

Descriptor Term: FAMILY MEDICAL LEAVE	Descriptor: GCCAC-R/GDCB-R	Issued: DRAFT
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MILITARY FAMILY LEAVE

The National Defense Authorization Act amended the FMLA to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any “qualifying exigency” arising out of the active duty or call to active duty status of a spouse, son, daughter or parent. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. These two new types of FMLA leave are known as the military family leave entitlements.

A. DEFINITIONS

For purposes of this policy, the following definitions apply:

1. A “covered military member” means the employee’s spouse, son, daughter, or parent on active duty or called to active duty status.
2. “Active duty or called 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.
3. A “serious injury or illness” means an injury or illness incurred by a covered service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.
4. When a covered service member is on ‘outpatient status,” he/she is receiving medical care as an outpatient. In order to care for a covered service member on outpatient status, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered service member.
5. The “next of kin of a covered service member” may be designated either in writing or by degree of relationship for purposes of military caregiver leave under the FMLA. When no such designation is made and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member’s next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member’s only next of kin. For example, if a covered service member has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered service member’s next of kin. Alternatively, where a covered service member has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered service member’s next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the service member.
6. A call to active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States.

B. LEAVE PROVISIONS

1. An eligible employee is entitled to up to 26 workweeks of leave to care for a covered service member with a serious injury or illness during a single 12-month period.

An employee is eligible to take FMLA leave because of a qualifying exigency when the covered military member is on active duty or called to active duty status as defined above. An employee whose family member is on active duty or called to active duty status in support of a contingency operation as a member of the Regular Armed Forces is not eligible to take leave because of a qualifying exigency.

The leave entitlement described above is to be applied on a per-covered-service member, per-injury basis such that an eligible employee may be entitled to take more than one period

of 26 workweeks of leave if the leave is to care for different covered service members or to care for the same service member with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any single 12-month period. An eligible employee may take more than one period of 26 workweeks of leave to care for a covered service member with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. When an eligible employee takes leave to care for more than one covered service member or for a subsequent serious injury or illness of the same covered service member, and the single 12-month periods corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period.

An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA qualifying reason during a single 12-month period, provided that the employee is entitled to no more than 12 weeks of leave for one or more of the following: the birth of a son or daughter of the employee and in order to care for such son or daughter; the placement of a son or daughter with the employee for adoption or foster care; in order to care for the spouse, son, daughter, or parent with a serious health condition; the employee's own serious health condition; or because of a qualifying exigency. Thus, for example, an eligible employee may, during the single 12-month period, take 16 weeks of FMLA leave to care for a covered service member and 10 weeks of FMLA leave to care for a newborn child. However, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child during the single 12-month period, even if the employee takes fewer than 14 weeks of FMLA leave to care for a covered service member.

In all circumstances, including for leave taken to care for a covered service member, the District is responsible for designating leave, paid or unpaid, as FMLA-qualifying, and for giving notice of the designation to the employee. In the case of leave that qualifies as both leave to care for a covered service member and leave to care for a family member with a serious health condition during the single 12-month period, the employer must designate such leave as leave to care for a covered service member in the first instance. Leave that qualifies as both leave to care for a covered service member and leave taken to care for a family member with a serious health condition during the single 12-month period must not be designated and counted as both leave to care for a covered service member and leave to care for a family member with a serious health condition. As is the case with leave taken for other qualifying reasons, the District may retroactively designate leave as leave to care for a covered service member.

A husband and wife who are eligible for FMLA leave and are both employed by the District may be limited to a combined total of 26 workweeks of leave during the single 12-month period if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, to care for the employee's parent with a serious health condition, or to care for a covered service member with a serious injury or illness.

Legal Ref: Family Medical Leave Act of 1993
National Defense Authorization Act of 2008