

## Fact Sheet #28M(c): Qualifying Exigency Leave under the Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles eligible employees who work for covered employers to take up to 12 workweeks of unpaid, job-protected leave in a 12-month period for a “qualifying exigency” arising out of the foreign deployment of the employee’s spouse, son, daughter, or parent. FMLA leave for this purpose is called qualifying exigency leave.

### QUALIFYING EXIGENCY LEAVE ENTITLEMENTS

Qualifying exigencies may arise when the employee’s spouse, son, daughter, or parent who is a member of the Armed Forces (including the National Guard and Reserves) and who is on covered active duty or has been notified of an impending call or order to covered active duty. For purposes of qualifying exigency leave, an employee’s son or daughter on covered active duty refers to a child of any age.

#### Covered Active Duty

Eligible employees may take FMLA leave for a qualifying exigency while the military member is on covered active duty, call to covered active duty status, or has been notified of an impending call or order to covered active duty.

For members of the **Regular Armed Forces**, covered active duty is duty during deployment of the member with the Armed Forces to a foreign country.

For members of the **Reserve components** of the Armed Forces (members of the National Guard and Reserves), covered active duty is duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation.

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. It also includes deployment to international waters.

#### Qualifying Exigency Categories

The Department has identified nine broad categories of qualifying exigencies. If the military member is on covered active duty, the employee may take FMLA leave for the following qualifying exigencies:

- Issues arising from the military member's **short notice deployment** (*i.e.*, deployment within seven or less days of notice). For a period of up to seven days from the day the military member receives notice of deployment, an employee may take qualifying exigency leave to address **any** issue that arises from the short-notice deployment.
- Attending **military events and related activities**, such as official ceremonies, programs, events and informational briefings, or family support or assistance programs sponsored by the military, military service organizations, or the American Red Cross that are related to the member's deployment.
- Certain **childcare and related activities** arising from the military member's covered active duty, including arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling in or transferring a child to a new school or day care facility.

**Note:** The employee taking FMLA qualifying exigency leave does not need to be related to the military member's child. However, (1) the military member must be the parent, spouse, son or daughter of the employee taking FMLA leave, and (2) the child must be the child of the military member (including a child to whom the military member stands in loco parentis).

- Certain activities arising from the military member's covered active duty related to **care of the military member's parent** who is incapable of self-care, such as arranging for alternative care, providing care on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers.

**Note:** The employee taking FMLA qualifying exigency leave does not need to be related to the military member's parent. However, (1) the military member must be the parent, spouse, son or daughter of the employee taking FMLA leave, and (2) the parent must be the parent of the military member (including an individual who stood in loco parentis to the military member when the member was a child).

- Making or updating **financial and legal arrangements** to address a military member's absence while on covered active duty, including preparing and executing financial and healthcare powers of attorney, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), or obtaining military identification cards.
- Attending **counseling** for the employee, the military member, or the child of the military member when the need for that counseling arises from the covered active duty of the military member and is provided by someone other than a health care provider.
- Taking up to 15 calendar days of leave to spend time with a military member who is on short-term, temporary **Rest and Recuperation** leave during deployment. The employee's leave for this reason must be taken while the military member is on Rest and Recuperation leave.

- Certain **post-deployment activities** within 90 days of the end of the military member's covered active duty, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military, and addressing issues arising from the death of a military member, including attending the funeral.
- Any other event that the employee and employer agree is a qualifying exigency.

## **CERTIFICATION REQUIREMENTS**

Employers may require that an employee's request for qualifying exigency leave be supported by an appropriate certification. An employer may require that the certification include a copy of the military member's active duty orders. However, the employee is only required to provide this information to the employer once for a military member on a specific deployment.

The employer may also require the employee to submit certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought. For example, if the employee is taking leave to meet with an alternate childcare provider or a financial consultant, the employer may require the employee to provide the contact information of the third party with whom the employee is meeting. Where an employee seeks leave to spend time with a military member on Rest and Recuperation leave, the employer may request a copy of the military member's Rest and Recuperation orders, or other documentation confirming the dates of the member's leave. Employees may use form [WH-384](#) for obtaining qualifying exigency certification.

The employer may not require second and third opinions or recertification for qualifying exigency leave. When the leave involves meeting with a third party, an employer may contact the third party to confirm that the meeting is taking place and the nature of the meeting, but the employer may not request additional information. An employer also may contact the Department of Defense to verify a military member's covered active duty status.

See "[The Employee's Guide to Military Family Leave](#)" and [Fact Sheet 28M, The Military Family Leave Provisions under the FMLA](#), for more information on the FMLA military family leave entitlements.

## **ENFORCEMENT**

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA. See [Fact Sheet 77B: Protections for Individuals under the FMLA](#). The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the

law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

**For additional information, visit our Wage and Hour Division Website:**

**<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

For information on the effective date, [click here](#).

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