

		Department of Administrative Services (DAS)			
		Human Resources Enterprise (HRE)			
		Title/Subject:		Family Medical Leave Act (FMLA) Policy	
Applies to:		All State Government Agencies	Effective Date:	7/11/2019	
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I. Purpose

The purpose of this policy is to ensure the Family and Medical Leave Act (FMLA) of 1993 is administered consistently and in compliance with federal requirements.

II. Policy

It is the policy of DAS to comply with the Family and Medical Leave Act (FMLA) of 1993.

III. 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:

- A. 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:
 1. Treatment two or more times by a health care provider within the first 30 days of incapacity, unless extenuating circumstances exist, or
 2. 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.

- A. Pregnancy or prenatal care. Any period of incapacity due to pregnancy, or for prenatal care.
- B. Chronic conditions. A chronic serious health condition is one which:
 1. 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;
 2. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 3. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

“Permanent or long-term conditions” means 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.

“Conditions requiring multiple treatments (non-chronic conditions)” means 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:

- A. 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
- B. 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:

- A. 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
- B. 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” means 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:

- A. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or
- B. 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.

- Short-notice deployment
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation
- Post-deployment activities
- 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:

- A. 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

- B. 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:
1. 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
 2. 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
 3. 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. 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.

IV. Background

The Family and Medical Leave Act (FMLA) was signed into law on February 5, 1993, and was revised effective January 16, 2009. The National Defense Authorization Act (NDAA) amended the FMLA on January 28, 2008, and October 28, 2009. New regulations to implement certain aspects of the NDAA amendments became effective March 8, 2013.

The 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 service member or veteran, or when a qualifying exigency exists.

An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work instead of taking leave. If an employee was paying all or part of the premium payments prior to leave, the employee continues to pay his or her share during the leave period.

The following information is intended to assist you in administering the FMLA. 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 XXXV.

V. Effective Date

It is the policy of DAS to comply with Iowa Code Chapter 17A.9A (4) (5) regarding public inspection related to granting or denying a waiver or variance petition for a DAS Administrative Rule.

- A. FMLA leave was effective for noncontract employees on August 5, 1993, and for contract-covered employees on February 5, 1994.
- B. Military Family Leave to care for a covered service member with an illness or injury incurred in the line of duty was effective on January 28, 2008. Military family leave to care for a covered veteran was effective March 8, 2013.
- C. Military Family Leave for any qualifying exigency was effective January 16, 2009.
- D. Only leave taken on or after the effective date of the Act as amended is considered FMLA leave.

VI. Eligibility

- A. Any employee who has been employed for at least 12 months and has worked for at least 1,250 hours in the 12-month period immediately preceding the commencement of leave is eligible.
 - 1. The 12 months that the employee must have been employed need not be consecutive. Employment periods prior to a break in service of seven years or more need not be counted in determining whether the employee has been employed for at least 12 months, unless the break in service is due to the fulfillment of a Uniformed Services Employment and Reemployment Rights Act (USERRA) covered service obligation, or there is a written agreement concerning the intention to rehire the employee after the break in service. If the employee has been maintained on the payroll for any part of a week, including any periods of paid sick, vacation, or unpaid leave during which other benefits or compensation are provided by the employer (e.g., workers' compensation,

group health benefits, etc.), the week counts as a week of employment. The period of absence from work due to or necessitated by USERRA-covered service must be also counted in determining whether the employee has been employed for at least 12 months.

2. Whether an employee has worked the minimum 1,250 hours of service is determined according to the principles of the Fair Labor Standards Act (FLSA) for determining compensable hours. The calculation is based upon hours actually worked, not hours in pay status, except for an employee who has performed USERRA-covered service. An employee returning from, or reemployed after, USERRA-covered service is credited with the hours of work that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service. The 1,250 hours may be worked intermittently, and may involve multiple job classes and multiple branches of state government.
- B. The determination of whether an employee has worked 1,250 hours and has been employed for a total of at least 12 months must be made as of the date the FMLA leave is to start. An employee may be on non-FMLA leave at the time he or she meets the 12-month eligibility requirement, and in that event, any portion of the leave taken for an FMLA-qualifying reason after the employee meets the eligibility requirement would be FMLA leave.
- C. An employee who fraudulently obtains FMLA leave from the employer is not protected by FMLA's job restoration or maintenance of health benefits provisions.

VII. Leave Entitlement

- A. An eligible employee is entitled to 12 weeks of FMLA leave in a fiscal year for any one, or more, of the following reasons:
 1. The birth of a child and to care for the newborn child,
 2. The placement of a child for adoption or foster care
 3. To care for the employee's spouse, child (under 18, unless incapable of self-care), or parent with a serious health condition
 4. Because of the employee's own serious health condition
 5. Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty status.
- B. An eligible employee is entitled to up to a total of 26 weeks of leave in a single 12-month period to care for a covered service member with a serious injury or illness. The 12-month period begins on the first date the employee uses leave to care for the covered service member. During this period, an eligible employee's leave entitlement is limited to a combined total of 26 weeks of FMLA leave for any qualifying reason.
- C. When both spouses are employed by the State, they are limited to a combined total of 12 weeks of FMLA leave in a fiscal year for leave taken for:
 1. The birth of the employees' healthy child
 2. A bonding period
 3. Care for a healthy child after birth, adoption, or placement for foster care, or
 4. The care of a parent with a serious health condition.

5. Where the spouses each use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes.
6. When both spouses are employed by the State, they are each entitled to 12 weeks of FMLA leave in a fiscal year for leave involving the care of a son, daughter, or spouse with a serious health condition, or leave that involves the employee's own serious health condition.
- D. If an employee unequivocally advises the employer in writing that he or she does not intend to return to work for a reason other than the immediate serious health condition, the employee's entitlement to continued FMLA leave and associated benefits ceases.
- E. Leave may be taken on a continuous, intermittent, or reduced schedule basis. This leave may be paid or unpaid (see Section XV).

VIII. Qualifying Reasons For Leave

- A. An eligible employee is entitled to 12 weeks of FMLA leave in a fiscal year for any one, or more, of the following reasons:
 - B. The birth of a child and to care for the newborn child,
 - C. The placement of a child for adoption or foster care
 - D. To care for the employee's spouse, child (under 18, unless incapable of self-care), or parent with a serious health condition
 - E. Because of the employee's own serious health condition
 - F. Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty status.
- G. An eligible employee is entitled to up to a total of 26 weeks of leave in a single 12-month period to care for a covered service member with a serious injury or illness. The 12-month period begins on the first date the employee uses leave to care for the covered service member. During this period, an eligible employee's leave entitlement is limited to a combined total of 26 weeks of FMLA leave for any qualifying reason.

IX. Serious Health Condition

- A. A 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.
- B. The term incapacity means inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.
- C. The term treatment includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is

not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

- D. 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 unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths is serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of this section are met.

X. Inpatient Care

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.

XI. Continuing Treatment

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

A. Incapacity and treatment.

A period of 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:

1. Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 2. 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.
 3. The requirement in (1) and (2) of this section for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.
 4. 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.
 5. The term extenuating circumstances means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the 30-day period, but the health care provider does not have any available appointments during that time period.
- B. Pregnancy or prenatal care. Any period of incapacity due to pregnancy, or for prenatal care. Absences attributable to pregnancy or prenatal care qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three

- consecutive, full calendar days. For example, an employee who is pregnant may be unable to report to work because of severe morning sickness.
- C. Chronic conditions. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - 1. 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;
 - 2. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - 3. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
 - D. Permanent or long-term conditions. A period of incapacity that 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 disease, a severe stroke, or the terminal stages of a disease.
 - E. Conditions requiring multiple treatments. 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:
 - 1. Restorative surgery after an accident or other injury; or
 - 2. 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), or kidney disease (dialysis).
 - F. Absences attributable to incapacity under B or C of this section qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

XII. Leave For Treatment of Substance Abuse

- A. Substance abuse may be a serious health condition if the conditions of V, VI, and VII are met. FMLA leave may only be taken for treatment of substance abuse. Absence because of the employee's use of the substance rather than for treatment does not qualify for FMLA leave.
- B. Treatment for substance abuse does not prevent an employer from taking employment action against an employee.
- C. An employee may take FMLA leave to care for a covered family member who is receiving treatment for substance abuse.

XIII. Leave For Pregnancy of Birth (Also See Section IV-Leave Entitlement)

- A. Both parents are entitled to FMLA leave for the birth of their child. Certification requirements are noted in the following subsections.
- B. Both parents are entitled to FMLA leave to be with the healthy newborn child (bonding time) during the 12-month period beginning on the date of birth. An employee's entitlement to FMLA leave for a birth expires at the end of the 12-month period beginning on the date of birth. Under this section, both parents are entitled to FMLA leave even if the newborn child does not have a serious health condition. If neither of the parents or the child has a serious health condition, medical certification is not required. Pregnancy and recovery from childbirth are considered serious health conditions.
- C. Spouses who are eligible for FMLA leave and are employed by the same employer may be limited to a combined total of 12 weeks of leave during the FMLA leave year if leave is taken for the birth of a child or to care for the child after birth, for placement of a child for adoption or foster care or to care for the child after placement, or to care for the employee's parent with a serious health condition.
- D. The mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. Circumstances may require that FMLA leave begin before the actual date of birth of a child. An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work. The mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days. Medical certification is required.
- E. A spouse is entitled to FMLA leave if needed to care for their pregnant spouse who is incapacitated, or if needed to care for the spouse during her prenatal care, or if the spouse has a serious health condition following the birth of a child. Medical certification is required.
- F. Both parents are entitled to each take up to 12 weeks of FMLA leave to care for a child with a serious health condition. Medical certification is required.
- G. An employee may use intermittent or reduced schedule leave after the birth to be with a healthy newborn child only if the employer agrees. The employer's agreement is not required for intermittent leave when the mother or newborn child has a serious health condition.

XIV. Leave For Adoption or Foster Care (Also See Section IV- Leave Entitlement)

- A. Employees may take FMLA leave before the actual placement or adoption of a child if the absence is required for the placement or adoption to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with an attorney, submit to a physical examination, or travel to another country to complete an adoption. The source of an adopted child (whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.
- B. An employee's entitlement to leave for adoption or foster care expires at the end of the 12-month period beginning on the date of the placement.
- C. Spouses who are employed by the same employer are limited to a combined total of 12 weeks of leave if leave is taken for the adoption or placement of a child.

- D. Each parent is entitled to take up to 12 weeks of FMLA leave to care for an adopted or foster child with a serious health condition.
- E. An employee may use intermittent or reduced schedule leave after the placement of a healthy child for adoption or foster care only if the employer agrees. The employer's agreement is not required for intermittent leave when the adopted or foster child has a serious health condition.

XV. Leave Because of a Qualifying Exigency

- A. Eligible employees may take FMLA leave for a qualifying exigency while the employee's spouse, son, daughter, or parent is a covered military member on covered active duty or call to covered active duty status, or has been notified of an impending call or order to covered active duty, in a foreign country. The active duty orders will generally specify if the member is deployed to a foreign country.
 - 1. Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters.
 - 2. A call to active duty refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States.
- B. The employee must submit a complete and sufficient "Certification of Qualifying Exigency for Military Family Leave" (U.S. Department of Labor Form WH-384) form and submit it to his or her supervisor. See Section XXVI for certification requirements.
- C. Qualifying exigencies include:
 - 1. Short Notice Deployment
 - a) To address any issue that arises from the fact that a military member is notified of an impending call or order to covered active duty (in a foreign country) seven or less calendar days prior to the date of deployment.
 - b) Leave taken for this purpose can be used for a period of seven calendar days beginning on the date the military member is notified of an impending call or order to covered active duty.
 - 2. Military events and related activities
 - a) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the military member.
 - b) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member.
 - 3. Childcare and school activities
 - a) The child must be the military member's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the military member stands in loco parentis, who is either under 18 years of age or older and incapable of self-care at the time FMLA leave is to commence.

- b) The military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.
 - c) Leave for childcare and school activities can be used:
 - (1) To arrange for alternative childcare for a child of the military member when the covered active duty or call to covered active duty status of a military member necessitates a change in the existing childcare arrangement.
 - (2) To provide childcare on an urgent, immediate need basis, but not on a routine, regular, or everyday basis, when the need to provide such care arises from the covered active duty or call to covered active duty status of a military member.
 - (3) To enroll in or transfer to a new school or day care facility the child of the military member when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of a military member.
 - (4) To attend meetings with staff at a school or daycare facility when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of a military member.
4. Financial and legal arrangements
- a) To make or update financial or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and,
 - b) To act as the military member's representative before a federal, state, or local agency for the purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status.
5. Counseling
- To attend counseling provided by someone other than a health care provider for oneself, for the military member, or for the biological, adopted, or foster child, stepchild, or a child for whom the military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care, at the time FMLA leave is to commence, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a military member.
6. Rest and recuperation
- a) To spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment.
 - b) Eligible employees may take up to 15 days of leave beginning on the date the military member begins each instance of Rest and Recuperation leave.
 - c) A copy of the military member's Rest and Recuperation leave orders, or other documentation issued by the military setting forth the dates of the military member's leave may be required.
7. Post-deployment activities

- a) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member's covered active duty status.
- b) To address issues that arise from the death of a military member while on covered active duty status, such as meeting and recovering the body of the military member, making funeral arrangements, and attending funeral services.
- c) Parental care
- d) For FMLA leave for parental care, the parent of the military member must be incapable of self-care and must be the military member's biological, adoptive, step, or foster father or mother, or any other individual who stood in loco parentis to the military member when the member was under 18 years of age.

A parent who is incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living. 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 telephones and directories, using a post office, etc.

- e) The military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.
 - f) Parental care leave can be used:
 - (1) To arrange for alternative care for a parent of the military member when the parent is incapable of self-care and the covered active duty or call to covered active duty status of the military member necessitates a change in the existing care arrangement for the parent;
 - (2) To provide care for a parent of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the parent is incapable of self-care and the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;
 - (3) To admit to or transfer to a care facility a parent of the military member when admittance or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and
 - (4) To attend meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member but not for routine or regular meetings.
 - (5) Additional activities
8. To address other events that arise, provided that the employers and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

XVI. Leave to Care For a Covered Service Member (Military Caregiver Leave)

- A. Eligible employees are entitled to FMLA leave to care for a covered servicemember with a serious illness or injury.
- B. Covered service member 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.
 - 2. A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. A covered veteran is an individual who was a member of the Armed Forces, including 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 employee takes leave to care for the covered veteran.
 - a) An eligible employee must commence leave to care for a covered veteran within five years of the veteran's active duty service, but the single 12-month period may extend beyond the five-year period.
 - b) For an individual who was a member of the Armed Forces, including the National Guard or Reserves, and who was discharged or released prior to March 8, 2013, the period between October 28, 2009 and March 8, 2013 shall not count toward the determination of the five-year period for covered veteran status.
- C. 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.
- D. In order to care for a covered servicemember, the employee must be the spouse, son, daughter, or parent, or next of kin of the covered servicemember.
- E. An eligible employee is entitled to up to a total of 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a single 12-month period.
 - 1. The single 12-month period begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during this single 12-month period, the remaining part of the 26 workweeks of leave entitlement is forfeited.
 - 2. The leave entitlement is on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any single 12-month period.
 - 3. An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period. However, the employee is entitled to no more than 12 weeks of leave for one or more of the following:
 - a) The birth of a son or daughter of the employee and to care for such son or daughter
 - b) Placement of a son or daughter with the employee for adoption or foster care
 - c) To care for the employee's spouse, son, daughter, or parent with a serious health condition
 - d) Because of the employee's own serious health condition
 - e) Because of a qualifying exigency
- F. A husband and wife who are eligible for FMLA leave and are both employed by the State are limited to a combined total of 26 work weeks of leave during the single 12-month period described in E above if the leave is taken:
 - 1. For the birth of the employee's son or daughter or to care for the child after birth
 - 2. For the placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement
 - 3. To care for the employee's parent with a serious health condition
 - 4. To care for a covered servicemember with a serious injury or illness.
- G. The employee must submit a complete and sufficient "Certification for Serious Injury or Illness of Covered Servicemember" form (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). See Section XXVII for certification requirements.