



Unified Government Human Resources Guide

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FAMILY AND MEDICAL LEAVE

- I. General: FMLA leave is available to eligible employees for certain family and medical reasons, as provided in the Family and Medical Leave Act of 1993, as amended, (FMLA) and Department of Labor regulations.
- II. Policy
 - A. Employee eligibility: To be "eligible" for FMLA leave, an employee must:
 1. Have been employed by the Unified Government for at least 12 months within the previous seven years; and
 2. Have worked at least 1,250 hours during the 12 months preceding the start of the leave. An employee returning from fulfilling his or her National Guard or Reserve military obligation will be credited with the hours of service that would have been performed but for the period of military service.
 - B. Leave entitlement: An eligible employee is entitled to leave, either paid or unpaid or a combination of the two, totaling:
 1. 12 workweeks during a rolling 12-month period for any of the following reasons:
 - a. Because of the birth of a child and to care for the newborn child;
 - b. Because of the placement of a child with the employee for adoption or foster care. (Employees may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. Leave must conclude within 12 months of the birth or placement;
 - c. To care for the employee's spouse, son, daughter, or parent who has a serious health condition;
 - d. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job; or
 - e. 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 or call to covered active duty status (or has been notified of an impending call or order to covered active duty) in the Armed Forces.
 2. 26 workweeks in a single 12-month period for an employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness, beginning the first day the eligible employee takes FMLA leave to care for a covered servicemember and ending 12 months after that date.
 - a. During the single 12-month period described in II.B.2, all leaves taken under II.B.1 or II.B.2 may not exceed a combined total of 26 workweeks.



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- C. Leave because of qualifying exigency: Eligible employees may take FMLA leave while the employee's spouse, son, daughter, or parent is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces for one or more of the following qualifying exigencies:
1. Short-term notice deployment
 - a. To address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty in the Armed Forces 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 the 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; and
 - 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. 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 the military member necessitates a change in the existing childcare arrangement;
 - b. To provide for childcare for a child of the military member 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 the military member;
 - c. To enroll in or transfer to a new school or day care facility a child of the military member when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and
 - d. To attend meetings with staff at a school or a daycare facility regarding a child 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;



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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; 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 child of the military member, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member;
 6. Rest and recuperation. To spend time (up to 15 days for each instance) with a military member who is on short-term, temporary, rest and recuperation leave during the period of deployment;
 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; and
 - 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, or attending funeral services;
 8. Additional activities. To address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the department head and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.
- D. Manner of taking leave
1. Continuous - a number of consecutive days up to the entitlement specified in II.B.
 2. Intermittent or reduced leaves schedule
 - a. Intermittent leave or leave on a reduced leave schedule may be taken because of the employee's own serious health condition, to care for a parent, son, or daughter with a serious health condition, or to care for a covered servicemember, provided there is a medical need for the leave and the medical need can be best accommodated through an intermittent or



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- reduced leave schedule. In addition, leave due to a qualifying exigency may be taken on an intermittent or reduced leave schedule basis.
- b. Leave after the birth to be with a healthy newborn child or after placement of a healthy child for adoption or foster care may be taken on an intermittent or reduced leave schedule only with the approval of the department head.
 - c. The Unified Government may temporarily transfer an employee on an intermittent or reduced leave schedule to an alternative position for which the employee is qualified and which better accommodates recurring periods of leave than the employee's regular job. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for an intermittent or reduced leave schedule. The alternative position must have equivalent pay and benefits.
 - d. Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro-rata or proportional basis.
3. Notice and scheduling
- a. Employee obligations
 - (1) An employee must provide the Unified Government with at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember. If 30 days' notice is not practicable, such as because of a lack of knowledge of when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. When the need for FMLA leave is clearly foreseeable in advance and an employee fails to give timely advance notice with no reasonable excuse, the Unified Government may delay FMLA coverage.
 - (2) When the approximate timing of the need for FMLA leave is not foreseeable, an employee must provide notice as soon as practicable. If an employee fails to give notice of the need for FMLA leave as soon as practicable, the Unified Government may delay FMLA coverage.
 - (3) When taking leave for an FMLA qualifying reason, an employee is required to follow departmental policies for reporting absences, unless unusual circumstances justify the failure to comply.



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- (4) An employee must provide sufficient information for the Unified Government to reasonably determine whether the FMLA may apply to the leave request, as well as the anticipated duration of the absence, if known. Failure to respond to reasonable inquiries regarding the leave request may result in denial of FMLA protection if the Unified Government is unable to determine whether the leave is FMLA-qualifying.
 - (5) When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA. When an employee seeks leave due to a qualifying reason, for which the Unified Government previously has provided the employee with FMLA-protected leave, the employee must specifically reference either the qualifying reason for the leave or the need for FMLA leave. Calling in “sick” without providing more information will not be considered sufficient notice of FMLA leave.
 - (6) When planning medical treatment, the employee must consult with his or her supervisor or department head and make a reasonable effort to schedule the treatment so as not to disrupt unduly the department’s operations, subject to the approval of the health care provider.
 - (7) An employee on an intermittent or reduced leave schedule must advise his or her supervisor or department head, upon request, of the reasons why the intermittent or reduced leave schedule is necessary and of the schedule for treatment, if applicable. Upon request, the employee shall meet with the supervisor or department head to attempt to work out a leave schedule that meets the employee’s needs without unduly disrupting the department’s operations, subject to the approval of the health care provider.
 - (8) As directed by his or her supervisor or department head, an employee on FMLA leave must report periodically on his or her status and intent to return to work.
 - (9) Employees on FMLA leave for their own serious illness or injury are prohibited from being gainfully employed by an employer other than the Unified Government or from being self-employed.
- b. Notices by Unified Government
- (1) *Eligibility notice.* When an employee requests FMLA leave, or when the Unified Government acquires knowledge that an employee’s leave may be for an FMLA-qualifying reason, the Unified Government will notify the employee of the employee’s



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eligibility to take FMLA leave within five business days, absent extenuating circumstances. The eligibility notice will state whether the employee is eligible for FMLA leave and, if the employee is not eligible, will state the reason why.

- (a) Employee eligibility will be determined and notice provided at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. If the employee provides notice of a subsequent need for FMLA leave during the applicable 12-month period due to a different FMLA-qualifying reason and the employee's eligibility notice has not changed, no additional eligibility notice will be provided.
- (2) *Rights and responsibilities notice.* Along with the eligibility notice, the Unified Government will provide a written rights and responsibilities notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The rights and responsibilities notice will be accompanied by a certification form.
- (3) *Designation notice.* When the Unified Government has enough information to determine whether the leave is being taken for a FMLA-qualifying reason (e.g., after receiving a certification), the Unified Government will notify the employee whether the leave will be designated and counted as FMLA leave within five business days, absent extenuating circumstances.
 - (a) Only one notice will be provided for each FMLA-qualifying reason during the applicable 12-month period, regardless of whether the leave is continuous or intermittent or reduced schedule leave. If the information provided in the designation notice changes (e.g., the employee exhausts the FMLA leave entitlement), the Unified Government will provide, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change.
 - (b) When the amount of the leave needed is known at the time the Unified Government designates the leave as FMLA-qualifying, the Unified Government will notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice. If it is not possible to provide the hours, days, or weeks that will be counted against the employee's FMLA leave entitlement (such as in the case of



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unforeseeable intermittent leave), then the Unified Government will provide notice of the amount of leave counted against the employee's FMLA entitlement upon request by the employee, but not more often than once in a 30-day period and only if leave was taken in that period.

- (c) The Unified Government may retroactively designate leave as FMLA leave with appropriate notice to the employee if the failure to timely designate leave does not cause harm or injury to the employee.

4. Certification and documentation

- a. An employee requesting FMLA leave due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of his or her position or to care for a covered family member with a serious health condition must obtain and submit a complete and sufficient certification from his or her health care provider or the family member's health care provider, as appropriate. The employee must use the certification form included in FMLA packet and instructions.
- b. The certification must provide, among other information:
 - (1) The approximate date on which the serious health condition commenced and its probable duration;
 - (2) A statement or description of appropriate medical facts regarding the patient's health condition for which the FMLA leave is requested that is sufficient to support the need for leave;
 - (3) If the employee is the patient, information sufficient to establish that the employee cannot perform the essential functions of the employee's job, as well as the nature of any other work restrictions, and the likely duration of such inability;
 - (4) If the patient is a covered family member with a serious health condition, information sufficient to establish that the family member is in need of care and an estimate of the frequency and duration of the leave required to care for the family member;
 - (5) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment of the employee's or a covered family member's serious health condition, information sufficient to establish the medical necessity for such leave and an estimate of the dates and duration of such treatments and any periods of recovery;



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- (6) If an employee requests leave on an intermittent or reduced schedule basis for the employee's serious health condition, including pregnancy, that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for such leave and an estimate of the frequency and duration of the episodes of incapacity; and
 - (7) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered family member with a serious health condition, a statement that such leave is medically necessary to care for the family member's recovery, and an estimate of the frequency and duration of the required leave.
- c. An employee requesting FMLA leave for the birth of a child, to care for the newborn child, or because of the placement of a child with the employee for adoption or foster care may be required to submit documentation substantiating the reason for the leave.
 - d. The employee must provide the certification or documentation within 15 calendar days after the Unified Government requests it, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts or the Unified Government extends the time.
 - e. The Unified Government will advise an employee whenever it finds a certification incomplete or insufficient, and shall state in writing what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if one or more of the applicable entries on the form have not been completed. A certification is considered insufficient if it is complete, but the information provided is vague, ambiguous, or non-responsive. The Unified Government will provide an employee with no less than seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any deficiency.
 - f. The Unified Government may deny FMLA leave to an employee who fails to provide a certification or whose certification remains incomplete and insufficient after the employee has been provided the opportunity to cure any deficiency.
 - g. If an employee submits a complete and sufficient certification signed by the health care provider, the Unified Government may not request additional information from the health care provider, but may contact the health care provider for the limited purposes of clarification and authentication of the medical certification after the employee has been given the opportunity to cure any deficiencies. All contact with the health



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care provider shall be through the Human Resources Department. In no event is the employee's direct supervisor to contact the health care provider.

- h. The Unified Government may require the employee to obtain a second opinion from a health care provider designated by the Unified Government, at the Unified Government's expense. If opinions differ, the Unified Government may require a third certification at the Unified Government's expense. The third opinion will be final and binding. Pending receipt of the second (or third) opinion, the employee is provisionally entitled to the benefits of the FMLA. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave will not be designated as FMLA leave.
- i. In the case of FMLA leave due to a qualifying military exigency, a copy of the military member's active duty orders or other documentation issued by the military that indicates that the military member is on active duty or call to active duty status and the dates of the military member's covered active duty service may be required in addition to information regarding the need for and duration of the leave.
- j. In the case of FMLA leave to care for a covered servicemember with a serious injury or illness, the employee will be required to provide documentation to verify that the servicemember is a covered servicemember, in addition to information regarding the need for and duration of the leave. Additionally, verification of the next of kin status of the employee to the covered servicemember may be required.
- k. Recertification
 - (1) The Unified Government may require recertification for leave taken because of an employee's serious health condition or the serious health condition of a family member. Recertification may be requested no more than every 30 days or the minimum duration of the condition as shown on the medical certification, whichever is longer. In all cases, the Unified Government may require a recertification of a medical condition every six months in connection with an absence by the employee.
 - (2) The Unified Government may request a recertification in less than 30 days if:
 - (a) The employee requests an extension of leave;
 - (b) Circumstances described by the original certification have changed significantly, for example, changes in the duration or frequency of absence or the nature or severity of the



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- illness, complications, or a pattern of using unscheduled FMLA leave in conjunction with scheduled days off; or
- (c) The Unified Government receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.
- (3) The Unified Government may ask for the same information when obtaining recertification as that permitted for the original certification. In addition, as part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the Unified Government may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.
 - (4) The employee must provide the requested recertification within 15 calendar days unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts or the Unified Government gives the employee more time.
 - (5) Any recertification requested by the Unified Government shall be at the employee's expense. No second or third opinion on recertification may be required.
 - (6) Employees who are using FMLA leave at the end of their eligible 12-month period (either continuous or intermittent) and continue to be eligible for FMLA, are required to submit new documentation (FMLA packet) at the beginning of the new 12-month eligibility period.
- 1. An employee whose continuous FMLA leave was due to the employee's own serious health condition must submit certification from his or her health care provider that the employee is able to perform the essential functions of his or her job before returning to work. The employee will not be reinstated until such fitness for duty certification is submitted. Fitness for Duty Certification also may be required for absences while the employee is on intermittent FMLA leave.
- 5. Relationship to paid leave
 - a. Before any unpaid FMLA leave is taken, all accrued (including banked) leave must be exhausted, except as provided in the next paragraph. Paid leave that is classified as FMLA leave constitutes part or all of the 12 or 26 weeks of FMLA leave to which an employee is entitled.



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- b. The employee's FMLA 12-week entitlement will run concurrently with any leave taken under workers' compensation or injury on duty when the injury is one that meets the criteria for a serious health condition. (See definition in II.F.5. below.)

E. Maintenance of benefits

1. An employee who takes FMLA leave will not accrue any employment benefits except seniority during any period of unpaid leave. Thus, no vacation or sick leave time is earned during any calendar month unless the employee is in paid status for the minimum month, as defined in 2.8—Hours of Operation or the memorandum of understanding or other contractual agreement between the Unified Government and a represented group of employees to which an employee is subject.
2. While an employee is on paid FMLA leave, the Unified Government will continue health coverage at the same level of contributions and benefits as if the employee were working. Any share of group health plan premiums that had been paid by the employee before FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered, the employee must pay the new premium rates. If the Unified Government provides a new health plan or benefits or changes health plans or benefits while an employee is on FMLA leave, the employee will receive the new or changed plan or benefits to the same extent as if the employee were not on leave.
 - a. To maintain coverage during unpaid leave, the employee must pay all contributions to medical and dental insurance that would ordinarily be deducted from his or her paychecks. If premiums are raised or lowered for the group of employees of which the employee on FMLA leave is a member, the employee will be required to pay the new premium rates.
 - b. Failure to make payments will result in the cancellation of the particular coverage. A payment that is more than 30 days late is considered a failure to pay. Before canceling the coverage of an employee whose premium payment is late, the Unified Government will provide written notice to the employee that the payment has not been received. The notice will be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be cancelled on a specified date at least 15 days after the date of the letter unless payment has been received by that date.
 - c. When an employee whose health coverages have been canceled returns to work, the Unified Government will restore the employee to coverage and benefits equivalent to those the employee would have had if leave had not been taken and the premium payments had not been missed, including



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family or dependent coverage, without any qualifying period, physical examination, or exclusion of pre-existing conditions.

3. Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), the Unified Government's obligation to maintain health benefits under this policy ceases in the following circumstances:
 - a. If and when the employment relationship would have terminated if the employee had not taken FMLA leave;
 - b. If and when the employee informs the Unified Government of his/ or her intent not to return from leave; or
 - c. If the employee fails to return from leave or continues on leave after exhausting his or her FMLA entitlement in the 12-month period.
4. If the employee does not return to work after the period of leave has expired, the employee must reimburse the Unified Government for the Unified Government's share of the health plan premiums during the period of unpaid FMLA leave, unless the employee does not return to work due to:
 - a. The continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember, which would otherwise entitle the employee to leave under the FMLA; or
 - b. Other circumstances beyond the control of the employee.

The Unified Government may require medical certification of the employee's or the family member's serious health condition or the covered servicemember's serious injury or illness at the employee's expense.
5. An employee who returns to work for at least 30 calendar days is considered to have "returned" to work. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned to work.
6. Participation in the Employee Contributions Cafeteria Plan
 - a. An employee on paid FMLA leave is eligible to participate in the Employee Contributions Cafeteria Plan (the Plan) and may continue participation in the Plan if he or she was a member when the leave began. -An employee on unpaid FMLA leave is not eligible to participate in the Plan except as provided in this section.
 - b. When the need for unpaid FMLA leave is foreseeable, an employee may make arrangements to prepay health care premiums for the period of unpaid leave through increased payroll deductions and thus maintain his or her participation in the Plan.



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- c. If the employee was a member of the Plan before beginning a period of unpaid FMLA leave, upon return to work, the employee will automatically be reinstated in the Plan with the same benefit elections he or she had before going on leave.
- 7. To maintain voluntary group term life insurance coverage during a period of unpaid FMLA leave, the employee must pay the premiums for such coverage that ordinarily would be deducted from his or her paychecks. -If an employee does not maintain this coverage during a period of unpaid FMLA leave, he or she may reinstate coverage upon payment of the missed premiums.
- 8. An employee who is unable to return to work at the end of FMLA leave should refer to rights under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). See 4.1—Health Care Benefits.
- F. Job restoration
 - 1. Except as provided in subsection 2, any eligible employee who takes FMLA leave shall be entitled, upon return from such leave:
 - a. To be restored by the Unified Government to the position of employment held when the leave began; or
 - b. To be restored to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.
 - 2. If the employee is unable to perform an essential functions of the position because of a physical or mental condition, including the continuation of a serious health condition or an injury or illness also covered by workers’ compensation or injury on duty, the employee has no right to restoration to another position under the FMLA.
 - 3. The Unified Government’s obligation to restore an employee to the same or equivalent position ceases in the following circumstances:
 - a. If and when the employment relationship would have terminated if the employee had not taken FMLA leave;
 - b. The employee informs that Unified Government of his or her intent not to return from leave; or
 - c. The employee fails to return from leave or continues on leave after exhausting his or her FMLA entitlement in the 12-month period.
- G. Protection for employees who request FMLA leave or otherwise assert FMLA rights
 - 1. The Family and Medical Leave Act prohibits interference with an employee’s rights under the law and with legal proceedings or inquiries relating to an employee’s rights.



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2. Unified Government employees, including supervisors and other members of management, are prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided under this policy or the Act or from in any way discriminating or retaliating against any individual (whether or not an employee) for opposing or complaining about any unlawful practice under the Act.
3. Employees are prohibited from discriminating against any individual (whether or not an employee) because that individual has--
 - a. Filed any charge or instituted or caused to be instituted any proceeding under or related to this policy or the Act;
 - b. Given, or is about to give, any information in connection with an inquiry or proceeding relating to any right provided under this policy or the Act; or
 - c. Testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this policy or the Act.
4. “Interfering with” the exercise of an employee’s rights includes (but is not limited to) discouraging an employee from using FMLA leave or using the taking of FMLA leave as a negative factor in hiring, promotions, disciplinary actions, performance evaluations, or other employment actions.
5. Employees who violate this policy are subject to discipline, up to and including termination.

H. Definitions

1. *Contingency operation*: The term “contingency operation” means a military operation that:
 - a. Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
 - b. Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.
2. *Covered active duty or call to covered active duty status*: The term “covered active duty or call to 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



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- b. In the case of a member of the Reserve components 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.
3. *Covered servicemember*: The term “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.
4. *Covered veteran*: 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.
5. *Health care provider*: A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices, podiatrists, dentists, clinical psychologists, optometrists, chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist), nurse practitioners, nurse-midwives, clinical social workers, and physician assistants who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law; Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and any other person determined by the Secretary of Labor to be capable of providing health care services.
6. *Incapacity*: The inability to work, attend school, or perform other regular daily activities due to a serious health condition, treatment therefore, or recovery therefrom.
7. *In loco parentis*: Having day-to-day responsibilities to care for or to financially support a child, or, in the case of an employee, having had such responsibility for the employee when the employee was a child.
8. *Next of kin of a covered servicemember*: 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



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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.

9. *Outpatient status*: With respect to a covered servicemember, means the status of a member of the Armed Forces assigned to—
 - (A) A military medical treatment facility as an outpatient; or
 - (B) A unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
10. *Parent*: The biological, adoptive, step, or foster parent, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This term does not include parents “in law”.
11. *Serious health condition*: An illness, injury, impairment, or physical or mental condition that involves one of the following:
 - a. *Inpatient care* - 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.
 - b. *Continuing treatment* – A period of incapacity of more than three consecutive, full calendar days, (including 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. 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.
 - c. *Pregnancy* - Any period of incapacity due to pregnancy, or for prenatal care.



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- d. *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 that:
 - (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.).
- e. *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, a severe stroke, or the terminal stages of a disease.
- f. *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).

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, ear aches, upset stomachs, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, and periodontal disease are not serious health conditions and do not qualify for FMLA leave.

12. *Serious injury or illness:*

- a. In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means 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



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- 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 means an injury or illness that was incurred by the member in the 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:
- (i) 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
 - (ii) 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
 - (iii) 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
 - (iv) 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.
13. *Son or daughter*: A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.
14. *Son or daughter of a covered servicemember*: The servicemember's son or daughter who is of any age.
15. *Son or daughter on covered active duty or call to covered active duty status*: The employee's son or daughter who is on covered active duty or call to covered active duty status and is of any age.
16. *Spouse*: A husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any



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State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

- (a) Was entered into in a State that recognizes such marriages; or
- (b) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

17. *Treatment*: 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.

18. *12-month period*: The 12 months measured backward from the date an employee uses any FMLA leave.

I. Intent of policy; interpretation

The intent of this policy is to implement the Family and Medical Leave Act of 1993, as amended, and the regulations promulgated by the Department of Labor. *See* 29 C.F.R. Part 825. No rights are conferred by this policy beyond those in the Family and Medical Leave Act. This policy will be interpreted consistent with the Act and the implementing regulations.

J. Conflict

Should any term or provision of this policy conflict with any other Human Resources Guide policy, this policy shall prevail, except as otherwise noted in this policy. -

- RELATED POLICIES:
- 4.1 Health Care Benefits
 - 5.1 Sick Leave
 - 5.2 Vacation
 - 5.11 Leaves of Absence Without Pay
 - 6.1 Workers Compensation and Injury Leave

- RELATED FORMS:
- FMLA Packet and Instructions
 - Personnel Action Notice