

Family and Medical Leave-Military Caregiver

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Purpose

The Family and Medical Leave Act (FMLA) entitles eligible employees to take unpaid, job-protected leave to care for a family member who is a current servicemember or a covered veteran with a serious injury or illness. FMLA leave for this purpose is called “military caregiver leave.”

Military Caregiver Entitlement

Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember or a covered veteran with a serious injury or illness to take up to a total of 26 workweeks of unpaid leave during a “single 12-month period” to provide care for the servicemember or veteran.

Definitions

Covered Servicemember – The term “covered servicemember” means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness.

Covered Veteran – A veteran is covered if he or she was a member of the Armed Forces (including a member of the National Guard or Reserves); was discharged or released under conditions other than dishonorable; and was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him or her.

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For a veteran who was discharged prior to March 8, 2013, the effective date of the FMLA Final Rule, the period between October 28, 2009 and March 8, 2013 will not count towards the determination of the five-year period. For example, if a servicemember retired on October 28, 2007, he or she would have had three years remaining of the five-year period on October 28, 2009. The family member requesting FMLA leave will have three years to begin military caregiver leave starting on March 8, 2013. Likewise, if a servicemember was discharged on December 1, 2010, the five-year period will begin on March 8, 2013 and extend until March 8, 2018.

Outpatient Status – The term “outpatient status” means, with respect to a covered servicemember who is a currently member of the Armed forces, the status of member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Serious Injury or Illness of a Covered Service Member – The term “serious injury or illness” related to military caregiver leave is one that is incurred by a servicemember in the line of duty on active duty that may cause the servicemember to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the servicemember’s active duty and that were aggravated by service in the line of duty on active duty.

Serious Injury or Illness of a Covered Veteran – The term “serious injury or illness” means an injury or illness that was incurred by the covered veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran’s active duty and was aggravated by service in the line of duty on active duty, and that is either:

1. a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating; or

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2. a physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the need for military caregiver leave is related to that condition; or
3. a physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or
4. an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Any one of these definitions meets the FMLA's definition of a serious injury or illness for a covered veteran regardless of whether the injury or illness manifested before or after the individual became a veteran.

Next of Kin – The term "next of kin" for a current servicemember or covered veteran is the nearest blood relative, other than the current servicemember's or veteran's spouse, parent, son, or daughter, in the following order of priority:

1. a blood relative who has been designated in writing by the servicemember or veteran as the next of kin for FMLA purposes
2. blood relative who has been granted legal custody of the servicemember or veteran
3. brothers and sisters
4. grandparents
5. aunts and uncles
6. first cousins

Note: When a servicemember or veteran designates in writing a blood relative as next of kin for FMLA purposes, that individual is deemed to be the servicemember's or veteran's only FMLA next of kin. When a current servicemember or veteran has not designated in writing a next of kin for FMLA purposes, and there are multiple family members with the same level of relationship to the servicemember or veteran, all such

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family members are considered the servicemember's or veteran's next of kin and may take FMLA leave to provide care to the servicemember or veteran.

Employee Eligibility

An employee's eligibility for military caregiver 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.

Military Caregiver Benefits and Options

Employees on military caregiver leave receive up to 26 workweeks of paid or unpaid leave during any single 12-month period; health insurance coverage, and reinstatement rights.

The single 12-month period for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established for other FMLA (regular and qualifying exigency) leave reasons.

An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during the single 12-month period. Up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than military caregiver leave. For example, if an employee uses 10 weeks of FMLA leave for his or her own serious health condition during the single 12-month period, the employee has up to 16 weeks of FMLA leave left for military caregiver leave. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember or covered veteran during this "single 12-month period," the remaining part of his or her 26 workweeks of leave entitlement to care for the covered servicemember or covered veteran is forfeited.

Military caregiver leave is available to an eligible employee once per servicemember/veteran, per serious injury or illness. However, an eligible employee may take an additional 26 weeks of leave in a different 12-month period to care for the same servicemember/veteran if he or she has another serious injury or illness. For example, if an eligible employee takes military caregiver leave to care for a current servicemember/veteran who sustained severe burns, the employee would be entitled to

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an additional 26 weeks of caregiver leave in a different 12-month period if the same servicemember/veteran is later diagnosed with a traumatic brain injury that was incurred in the same incident as the burns.

An eligible employee may also take military caregiver leave to care for more than one current servicemember/veteran with a serious injury or illness at the same time, but the employee is limited to a total of 26 weeks of military caregiver leave in any single 12-month period. Additionally, an eligible employee may be able to take military caregiver leave for the same family member with the same serious injury or illness both when the family member is a current servicemember and when the family member is a veteran.

An employee may choose to exhaust available sick leave and/or vacation/bonus leave, or any portion, or go on leave without pay to care for an injured family member.

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

Employee Notification Requirements

Employees shall follow the same notification requirements for requesting military caregiver 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 including call-in procedures for reporting unexpected absences. The employee shall provide such notice when the need for leave becomes known to the employee.

Notice and Designation of Eligibility

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

Certification Requirements for Military Caregiver Leave

For Covered Servicemembers - An agency may require that leave to care for a covered servicemember be supported by a certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family. Employees may use the U. S. Department of Labor's optional form WH-385.

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For Covered Veterans – An agency may require that leave to care for a veteran be supported by a certification completed by an authorized health care provider. An employee may submit a copy of a VASRD rating determination or enrollment documentation from the VA Program of Comprehensive Assistance for Family Caregivers to certify that the veteran has a serious injury or illness. This documentation is sufficient regardless of whether the employee is the named caregiver. However, if the employee submits such documents, the employee may still be required to provide confirmation of family relationship and documentation of discharge date and status for a complete certification. Employees may use the U. S. Department of Labor’s optional form WH-385-V.

An **authorized health care provider** is a:

- (1) United States Department of Defense (“DOD”) health care provider;
- (2) United States Department of Veterans Affairs (“VA”) health care provider;
- (3) DOD TRICARE network authorized private health care provider;
- (4) DOD non-network TRICARE authorized private health care provider; or
- (5) non-military-affiliated health care provider.

An employer may request a second and third opinion of a covered veteran’s serious injury or illness only when a certification is provided by a non-military-affiliated health care provider. An agency may request a second or third opinion of a current servicemember’s/veteran’s serious injury or illness only when a certification is provided by a non-military-affiliated health care provider. An agency may seek authentication and/or clarification of the certification received from a military-affiliated health care provider. Additionally, recertifications are not permitted for leave to care for a covered servicemember/veteran.

The Department of Labor has developed optional forms (WH-385/WH-385-V) for employees’ use in obtaining certification that meets FMLA’s certification requirements. These optional forms reflect certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave to care for a

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covered servicemember/veteran with a serious injury or illness. WH-385/WH-385-V, 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 form. In all instances the information on the certification must relate only to the serious injury or illness for which the current need for leave exists.
