

FREQUENTLY ASKED QUESTIONS

MILITARY FMLA LEAVE

(See FMLA Handbook pp. 23-33)

A. QUALIFYING EXIGENCY LEAVE

1. What are the types of Military FMLA leave?

There are two forms of Military FMLA leave, “Qualifying Exigency” leave and “Military Caregiver” leave.

2. What is "qualifying exigency leave"?

"Qualifying exigency leave" is leave taken by a family member of a covered servicemember, who is either called to covered active duty or who has already been deployed to covered active duty to a foreign country during a war or national emergency as declared by the President or Congress.

3. What kinds of leave are available under qualifying exigency leave?

Leave may be taken to address the most common issues that arise when a covered servicemember is deployed, such as attending military-sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare. Please see the Metro FMLA Handbook at pp. 25-26 for a complete list of activities that meet these requirements.

4. Who is a "covered servicemember"?

A covered servicemember is the employee's spouse, son, daughter, or parent who is on covered active duty or call to covered active duty status.

5. What is "covered active duty or a call to covered active duty status"?

Covered active duty or a call to covered active duty status means duty during the deployment of a regular Armed Forces member or reservist to a foreign country.

6.Can I take qualifying exigency leave if my son or daughter is 18 years old or older?

Yes. The new FMLA regulations contain special definitions for son and daughter for both of the military family leave provisions. For this type of leave, a "son or daughter on covered active duty or call to active duty status" is defined as the employee's biological, adopted, or foster child, stepchild, legal ward, or child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.

7.Can I take qualifying exigency leave if the covered servicemember is my stepson or stepdaughter? Alternatively, can I take qualifying exigency leave if the covered servicemember is my stepparent?

Yes. Under the FMLA for qualifying exigency leave, a "son or daughter on covered active duty or call to covered active duty status" means 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 covered active duty or call to covered active duty status, and who is of any age. Additionally, under the FMLA for qualifying exigency leave, a "parent" means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This term does not include parents-in-law.

8.How will I know whether a covered servicemember has been called to or is on covered active duty?

A covered servicemember will receive active duty orders which will include the appropriate specifications.

9.Can I take qualifying exigency leave to pick up a child from school or attend a school event?

Yes, in certain limited circumstances. An eligible employee caring for a covered servicemember's child may use qualifying exigency leave to provide childcare on an urgent, immediate need basis, but not on a routine, everyday basis, where the need to provide the care arises from the covered active duty or call to covered active duty status of the covered servicemember. Qualifying exigency leave may also be used to attend certain meetings with

school staff, if those meetings are necessary due to the covered active duty or call to covered active duty status of the covered servicemember. Qualifying exigency leave may not be used, however, for attending routine school events, such as birthday parties or plays.

10. For what additional events may employers and employees agree to use qualifying exigency leave?

Employers and employees may agree to cover any additional events arising from the covered servicemember's covered active duty or call to covered active duty status as qualifying exigency leave. Such events may include leave to spend time with a covered servicemember either prior to or post deployment, or to attend to household emergencies that would normally have been handled by the covered servicemember. Employers and employees must agree to both the timing and duration of any such qualifying exigency leave and the leave may be counted against the employee's 12 week FMLA leave entitlement.

11. What type of notice must an employee provide to his/her employer when taking FMLA leave because of a qualifying exigency?

An employee must provide notice of the need for qualifying exigency leave as soon as practicable. When the need for leave is unforeseeable, an employee must comply with an employer's normal call-in procedures absent unusual circumstances.

12. What are the certification requirements for taking qualifying exigency leave?

The first time that an employee requests qualifying exigency leave, he/she will need to provide a copy of the covered servicemember's active duty orders or other documentation issued by the military that indicates that the covered servicemember is on covered active duty or call to covered active duty status, and the dates of the covered servicemember's covered active duty service.

In addition, each time that an employee requests leave for a new or different type of the listed qualifying exigencies, he/she will be required to complete a Certification Of Qualifying Exigency for Military Leave form.

13.How much FMLA leave may I take for qualifying exigencies?

An employee may take up to 12 workweeks of FMLA leave for qualifying exigencies during the twelve-month FMLA period. Qualifying exigency leave may also be taken on an intermittent or reduced leave schedule basis.

14. Are the 12 weeks of qualifying exigency leave a one-time entitlement?

No. If a covered servicemember's covered active duty or call to covered active duty status spans more than one FMLA leave year, an eligible employee would be eligible to take qualifying exigency leave in each FMLA leave year. Moreover, an eligible employee could take qualifying exigency leave in a subsequent FMLA leave year for a different covered servicemember. Finally, if the same covered servicemember returns from deployment and is subsequently redeployed, the eligible employee would again be entitled to qualifying exigency leave.

15.How much leave can I take if I need leave for both a serious health condition and a qualifying exigency?

Qualifying exigency leave, like leave for a serious health condition, is a FMLA-qualifying reason for which an eligible employee may use his or her entitlement for up to 12 workweeks of FMLA leave each year. An eligible employee may take all 12 weeks of his or her FMLA leave entitlement as qualifying exigency leave or the employee may take a combination of 12 weeks of leave for both qualifying exigency leave and leave for a serious health condition.

16.Can I take qualifying exigency leave when my "covered service-member" returns from deployment?

Yes. An eligible employee is entitled to take qualifying exigency leave for certain qualifying post-deployment exigencies, including reintegration activities, for a period of 90 days following the termination of the covered servicemember's covered active duty status.

