



The Family and Medical Leave Act (FMLA)

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Human Resources

Agenda

- Background
- Eligibility
- Qualifying Reasons
- Leave Entitlement
- Notices Required
- Certifications
- Clarification and Authentication
- Questions

Background Information – Federal Regulations

CFR Title 29, Part 825

- Signed into law February 5, 1993
- Amended by
 - National Defense Authorization Act (NDAA)
 - January 28, 2008 – Military Caregiver
 - October 28, 2009 – Qualifying Exigency
 - New regulations
 - January 16, 2009
 - March 8, 2013
 - March 27, 2015



Background

- Job protected leave for
 - Birth, adoption or foster placement of a child
 - Employee's serious health condition
 - Care for child, spouse or parent with serious health condition
 - Military Family Leave
 - Qualifying Exigency
 - Care for ill or injured covered servicemember or veteran
- Provides for maintenance of health benefits
- Administered by Reed Group – 7/1/15

Employee Eligibility

- 12 months of employment during past seven years and 1,250 hours worked
 - Hours employee would have worked but for service in the Military, Guard or Reserve count
- Employees not initially eligible become eligible once they meet above criteria
- The State FMLA period runs from July 1 – June 30. Reed Group reviews all leaves that extend into the new year to determine if employee still meets eligibility requirements for FMLA

Qualifying Reasons for FMLA Leave

- Birth of a child and to care for the newborn child
 - Includes prenatal care and appointments
- Placement of a child for adoption or foster care
 - Includes any time prior to placement
- Care for employee's spouse, child (under 18) or parent with a serious health condition
- Serious health condition that makes the employee unable to perform the functions of the employee's job
- Qualifying exigency due to covered military member's service
- Care for ill or injured covered servicemember or veteran

Serious Health Condition

- Illness, injury, impairment, or physical or mental condition that involves
 - Inpatient care, or
 - Continuing treatment by a health care provider
- Cosmetic and infertility treatments not covered unless inpatient hospital care is required or complications develop
- Substance abuse treatment is covered; absences because of the use of a substance are not
- Six categories of serious health condition

Serious Health Condition #1: Inpatient Care

- Overnight stay in
 - Hospital
 - Hospice
 - Residential care facility
- Includes any subsequent treatment in connection with inpatient care

Serious Health Condition #2

Incapacity and Treatment

- Incapacity of *more than 3 calendar days* AND
 - Treatment two or more times by health care provider within 30 days of the first day of incapacity
- OR -
- Treatment by health care provider at least once that results in a regimen of continuing treatment under the supervision of the health care provider
- In-person visit within 7 days of the first day of incapacity
 - Incapacity – inability to work, attend school, or perform other regular daily activities due to serious health condition, treatment for, or recovery from

Serious Health Conditions #3 & #4

Continuing Treatment

- Pregnancy or prenatal care
 - Any period of incapacity due to pregnancy or for prenatal care (Iowa Law grants 8 weeks of PREGNANCY LEAVE for employees – even if they are NOT eligible for FMLA)
- Chronic conditions
 - Require periodic visits for treatment by health care provider
 - Two or more visits per year
 - Continue over extended period of time
 - May cause episodic rather than continuing period of incapacity
 - Asthma, diabetes, epilepsy, etc.

Serious Health Conditions #5 & #6

- Permanent or long-term conditions – under continuing supervision of health care provider; active treatment not required
 - Alzheimer’s, severe stroke, terminal stages of a disease
- Conditions requiring multiple treatments
 - Restorative surgery after accident or other injury
 - Condition that would likely result in period of incapacity of more than three days in the absence of medical care
 - Cancer (chemotherapy)
 - Severe arthritis (physical therapy)
 - Kidney disease (dialysis)

Pregnancy or Birth

- Both parents entitled to
 - Leave for birth (Pregnancy is a SHC)
 - Leave to be with healthy newborn (bonding time)
 - Spouses employed by same employer share 12 weeks for bonding
 - 12 months beginning on date of birth
 - Intermittent leave for bonding only if employer agrees
 - Must have prior FMLA use
- Mother and spouse can use FMLA for incapacity, prenatal care or own serious health condition
- Both parents entitled to 12 weeks if child, self or spouse has serious health condition

Adoption or Foster Care

- Can use leave before placement or adoption
 - Counseling sessions, appear in court, consult with attorney, travel to another country
- Expires 12 months after date of placement
- Spouses employed by same employer share 12 weeks for adoption or placement for foster care
- Both parents entitled to 12 weeks to care for child with serious health condition
- Intermittent leave for bonding only if employer agrees (must have prior FMLA use)

Qualifying Exigency Leave

- Employee's spouse, son, daughter or parent
 - Covered military member on covered active duty or federal call to active duty status in a foreign country
- Certification of Qualifying Exigency for Military Family Leave
- Nine qualifying exigencies
- Limits to length of eligibility for some exigencies

Qualifying Exigencies

1. Short Notice Deployment
 - Military member notified of call or order to active duty **seven or less calendar days prior to the date of deployment**
2. Military events and activities related to active duty or call to active duty
3. Childcare and School Activities
4. Financial and legal arrangements
 - Eligible for 90 days following termination of active duty status
5. Attend Counseling
 - For employee, covered military member, or child (under 18) of the covered military member

Qualifying Exigencies

6. Rest and Recuperation

- Spend time with military member on rest and recuperation leave during deployment

7. Post-deployment activities

- Attend military ceremonies or programs
 - Up to 90 days following termination of active duty
- Address issues that arise from death of covered military member on active duty status
 - Meeting and recovering body
 - Making funeral arrangements
 - Attending the funeral

Qualifying Exigencies

8. Parental Care for military member's parent incapable of self-care - (biological, adoptive, step, or foster parent)
9. Additional activities
 - Employer and employee must agree that leave qualifies as an exigency
 - Employer and employee must agree to both timing and duration of leave

Military Caregiver

- Leave to care for covered servicemember
 - Current member of the Armed Forces, National Guard or Reserves who is undergoing medical treatment or is on the temporary disability retired list
 - Covered veteran - must be undergoing medical treatment, recuperation, or therapy for a serious injury or illness
 - Must have been discharged within a 5 year period before employee's first use of leave
 - Injury or illness incurred in line of duty on active duty
- OR**
- Existed before active duty and aggravated by service in the line of duty on active duty

Military Caregiver

- Employee must be
 - Spouse
 - Son
 - Daughter
 - Parent
 - Next of Kinof covered servicemember
- Employee is entitled to take **26 weeks** leave during a single **12-month period**

Leave Entitlement

- Up to 12 weeks per fiscal year for medical and/or qualifying exigency
 - If both spouses employed by State, 12 weeks is shared for birth, adoption, foster care, or to care for employee's parent
 - Each get 12 weeks to care for son, daughter or spouse
- Continuous, reduced schedule or intermittent
- Paid or unpaid – FMLA designation runs concurrently with FMLA time types (FMLA sick, FMLA vacation, FMLA unpaid, etc.)

Leave Entitlement

- Continuation of health insurance while employee on FMLA, whether paid or unpaid
- Entitlement ends if employee gives unequivocal written notice of intent not to return to work for other than serious health condition
- Employee can be required to reimburse state share of health insurance if employee does not return to work for a reason other than
 - A condition that would entitle the employee to FMLA leave, or
 - Other circumstances beyond the employee's control

Intermittent & Reduced Schedule Leave

- If based on planned medical treatment, may
 - Temporarily assign employee to other position
 - Alter current position during FMLA leave
 - Cannot result in loss of pay or benefits
- Employee must make reasonable effort to schedule treatments so schedule does not disrupt employer's operations
- Adjusted schedule ends when FMLA expires

Paid and Unpaid Leave

- State of Iowa requires use of appropriate paid leave (sick, vacation, compensatory) during periods of FMLA leave
 - SPOC-covered employees not required to use paid leave (sick or vacation)
- Employees (other than SPOC) can retain *up to* 80 hours of vacation each fiscal year
 - Cannot retain more than they have
 - Can decrease, but not increase retention

Employer Notices Required

WHD Publication 1420 Revised February 2013

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlement

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintroduction briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is:

- (1) a current member of the Armed Forces, including a member of the National Guard or Reserve, 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*;
- (2) a veteran who 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, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.*

***The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months*, and if at least 50 employees are employed by the employer within 75 miles.

***Special hours of service eligibility requirements apply to airlines flight crew employees.**

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and

a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when mutually necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment or so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Act by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires: FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 815.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-6243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Wage and Hour Division



WHD Publication 1420 - Revised February 2013

- General Notice – Employee Rights And Responsibilities Under The Family And Medical Leave Act

Employer Notices Required

Provided by Reed Group

- Notice of Eligibility – within 5 business days of acquiring knowledge that absence may be FMLA-qualifying
- Notice of Rights & Responsibilities – within 5 business days
- Designation Notice – within 5 business days
 - If certification incomplete or insufficient, allow 7 calendar days to cure

Designation of Leave

- Employer must designate if reasonable basis to know FMLA applies
 - Employee does not have to agree
- Employer can require certification; if not provided, leave can be denied
- Cannot require employee to use more FMLA than medically necessary

Employee Notice Requirements

- Employee makes written or oral notice of need for absence to employer and Reed Group
 - Must give enough explanation to allow determination if leave is FMLA-qualifying
 - Stating that he or she is sick not sufficient to trigger FMLA
 - Employer can ask employee questions (Is this for a doctor's appointment, flare-up, etc.)
- Leave may be denied if employee fails to adequately explain reason for leave
- Must give notice if using leave for a reason for which leave was previously taken or certified

Employee Notice Requirements

- Foreseeable leave
 - Up to 30 days notice
 - Birth, adoption, planned medical treatment
- Unforeseeable leave
 - As soon as practicable, generally
 - Same day employee becomes aware
 - Next business day
- Must report to Reed Group no later than 48 hours after start of absence

Employee Notice Requirements

- Must comply with employer's notice requirements for requesting leave
- If not compliant, FMLA may be delayed or denied
- Must follow sick leave policies
- Retroactive designation
 - Can be made if employee and employer agree
 - If notice not made, cannot later assert FMLA protection

Certification

- Can be required for
 - Serious health condition of employee or family member
 - Qualifying exigency
 - Leave to care for ill or injured covered servicemember
- Must be requested in writing
 - When notice of need for leave given
 - Within five business days after leave begins

Certification

- Employee's responsibility to provide complete and sufficient certification
 - Applies to initial certification, recertification, second or third opinion, and return to work certification
 - Includes any clarifications needed
- Returned within 15 calendar days after request
- If incomplete or insufficient
 - Employee notified of deficiency in writing
 - Allowed 7 calendar days to cure
- If certification not provided, no FMLA protection

Certification

- Approval is for one year from first absence, if supported by certification of health care provider
- If need for intermittent leave lasts beyond a year, a new medical certification can be required in each subsequent fiscal year
- Reed Group may authenticate or clarify; will work with employee and/or employee's health care provider
- Employee pays for cost of initial certification
- Employer pays for second/third opinions

Second & Third Opinions

- Second Opinion - Reason to doubt validity of certification
 - After clarification and/or authentication
 - Employer pays for cost
 - Employer chooses provider
- If second opinion differs from first, third opinion is required
 - Employer pays for cost
 - Employee and employer must agree on health care provider for third opinion
 - Final and binding

Recertification

- Process for employer to verify that FMLA is still needed for employee who health care provider and Reed Group have already certified
- Can be requested when
 - Employee requests an extension of leave
 - Circumstances have changed significantly
 - Increased duration of absence
 - Pattern of FMLA use in conjunction with days off
 - Employer receives information that casts doubt
- Can provide health care provider with record of employee's absences and ask if need for leave is consistent with absence pattern
- Recertification is at employee's expense

Return to Work Certification

- May only require if employee is given list of essential job functions no later than when Designation Notice is given
- Give employee essential functions at time of notice from Reed Group
- May require that provider specifically address employee's ability to perform essential functions
- Employee provides to employer, not Reed Group, prior to returning to work

Workers' Compensation

- FMLA runs concurrently with Workers' Compensation
- FMLA certification not required if WC approved
- Employer may offer, but not require, light duty under FMLA
 - If employee refuses light duty, will lose Workers' Compensation benefits
- If unable to return after FMLA exhausted, FMLA job restoration rights do not apply

FMLA Leave Reporting

- Employees must report their FMLA-qualifying absences to **Reed Group** within:
 - **30 calendar days before** an FMLA-qualifying absence or
 - **48 hours (2 business days after)** the start of an FMLA-qualifying absence
- Managers/Supervisors/HR Contacts have up to **2 weeks** to report an employee absence if employee fails to do so
- After 2 weeks requests for exceptions due to **extenuating** circumstances must be made to the FMLA Program Administrator at FMLA@iowa.gov

Information on the DAS HRE FMLA Web Site

Iowa Department of Administrative Services

HOME | DAS CORE | GENERAL SERVICES | HUMAN RESOURCES | PROCUREMENT & FLEET | STATE ACCOUNTING

Human Resources > FMLA

FMLA

The Family and Medical Leave Act (FMLA) is a federally mandated program that entitles eligible employees of covered employers to un-paid, job-protected leave for specified family, medical and military reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible State of Iowa employees are entitled to up to 12 work weeks of FMLA leave in a fiscal year (up to 26 weeks for Military Caregiver Leave in a single 12-month period).

To ensure FMLA is administered consistently and in compliance with federal requirements, effective July 1, 2015, Reed Group began managing FMLA absences for State of Iowa Central Payroll and Department of Transportation (DOT) employees.

?? Not sure when to contact Reed Group ??

Consult the [FMLA Decision Tree](#) for guidance,
or call Reed Group toll-free at 844-507-5393 (8a-8p, M-F)
or email StateofIowa@ReedGroup.com.

As a best practice, it is recommended that:

- FMLA leaves be initiated by phone at Reed Group's dedicated toll-free number for State of Iowa employees: **844-507-5393** (answered 8am-8pm, M-F; voicemail after hours)
- Subsequent absences be reported via the Reed Group's online self-service portal: **LeavePro: stateofiowa.leavepro.com**

Important FMLA Update: Effective 8/12/15, FMLA recertification will occur annually. FMLA claims previously approved for 6 months will be reviewed upon the employee's request and adjusted to one year if supported by the health care provider. Employees will receive advance notification for recertification from Reed Group.

FMLA Resources

The following resources are provided to assist you in understanding and complying with FMLA requirements.

DAS HRE Resources	
FMLA FAQs	Benefit Guide: FMLA and Extended Illness, Long Term Disability and Death
FMLA Training (Webinar) - For Human Resource contacts	Military Family LeaveFAQs
FMLA Training (pdf) - For Human Resource contacts	DAS HRE Managers and Supervisors Manual, Section 6.9D
Reed Group Resources	
FMLA Decision Tree: When to notify Reed Group	LeavePro (self-service FMLA absence management portal)
Reed Group Helpful Hints	LeavePro Video - For Employees (approx. 24 minutes)
	LeavePro Video - For Management (approx. 21 minutes)

Go to the DAS HRE FMLA Web Site for...

- Reed Group contact information
- Reed Group Resources
 - Overview of Reed Group Absence Reporting
 - On-Demand Webinars
 - Overviews for employees & management
 - LeavePro online portal overview
 - LeavePro reports & notifications
- FAQs
- Forms
- QuickLinks

Questions

