitute available paid leave, which would normally be provided in this situation (such as accrued vacation or family illness time), for the unpaid leave. Military Caregiver Leave may be taken as a continuous block of time, or on a reduced schedule or intermittent basis. Partial-day deductions are permitted for both hourly and salaried employees.

2. Who is eligible to take Military Caregiver Leave?

An employee who has been employed by the City for at least 12 months, worked at least 1,250 hours during the previous 12-month period, and is the spouse, son, daughter, parent, or next of kin of a covered servicemember.

3. Definitions:

Covered Servicemember – a member of the Armed Forces of the United States, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary (not permanent) disability retired list, for a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

Spouse – a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

Son or Daughter – the servicemember’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the servicemember stood in loco parentis, and who is of any age.

Parent – a covered servicemember’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents “in law.”

Next of Kin – the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter.

4. How should an employee provide notice of the need for Military Care Leave?

An employee requesting Military Care Leave is required to provide “reasonable and practicable” notice. Employees should use Form Gen. 191 “Employee Request for Family or Medical Leave” and Form HW-385 “Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave” (or a comparable certification).

5. How should Management respond to an employee’s request for, and/or designate, Medical Care Leave?

By completing and providing to the employee Form Gen. 192 “Employer Response to Employee Request for Family or Medical Leave, and Employer Notice of Eligibility and Notice of Designation of Family or Medical Leave.” Management’s notice of eligibility and designation responsibilities are the same for Medical Care Leave as it is for traditional FMLA leave.

6. How is Military Care Leave counted in conjunction with other FMLA or California Family Rights Act (CFRA) leave?

The first day that Military Care Leave is taken starts the first day of the single 12-month period for tracking Military Care Leave, regardless of any other 12-month period that may already be in place for an employee who has used FMLA leave for a “traditional” reason other than Military Care Leave. Therefore, this could possibly result in the tracking of two different 12-month periods.

However, during the single 12-month period in which Military Care Leave is taken, an employee is limited to a combined total of 26 work weeks (1,040 hours) of FMLA leave for any qualifying reason.

For example: if an employee used 26 work weeks for Military Care Leave, then no other FMLA leave would be available to take in the 12-month period that started the first day Military Care Leave began.

If an employee used three weeks for Military Care Leave, then based on the City’s Family and Medical Leave benefit that provides 18 weeks (720 hours) of FMLA leave (which is more generous than the 12 weeks provided by the FMLA) the employee would still have 18 weeks (720 hours) available to use for a traditional, non-Military Care Leave FMLA purpose. In no case shall a City employee be entitled to more than 18 weeks (720 hours) of leave for traditional FMLA leave reasons.

In the case of leave that qualifies both as leave to care for a covered servicemember and leave to care for a family member with a serious health condition during the single 12-month period, Management must designate such leave as Military Care Leave. The same leave cannot be designated and counted as both types of FMLA leave (Military Care Leave and traditional FMLA leave) at the same time.

Traditional FMLA leave, for a non-pregnancy condition, will continue to run concurrently with CFRA leave. Only CFRA bonding leave (up to 18 weeks per the City’s Family and Medical Leave benefit) for a pregnant employee may be taken in addition to the

aggregate 26-work weeks allowed for Military Care Leave, if the pregnant employee would otherwise qualify for the bonding leave.

City employees requesting Military Care Leave for the same covered servicemember (e.g., son or daughter) who are husband and wife (terms used in the final DOL regulations) are limited to an aggregate 26 work weeks of leave in a single 12-month period.

7. Is retroactive designation by Management of Military Care Leave permitted?

Yes.

8. Is health benefit coverage maintained during Military Care Leave?

Yes. The City must continue the employee's same health and dental coverage for the duration of Military Care Leave, as if the employee had been continuously employed during the period of leave taken.

Qualifying Exigency Leave

1. What is Qualifying Exigency Leave?

An eligible employee may take 12 work weeks (480 hours) of FMLA leave for one or more "qualifying exigencies" arising from a covered military member who is on active duty status or has been notified of an impending call or order to active duty in support of a contingency operation. An eligible employee may elect, or the employer may require the employee, to substitute available paid leave, which would normally be provided in this situation (such as accrued vacation time), for the unpaid leave. Qualifying Exigency Leave may be taken as a continuous block of time, or on a reduced schedule or intermittent basis. Partial-day deductions are permitted for both hourly and salaried employees.

2. Who is eligible to take Qualifying Exigency Leave?

An employee who has been employed by the City for at least 12 months, worked at least 1,250 hours during the previous 12-month period, and is the spouse, son, daughter, or parent of the covered military member.

3. Definitions:

Covered Military Member – the employee's spouse, son, daughter, or parent on active duty or call to active duty status as defined below.

Active Duty or Call to Active Duty Status – means duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation, as either a member of 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 as a retired member of the Regular Armed Forces or Reserve. An employee whose

family member is on active duty or call to active duty status in support of a contingency operation as a member of the Regular Armed Forces is **not eligible** to take FMLA leave because of a qualifying exigency.

Contingency Operation – usually specifically named in active duty orders and designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

Spouse – a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

Son or Daughter on Active Duty or Call to Active Duty Status – the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status as defined above, and who is of any age.

Parent – an employee's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee. This term does not include parents "in law."

4. What is a qualifying exigency?

Short-Notice Deployment – to address any issue that arises from a covered military member being notified of an impending call or order to active duty in support of a contingency operation seven (7) or less calendar days prior to the date of deployment. Leave taken for this purpose can be used beginning on the date of notification by the military and cannot exceed seven (7) calendar days.

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; and to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organization 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 – when the need arises from the active duty or call to active duty status of a covered military member relating to his/her child/children, to arrange for alternative childcare, to provide childcare on an urgent, immediate basis (not on a routine, regular, or everyday basis), to enroll or transfer the child to a new school or day care facility, and/or to attend meetings with staff at a school or daycare facility.

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; and/or to act as the covered military member's representative before a federal, state, or local agency relating to the provision of military service benefits and for a period of 90 days following the termination of the covered military member's active duty status.

Counseling – to attend counseling in support of the covered military member or his/her child/children (not for the employee provided by the employee's health care provider) arising 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 (5) days of leave for each instance of rest and recuperation.

Post-Deployment Activities – to attend arrival ceremonies, 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 and make arrangements that arise from the death of a covered military member while on active duty status.

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

5. How should an employee provide notice of the need for Qualifying Exigency Leave?

An employee requesting Qualifying Exigency Leave is required to provide "reasonable and practicable" notice. Employees should use Form Gen. 191 "Employee Request for Family or Medical Leave" and Form HW-384 "Certification of Qualifying Exigency for Military Family Leave" (or a comparable certification) along with any required documentation.

6. How should Management respond to an employee's request for, and/or designate, Qualifying Exigency Leave?

By completing and providing to the employee Form Gen. 192 "Employer Response to Employee Request for Family or Medical Leave, and Employer Notice of Eligibility and Notice of Designation of Family or Medical Leave." Management's notice of eligibility and designation responsibilities are the same for Qualifying Exigency Leave as it is for traditional FMLA leave.

7. How is Qualifying Exigency Leave counted in conjunction with other FMLA or California Family Rights Act (CFRA) leave?

Leave taken as Qualifying Exigency Leave (up to 12 work weeks [480 hours]) is counted as traditional FMLA leave time and is charged against an employee's annual FMLA entitlement (City's Family and Medical Leave benefit of 18 weeks [720 hours]). However, unlike traditional FMLA leave, Qualifying Exigency Leave cannot run simultaneously with

CFRA leave because CFRA does not have comparable provisions. Therefore, a City employee using Qualifying Exigency Leave under FMLA would still have CFRA leave (up to 18 weeks [720 hours] based on the City's Family and Medical Leave benefit) available to use for a CFRA-eligible condition, if he/she otherwise qualified to use CFRA. That CFRA time would still run concurrently with any remaining traditional FMLA leave that does not constitute Qualifying Exigency Leave.

8. Is retroactive designation by Management of Qualified Exigency Leave permitted?

Yes, under conditions consistent with the provisions for traditional FMLA.

9. Is health benefit coverage maintained during Qualified Exigency Leave?

Yes, in the same manner as for traditional FMLA.

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





Employee Request for Family or Medical Leave
(Family and Medical Leave Act of 1993)

To be submitted to the Personnel Director of the Employee's Department/Bureau

PLEASE PRINT OR TYPE:

Employee's Name Employee I.D.
Classification Division/Bureau
Work Phone Home Phone Cellular Phone

REQUEST FOR FAMILY OR MEDICAL LEAVE

I am requesting Family or Medical Leave for the following reason:

- The birth of a child, adoption, or foster care of a child; or
My own serious health condition (non-work related); or
A serious health condition affecting an immediate member of my family:
spouse/domestic partner, child, parent, or other immediate family member (relationship); or
On Injury on Duty (IOD)/Workers' Compensation status; or
Military Caregiver Leave to care for: spouse, child, or parent; or
Qualifying Exigency Leave - covered military member: spouse, child, or parent.

1. Dates of Leave: Start Date (mm/dd/yyyy) End Date (mm/dd/yyyy)

2. Type of leave requesting:

- a. Continuous block of time. Duration of leave requesting: work weeks AND/OR days
b. intermittent OR reduced schedule
Schedule of time off requesting:
hours off per day, on day(s) per week OR on day(s) per month
day(s) off per work week month

Explain request for this type of leave here:

Empty box for explaining the request for leave.

3. Medical Certification of a Health Care Provider is attached: Yes No

I understand that I will be required to furnish complete and sufficient Medical Certification before my leave is approved, and that recertification may be necessary after my leave is approved.

4. I do do not have a spouse/domestic partner, or other parent of my child, also employed by the City of Los Angeles who will be taking a Family/Medical Leave for the same incident/reason.

If applicable, spouse/domestic partner's name, or other parent's name:

Name Department/Bureau Employed

Anticipated duration of leave: _____ (days) _____ (months)

Start date of leave (mm/dd/yyyy): _____ End date of leave (mm/dd/yyyy): _____

5. For my Family or Medical Leave, I will be using the following paid and/or unpaid leave:

(Indicate 100% sick leave, 75% sick leave, vacation, compensatory time off*, or unpaid leave, and place in order of usage. For pregnancy-related leave, use both columns, if necessary, to indicate time used for pregnancy disability {1st column} and time used for family leave/"bonding" {2nd column}.)

- | | |
|----------|----------|
| a. _____ | a. _____ |
| b. _____ | b. _____ |
| c. _____ | c. _____ |
| d. _____ | d. _____ |

Dates of Pregnancy Disability Leave:

Dates of Bonding Leave:

* *Accrued compensatory time off cannot be counted against an employee's annual FMLA entitlement.*

Note: Please refer to your MOU provision on Family and Medical Leave (for represented employees) or to Los Angeles Administrative Code Section 4.129 (for non-represented employees) for guidance regarding type and order of time off to be used. Time off for FMLA Military Family Leave Entitlements is described in the February 2009 Employee Relations Bulletin. Your most recent paycheck stub shows available time off balances. If needed, verify balances with a department/bureau representative.

Regarding the continuation of Flex-Benefits (health, dental, life insurance, and disability) during Family or Medical Leave, I understand the following:

- For traditional FMLA and CFRA leaves, the City will pay Flex-Benefit subsidies during compensated time off, and up to nine (9) pay periods (18 weeks) during unpaid leave.
- If on unpaid leave beyond nine (9) pay periods (18 weeks), I will be billed for any outstanding payroll deductions, with the exception of FMLA Military Care Leave.
- For FMLA Military Care Leave (up to 26 work weeks of paid or unpaid leave), the City will pay Flex-Benefit subsidies.
- If on unpaid leave beyond the maximum Family or Medical Leave period, I will be sent a billing letter by the Employee Benefits Division of the Personnel Department requesting payment of monthly premiums for an additional two months. Thereafter, continuation of benefits through COBRA will be offered at full monthly premiums.
- If and when a billing letter is sent, I will have 30 days from the date of the letter to make payment, and if payment is not received, my benefits will be cancelled.

Employee Signature Date (mm/dd/yyyy)

Supervisor's Signature Date (mm/dd/yyyy)

Division Head Signature Date (mm/dd/yyyy)



Employer Response to Employee Request for Family or Medical Leave, and Employer Notice of Eligibility and Notice of Designation of Family or Medical Leave

(Family and Medical Leave Act of 1993)

Date: _____

To: _____
Employee's Name Employee I.D. Division/Bureau

From: _____
Departmental Personnel Director

Subject: Employer Response to Employee Request for Family or Medical Leave, and Employer Notice of Eligibility and Notice of Designation of Family or Medical Leave

On _____, you notified us of your need to take Family/Medical Leave, OR Management has received
Date

sufficient information that your leave qualifies as Family/Medical Leave, due to the following reason:

- checkbox The birth of a child, or the placement of a child with you for adoption or foster care; or
checkbox A serious health condition that makes you unable to perform the essential functions of your job; or
checkbox A serious health condition affecting your spouse/domestic partner, child, parent, or other immediate family member for which you are needed to provide care; or
checkbox Injury on Duty/Workers' Compensation status; or
checkbox Military Caregiver Leave to care for: spouse, child, or parent; or
checkbox Qualifying Exigency Leave - covered military member: spouse, child, or parent.

We received information that you need this leave beginning on _____ and that the leave is expected to
continue until _____
Date Date

For the following, refer to the appropriate MOU (represented employees) or to LAAC Sec.4.129 (non-represented employees), and the February 2009 Employee Relations Bulletin on Revised FMLA Provisions and New Military Family Leave Entitlements.

1. Notice of Eligibility:

This is to inform you that: (Check appropriate boxes and fill in numbers and dates where appropriate.)

- a. You are eligible not eligible for leave under the Family Medical Leave Act of 1993 (FMLA), the California Family Rights Act (CFRA), and/or the Pregnancy Disability Leave (PDL) provisions of the California Fair Employment and Housing Act (FEHA).

1. Notice of Eligibility (Cont.):

- b. **If eligible**, you have _____ weeks, or _____ days (_____ hours) available of traditional FMLA/CFRA leave based on the City's benefit of 18 weeks (720 hours), as of _____ *Date* [also use this category for bonding leave for the non-pregnant employee]

- c. **If eligible and requesting pregnancy-related leave as the pregnant employee**, you have _____ weeks, or _____ days (_____ hours) available of PDL under the FEHA, which runs concurrently with FMLA (up to 18 weeks {720 hours} as certified as necessary by a health care provider); and for bonding leave (provided under the CFRA), you have up to _____ weeks, or _____ days (_____ hours) available to use based on the City's benefit of 18 weeks (720 hours), as of _____ *Date*.

- d. **If eligible and requesting Military Caregiver Leave**, you have _____ weeks, or _____ days (_____ hours) available of FMLA Military Caregiver Leave (out of 26 weeks or 1,040 hours), as of _____ *Date*.

- e. **You are not eligible for the following reason(s):**
 - You have not been employed by the City for one year (aggregate of 12 months) prior to the requested start of your leave. [not applicable for pregnancy disability leave] As of _____ *Date* you have _____ months with the City.

 - You have not worked* the requisite number of hours in the 12-month period immediately preceding the first day of your requested leave (1,040 hours for traditional, non-pregnancy FMLA leave and 1,250 hours for Military Caregiver Leave or Qualifying Exigency Leave on behalf of a covered military member).
[* Refer to the appropriate MOU; a limited number of compensated hours (other than "Hours Worked") may be allowed in certain circumstances.]

 - You do not have any FMLA and/or CFRA leave available or remaining to use.

 - You do not have any FMLA Military Caregiver Leave available or remaining to use.

2. Required Medical Certification or Military Family Leave Certification:

- a. We have received satisfactory medical certification of a serious health condition affecting you or a member of your immediate family; or
 We have received satisfactory certification of a "Qualifying Exigency for Military Family Leave" .

- b. We have not received a medical certification (or a certification required for military family leave). You will be required to furnish medical certification of a serious health condition (or certification related to military family leave) by _____ *Date*.

Failure to submit a certification within 15 calendar days following this request may delay the start of your leave or result in your leave being recorded as unauthorized leave (AW).

- A blank Form Gen. 193 "Certification of Health Care Provider" to be completed is being provided to you with this notice; or

- A blank Form WH-384 "Certification of Qualifying Exigency for Military Family Leave" to be completed is being provided to you with this notice; or

- A blank Form WH-385 "Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave" to be completed is being provided to you with this notice.

2. Required Medical Certification or Military Family Leave Certification (Cont.):

- c. The medical certification (or certification for military family leave) submitted is incomplete or insufficient. The following information is missing or not clear and needs to be provided:

This information must be provided within seven (7) calendar days of receipt of this notice, otherwise your leave may be recorded as unauthorized leave (AW).

- d. You will be not required to furnish medical certification at this time.

Note: *Re-certification at the employee's expense may be requested if an employee requests an extension of a leave, the circumstances described in the previous certification have changed, and/or there is concern about the continuing validity of the certification.*

3. Notice of Designation:

[Complete this section only if the employee is determined to be eligible in No. 1 above, and the required Certification has been provided in accordance with No. 2 above.]

- a. Your leave does not qualify to be designated as FMLA and/or CFRA leave. As such it will not be counted against Family/Medical Leave entitlement.

[Stop here. Sign and date this form on the last page and submit to the employee.]

- Your leave qualifies for and will be designated as FMLA and/or CFRA leave. As such it will be counted against your annual Family/Medical Leave entitlement.

- b. Your leave will commence on _____ and end on _____ .
Date Date

- c. Your designated leave will be in the form of:

- a continuous block of time reduced work schedule
 intermittent leave other

Describe intermittent, reduced work schedule, or other type of leave here (e.g., hours or days off per week or month, and frequency):

- d. If your leave is for a continuous block of time, it has been determined that based on the duration of time off indicated in 3.b above, _____ days (_____ hours) will be counted against your Family/Medical Leave entitlement.

Additional explanation if necessary:

4. Family/Medical Leave for personal illness/injury (including IOD), family illness, or pregnancy disability leave:

- a. Time off (100% sick leave, 75% sick leave,¹ 50% sick leave (sworn employees only), vacation, compensatory time off,² unpaid leave, or IOD) for your FMLA and/or CFRA leave will be charged as follows:

(Refer to the employee's MOU or LAAC Sec 4.129 for non-represented employees for the type of time off and place in order to be used. Time off for FMLA Military Leave Entitlement is described in the February 2009 Employee Relation Bulletin.)

- (1) _____
- (2) _____
- (3) _____
- (4) _____
- (5) _____

If applicable: Dates of Pregnancy Disability Leave

- b. Family leave for non-disability childbirth ("bonding"), adoption, or foster care placement:

Time off (100% sick leave, 75% sick leave,¹ 50% sick leave (sworn employees only), vacation, compensatory time off,² unpaid leave) for your FMLA and/or CFRA leave will be charged as follows:

(Refer to the employee's MOU or LAAC Sec.4.129 for non-represented employees for the type of time off and order to be used.)

- (1) _____
- (2) _____
- (3) _____
- (4) _____
- (5) _____

If applicable: Dates of Bonding Leave

¹ You may qualify for Catastrophic Illness Leave or disability benefits upon exhaustion of sick leave. Please contact the City's Catastrophic Illness Leave Donation Program Coordinator at (213) 978-1646 or the Employee Benefits Office for disability claims at (213) 978-1655.

² Accrued compensatory time off cannot be counted against an employee's annual FMLA entitlement.

Note: To add a new dependent to your medical coverage, you must call within 30 days the Flex-Benefits by Request Line at (800) 778-2133.

If your leave is approved as Family/Medical Leave (other than Military Caregiver Leave), you may be eligible to have the City continue to pay the subsidies for your Flex-Benefits (health and/or dental, basic life, and basic disability plan) while on paid leave. If on unpaid FMLA/CFRA leave, the City will pay your Flex Benefits subsidies up to a maximum of nine (9) pay periods. The employee will be responsible for any related payroll deductions. If you are on unpaid leave beyond nine (9) pay periods, you will be billed for any outstanding payroll deductions.

For Military Caregiver Leave, the City will continue to pay your Flex Benefits subsidies up to 26 weeks of leave, whether leave is paid or unpaid. If an employee is on unpaid leave beyond the maximum Family/Medical Leave period, the Employee Benefits Office, Personnel Department, will be sending you a billing letter requesting payment of monthly premiums for an additional two months. Thereafter, you will be offered continuation of benefits through COBRA at full monthly premiums.

When a billing letter is sent to the employee, the employee will have 30 days from the date of the letter to make payment. If payment is not received, your benefits will be cancelled.

5. Fitness for Duty (Return to Duty) Certification:

- a. You will will not be required to present a Fitness for Duty (Return to Duty) Certification to Occupational Health Services Division, Personnel Department, prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until certification is provided.

- b. If applicable, the Return to Duty Certification is required not required to address your ability to perform the essential functions of your position. If required, a list of the essential functions of your position has been included with this notice for you to provide to your health care provider.

- 6. If the circumstances of your leave change and you are able to return to work earlier than the date indicated on page 1 of this form, you will will not be required to notify us at least two work days prior to the date you intend to report to work.

If you have any questions regarding this form, please contact _____ at _____ of my staff.
Name *Phone No.*

Department Representative Signature *Date*

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





Certification of Health Care Provider
(Family and Medical Leave Act of 1993)

When completed, please provide this form directly to the employee, not to the City of Los Angeles.

1. a. Employee's Name
b. Employee I.D.
2. a. Patient Name (if different from Employee)
b. Relationship to Employee
Spouse/Domestic Partner Child Parent
Other

3. Page 4 describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the patient's condition (* see below) qualify under any of the categories described? If so, please check the applicable category.
(1) (2) (3) (4) (5) (6) or None of the above

4. a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity {** see below} if different):
b. Will it be necessary for the employee to work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in Item 5 below)?
Yes No
If yes, give the probable schedule of time off required and duration:
c. If the condition is a chronic condition (Condition #4) or pregnancy, state whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity (** see below):

* Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

** "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

5. a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments.

- b. If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number of and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

- c. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments:

- d. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

6. a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind?

- b. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)? If yes, please list the essential functions the employee is unable to perform:

- c. If neither a nor b applies, is it necessary for the employee to be absent from work for treatment?

Yes

No

7. a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation?

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

Signature of Health Care Provider

Type of Practice

Address

Phone Number

Extension

City

State

Zip Code

Date (mm/dd/yyyy)

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

Employee Signature

Date (mm/dd/yyyy)

A " Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity {** see page 1} or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

A period of incapacity (** see page 1) of more than three consecutive calendar days (including any subsequent treatment or period of incapacity {** see page 1} relating to the same condition), that also involves:

- (a) Treatment (***) see below) two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- (b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment (**** see below) under the supervision of the health care provider

3. Pregnancy

Any period of incapacity due to pregnancy, or for prenatal care.

4. Chronic Conditions Requiring Treatments

A chronic condition which:

- (a) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- (b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- (c) May cause episodic rather than a continuing period of incapacity (** see page 1) (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-Term Conditions Requiring Supervision

A period of incapacity (** see page 1) which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

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, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity (** see page 1) of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

*** Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

**** A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

Certification of Qualifying Exigency
For Military Family Leave
(Family and Medical Leave Act)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



OMB Control Number: 1215-0181
Expires: 12/31/2011

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA leave due to a qualifying exigency to submit a certification. Please complete Section I before giving this form to your employee. Your response is voluntary, and while you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. § 825.309.

Employer name: _____

Contact Information: _____

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II fully and completely. The FMLA permits an employer to require that you submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a qualifying exigency. Several questions in this section seek a response as to the frequency or duration of the qualifying exigency. Be as specific as you can; terms such as “unknown,” or “indeterminate” may not be sufficient to determine FMLA coverage. Your response is required to obtain a benefit. 29 C.F.R. § 825.310. While you are not required to provide this information, failure to do so may result in a denial of your request for FMLA leave. Your employer must give you at least 15 calendar days to return this form to your employer.

Your Name: _____
 First Middle Last

Name of covered military member on active duty or call to active duty status in support of a contingency operation:

 First Middle Last

Relationship of covered military member to you: _____

Period of covered military member’s active duty: _____

A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes written documentation confirming a covered military member’s active duty or call to active duty status in support of a contingency operation. Please check one of the following:

- ___ A copy of the covered military member’s active duty orders is attached.
- ___ Other documentation from the military certifying that the covered military member is on active duty (or has been notified of an impending call to active duty) in support of a contingency operation is attached.
- ___ I have previously provided my employer with sufficient written documentation confirming the covered military member’s active duty or call to active duty status in support of a contingency operation.

PART A: QUALIFYING REASON FOR LEAVE

1. Describe the reason you are requesting FMLA leave due to a qualifying exigency (including the specific reason you are requesting leave):

2. A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes any available written documentation which supports the need for leave; such documentation may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs. Available written documentation supporting this request for leave is attached. Yes No None Available

PART B: AMOUNT OF LEAVE NEEDED

1. Approximate date exigency commenced: _____

Probable duration of exigency: _____

2. Will you need to be absent from work for a single continuous period of time due to the qualifying exigency? No Yes.

If so, estimate the beginning and ending dates for the period of absence:

3. Will you need to be absent from work periodically to address this qualifying exigency? No Yes.

Estimate schedule of leave, including the dates of any scheduled meetings or appointments: _____

Estimate the frequency and duration of each appointment, meeting, or leave event, including any travel time (i.e., 1 deployment-related meeting every month lasting 4 hours):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours _____ day(s) per event.

PART C:

If leave is requested to meet with a third party (such as to arrange for childcare, to attend counseling, to attend meetings with school or childcare providers, to make financial or legal arrangements, 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, or to attend any event sponsored by the military or military service organizations), a complete and sufficient certification includes the name, address, and appropriate contact information of the individual or entity with whom you are meeting (i.e., either the telephone or fax number or email address of the individual or entity). This information may be used by your employer to verify that the information contained on this form is accurate.

Name of Individual: _____ Title: _____

Organization: _____

Address: _____

Telephone: (_____) _____ Fax: (_____) _____

Email: _____

Describe nature of meeting: _____

PART D:

I certify that the information I provided above is true and correct.

Signature of Employee

Date

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution AV, NW, Washington, DC 20210. **DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION; RETURN IT TO THE EMPLOYER.**

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

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



OMB Control Number: 1215-0181
Expires: 12/31/2011

Notice to the EMPLOYER INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA leave due to a serious injury or illness of a covered servicemember to submit a certification providing sufficient facts to support the request for leave. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. § 825.310. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies.

SECTION I: For Completion by the EMPLOYEE and/or the COVERED SERVICEMEMBER for whom the Employee Is Requesting Leave INSTRUCTIONS to the EMPLOYEE or COVERED

SERVICEMEMBER: Please complete Section I before having Section II completed. The FMLA permits an employer to require that an employee submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a serious injury or illness of a covered servicemember. If requested by the employer, your response is required to obtain or retain the benefit of FMLA-protected leave. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to do so may result in a denial of an employee's FMLA request. 29 C.F.R. § 825.310(f). The employer must give an employee at least 15 calendar days to return this form to the employer.

SECTION II: For Completion by a UNITED STATES DEPARTMENT OF DEFENSE (“DOD”) HEALTH CARE PROVIDER or a HEALTH CARE PROVIDER who is either: (1) a United States Department of Veterans Affairs (“VA”) health care provider; (2) a DOD TRICARE network authorized private health care provider; or (3) a DOD non-network TRICARE authorized private health care provider INSTRUCTIONS to the HEALTH CARE PROVIDER:

The employee listed on Page 2 has requested leave under the FMLA to care for a family member who is a member of the Regular Armed Forces, the National Guard, or the Reserves who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness. For purposes of FMLA leave, a serious injury or illness is one that was incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

A complete and sufficient certification to support a request for FMLA leave due to a covered servicemember's serious injury or illness includes written documentation confirming that the covered servicemember's injury or illness was incurred in the line of duty on active duty and that the covered servicemember is undergoing treatment for such injury or illness by a health care provider listed above. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as “lifetime,” “unknown,” or “indeterminate” may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave.

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

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



SECTION I: For Completion by the EMPLOYEE and/or the COVERED SERVICEMEMBER for whom the Employee Is Requesting Leave: (This section must be completed first before any of the below sections can be completed by a health care provider.)

Part A: EMPLOYEE INFORMATION

Name and Address of Employer (this is the employer of the employee requesting leave to care for covered servicemember):

Name of Employee Requesting Leave to Care for Covered Servicemember:

First	Middle	Last
-------	--------	------

Name of Covered Servicemember (for whom employee is requesting leave to care):

First	Middle	Last
-------	--------	------

Relationship of Employee to Covered Servicemember Requesting Leave to Care:

Spouse Parent Son Daughter Next of Kin

Part B: COVERED SERVICEMEMBER INFORMATION

(1) Is the Covered Servicemember a Current Member of the Regular Armed Forces, the National Guard or Reserves? ___Yes ___No

If yes, please provide the covered servicemember's military branch, rank and unit currently assigned to:

Is the covered servicemember assigned to a military medical treatment facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit)? ___Yes ___No If yes, please provide the name of the medical treatment facility or unit:

(2) Is the Covered Servicemember on the Temporary Disability Retired List (TDRL)? ___Yes ___No

Part C: CARE TO BE PROVIDED TO THE COVERED SERVICEMEMBER

Describe the Care to Be Provided to the Covered Servicemember and an Estimate of the Leave Needed to Provide the Care:

SECTION II: For Completion by a United States Department of Defense (“DOD”) Health Care Provider or a Health Care Provider who is either: (1) a United States Department of Veterans Affairs (“VA”) health care provider; (2) a DOD TRICARE network authorized private health care provider; or (3) a DOD non-network TRICARE authorized private health care provider. If you are unable to make certain of the military-related determinations contained below in Part B, you are permitted to rely upon determinations from an authorized DOD representative (such as a DOD recovery care coordinator). (Please ensure that Section I above has been completed before completing this section.) Please be sure to sign the form on the last page.

Part A: HEALTH CARE PROVIDER INFORMATION

Health Care Provider’s Name and Business Address:

Type of Practice/Medical Specialty: _____

Please state whether you are either: (1) a DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider: _____

Telephone: () _____ Fax: () _____ Email: _____

PART B: MEDICAL STATUS

(1) Covered Servicemember’s medical condition is classified as (Check One of the Appropriate Boxes):

- (VSI) Very Seriously Ill/Injured** – Illness/Injury is of such a severity that life is imminently endangered. Family members are requested at bedside immediately. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)
- (SI) Seriously Ill/Injured** – Illness/injury is of such severity that there is cause for immediate concern, but there is no imminent danger to life. Family members are requested at bedside. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)
- OTHER Ill/Injured** – a serious injury or illness that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating.
- NONE OF THE ABOVE** (Note to Employee: If this box is checked, you may still be eligible to take leave to care for a covered family member with a “serious health condition” under § 825.113 of the FMLA. If such leave is requested, you may be required to complete DOL FORM WH-380 or an employer-provided form seeking the same information.)

(2) Was the condition for which the Covered Service member is being treated incurred in line of duty on active duty in the armed forces? ___ Yes ___ No

(3) Approximate date condition commenced: _____

(4) Probable duration of condition and/or need for care: _____

(5) Is the covered servicemember undergoing medical treatment, recuperation, or therapy? ___ Yes ___ No. If yes, please describe medical treatment, recuperation or therapy:

PART C: COVERED SERVICEMEMBER'S NEED FOR CARE BY FAMILY MEMBER

- (1) Will the covered servicemember need care for a single continuous period of time, including any time for treatment and recovery? Yes No
If yes, estimate the beginning and ending dates for this period of time: _____

- (2) Will the covered servicemember require periodic follow-up treatment appointments?
 Yes No If yes, estimate the treatment schedule: _____

- (3) Is there a medical necessity for the covered servicemember to have periodic care for these follow-up treatment appointments? Yes No

- (4) Is there a medical necessity for the covered servicemember to have periodic care for other than scheduled follow-up treatment appointments (e.g., episodic flare-ups of medical condition)? Yes No If yes, please estimate the frequency and duration of the periodic care:

Signature of Health Care Provider: _____ **Date:** _____

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years, in accordance with 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution AV, NW, Washington, DC 20210. **DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION; RETURN IT TO THE PATIENT.**