

		Department of Administrative Services Human Resources Enterprise			
		Title/Subject: Family and Medical Leave Act (FMLA) Procedure			
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I. INTRODUCTION

The Family and Medical Leave Act (FMLA) allows eligible employees to take job-protected leave for the birth, adoption, or foster placement of a son or daughter, the employee’s own serious health condition, or to care for a child, spouse, or parent with a serious health condition. It also provides the right to take leave to care for an ill or injured covered servicemember or veteran, or when a qualifying exigency exists.

The following information provides an in-depth review of the FMLA policy and includes procedural information used in the State of Iowa’s FMLA administration. The State uses as guidance, Title 29, Part 825 of the Code of Federal Regulations to administer this policy. Definitions of terms used in this document can be found in Section XXIII.

II. INTERMITTENT OR REDUCED SCHEDULE LEAVE

- A. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.
- B. When leave is taken intermittently or on a reduced leave schedule basis, there must be a medical need for leave, and it must be that the medical need can be best accommodated through intermittent leave or a reduced leave schedule. The treatment regimen and other information described in the medical certification must address the necessity of intermittent or reduced schedule leave.
- C. Eligible employees may take FMLA leave on an intermittent or reduced schedule basis when necessary because of a qualifying exigency.
- D. Eligible employees may take FMLA leave on an intermittent or reduced schedule basis when medically necessary due to:
 - a. The serious health condition of a covered family member
 - b. The serious health condition of the employee

c. The serious injury or illness of a covered servicemember

- E. Intermittent or reduced schedule leave may be taken to provide care or psychological comfort to an immediate family member with a chronic or serious health condition.
- F. Intermittent or reduced schedule leave may be taken for absences where the employee is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even if he or she does not receive treatment by a health care provider.
- G. Intermittent leave may be taken for a serious health condition that requires treatment by a health care provider periodically, rather than one continuous period of time, and may include leave periods from one hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.
- H. If an employee needs intermittent or reduced schedule leave for planned medical treatment, the employee must make a reasonable effort to schedule treatments so as not to disrupt the employer's operations.
- I. If an intermittent or reduced leave schedule is necessary based on a planned course of medical treatment, the employer may temporarily assign an employee to another position, or alter his or her current position during the period that the leave is required to better accommodate recurring periods of leave. The assignment or alteration to the position cannot result in a loss of pay or benefits for the employee. Assignment of the employee will be in accordance with DAS-HRE rules or applicable collective bargaining agreement. Any reassignment or adjusted schedule will end at the expiration of the FMLA leave entitlement.
- J. When FMLA leave is taken intermittently or on a reduced leave schedule, full-time employees who work 40 hours per week are entitled to 480 hours (12 weeks) of leave in a fiscal year. When leave is taken intermittently or on a reduced leave schedule to care for a covered servicemember with a serious injury or illness, full-time employees who work 40 hours per week are entitled to 1,040 hours (26 weeks) of leave in the 12-month period. There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced leave schedule. However, an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave provided it is not greater than one hour. The FMLA leave entitlement may not be reduced by more than the amount of leave actually taken.
- K. Hours for part-time employees are prorated based on the average number of hours worked weekly during the previous six months of state employment. For example, if a part-time employee worked an average of 30 hours in the previous 6 months, he or she would be entitled to a maximum of 360 hours (12 weeks times 30 hours) of FMLA leave in a fiscal year.

- L. If an employee's schedule varies from week to week to the extent that the employer is unable to determine with certainty how many hours the employee would have worked, but for the taking of FMLA leave, a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave will be used for calculating the leave entitlement. Hours for which the employee took any type of leave will be included in this calculation.
- M. When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. The employer's agreement is not required for intermittent leave required when the mother or the newborn child has a serious health condition.
- N. An employee's entitlement to FMLA leave after the birth, adoption, or foster placement of a son or daughter expires 12 months after the date of the birth or placement.

III. PAID AND UNPAID LEAVE

- A. **FAMILY LEAVE:** An employee taking FMLA leave for the birth, adoption, or foster placement of a son or daughter, or the care of a seriously ill son, daughter, spouse, or parent, is required to exhaust any family (enforced) leave, accrued vacation, personal leave and compensatory leave for any part of the 12-week FMLA period before unpaid leave is granted. Substitution of paid leave may be elected to the extent the circumstances meet the usual requirements for that leave. See H below for SPOC employees. [For central payroll: when paid leave is exhausted, the employee must be placed in an unpaid Leave of Absence for the remainder of the leave. Any remaining paid time off accruals from the final pay period with paid leave, will be paid out in a one-time payment, provided the employee is continuing to be out on leave.
- B. **MEDICAL LEAVE:** For the employee's own serious health condition, the employee must exhaust any accrued sick leave, accrued vacation, compensatory leave and personal leave before unpaid leave is granted. See H below for SPOC employees. [For central payroll: when paid leave is exhausted, the employee must be placed in an unpaid Leave of Absence for the remainder of the leave. Any remaining paid time off accruals from the final pay period with paid leave, will be paid out in a one-time payment, provided the employee continues to be out on leave.
- C. **LEAVE FOR THE BIRTH OF A CHILD:** An employee who requests FMLA leave after the birth of a child and who has not received a medical release to return to work must exhaust any accrued sick leave, vacation, compensatory leave and personal leave before unpaid leave is granted. Generally, 6 weeks is allowable for medical recovery from a natural birth delivery and 8 weeks is allowable for medical recovery from a C-section delivery with provider notification. When the employee's physician releases the employee to return to work, the employee is no longer eligible to use paid sick leave; however, the employee may use personal leave or accrued vacation. See H below for SPOC employees.
- D. **QUALIFYING EXIGENCY LEAVE:** An employee taking qualifying exigency leave is required to exhaust any accrued vacation, personal leave, compensatory leave, and family (enforced) leave (if applicable), for any part of the 12-week FMLA period before unpaid leave is granted. Substitution of paid leave may be elected to the extent the circumstances meet the usual

requirements for that leave. See H below for SPOC employees. [For central payroll: when paid leave is exhausted, the employee must be placed in an unpaid Leave of Absence for the remainder of the leave and any remaining paid time off accruals from the final pay period with paid leave will be paid out in a one-time payment, provided the employee continues to be out on leave.

- E. **MILITARY CAREGIVER LEAVE:** An employee taking military caregiver leave is required to exhaust any family (enforced) leave, accrued vacation, compensatory leave, and personal leave for any 4 part of the 26-week FMLA period before unpaid leave is granted. Substitution of paid leave may be elected to the extent the circumstances meet the usual requirements for that leave. (For central payroll: an unpaid Leave of Absence for the remainder of the leave and any remaining paid time off accruals from the final pay period with paid leave will be paid out in a one-time payment, provided the employee is continuing to be out on leave.)

Employees covered by the State Police Officers Council (SPOC) collective bargaining agreement may, but are not required to, substitute accrued paid leave for 12 weeks of the 26-week period. Upon the expiration of the 12-week period, use of appropriate paid leave is required.

- F. **COMPENSATORY LEAVE:** Employees are required to use accrued compensatory leave during periods of FMLA leave. See H below for SPOC employees
- G. **LEAVE RETENTION:** Employees who are qualified for FMLA leave are eligible to retain up to two weeks (80 hours) of accrued annual leave (vacation) in each fiscal year. This option is allowable only at their first FMLA instance of the fiscal year or at the turn of the fiscal year if they have an existing Leave of Absence that spans beyond July 1. If the employee changes their mind and wants to utilize their retained vacation, they may do so, but it will need to be used until it is exhausted and the request to retain will be shown nullified for the remainder of the fiscal year. Vacation hours that have been approved for retention are managed by the employee and the supervisor.
- H. **SPOC-COVERED EMPLOYEES:** Employees covered by the State Police Officers Council (SPOC) collective bargaining agreement may, but are not required to, substitute appropriate accrued paid leave for any part of the twelve (12) week leave period the employee is entitled to under the FMLA as stated in the SPOC Collective Bargaining Agreement. SPOC covered employees should also consult their Collective Bargaining Agreement for how their sick time offs are able to be utilized.

IV. IV. PAY AND STATUS CHANGES An employee's pay will be adjusted for across-the-board increases, and pay grade or pay plan changes that may occur while he or she is on FMLA leave.

V. EMPLOYER NOTICES REQUIRED

- A. The employer must post and keep posted the Department of Labor Publication 1420 (WHD Publication 1420) on its premises in conspicuous places where it can be seen by employees and applicants.
 - 1. Notification of FMLA rights afforded to employees must be given to persons with

disabilities in a format that accommodates their disability or disabilities.

2. Future publication of department's employee handbooks must include the notice of employee rights as detailed in WHD Publication 1420.
- B. When an employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must issue a Notice of Eligibility and Rights & Responsibilities (CFN 552-0730) to notify the employee of the employee's eligibility to take FMLA leave within five business days. Employee eligibility is determined at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. All FMLA absences for the same qualifying reason are considered a single leave and employee eligibility does not change during the 12-month period.
- C. The employer is responsible in all circumstances for designating leave as FMLA qualifying, and for giving a Designation Notice (CFN 552-0762) to the employee. The Designation Notice must be given within five business days after the employer has enough information to determine that the leave is FMLA-qualifying. Only one notice is required for each FMLA-qualifying reason during the leave year. The employer must also give the employee a Designation Notice if it is determined that the leave is not FMLA-qualifying. If the leave is not FMLA-qualifying, the employer must provide a reason for the ineligibility.
1. If the employer has sufficient information to designate the leave as FMLA leave immediately after receiving notice of the need for leave, the designation notice may be provided to the employee at that time.
 2. If a Return to Work Certification will be required, the employer must provide the employee with a list of the essential functions of the employee's job no later than when the Designation Notice is provided to the employee.
 3. If the information provided in the Designation Notice changes (e.g., the employee exhausts the FMLA leave entitlement), the employer must provide written notice of the change within five business days of receipt of the employee's first notice of need for leave subsequent to any change.
 4. The employer must notify the employee of the amount of leave counted against the employee's FMLA leave entitlement. If the amount of leave needed is known at the start of the leave, this information must be included in the Designation Notice. If it is not possible to provide this information in the Designation Notice, the employer must provide notice of the amount of FMLA leave used upon request by the employee, but not more often than once in a 30-day period, and only if leave was taken in the period.
- D. Failure to follow notice requirements may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employer may be held liable for compensation and benefits lost by reason of the violation.

VI. DESIGNATION OF LEAVE

- A. The employer's decision to designate leave as FMLA must be based only on information received from the employee or the employee's spokesperson (if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, etc. may provide notice to the employer).
- B. In any circumstance where the employer does not have sufficient information about the reason for an employee's use of leave, the employer should inquire further to determine if the leave is FMLA qualifying.
- C. Once the employer has knowledge that leave is FMLA qualifying, a Designation Notice must be provided.
- D. The employer will make an FMLA designation within five business days of receiving sufficient information to make a determination.
- E. FMLA leave will be designated for the employee's own serious health condition that renders the employee unable to work at all or perform any one of the essential functions of his or her job.
- F. FMLA leave will be designated for the birth, adoption, or foster placement of a son or daughter, or to care for a son, daughter, spouse, or parent with a serious health condition.
 - 1. An employee's entitlement to FMLA expires at the end of the 12-month period beginning on the date of the birth or placement for adoption or foster care.
 - 2. The son or daughter must be under 18 years of age, unless incapable of self-care because of a physical or mental disability.
- G. FMLA leave will be designated for leave taken to care for an ill or injured covered servicemember or for leave taken due to a qualifying exigency for a military member.
- H. If the employer has a reasonable basis to know that leave is taken for an FMLA-qualifying reason, the employer will designate the leave as FMLA leave even if the employee does not desire the leave to be designated as such.
- I. An employee may not be required to take more FMLA leave than necessary to address the circumstances that caused the need for leave.
- J. The employer may retroactively designate leave as FMLA leave with appropriate notice to the employee, provided that the employer's failure to designate leave does not cause harm or injury to the employee.
- K. If a holiday occurs during a period of continuous FMLA leave, the holiday will be designated as used FMLA leave. If an employee is using intermittent FMLA leave, the holiday will not be designated as FMLA leave unless the employee was scheduled and expected to work during the holiday.

- L. If an employee is unable to work voluntary or mandated overtime due to an FMLA-qualifying reason, the overtime hours the employee would have worked will not be counted against the employee's FMLA entitlement.

VII. EMPLOYEE NOTICES REQUIRED

- A. When an employee provides initial notification of the need for an absence, the employee must explain the reasons for the needed leave so as to allow the employer to determine whether the leave is FMLA qualifying. The employee merely stating that he or she is sick is not enough to trigger the FMLA. If the employee fails to explain the reasons, leave may be denied. Employees also must inform the employer if the requested leave is for a reason for which leave was previously taken or certified.
- B. An employee must provide the employer with at least 30 calendar days notice of his or her need to take foreseeable FMLA leave (i.e., birth of a child, adoption of a child, planned medical treatment). For foreseeable leave due to a qualifying exigency, notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable. In cases where the employee is required to provide at least a 30-day notice of foreseeable leave and does not do so, the employee shall explain the reasons why such notice was not practicable upon a request from the employer for such information.
- C. When the need for FMLA leave is unforeseeable, the employee must provide notice as soon as practicable, either orally or in writing. The employee must also comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. When an employee becomes aware of a need for leave less than 30 days in advance, it should be practicable for the employee to provide notice either the same day or the next business day. Untimely requests or failure to provide mandatory information to the employer may result in delay or denial of the FMLA leave.

- D. When an employee seeks leave due to an FMLA-qualifying reason, for which the employer has previously provided FMLA-protected leave, the employee must specifically reference the qualifying reason for leave or the need for FMLA leave.
- E. When an employee has been previously certified for leave due to more than one FMLA-qualifying reason, the employer may need to inquire further to determine for which qualifying reason the leave is needed. An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable employer inquiries may result in denial of FMLA protection.
- F. When planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider.

- G. When the employee is unable to provide notice because of his or her illness or injury, notice may be given by a family member or a spokesperson as soon as practicable.

VIII. CERTIFICATION OF A SERIOUS HEALTH CONDITION

- A. The employee, family member, or spokesperson must complete a “State of Iowa Family and Medical Leave Act (FMLA) Application” (CFN 552-0599) form and submit it to his or her supervisor. If the employer has reason to know that the employee qualifies for FMLA leave, then FMLA applies whether the employee has submitted the application or not.
- B. If requested, the employee must provide medical certification to support the FMLA leave. An employee can be disciplined for failing to return the appropriate medical certification. If the employer requests medical certification for an absence, the employer must also advise the employee of the anticipated consequences of an employee’s failure to provide adequate certification. Medical certification shall be obtained and returned to the employer within 15 calendar days of the request or upon return to work from an absence that may qualify as FMLA leave (absent extenuating circumstances). It is the employee’s responsibility to pay the fee for completion of the medical certification and travel costs (if applicable). If second or third opinions are required, the employer is responsible for the costs.
- C. When leave is for the employee’s serious health condition, the health care provider must complete the “Certification of Health Care Provider for Employee’s Serious Health Condition” (CFN 552-0755) to satisfy the certification requirement. If the employee qualifies for workers’ compensation benefits, his or her medical documentation will be accepted for FMLA purposes.
- D. When leave is for a family member’s serious health condition, the health care provider must complete the Certification of Health Care Provider for Family Member’s Serious Health Condition (U.S. Department of Labor Form WH-380-F). Medical confirmation is required, except in the case of birth, adoption, or foster placement.
- E. When leave is for a covered servicemember’s serious health condition, the health care provider must complete the Certification for Serious Illness or Injury of Covered Servicemember (U.S. Department of Labor Form WH-385). See Sections XIII and XXVII.
- F. When leave is for a covered veteran, the health care provider must complete the Certification for Serious Illness or Injury of a Veteran for Military Caregiver Leave (U.S. Department of Labor Form WH- 385-V). See Section XXVII.
- G. If a workers’ compensation absence meets the definition of a serious health condition (see Section VI), FMLA will be designated. A Certification of Serious Health Condition is not required. See Section XXXI for workers’ compensation information.

IX. AUTHENTICATION AND CLARIFICATION OF CERTIFICATIONS

- A. At the time the employer requests certification, the employer must also advise the employee of the anticipated consequences of an employee’s failure to provide adequate certification, which could include delay, denial, designation without certification, or discipline. The employer shall advise an employee whenever the employer finds a certification incomplete, and provide the

employee a reasonable opportunity to cure any such deficiency.

- B. If an employee submits a complete and sufficient certification signed by a health care provider, the employer may not request additional information from the employee's health care provider regarding the certification.
- C. If the certification is incomplete or insufficient, the employer shall advise the employee and state in writing what information is necessary to make the certification complete and sufficient. The employer must allow the employee seven calendar days to cure any deficiency. If the deficiencies are not cured, FMLA leave may be denied. A certification that is not returned is not considered incomplete or insufficient, but constitutes a failure to provide certification. This provision applies whether it is the initial certification, a recertification, a second or third opinion, or a return to work certification, including any clarifications necessary.
- D. The employer may contact the health care provider directly for purposes of clarification and authentication of the medical certification after the employer has given the employee the opportunity to cure any deficiencies. The employee's consent to this contact is not required. The employer contact must be made by a healthcare provider, human resources professional, a leave administrator, or a management official. Under no circumstances may the employee's direct supervisor contact the employee's health care provider.
- E. If the health care provider requires a HIPAA release, the employee is responsible for providing such a release. If the employee fails to provide the release, and the employer cannot obtain clarification, FMLA leave will be denied.
- F. If an employee is on FMLA leave that is running concurrently with a workers' compensation absence, the employer may contact the workers' compensation provider directly for the purpose of clarifying or checking the authenticity of a medical certification.

X. SECOND AND THIRD OPTIONS

- A. An employer who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employer's expense (including travel). The employee must submit the claim to his or her health insurance carrier for payment; the employer is responsible for the remaining dollar amount, if any. The employer is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employer. Pending receipt of the second medical opinion, the employee is provisionally entitled to FMLA leave.
- B. If the opinions of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain a third medical opinion at the employer's expense. The third opinion shall be final and binding. The health care provider selected for a third medical opinion must be acceptable to both the employee and employer. Upon request, the employee shall be provided with a copy of the second and third medical opinions, where applicable, within five business days.

XI. RECERTIFICATION OF MEDICAL CONDITIONS

- A. An employer may request recertification no more often than every 30 calendar days and only in connection with an absence by the employee, unless B or C below apply.
- B. If the medical certification indicates that the minimum duration of the condition is more than 30 calendar days, the employer may not request recertification until that minimum duration has passed unless:
 - 1. The employee requests an extension of leave; or
 - 2. Circumstances described by the previous certification have changed significantly (e.g., the duration of the illness, or frequency of absences, the nature or severity of the illness, complications); or
 - 3. The employer receives information that casts doubt upon the continuing validity of the certification.
- C. The employer may request recertification in less than 30 calendar days if:
 - 1. The employee requests an extension of leave; or
 - 2. Circumstances described by the previous certification have changed significantly (e.g., the duration of the illness, or frequency of absences, the nature or severity of the illness, complications); or
 - 3. The employer receives information that casts doubt upon the continuing validity of the certification.
- D. As part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the employer may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.
 - 1. The employee must provide the requested recertification to the employer within 15 calendar days after the employer's request unless it is not practicable under the particular circumstances. Any recertification shall be at the employee's expense.
 - 2. No second or third opinion may be required following a recertification.
- E. Recertification does not apply to leave taken for a qualifying exigency.

XII. NEW CERTIFICATION OF ONGOING MEDICATION CONDITIONS

Where the employee's need for leave lasts beyond a single leave year, the employee must provide a new medical certification in each subsequent leave year. Such certifications are subject to the provisions for authentication and clarification, including second and third opinions.

XIII. RETURN TO WORK CERTIFICATION

When the leave involves the employee's own serious health condition, the employer shall require a Return to Work Certification Form (CFN 552-0731) from the employee's health care provider as

evidence that the employee is able to perform the essential functions of his or her position. Employees going out on continuous leave for their own health condition should request the essential functions of their job to aid the provider in completion of the Return to Work Certification Form. The employer may contact the employee's health care provider for purposes of clarifying and authenticating the Return to Work Certification. The employee is required to pay for any costs associated with the release including travel. Failure to provide a Return to Work Certification may result in discipline up to and including discharge.

XIV. CERTIFICATION FOR QUALIFYING EXIGENCY

- A. An employee requesting qualifying exigency leave must submit a complete and sufficient "Certification of Qualifying Exigency for Military Family Leave" (U.S. Department of Labor Form WH-384) form.
- B. The first time an employee requests leave because of a qualifying exigency, the employee must provide a copy of the military member's active duty orders or other documentation issued by the military. This documentation must include the dates of the military member's active duty service. This information need only be provided to the employer once.
- C. A copy of new active duty orders or other documentation issued by the military shall be provided to the employer if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different military member.
- D. Leave for any qualifying exigency must 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 leave is requested, and any available written documentation which supports the request for leave. For example, 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 affairs.
 2. The approximate date on which the qualifying exigency leave commenced or will commence.
 3. The beginning and end dates for leave requested for a single, continuous period of time.
 4. An estimate of the frequency and duration of the qualifying exigency if leave is requested on an intermittent or reduced schedule basis.
 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, including a brief description of the purpose of the meeting.
 6. No recertification may be requested for qualifying exigency leave.

XV. CERTIFICATION OF MILITARY CAREGIVER LEAVE

- A. An employee requesting leave to care for a covered servicemember must submit a complete and sufficient “Certification for Serious Injury or Illness of Covered Servicemember” (U.S. Department of Labor Form WH-385) or “Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave” (U.S. Department of Labor Form WH-385-V).
1. For purposes of leave taken to care for a covered servicemember, any one of the following health care providers may complete the certification:
 - a. A United States Department of Defense (DOD) health care provider;
 - b. A United States Department of Veterans Affairs (VA) health care provider
 - c. A DOD TRICARE network authorized private health care provider; or
 - d. A DOD non-network TRICARE authorized private health care provider; or
 - e. Any health care provider that is authorized to certify a serious health condition.
 2. If the authorized health care provider is unable to make military-related determinations, the health care provider may rely on determinations from an authorized DOD representative (such as a DOD Recovery Care Coordinator) or an authorized VA representative.
 - a. Certification for a current member of the Armed Forces must include information on whether the injury or illness may render the covered servicemember medically unfit to perform the duties of the servicemember’s office, grade, rank, or rating, and whether the member is receiving medical treatment, recuperation, or therapy.
 - b. Certification for a covered veteran must include:
 - 1) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is the continuation of an injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember medically unfit to perform the duties of the servicemember’s office, grade, rank, or rating; or
 - 2) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and that such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
 - 3) Information on whether the veteran is receiving medical treatment,

recuperation, or therapy for an injury or illness that is a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

- 4) Documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
3. The certification must contain information sufficient to establish that the covered servicemember is in need of care.
 - a. If leave is continuous, the certification must include an estimate of the beginning and ending dates for the leave.
 - b. If leave is intermittent, the certification must include the frequency and duration of the periodic care.
 4. If the covered servicemember is a veteran, the employer may require the employee to provide documentation issued by the military, which indicates that the covered servicemember is a veteran, the date of separation, and that the separation is other than dishonorable. Where an employer requires such documentation, an employee may provide a copy of the veteran's Certificate of Release or Discharge from Active Duty issued by the U.S. Department of Defense (Form DD-214) or other proof of veteran status.
 5. No information beyond that required on the certification may be required.
 6. The employer may seek authentication and/or clarification of the certification.
 - a. Second and third opinions may not be requested when the certification has been completed by a health care provider other than:
 - 1) A United States Department of Defense (DOD) health care provider;
 - 2) A United States Department of Veterans Affairs (VA) health care provider;
 - 3) A DOD TRICARE network authorized private health care provider; or
 - 4) A DOD non-network TRICARE authorized private health care provider.
 - b. Second and third opinions may be requested when the certification has been completed by any health care provider other than those listed in 6 a. above.
 - c. Recertifications are not permitted for leave to care for a covered servicemember.

7. The employee may be required to provide confirmation of family relationship to the seriously injured or ill servicemember.
8. The employer must accept, in lieu of the certification form, “invitational travel orders” (“ITOs”) or “invitational travel authorizations” (“ITAs”) issued to any family member to join an ill or injured servicemember regardless of whether the employee is named in the order or authorization. No additional certification may be required for the duration of time specified in the ITO or ITA.
 - a. If leave is needed beyond the expiration date in an ITO or ITA, the employer may request a Certification of Serious Injury or Illness of a Covered Servicemember.
 - b. The employer may seek authentication and clarification of the ITO or ITA. The second or third opinion process or recertification process may not be used during the period of time specified by the ITO or ITA.
 - c. The employer may require the employee to provide confirmation of covered family relationship when the leave request is supported by an ITO or ITA.
9. The employer must accept as sufficient certification documentation indicating the servicemember’s enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family caregivers. Such documentation is sufficient certification of the servicemember’s serious injury or illness to support the employee’s request for military caregiver leave regardless of whether the employee is the named caregiver in the enrollment documentation.
 - a. An employer may seek authentication and clarification of the documentation indicating the servicemember’s enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
 - b. Second or third opinions or recertifications may not be requested when the servicemember’s serious injury or illness is shown by documentation of enrollment in this program.
 - c. An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember when an employee's request for FMLA leave is supported by a copy of such enrollment documentation.
 - d. The employee may be required to provide documentation, such as a veteran’s Form DD– 214, showing that the discharge was other than dishonorable and the date of the veteran’s discharge.
10. When medical certification is requested by an employer, an employee may not be held liable for administrative delays in the issuance of military documents, despite the

employee's diligent, good-faith efforts to obtain such documents.

11. In all instances in which certification is requested, it is the employee's responsibility to provide the employer with complete and sufficient certification. Failure to do so may result in the denial of FMLA leave.
12. The employee may be required to report periodically on the employee's status and intent to return to work.

XVI. RETURNING FROM LEAVE

- A. Upon returning from FMLA leave, an employee is entitled to the same position, or an "equivalent position." An equivalent position is one with the same pay, benefits, and working conditions (shift and schedule) and the same or substantially similar duties, conditions, privileges, and status, which require equivalent skill, effort, responsibility, and authority.
 1. If a layoff occurs while the employee is on leave, the employee's right to a position shall be established in accordance with the DAS-HRE Rules Chapter 11, the applicable collective bargaining agreement, or the applicable Regents Institution's policies.
 2. The FMLA does not prohibit an employer from accommodating, consistent with the Americans with Disabilities Act, an employee's request to be restored to a different shift, schedule, position, or location, which better suits the employee's personal needs on return from leave. However, accommodating an employee in this manner must also be in compliance with any applicable collective bargaining agreement.
- B. If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. The employer's obligations may be governed by the Americans with Disabilities Act (ADA).
- C. An employee may be placed in a position in the same class, and must be reinstated to the same or a geographically proximate work site (i.e., one that does not involve significant increase in commuting time or distance) from where the employee had previously been employed when he or she returns from FMLA leave.
- D. Upon returning from FMLA leave, an employee is entitled to no more rights or benefits than he or she would have received had the leave not been taken.
- E. An employee must work at least 30 calendar days after his or her return to be considered "returned" to work.
- F. If the employee does not return to work because of the serious health condition of the employee or family member, the employer will require written certification from the health care provider. If the employee fails to respond within 30 calendar days, the employer may recover the State's share of health and dental plan premiums paid during periods of unpaid leave greater than 30 days.

G. If the employee does not return to work and the reason for not returning to work is not due to either:

- a. The employee's serious health condition, or
- b. Circumstances beyond the employee's control,

the employer may recover the State's share of health and dental plan premiums paid for the employee during periods of unpaid leave greater than 30 days.

H. If the employee does not or cannot return to work because of the employee's serious health condition, the employer will discuss the possibility of applying for long-term disability insurance (LTD) benefits with the employee.

I. The employer may request periodic updates from the employee concerning the employee's status, and the date he or she intends to return to work. Requests for periodic updates will be made no more often than necessary depending on the facts and circumstances of each case. The employer must take into account all of the relevant facts and circumstances related to the employee's leave situation.

J. If an employee is unable to return from FMLA leave on the expected date and FMLA leave has not been exhausted, the employee shall contact his or her supervisor about an extension. If FMLA leave has been exhausted, published leave procedures will apply.

XVII. RECORDKEEPING

A. The employer must keep, for at least three years, records pertaining to compliance with the FMLA. Upon request, records will be provided to the Department of Labor (DOL) by the Iowa Department of Administrative Services – Human Resources Enterprise.

B. Records kept in accordance with the FMLA must disclose the following:

- 1. Basic payroll and identifying employee data; and
- 2. Dates FMLA leave is taken by employees; and
- 3. If FMLA leave is taken in increments of less than one full day, the hours of the leave; and
- 4. Copies of employee notices of FMLA leave furnished to the employer, and copies of all general and specific notices given to employees; and
- 5. Records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer and employee of the reasons for the designation and for the disagreement.

C. Records and documents relating to medical certifications, re-certifications, or medical histories must be treated as confidential and maintained in the employee's confidential medical files. Supervisors, managers, first aid, and safety personnel may be provided relevant information on a need-to-know basis.

XVIII. AMERICANS WITH DISABILITIES ACT

- A. The ADA and the FMLA provide substantially different protection, but have important areas of overlap. The FMLA does not amend the ADA, but it does affect the rights and protection provided by the ADA. In some ways, the FMLA is broader than the ADA in its protection; in other ways, it is more limited.
- B. The ADA and the FMLA differ with respect to coverage of employees. To be protected under the ADA, an individual:
 - 1. Can be either an “applicant” or “employee;” and
 - 2. Must be “qualified;” and
 - 3. Must have a “disability;” or
 - 4. Have a history of “disability;” or
 - 5. Be perceived as having a “disability;” or
 - 6. Working on behalf of someone with a “disability.”

In addition, the ADA covers employees regardless of how long or how much they have worked. By contrast, the FMLA does not apply to applicants, and it protects employees who have been employed for at least 12 months and who have worked at least 1,250 hours during that 12-month period. The FMLA does not require that employees be “qualified,” or that they have a “disability.” Rather, the FMLA requires that employees have a “serious health condition.”

- C. The ADA and the FMLA also differ with regard to the actual protections provided to employees. These protections may be broken down into two categories: (1) medical leave and (2) family leave.
 - 1. Medical Leave for Employees. The ADA prohibits an employer from discriminating against a qualified applicant or employee with a disability. Disability, under the ADA, means that the individual has a physical or mental impairment that substantially limits a major life activity; has a record of such an impairment; or is regarded as having such an impairment.
 - a. Under the ADA, employers are required to provide reasonable accommodations for known disabilities, such as making facilities accessible and providing unpaid leave, as well as making any number of modifications to the actual job. However, an employer is not required to make accommodations that create an “undue hardship.”
 - b. The FMLA requires only that an employer provide up to 12 weeks of leave for an employee who has a “serious health condition” that makes the employee unable to perform the functions of his or her position. Unable to perform the functions of the position means that the employee is “unable to work at all or is unable to perform any one of the essential functions of the employee’s

position” within the meaning of the ADA. Unlike the ADA, the FMLA does not have an “undue hardship” defense to the employer who fails to provide the required leave.

- c. The employer must carefully consider its responsibilities under the ADA and FMLA and understand how they relate. The differences between the ADA’s and FMLA’s definitions and substantive requirements have important practical consequences. They are:
- 1) The definition of disability under the ADA clearly differs from the definition of a serious health condition under the FMLA. Therefore, the employee may be protected under one statute and not the other. For example, an employee with a mild hernia requiring an operation involving inpatient care would be protected under the FMLA but not the ADA because this condition would not appear to qualify as a disability under the ADA.
 - 2) The nature and extent of protection differs under the ADA and FMLA. If the employee has an ADA-defined disability, the ADA may provide greater protection than the FMLA. An employee with a disability may be entitled to 12 weeks of leave under the FMLA and additional “reasonable accommodation” under the ADA. For example, suppose an employee develops cancer and undergoes debilitating surgery and therapy. The employee would presumably be entitled to 12 weeks leave under the FMLA. If the employee has a “disability” under the ADA, the employer must provide a reasonable accommodation. If the employee requires a modified leave schedule or additional leave beyond that which was provided under the FMLA, the employer must provide this accommodation unless it would impose an “undue hardship” on the employer. The employer, however, can factor into the “undue hardship” determination the fact that the employee was previously provided 12 weeks of FMLA leave.
 - 3) The ADA may also give greater protection in terms of the actual position held open for the employee. Under the FMLA, an employer is required to place an employee returning from a 12-week leave in the job he or she held or in “an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.” The employer does not have to establish an “undue hardship” in order to assign an employee to an equivalent position. Therefore, the employee may have stronger return rights under the ADA.
 - 4) There is a difference in how the employer may request medical certification between the ADA and FMLA. Under the ADA, the employer may ask employees disability-related questions or require employee

medical examinations only if they are “job-related” and “consistent with business necessity.” However, under the FMLA, an employer may require certain medical documentation before an employer will designate an absence as FMLA leave. This documentation is the only medical information the employer may access with exception of a second or third opinion.

2. Family Leave for Employees. The ADA prohibits employers from discriminating against qualified individuals because they have a relationship with someone who has a disability. However, the ADA specifically restricts an employer’s obligation to provide reasonable accommodations to the “known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee.” Therefore, the ADA does not require an employer to provide a reasonable accommodation to an applicant or employee without a disability simply because that person has a relationship with someone with a disability. On the other hand, the FMLA imposes an affirmative obligation on employers with respect to an employee without a disability who must care for a spouse, son, daughter, or parent who has a serious health condition. Specifically, the FMLA requires an employer to allow an employee without a disability to take up to 12 weeks of leave so that the employee can care for a sick family member. Therefore, with respect to family leave, the FMLA provides employees protection not provided under the ADA.

XIX. WORKERS’ COMPENSATION

- A. FMLA leave runs concurrently with a workers’ compensation absence. In this instance, under the State’s workers’ compensation program, employees are not required to supplement workers’ compensation benefits with paid leave.
- B. Under the FMLA, an employer may offer restricted duty. However, it cannot compel or take any detrimental action if the employee declines restricted duty while the employee is on FMLA leave. Under the State’s workers’ compensation program, an employee who is offered and refuses restricted (light) duty may lose his or her workers’ compensation benefits.
- C. Employees on workers’ compensation who are on FMLA leave concurrently and are unable to return to work after the exhaustion of FMLA leave are subject to state workers’ compensation laws and will have no job restoration rights under FMLA.

XX. HEALTH, DENTAL, LIFE, AND LONG-TERM DISABILITY (LTD) INSURANCE

- A. The State of Iowa is required to maintain an employee’s health insurance coverage during periods of FMLA leave by paying the State’s share of the insurance premium. The employee shares will be caught up in the arrears process upon the employee’s return to work.
- B. The State of Iowa will maintain an employee’s dental, basic life and LTD insurance during periods of FMLA leave. (See section XV, Paid and Unpaid Leave, for leave code and state premium information.) Supplemental Life Insurance will cease if on unpaid leave. Please contact your HRA for payment arrangements. Upon return from leave, the employee will be required to complete Evidence of Insurability (EOI) and reapply for supplemental life insurance. If an employee does not pay the supplemental life premiums, and he or she passes

away, only the basic amount of life insurance will be paid to the beneficiary.

- C. When approved for FMLA leave, the State's share of applicable insurance premiums will begin the first of the month in which FMLA leave begins.
- D. If an employee is on paid FMLA leave, his or her share of the health, dental and supplemental life insurance premiums will be deducted. If an employee is in unpaid status, the missed premiums will be caught up in the arrears process after the employee has returned to work.
- E. If an employee does not pay his or her share of the health or dental insurance premium and the insurance payment is 30 calendar days past due, the employee's coverage and claim payments will be canceled retroactively to the first day of the month in which the premium was not paid. The employer must provide notice to the employee 15 calendar days prior to any retroactive cancellation of insurance coverage.
- F. Upon return from FMLA leave, employees who have dropped or canceled their health, dental or supplemental life insurance while on FMLA leave will have coverage reinstated in accordance with the IRS Cafeteria Plan rules. If the employee's absence is less than one year, insurance coverage will be effective the first of the month following the employee's return to work. If the employee's absence is one year or more, see an applicable collective bargaining agreement or DAS Administrative Rules.
- G. During the annual enrollment and change period, employees on FMLA leave must be provided notice of the opportunity to make changes to benefit elections. If an employee on FMLA leave elects to make any changes during this period, the changes must be completed by the end of the published enrollment and change period.
- H. When taking FMLA leave, an employee must use paid leave in an amount equal to his or her regularly scheduled hours of work. Altering an employee's work schedule for the purpose of extending his or her benefits is not permitted.

XXI. DEFERRED COMPENSATION

- A. While on FMLA leave, an employee remains a participant in the deferred compensation program.
- B. Deferrals are made while an employee is on paid leave, but are not made if he or she is on unpaid leave. If an employee wants to stop deferrals while on paid leave, a RIC Account Form (CFN 552- 0317) must be completed and submitted to the personnel assistant.
- C. If deferrals are stopped because an RIC Account Form was completed or an employee went on unpaid leave, an employee must complete a new RIC Account Form to restore deferrals upon returning to work. Published enrollment and change policies and procedures will apply.
- D. The deferred compensation information system will automatically zero out deductions for an employee in an unpaid leave status code.

XXII. FLEXIBLE SPENDING ACCOUNTS (FSA)

A. Dependent Care FSA:

1. An employee on paid or unpaid FMLA leave who is capable of self-care must immediately stop deductions by completing the Flexible Spending Account Change Form and submitting it to the personnel assistant. Employees who are capable of self-care are not eligible to participate in the dependent care FSA while on leave.
2. Within 30 days of return to work, an employee may elect to be reinstated in the plan by completing the Flexible Spending Account Change Form and submitting it to the personnel assistant.

B. Health Care FSA:

1. An employee on paid or unpaid FMLA leave may elect to cancel or to continue participation in the health care FSA. Employees on unpaid FMLA leave who wish to continue health care FSA coverage must make arrangements prior to the commencement of the leave to pay for the coverage. Employees whose coverage terminates while on FMLA leave are not entitled to receive reimbursements for services incurred during the period when the coverage is terminated.
2. Within 30 days of return to work, an employee may elect to be reinstated in the plan by completing the Flexible Spending Account Change Form and submitting it to the personnel assistant. If an employee elects to be reinstated in the Health FSA upon return from leave for the remainder of the plan year, the employee may not retroactively elect Health FSA coverage for services incurred during the period when the coverage was terminated.

XXIII. DEFINITIONS

Adoption means legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child is not a factor in determining eligibility for FMLA leave

Business day means the part of a day during which most state offices are operating, usually from 8:00 a.m. to 4:30 p.m., Monday through Friday.

Continuing treatment by a health care provider means any of the following:

1. Incapacity and treatment. Incapacity of more than three consecutive, full, calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:
 - a. Treatment two or more times by a health care provider within the first 30 days of incapacity, unless extenuating circumstances exist, or
 - b. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

Treatment by a health care provider means an in-person visit to a health care provider. The first visit must take place within seven days of the first day of incapacity.

Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

2. Pregnancy or prenatal care. Any period of incapacity due to pregnancy, or for prenatal care.
3. Chronic conditions. A chronic serious health condition is one which:
 - a. Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;
 - b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
4. Permanent or long-term conditions. A period of incapacity, which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
5. Conditions requiring multiple treatments (non-chronic conditions). Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Covered active duty means duty of a member of the Armed Forces, including a member of the National Guard or Reserves, during deployment to a foreign country.

Covered active duty or call to covered active duty status means:

1. In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
2. In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to Section 688 of Title 10 of the United States Code, Sections 12301(a), 12304, 12305, and 12406 of Title 10 of the United States Code, and chapter 15 of Title 10 of the United States Code.

Covered servicemember means:

1. 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, or
2. A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

Employer means the State of Iowa through the Department of Administrative Services – Human Resources Enterprise (DAS-HRE). When applicable, it also means an appointed or elected chief administrative head of a department, commission, board, independent agency, or statutory office or that person’s designee.

Essential functions mean those job functions that an individual must be able to perform in order to hold a position. Essential functions focus on what must be done and not on how it is accomplished.

FLSA means the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

Foster Care means 24-hour care for children in substitution for, and away from, their parents, or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves the agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

Health Care Provider means:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or
2. Any other person determined by the Department of Labor (DOL) to be capable of providing health care services. Others “capable of providing health care services” include only:
 - podiatrists
 - dentists
 - clinical psychologists
 - optometrists

- chiropractors (limited to treatment consisting of manual manipulation of the spine to correct subluxation as demonstrated by x-ray to exist)
- nurse practitioners
- nurse midwives
- clinical social workers
- physician assistants
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts
- any health care provider from which the State's health insurance plans will accept certification that a serious health condition exists
- a health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law

Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using a telephone and directory, using a post office, etc.

Incapacity means the inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with such inpatient care

Intermittent Leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of several months, such as for chemotherapy.

Invitational Travel Authorization (ITA) or Invitational Travel Order (ITO) are orders issued by the Armed forces to a family member to join an injured or ill servicemember at his or her bedside.

Leave Year means the State of Iowa's fiscal year, July 1 to June 30.

Medically Necessary means that there must be a medical need for the leave (as distinguished from voluntary treatments and procedures), and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule.

Military Caregiver Leave means leave taken to care for a covered servicemember with a serious injury or illness.

Military member for purposes of qualifying exigency leave means the employee's spouse, son, daughter, or parent who is on covered active duty or call to active duty status in a foreign country.

Needed to care for a family member or covered servicemember means both physical and psychological care. It includes situations where, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc. The term also includes providing psychological comfort and reassurance, which would be beneficial to a child, spouse, or parent with a serious health condition who is receiving inpatient or home care. The term also includes situations where an employee may be needed to substitute for others who normally care for the family member or covered servicemember, or to make arrangements for changes in care, such as transfer to a nursing home. The employee need not be the only individual or family member available to care for the family member or covered servicemember.

Next of kin of a covered servicemember means the 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 covered 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 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 servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.

Outpatient Status means, with respect to a covered servicemember who is a current member of the Armed Forces, the status of a 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.

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to an employee when the employee was a son or daughter as defined below. Persons in loco parentis include persons with day-to-day responsibilities to care for and/or financially support a child, regardless of whether the person has a legal or biological relationship to the child. This term does not include parents "in-law."

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."

Physical or Mental Disability means a physical or mental impairment that substantially limits one or more major life activities of an individual. The American with Disabilities Act, Title 42 United States Code section 12101 et seq., as amended, defines the terms.

Qualifying Exigency Leave means leave taken by an eligible employee while a covered member of the Armed Forces, including the National Guard or Reserve, is on active duty or call to active duty status in a foreign country for one or more of the qualifying exigencies.

1. Short-notice deployment
2. Military events and related activities
3. Childcare and school activities
4. Financial and legal arrangements
5. Counseling
6. Rest and recuperation
7. Post-deployment activities
8. Additional activities

Reduced Leave Schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Reserve Components of the Armed Forces, for purposes of qualifying exigency leave, include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation.

Serious Health Condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions, provided all other conditions are met. Mental illness or allergies may be serious health conditions, but only if all other conditions are met.

Serious injury or illness means:

1. In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; and
2. In the case of a covered veteran, an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in

the Armed Forces) and that manifested itself before or after the member became a veteran, and is

- a. A continuation of a serious injury or illness that was incurred or aggravated when the covered 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
- b. A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
- c. A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
- d. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Son or daughter means a biological, adopted or foster child, a stepchild, legal ward, or a child of a person standing in loco parentis, who is either under the age of 18, or age 18 or older and “incapable of self-care because of a mental or physical disability,” at the time FMLA leave is to commence.

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 servicemember stood in loco parentis, and who is of any age.

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.

Spouse means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized. Iowa recognizes a common law marriage.

TRICARE is the health care program serving active duty servicemembers, National Guard and Reserve members, retirees, their families, survivors, and certain former spouses worldwide.

Unable to perform the functions of the position means the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee’s position within the meaning of the Americans with Disabilities Act (ADA), as amended. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the

position during the absence for treatment.

USERRA is the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. 4301.