

Family and Medical Leave
Act Checklist and Sample
FMLA Policy

CHECKLIST FOR IMPLEMENTING NEW FMLA REQUIREMENTS

PHASE 1 – SHORT-TERM COMPLIANCE STEPS

_____ Post new FMLA poster in a prominent location at each worksite.

DOL has updated its form WH-1420, *Employee Rights and Responsibilities Under the Family and Medical Leave Act*, which replaces *Your Rights under the Family and Medical Leave Act of 1993* rev'd. 8/01. Posting must be accessible to employees and applicants. Electronic posting is permitted, and posting in language other than English may be required.

_____ Disseminate initial notice to all employees and new hires.

Updated WH-1420 may be used for this purpose. In lieu of this notice, a covered employer may satisfy this obligation by revising its current FMLA policy (as incorporated within an employee handbook) to incorporate all elements contained within updated form WH-1420. Among other things, any such policy should identify the basis for measuring the 12-month period in which leave may be taken (i.e., rolling backwards, calendar year, etc.). Attachment No. 2.

_____ Update notice and designation forms.

DOL has issued two new forms for this purpose, WH-381, *Notice of Eligibility and Rights and Responsibilities*, and WH-382, *Designation Notice*. Together, these forms replace WH-380, *Employer Response to Request for Leave*, rev'd. 6/97 (or the *Notice and Designation Form* for those who were utilizing the Fisher & Phillips LLP FMLA package). Electronic posting is permitted, and posting in language other than English may be required. We recommend use of Attachment Nos. 4 and 6, which are our modified versions of WH-381 and 382.

_____ Update certification forms.

DOL has issued two updated certification forms, to be utilized depending on the nature of the underlying leave request. WH-380E is the *Certification of Health Care Provider for Employee's Serious Health Condition*. WH-380F is the *Certification of Health Care Provider for Family Member's Serious Health Condition*. Together, these two forms replace WH-380, *Certification of Health Care Provider*, rev'd. 12/99. Attachment Nos. 7 and 8.

DOL has also issued two new certification forms for purposes of dealing with military FMLA leave. WH-384 is the *Certification of Qualifying Exigency for Military Family Leave*. WH-385 is the *Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave*. Attachment Nos. 9 and 10.

_____ Coordinate revisions with other existing leave policies.

Non-FMLA leave policies should be reviewed to ensure that they require employees on leave to furnish a report on status and intent to return to duty along with a certification of fitness-for-duty.

_____ Review and update current job descriptions.

Employers must attach an updated list of essential job duties to WH-382, *Designation Notice* should they choose to compel return-to-work certification addressing employee's ability to perform essential job functions.

_____ Audit compliance with new paperwork requirements.

_____ Conduct supervisory training.

Train supervisors to review new forms and procedures called for by the revised regulations, along with refresher points highlighting those requests that may implicate FMLA rights, and the need to proceed with caution when discipline or discharge is implicated.

PHASE 2 - RESPONDING TO A LEAVE REQUEST OR ABSENCE

Evaluating Qualification for FMLA Leave

_____ Review the request or absence to determine whether it is potentially FMLA-qualifying, by confirming whether it falls into one of six categories:

_____ Birth of employee's child, and/or to care for newborn child;

_____ Placement of a child for adoption or foster care with employee;

_____ Provide care for "close family member" with a "serious health condition";

_____ Employee's own "serious health condition" that makes employee unable to perform job functions;

_____ Care for "covered servicemember" due to serious injury or illness sustained or aggravated in the line of duty while on active duty; or,

_____ To tend to a "qualifying exigency" arising out of a "covered military member's" commitment to duty under a call or order to active duty.

_____ If employee fails to provide sufficient information to make this determination, then inquire further to ascertain whether the leave is potentially FMLA-qualifying.

Evaluating Notice Preceding FMLA Leave

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- ___ Did employee comply with customary notice and procedural requirements for requesting leave?
 - ___ If the need for leave appears foreseeable, determine whether the employee provided 30 days' advance notice. If not, ask for an explanation.
 - ___ If 30 days is not practicable under the circumstances, determine whether the employee provided notice within a business day of it becoming practicable.
 - ___ If need for leave is not foreseeable (or if need derives from a "qualifying exigency"), determine whether the employee provided notice as soon as practicable.
 - ___ Utilize a standardized Leave Request form for purposes of tracking this information.

PHASE 3 – ISSUING MANDATED NOTICE AND DESIGNATION

Complying with the New Notice Requirement

- ___ Within five business days of receiving leave request or acquiring knowledge of FMLA-qualifying basis for leave, notify employee of eligibility utilizing Attachment 4, Part A, *Notice of Eligibility and Rights and Responsibilities*.
- ___ State at least one reason for any determination of ineligibility, verbally or in writing.
- ___ If employee is deemed eligible, provide written notice detailing specific expectations and obligations of employee and consequences for failing to meet those obligations utilizing Attachment 4, Part B, *Notice of Eligibility and Rights and Responsibilities*.
- ___ If applicable, provide employee with appropriate Certification Form to complete and return within 15 days.

Complying with the New Designation Requirement

- ___ Within five business days of acquiring sufficient information to determine if leave is FMLA-qualifying, issue notice as to whether leave will be designated as FMLA-qualifying. Any verbal notice must be confirmed in writing by the following payday. Attachment 6, *Designation Notice*, may be used for this purpose.
- ___ Any such notice must state the amount of leave that will be counted against the employee's annual entitlement, any requirement for substitution of paid leave, and any applicable fitness for duty certification requirements.
- ___ If health care provider is to certify that returning employee can perform essential job functions, a list of essential duties must accompany the *Designation Notice*.
- ___ If leave is subsequently requested for a different qualifying reason and the employee's eligibility status has changed during the applicable 12-month measuring period, then an additional *Designation Notice* must be issued.

_____ *Designation Notice* may be issued retroactively, so long as it does not cause harm or injury to the employee.

PHASE 4 – UTILIZING THE NEW CERTIFICATION FORMS

_____ If employees request leave for their own serious health conditions, they should be asked to furnish a complete and sufficient *Certification of Health Care Provider for Employee's Serious Health Condition* form, WH-380E. Attachment 7.

_____ Those who request leave for the serious health condition of a close family member should furnish a *Certification of Health Care Provider for Family Member's Serious Health Condition* form, WH-380F. Attachment 8. Documentation of the family relationship may also be required.

_____ Those who seek leave to tend to a “qualifying exigency” arising out of a “covered military member’s” commitment to active duty should furnish a completed *Certification of Qualifying Exigency for Military Family Leave* form, WH-384. Attachment 9. Active duty orders or military documentation of active duty or call to active duty may be required on a per-incident basis. Confirmation of family relationship may also be required.

_____ Those who seek leave to care for “covered servicemember” due to serious injury or illness sustained in the line of duty should be asked to furnish a completed *Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave*, WH-385. Attachment 10. “Invitational Travel Orders” or “Invitational Travel Authorizations” issued to family members may be provided in lieu of certification. Documentation of “next of kin” status may also be required.

_____ All certification forms should be returned within 15 days, unless it is impracticable to do so despite the employee’s diligent, good faith efforts.

_____ If employee fails to furnish a complete and sufficient certification despite receiving an opportunity to timely cure the problem, leave may be denied.

_____ A new certification may be required for every 12-month period for non-military related leaves.

PHASE 5 – RESOLVING PROBLEMS WITH CERTIFICATION/DOCUMENTATION

Incomplete or Insufficient Certification

_____ Advise employee in writing of additional information necessary to render the form complete and sufficient.

_____ Provide employee with seven calendar days to cure any deficiencies, unless impracticable despite employee’s diligent, good faith efforts.

_____ The *Designation Notice*, Attachment 6, should be used to advise employee of any requirements in this regard.

Questioning Authenticity of Certification

- ___ Contact health care provider after seven-day curing period above has lapsed. Contact should be confined to a health care professional, human resources professional, leave administrator or other appropriate management official. Direct supervisor may not take part.
- ___ Provide health care provider with a copy of the completed certification form and inquire into whether he or she completed and/or authorized the information.
- ___ Do not require any additional medical information.

Clarifying the Certification

- ___ Health care provider may be contacted pursuant to limitations set forth above.
- ___ “Clarification” is limited to understanding the handwriting and the meaning of the response. Employer may not request additional information beyond that required on the certification form.
- ___ Employer may be called upon to furnish HIPAA authorization.

Questioning Validity/Obtaining Second Opinion

- ___ Employer may require second opinion at its own expense, unless purpose of leave is to care for a servicemember.
- ___ Absent limited exceptions, employer may not designate a health care provider that it employs, regularly engages or contracts with.
- ___ If the second opinion differs from the first, a third opinion may be required at the employer’s expense. The third health care provider is jointly designated by the employer and the employee. The third opinion is final and binding.
- ___ At the employee’s request, the employer must provide copies of the second and third opinions within five business days, absent extenuating circumstances.
- ___ Employee is provisionally entitled to FMLA benefits, pending receipt of any second or third opinions.

Questioning the Need for Qualifying Exigency Leave

- ___ Consider contacting the Department of Defense to verify active duty or call to active duty status.
- ___ Consider contacting any meeting participant to verify the schedule and nature of the meeting.

PHASE 6 – OBTAINING RECERTIFICATION OF SERIOUS HEALTH CONDITION

- _____ Consider requesting recertification due to serious health condition of employee or family member. It may not be requested in connection with leave sought to care for or tend to a servicemember.
- _____ Provide the health care provider with a record of the employee's absence pattern and ask him or her if it is consistent with the employee's or close family member's serious health condition and the underlying need for leave.
- _____ A recertification may typically be required no more than every 30 days. If leave is certified for more than 30 days, however, the employer must wait until the duration of leave or six months, whichever is less.
- _____ Recertification may be requested less than every 30 days if:
 - _____ The employee requests extension of leave;
 - _____ There is a significant change in circumstances; or,
 - _____ Employer receives information casting doubt on reason for absence or continuing validity of certification.
- _____ Employee must furnish complete and sufficient recertification within 15 days from Employer's written request, unless its is impracticable to do so under the circumstances despite employee's diligent, good faith efforts.
- _____ Employee must cure any deficiencies in recertification within seven calendar days of Employer's written notice seeking additional information necessary to render the recertification complete and sufficient.

PHASE 7 – OBTAINING STATUS REPORTS

- _____ Periodic report of status and intent to return to duty may be required if Employer also requires such reports for employees on non-FMLA leave. Employees should be advised of their obligations in the *Notice of Eligibility and Rights and Responsibilities* form, Attachment 4.
- _____ Employer may require employee to provide two days' notice of any changed circumstances requiring additional leave or reduction in anticipated leave.

PHASE 8 – FITNESS FOR DUTY CERTIFICATION

- _____ Returning employees may be required to provide a fitness for duty certification, at employee's expense, consistent with a uniformly-applied policy or practice for similarly-situated employees.
- _____ Certification may address employee's ability to perform essential job functions.

- _____ Any such certification must address only the serious health condition that gave rise to the need for FMLA leave.
- _____ All certification requirements must be set forth in the *Designation Notice*, Attachment 6, or within the employee handbook.
- _____ If Employer wants the health care provider to address employee's ability to perform essential job functions, it must attach a list of essential duties to the *Designation Notice*.
- _____ Employer may not require fitness for duty certification for each return from intermittent leave or leave on a reduced work schedule, but may require certification up to once every 30 days in the presence of reasonable safety concerns.
- _____ Employer may contact health care provider for clarification and authentication of fitness for duty certification, consistent with the limitations set forth above. Return to work, however, may not be delayed during this process.
- _____ Employer may not request second or third opinions for fitness for duty certifications.
- _____ Employer may delay job restoration due to employee failure to furnish completed fitness for duty certification, so long as proper employer notice was provided.

This checklist is only intended to highlight those procedural aspects of FMLA that have been altered or clarified by the new regulations. It is not intended to serve as a substitute for other steps that were left unchanged, but remain crucial to general compliance, including for example, the evaluation of employee eligibility.

This document is intended for general information purposes only. It is not a complete or all-inclusive explanation, and it should not be construed as legal advice on any specific facts or circumstances. Numerous regulations, interpretations, and other authorities must be evaluated in applying these principles. You are urged to consult legal counsel concerning your situation and any specific legal questions you might have.

FAMILY AND MEDICAL LEAVE ACT POLICY

The Family and Medical Leave Act (“FMLA”) provides eligible employees the opportunity to take unpaid, job-protected leave for certain specified reasons. The maximum amount of leave an employee may use is either 12 or 26 weeks within a 12-month period depending on the reasons for the leave.

Employee Eligibility

To be eligible for FMLA leave, you must:

1. have worked at least 12 months for the Company in the preceding seven years (limited exceptions apply to the seven-year requirement);
2. have worked at least 1,250 hours for the Company over the preceding 12 months; and
3. currently work at a location where there are at least 50 employees within 75 miles.

All periods of absence from work due to or necessitated by service in the uniformed services are counted in determining FMLA eligibility.

Conditions Triggering Leave

FMLA leave may be taken for the following reasons:

1. birth of a child, or to care for a newly-born child (up to 12 weeks);
2. placement of a child with the employee for adoption or foster care (up to 12 weeks);
3. to care for an immediate family member (employee’s spouse, child, or parent) with a serious health condition (up to 12 weeks);
4. because of the employee’s serious health condition that makes the employee unable to perform the employee’s job (up to 12 weeks);
5. to care for a Covered Servicemember with a serious injury or illness related to certain types of military service (up to 26 weeks) (see Military-Related FMLA Leave for more details); or,
6. to handle certain qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on covered active duty or call to covered activity duty status in the Uniformed Services (up to 12 weeks) (see Military-Related FMLA Leave for more details).

The maximum amount of leave that may be taken in a 12-month period for all reasons combined is 12 weeks, with one exception. For leave to care for a Covered Servicemember, the maximum combined leave entitlement is 26 weeks, with leaves for all other reasons constituting no more than 12 of those 26 weeks.

Definitions

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 includes an incapacity of more than three full calendar days and two visits to a health care provider or one visit to a health care provider and a continuing regimen of care; an incapacity caused by pregnancy or prenatal visits, a chronic condition, or permanent or long-term conditions; or absences due to multiple treatments. Other situations may meet the definition of continuing treatment.

Identifying the 12-Month Period

The Company measures the 12-month period in which leave is taken by the "rolling" 12-month method, measured backward from the date of any FMLA leave with one exception. For leave to care for a covered servicemember, the Company calculates the 12-month period beginning on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date. FMLA leave for the birth or placement of a child for adoption or foster care must be concluded within 12 months of the birth or placement.

Using Leave

Eligible employees may take FMLA leave in a single block of time, intermittently (in separate blocks of time), or by reducing the normal work schedule when medically necessary for the serious health condition of the employee or immediate family member, or in the case of a covered servicemember, his or her injury or illness. Eligible employees may also take intermittent or reduced-scheduled leave for military qualifying exigencies. Intermittent leave is not permitted for birth of a child, to care for a newly-born child, or for placement of a child for adoption or foster care. Employees who require intermittent or reduced-schedule leave must try to schedule their leave so that it will not unduly disrupt the Company's operations.

Use of Accrued Paid Leave

Depending on the purpose of your leave request, you may choose (or the Company may require you) to use accrued paid leave (such as sick leave, vacation, or PTO), concurrently with some or all of your FMLA leave. In order to substitute paid leave for FMLA leave, an eligible employee must comply with the Company's normal procedures for the applicable paid-leave policy (e.g., call-in procedures, advance notice, etc.).

Maintenance of Health Benefits

If you and/or your family participate in our group health plan, the Company will maintain coverage during your FMLA leave on the same terms as if you had continued to work. If applicable, you must make arrangements to pay your share of health plan premiums while on leave. In some instances, the Company may recover premiums it paid to maintain health coverage or other benefits for you and your family. Use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of your leave.

Notice and Medical Certification

When seeking FMLA leave, you are required to provide:

1. sufficient information for us to determine if the requested leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that you are unable to perform job functions, a 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. You must also inform the Company if the requested leave is for a reason for which FMLA leave was previously taken or certified.

If the need for leave is foreseeable, this information must be provided 30 days in advance of the anticipated beginning date of the leave. If the need for leave is not foreseeable, this information must be provided as soon as is practicable and in compliance with the Company's normal call-in procedures, absent unusual circumstances.

2. medical certification supporting the need for leave due to a serious health condition affecting you or an immediate family member within 15 calendar days of the Company's request to provide the certification (additional time may be permitted in some circumstances). If you fail to do so, we may delay the commencement of your leave, withdraw any designation of FMLA leave or deny the leave, in which case your leave of absence would be treated in accordance with our standard leave of absence and attendance policies, subjecting you to discipline up to and including termination. Second or third medical opinions and periodic re-certifications may also be required;
3. periodic reports as deemed appropriate during the leave regarding your status and intent to return to work; and
4. medical certification of fitness for duty before returning to work, if the leave was due to your serious health condition. The Company will require this certification to address whether you can perform the essential functions of your position.

Failure to comply with the foregoing requirements may result in delay or denial of leave, or disciplinary action, up to and including termination.

Employer Responsibilities

To the extent required by law, the Company will inform employees whether they are eligible under the FMLA. Should an employee be eligible for FMLA leave, the Company will provide him or her with a notice that specifies any additional information required as well as the employee's rights and responsibilities. If employees are not eligible, the Company will provide a reason for the ineligibility. The Company will also inform employees if leave will be designated as FMLA-protected and, to the extent possible, note the amount of leave counted against the employee's leave entitlement. If the Company determines that the leave is not FMLA-protected, the Company will notify the employee.

Job Restoration

Upon returning from FMLA leave, eligible employees will typically be restored to their original job or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.

Failure to Return After FMLA Leave

Any employee who fails to return to work as scheduled after FMLA leave or exceeds the 12-week FMLA entitlement (or in the case of military caregiver leave, the 26-week FMLA entitlement), will be subject to the Company's standard leave of absence and attendance policies. This may result in termination if you have no other Company-provided leave available to you that applies to your continued absence. Likewise, following the conclusion of your FMLA leave, the Company's obligation to maintain your group health plan benefits ends (subject to any applicable COBRA rights).

Other Employment

The Company generally prohibits employees from holding other employment. This policy remains in force during all leaves of absence including FMLA leave and may result in disciplinary action, up to and including immediate termination of employment.

Fraud

Providing false or misleading information or omitting material information in connection with an FMLA leave will result in disciplinary action, up to and including immediate termination.

Employers' Compliance with FMLA and Employee's Enforcement Rights

FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under FMLA, or 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.

While the Company encourages employees to bring any concerns or complaints about compliance with FMLA to the attention of the Human Resources Department, FMLA regulations require employers to advise employees that they may file a complaint with the U.S. Department of Labor or bring a private lawsuit against an employer.

Further, 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.

MILITARY-RELATED FMLA LEAVE

FMLA leave may also be available to eligible employees in connection with certain service-related medical and non-medical needs of family members. There are two forms of such leave. The first is Military Caregiver Leave, and the second is Qualifying Exigency Leave. Each of these leaves is detailed below.

Definitions

A "covered servicemember" is either: (1) a current servicemember of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness incurred in the line of duty for which the servicemember is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list; or (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 discharged under conditions other than dishonorable during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. The period between October 28, 2009 and March 8, 2013 is excluded in determining this five-year period.

The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition." For current servicemembers, the term "serious injury or illness" means an injury or illness that was incurred by the member in the line of duty while on active duty in the Armed Forces or that existed before the beginning of active duty and was aggravated by such service, that may render them medically unfit to perform the duties of their office, grade, rank or rating.

For covered veterans, this term means a serious injury or illness that was incurred in the line of duty while on active duty in the Armed Forces or that existed before the beginning of active duty and was aggravated by such service and manifested itself before or after the individual assumed veteran status, and is: (1) a continuation of a serious injury or illness that was incurred or aggravated when they were a member of the Armed Forces and rendered them unable to perform the duties of their office, grade, rank or rating; (2) a physical or mental condition for which the covered veteran has received a VA 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 caregiver leave; (3) a physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would be 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.

“Qualifying exigencies” include activities such as short-notice deployment, military events, arranging alternative childcare, making financial and legal arrangements related to the deployment, rest and recuperation, counseling, parental care, and post-deployment debriefings.

Military Caregiver Leave

Unpaid Military Caregiver Leave is designed to allow eligible employees to care for certain family members who have sustained serious injuries or illnesses in the line of duty while on active duty. Military Caregiver Leave is 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.

To be “eligible” for Military Caregiver Leave, the employee must be a spouse, son, daughter, parent, or next of kin of the covered servicemember. “Next of kin” means the nearest blood relative of the servicemember, other than the servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions; brothers and sisters; grandparents; aunts and uncles; and first cousins; unless the servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of Military Caregiver Leave. The employee must also meet all other eligibility standards as set forth within the FMLA Leave policy.

An eligible employee may take up to 26 workweeks of Military Caregiver Leave to care for a covered servicemember in a “single 12-month period.” The “single 12-month period” begins on the first day leave is taken to care for a covered servicemember and ends 12 months thereafter, regardless of the method used to determine leave availability for other FMLA-qualifying reasons. If an employee does not exhaust his or her 26 workweeks of Military Caregiver Leave during this “single 12-month period,” the remainder is forfeited.

Military Caregiver Leave applies on a per-injury basis for each servicemember. Consequently, an eligible employee may take separate periods of caregiver leave for each and every covered servicemember, and/or for each and every serious injury or illness of the same covered servicemember. A total of no more than 26 workweeks of Military Caregiver Leave, however, may be taken within any “single 12-month period.”

Within the “single 12-month period” described above, an eligible employee may take a combined total of 26 weeks of FMLA leave including up to 12 weeks of leave for any other FMLA-qualifying reason (i.e., birth or adoption of a child, serious health condition of the employee or close family member, or a qualifying exigency). For example, during the “single 12-month period,” an eligible employee may take up to 16 weeks of FMLA leave to care for a covered servicemember when combined with up to 10 weeks of FMLA leave to care for a newborn child.

An employee seeking Military Caregiver Leave may be required to provide appropriate certification from the employee and/or covered servicemember and completed by an authorized health care provider within 15 days. Military Caregiver Leave is subject to the other provisions in our FMLA Leave Policy (requirements regarding employee eligibility, appropriate notice of the need for leave, use of accrued paid leave, etc.). Military Caregiver Leave will be governed by, and handled in accordance with, the FMLA and applicable regulations, and nothing within this policy should be construed to be inconsistent with those regulations.

Qualifying Exigency Leave

Eligible employees may take unpaid “Qualifying Exigency Leave” to tend to certain “exigencies” arising out of the covered active duty or call to covered active duty status of a “military member” (i.e. the employee’s spouse, son, daughter, or parent). Up to 12 weeks of Qualifying Exigency Leave is available in any 12-month period, as measured by the same method that governs measurement of other forms of FMLA leave within the FMLA policy (with the exception of Military Caregiver Leave, which is subject to a maximum of 26 weeks of leave in a “single 12-month period”). Although Qualifying Exigency Leave may be combined with leave for other FMLA-qualifying reasons, under no circumstances may the combined total exceed 12 weeks in any 12-month period (with the exception of Military Caregiver Leave as set forth above). The employee must meet all other eligibility standards as set forth within the FMLA policy.

Persons who can be ordered to active duty include active and retired members of the Regular Armed Forces, certain members of the retired Reserve, and various other Reserve members including the Ready Reserve, the Selected Reserve, the Individual Ready Reserve, the National Guard, state military, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, and Coast Guard Reserve.

A call to active duty refers to a *federal* call to active duty, and *state* calls to active duty are not covered unless under order of the President of the United States pursuant to certain laws.

Qualifying Exigency Leave is available under the following circumstances:

- (1) **Short-notice deployment.** To address any issue that arises out of short notice (within seven days or less) of an impending call or order to covered active duty.
- (2) **Military events and related activities.** To attend any official military ceremony, program, or event related to covered active duty or call to covered active duty status or to attend certain family support or assistance programs and informational briefings.
- (3) **Childcare and school activities.** To arrange for alternative childcare; to provide childcare on an urgent, immediate need basis; to enroll in or transfer to a new school or daycare facility; or to attend meetings with staff at a school or daycare facility.
- (4) **Financial and legal arrangements.** To make or update various financial or legal arrangements; or to act as the covered military member’s representative before a federal, state, or local agency in connection with service benefits.
- (5) **Counseling.** To attend counseling (by someone other than a health care provider) for the employee, for the military member, or for a child or dependent when necessary as a result of duty under a call or order to covered active duty.

(6) **Temporary rest and recuperation.** To spend time with a military member who is on short-term, temporary rest and recuperation leave during the period of deployment. Eligible employees may take up to 15 calendar days of leave for each instance of rest and recuperation.

(7) **Post-deployment activities.** To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of up to 90 days following termination of the military member's active duty status. This also encompasses leave to address issues that arise from the death of a military member while on active duty status.

(8) **Parental care.** To care for the military member's parent who is incapable of self-care. The parent 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.

(9) **Mutually agreed leave.** Other events that arise from the military member's duty under a call or order to active duty, provided that the Company and the employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave.

An employee seeking Qualifying Exigency Leave may be required to submit appropriate supporting documentation in the form of a copy of the military member's active duty or rest and recuperation orders or other military documentation indicating the appropriate military status and the dates of active duty status, along with a statement setting forth the nature and details of the specific exigency, the amount of leave needed and the employee's relationship to the military member, within 15 days. Qualifying Exigency Leave will be governed by, and handled in accordance with, the FMLA and applicable regulations, and nothing within this policy should be construed to be inconsistent with those regulations.

Limited Nature of This Policy

This Policy should not be construed to confer any express or implied contractual relationship or rights to any employee not expressly provided for by FMLA. The Company reserves the right to modify this or any other policy as necessary, in its sole discretion to the extent permitted by law. State or local leave laws may also apply.