

FREQUENTLY ASKED QUESTIONS

MILITARY FMLA LEAVE

(See FMLA Handbook pp. 23-33)

A. LEAVE TO CARE FOR A COVERED SERVICEMEMBER

1. What is "covered servicemember leave"?

"Covered Servicemember leave" may be taken by an eligible employee to care for a covered servicemember with a serious injury or illness.

2. Who is a "covered servicemember"?

A "covered servicemember" is a current member of the Armed Forces, 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 disability retired list, for a serious injury or illness incurred in the line of duty on active duty.

A "covered servicemember" also includes a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

3. What is a "veteran"?

The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable.

4. What is a "serious injury or illness"?

A "serious injury or illness" is an injury or illness incurred by a covered servicemember in the line of duty on active duty in the Armed Forces (or an injury or illness which existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the

Armed Forces) that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. In the case of a veteran, this injury or illness could have manifested itself before or after the member became a veteran.

5. Who is eligible to take "covered servicemember leave"?

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness may take job-protected FMLA leave to provide care to the servicemember.

6. Who is a servicemember's "next of kin" for purposes of covered servicemember leave?

The regulations define a covered servicemember's "next of kin" as the servicemember's nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of covered servicemember leave under FMLA, in which case the designated individual shall be deemed to be the covered servicemember's next of kin. The regulations provide that all family members sharing the closest level of familial relationship to the covered servicemember shall be considered the covered servicemember's next of kin, unless the covered servicemember has specifically designated an individual as his or her next of kin for covered servicemember leave purposes. In the absence of a designation, where a covered servicemember has three siblings, for example, all three siblings will be considered the covered servicemember's next of kin.

7. How much leave may I take to care for a covered servicemember?

An eligible employee is entitled to take up to 26 workweeks of leave during a "single 12-month period" to care for a seriously injured or ill covered servicemember. The "single 12-month period" begins on the first day the eligible employee takes covered servicemember leave and ends 12 months after that date.

8. Can I take covered servicemember leave if I am the stepson or stepdaughter of the covered servicemember or if I am the stepparent of a covered servicemember?

Yes. Under the FMLA for covered servicemember leave, a "son or daughter of a covered servicemember" means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, and who is of any age. Under the FMLA for covered servicemember leave, a "parent of a covered servicemember" means 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.

9. May I take FMLA leave to both care for a covered servicemember and for another FMLA qualifying reason during this "single 12-month period"?

Yes. The regulations provide that an eligible employee is entitled to a combined total of 26 workweeks of covered servicemember leave and leave for any other FMLA-qualifying reason in this "single 12-month period", provided that the employee may not take more than 12 workweeks of leave for any other FMLA-qualifying reason during this period. For example, in the single 12-month period an employee could take 12 weeks of FMLA leave to care for a newborn child and 14 weeks of covered servicemember leave, but could not take 16 weeks of leave to care for a newborn child and 10 weeks of covered servicemember leave.

10. Can I carry-over unused weeks of covered servicemember leave from one 12-month period to another?

No. If an employee does not use his or her entire 26-workweek leave entitlement during the "single 12-month period" of leave, the remaining workweeks of leave are forfeited. After the end of the "single 12-month period" for covered servicemember leave, however, an employee may be entitled to take FMLA leave to care for the covered servicemember if the member is a qualifying family member under non-military FMLA and he or she has a serious health condition.

11. Can I take covered servicemember leave as the son or daughter of a covered servicemember if I am 18 years old or older?

Yes. The new FMLA regulations contain special definitions for son and daughter for the military family leave provisions. For covered servicemember leave, an eligible employee may take leave if he or she is the "son or daughter of a covered servicemember", which is defined as the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.

12. Can I take covered servicemember leave to care for a servicemember who is no longer serving in the military? What about for a retired member of the military?

Covered Servicemember leave may be taken for veterans, as indicated above. Covered servicemember leave also applies to seriously ill or injured servicemembers on the temporary disability retired list. Servicemembers on the permanent disability retired list, however, are not covered, nor are retired members of the Regular Armed Forces, the National Guard, or the Reserves.

13. Can I take covered servicemember leave for more than one seriously injured or ill servicemember, or more than once for the same servicemember if he or she has a subsequent serious injury or illness?

Yes. By regulation, covered servicemember leave is a "per-servicemember, per-injury" entitlement. Accordingly, an eligible employee may take 26 workweeks of leave to care for one covered servicemember in a "single 12-month period", and then take another 26 workweeks of leave in a different "single 12-month period" to care for another covered servicemember. An eligible employee may also take 26 workweeks of leave to care for a covered servicemember in a "single 12-month period", and then take another 26 workweeks of leave in a different "single 12-month period" to care for the same servicemember with a subsequent serious injury or illness (e.g., if the servicemember is returned to active duty and suffers another injury).

14. Can I take additional covered servicemember leave if a covered servicemember receives a serious injury or illness and then, at a later time, manifests a second serious injury or illness?

Yes. If a covered servicemember incurs a serious injury or illness and manifests a second serious injury or illness at a later time, an eligible employee would be entitled to an additional 26-workweek entitlement to care for the covered servicemember in a separate "single 12-month period". However, the covered servicemember must still be a member of the Armed Forces, the National Guard or Reserves, including those on the temporary disability retired list, or a veteran, as indicated above, and the second serious injury or illness must have been incurred in the line of duty on active duty.

For example, an eligible employee may take covered servicemember leave to care for a covered servicemember who has suffered a limb amputation in the line of duty on active duty; if that same servicemember manifests a brain injury a year later arising from the same incident, the employee would be eligible to take another 26 workweeks of covered servicemember leave at that time.

15. Can I care for two seriously injured or ill servicemembers at the same time?

Yes. However, an eligible employee may not take more than 26 workweeks of leave during each "single 12-month period".

16. What type of notice must be provided when taking covered servicemember FMLA leave because of a qualifying exigency?

An employee must provide 30 days advance notice of the need to take FMLA leave 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 taking into account all of the facts and circumstances. When the need for leave is unforeseeable, an employee must comply with the unit's normal notice or call-in procedures, absent unusual circumstances.

17. Are there certification requirements for taking covered servicemember leave?

Yes. When leave is taken to care for a covered servicemember with a serious injury or illness, an employee will be required to submit the Request for Military Caregiver Leave form and a completed Certification For Serious Injury or Illness of Covered Servicemember For Military Family Leave” form.

18. Are private health care providers, as well as military health care providers, permitted to complete the Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave form?

Yes. A private health care provider can complete certifications for covered servicemember leave if the health care provider is either a DOD TRICARE network authorized private health care provider or a DOD non-network TRICARE authorized private health care provider. Department of Defense health care providers and Veterans Affairs health care providers can also complete a certification for covered servicemember leave.

19. Is Military FMLA leave a separate period of leave from the “regular” FMLA leave that I can take for my own or a family member’s serious health condition, childbirth, adoption, etc.?

No. Military leave is NOT an extra 12 or 26 workweeks of leave in addition to the regular 12 workweeks of FMLA leave.

20. How is my accrued sick and vacation leave affected by my use of either Qualifying Exigency leave or Military Caregiver leave?

As with regular FMLA leave, your sick and vacation leave will be substituted for your unpaid Military FMLA leave, and both forms of leave will run concurrently with whichever form of Military FMLA leave you choose to take.

21. What about my health insurance, pension, continuous service date, and other benefits issues? How are they affected by my use of Military FMLA leave?

Almost every provision of the FMLA Handbook that deals with regular FMLA leave and your benefits, pension and continuous service date status etc. will apply equally to your use of Military FMLA leave.

