

## Family and Medical Leave-Qualifying Exigency

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### Purpose

The Family and Medical Leave Act (FMLA) entitles eligible employees to take up to 12 workweeks of unpaid, job-protected leave in a 12-month period for a “qualifying exigency” arising out of the foreign deployment of the employee’s spouse, son, daughter, or parent. FMLA leave for this purpose is called qualifying exigency leave.

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### Qualifying Exigency Entitlement

Qualifying exigencies may arise when the employee’s spouse, son, daughter, or parent who is a member of the Armed Forces (including the National Guard and Reserves) and who is on covered active duty or has been notified of an impending call or order to covered active duty. For the purposes of qualifying exigency leave, an employee’s son or daughter on covered active duty refers to a child of any age.

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### Covered Active Duty

Eligible employees may take FMLA leave for a qualifying exigency while the military member is on covered active duty, call to covered active duty status, or has been notified of an impending call or order to active duty.

For members of the **Regular Armed Forces**, covered active duty is during deployment of the member with the Armed Forces to a foreign country.

For a member of the **Reserve components** of the Armed Forces (members of the National Guard and Reserves), covered active duty is duty during deployment of the member with the Armed Forces to a foreign country under a Federal call or order to

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active duty in a contingency operation. Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States. It also includes deployment to international waters.

The term “contingency operation” means a military operation that:

- 1) is 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
- 2) results in the call or order to, or retention on, active duty of members of the Armed Forces during a war or during a national emergency declared by the President or Congress

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### Qualifying Exigency Categories/Reasons for Leave

If the military servicemember is on covered active duty, the employee may take FMLA leave for the following qualifying exigencies:

- 1) Issues arising from the military member’s **short notice deployment** (i.e., deployment within seven or less days of notice). For a period of up to seven days from the day the military member receives notice of deployment, an employee may take qualifying exigency leave to address any issue that arises from the short-notice deployment.
- 2) Attending **military events and related activities**, such as official ceremonies, programs, events and informational briefings, or family support or assistance programs sponsored by the military, military service organizations, or the American Red Cross that are related to the member’s deployment.
- 3) Certain **childcare and related activities** arising from the military member’s covered active duty, including arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling in or transferring a child to a new school or day care facility. **Note:** The employee taking FMLA qualifying exigency leave does not need to be related to the military

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member's child. However, the military member must be the parent, spouse, son or daughter of the employee taking FMLA leave, and the child must be the child of the military member (including a child to whom the military member stands in loco parentis).

- 4) Certain activities arising from the military member's covered active duty related to **care of the military member's parent** who is incapable of self-care, such as arranging for alternative care, providing care on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers. **Note:** The employee taking FMLA qualifying exigency leave does not need to be related to the military member's parent. However, (1) the military member must be the parent, spouse, son or daughter of the employee taking FMLA leave, and (2) the parent must be the parent of the military member (including an individual who stood in loco parentis to the military member when the member was a child).
- 5) Making or updating **financial and legal arrangements** to address a military member's absence while on covered active duty, including preparing and executing financial and healthcare powers of attorney, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), or obtaining military identification cards.
- 6) Attending **counseling** for the employee, the military member, or the child of the military member when the need for that counseling arises from the covered active duty of the military member and is provided by someone other than a health care provider.
- 7) Taking up to 15 calendar days of leave to spend time with the military member who is on short-term, temporary **Rest and Recuperation** leave during deployment. The employee's leave for this reason must be taken while the military member is on Rest and Recuperation Leave.
- 8) Certain **post-deployment activities** within 90 days of the end of the military member's covered active duty, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs

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sponsored by the military, and addressing issues arising from the death of a military member, including attending the funeral.

- 9) **Additional activities** where the agency and employee agree to the leave to address other events which arise out of the covered military member's active duty or call to active duty status provided the agency and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of leave.

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### Employee Eligibility

An employee's eligibility for qualifying exigency leave shall be determined using the same requirements (appointment type, months of cumulative service and hours in pay status) as used for regular Family Medical Leave.

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### Exigency Leave Benefits and Options

Employees on qualifying exigency leave receive the same benefits as employees on regular Family Medical Leave to include up to 12 workweeks of paid or unpaid leave during any 12-month period; health insurance coverage, and reinstatement rights. Paid and unpaid absences for exigency leave and regular Family Medical Leave shall be combined during a single 12-month period when determining the 12 workweek Family Medical Leave benefit. The combined total of exigency leave and regular Family Medical Leave shall not exceed 12 workweeks in a single 12-month period.

An eligible employee may choose to use paid vacation/bonus leave, or any portion, or go on leave without pay when necessitated by one of the qualifying exigency reasons. Sick leave cannot be used during qualifying exigency leave.

Leave may be taken intermittently or on a reduced work schedule.

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### Employee Notification Requirements

Employees shall follow the same notification requirements for requesting exigency leave as required under the regular Family and Medical Leave policy. The employee must follow the agency's usual and customary policy for requesting a leave of absence

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including call-in procedures for leave approval for unexpected absences. The employee shall provide such notice as it is reasonable and practicable.

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### Notice and Designation of Eligibility

The agency shall follow the same process for notification of eligibility and designation of exigency leave as required for regular Family Medical Leave.

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### Certification Requirements for Qualifying Exigencies Leave

The agency may require an employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation, and the dates of the covered military member's active duty service.

An agency may require that leave for any qualifying exigency be supported by a certification from the employee that sets forth the following information:

- 1) A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave. Such facts should include information on the type of qualifying exigency for which leave is requested and any available written documentation which supports the request for leave; such documentation, for example, 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 affair;
- 2) The approximate date on which the qualifying exigency commenced or will commence;
- 3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence;

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- 4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency; and
- 5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and e-mail address) and a brief description of the purpose of the meeting.
- 6) If the qualifying exigency involves leave during the period of Rest and Recuperation of the servicemember, the agency may request a copy of the servicemember's Rest and Recuperation orders, or other documentation confirming the dates of the servicemember's leave.

DOL has developed an optional form (Form WH-384) for employees' use in obtaining a certification that meets FMLA's certification requirements. This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave because of a qualifying exigency. Form WH-384, or another form containing the same basic information, may be used by the agency; however, no information may be required beyond that specified in this Policy.

**Verification:** If an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency, the agency may not request additional information from the employee. However, if the qualifying exigency involves meeting with a third party, the agency may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the agency. An agency also may contact an appropriate unit of the Department of Defense to request verification that a covered military member is on active duty or call to active duty status; no additional information may be requested and the employee's permission is not required.