

## RESPONSIBILITIES

### Employee is responsible for:

- requesting FML only for appropriate uses;
- knowing the amount of his/her FML balance;
- providing in a timely manner, as defined in this policy, sufficient information for a determination whether an absence qualifies for FML;
- using the minimum FML necessary for each qualifying event;
- scheduling appointments outside work hours whenever possible and, where not possible, scheduling appointments to cause the least disruption to operations; and
- complying with all requirements for securing FML including advance notice and documentation requirements.

### Employer is responsible for:

- implementing this policy in an appropriate and consistent manner;
- developing and distributing procedures for employees to secure FML, including identifying persons to be notified with requests for leave and any required notification procedures or forms;
- approving leave only for appropriate uses;
- approving or denying requests for FML within the specified time limits;
- requesting second (and third) opinions and recertifications in appropriate circumstances;
- notifying employees of FML designations, including appropriate general posting and specific notice requirements;
- designating FML in all appropriate circumstances;
- maintaining health care benefits when employee pays his/her portion of the premium;
- reinstating employees properly and expeditiously in appropriate circumstances;
- keeping accurate and up-to-date records for each affected employee; and
- taking appropriate actions, including discipline, when an employee fails to abide by the requirements of this and related attendance and leave policies.

## ELIGIBILITY REQUIREMENTS 29 CFR §825.110

Employees who have

- been employed in an agency under the executive authority of the Governor for at least twelve (12) months (consecutive or non-consecutive);
  - worked at least 1250 hours in the twelve-month period immediately preceding the need for family-medical leave; and
  - not exhausted their allotment of family-medical leave in the applicable time period
- are eligible for family-medical leave (FML).

**1250 hours of work** means actual work hours and does not include holidays, time spent in paid or unpaid leave, vacation leave, sick leave, or personal leave, compensatory time off, time spent receiving benefits under the State's Short/Long Term Disability Plan or time during the elimination period prior to receiving benefits under the Disability Plan. In determining whether a veteran meets this requirement, the hours that were actually worked for the state should be

combined with the hours that would have been worked during the twelve months prior to the start of family-medical leave but for the military service. [29 CFR §825.110\(c\)\(1\) & \(2\)](#)

**Aggregate twelve (12) months service** means consecutive or non-consecutive employment in agency(s) subject to the executive authority of the Governor for a combined total of twelve (12) months. Non-consecutive service prior to a break in service of seven (7) years or more is not counted in this calculation unless the break was occasioned by the fulfillment of the employee's National Guard or Reserve military service obligation. In determining whether a veteran meets this requirement, the months employed by the state should be combined with the months that would have been worked but for the military service. [29 CFR §825.110\(b\)](#)

**Allotment of family-medical leave** means

(A) 12 workweeks in a 12-month period for the following qualifying events: (1) birth of the employee's child and to care for the newborn; (2) placement with the employee of a child by adoption or foster care and to care for the newly-placed child; (3) to care for the employee's spouse, child, or parent with a serious health condition; (4) because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his/her job; and (5) because of any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on active duty or call to active duty status in support of a contingency operation. [29 CFR §825.200](#) OR

(B) 26 workweeks in a single 12-month period [29 CFR §825.127\(c\)](#) to care for a covered servicemember with a serious injury or illness incurred in the line of duty on active duty.

(C) Under no circumstances can the amount of leave taken during a 12-month period exceed 26 workweeks, and that is possible only if one of the reasons for leave is to care for a covered servicemember. Any combination of reasons for leave #1-5 above is limited to a maximum total of 12 workweeks in the State's chosen 12-month period of the fiscal year (July 1 – June 30). Additional limitations can be found in this policy under Parenting Leave for Newborn, Adopted, or Foster Child(ren), and Leave to Care for Covered Servicemember. [29 CFR §825.200](#)

**Applicable time period** means

- the fiscal year (July 1 through June 30) for purposes of leaves for the serious health condition of the employee, spouse, child, or parent or because of a qualifying exigency; [29 CFR §825.200\(b\)\(2\)](#)
- the single 12-month period beginning on the first day of leave to care for a covered servicemember; [29 CFR §825.127\(c\)\(1\)](#) and/or
- the 12-month period beginning with the birth or placement of a child. [29 CFR §825.120\(a\)\(2\)](#) & [29 CFR §825.121\(a\)\(2\)](#)

**Employee** means a person who has been employed in agency(s) subject to the executive authority of the Governor for an aggregate twelve (12) months of service and who has performed at least 1250 hours of work in such agency(s) during the twelve (12)-month period immediately preceding the need for family-medical leave.

**Employer** means the appointing authority or designee of the agency employing the employee at the time leave under this policy is taken.

**Fiscal Year** means the twelve-month period beginning July 1 and ending June 30.

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## PROTECTION OF INSURANCE BENEFITS AND EMPLOYMENT

### MAINTENANCE OF HEALTH BENEFITS [29 CFR §825.209 -.213](#)

The employer must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

Therefore, the employer must notify the insurance carriers whenever an employee is covered by approved FML, but not in pay status for an entire pay period.

Upon such notice, the insurance provider will bill the employee directly for his/her portion of the premium for which the employee would be responsible had s/he not taken FML.

It is the employee's responsibility to pay such bill from the provider if s/he desires to maintain coverage under any group health plan provided by the employer. Once the insurance carrier notifies the employer that the employee has paid his/her portion of the premium, then the employer is obligated to pay the employer's portion of the premium. The employer must send to the carrier a copy of the Deductions/Other Earnings (D/OE) override form that will be submitted to the Payroll Section of the Auditor's Office as soon as the employee returns to work and the payroll account is reopened. If the employee is covered by the State's Short/Long Term Disability Plan, the employer must notify the Third Party Administrator (TPA) that the employee has paid his/her portion of the premium. The TPA will then pay the employer's portion and bill the employer for that amount.

Coverage under the dental and vision insurance plans must be maintained by the employer even if the employee is not obligated to pay a portion of the premium.

If the employee has chosen not to retain group health plan coverage during FML, the employee is entitled, upon return to work, to be reinstated on the same terms as prior to taking the leave without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.

If the employer provides a new health plan or benefits or changes health benefits or plans while an employee is on FML, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. This includes participation in open

enrollment and the opportunity to change coverage due to qualifying events. Therefore, the employer must provide notice and necessary forms to the employee for these purposes.

**JOB RESTORATION** 29 CFR §825.214 & 29 CFR §825.215

The employee is responsible for notifying the employer of his/her intent to return or not to return to work.

The employee shall notify the employer as soon as possible of his/her intent to return to work earlier than originally planned and shall provide reasonable notice (usually two (2) business days) in order to arrange an early return to work.

The employer shall return the employee to the same or equivalent position upon his/her return to work from FML. An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority. If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, etc. as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

If an employee who has exhausted his/her entitlement to FML remains on leave under provisions of workers' compensation, disability plan, or as a reasonable accommodation under the Americans with Disabilities Act (ADA), the employer is responsible for applying the reinstatement requirements under the applicable law or program rather than the reinstatement provisions under FML.

It is the employer's burden to show that an employee otherwise entitled to reinstatement under the provisions of FML is not entitled to reinstatement due to reasons other than his/her FML absence. An employee has no greater right to reinstatement or other benefits or conditions of employment than if the employee had been continuously employed during the FML period.

<p style="text-align: center;"><b>LEAVE FOR SERIOUS HEALTH CONDITION OF EMPLOYEE</b> 29 CFR §825.112(a)(4) &amp; 29 CFR §825.123</p>
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Request for FML

Certification of Health Care Provider for Serious Health Condition of Employee

**DEFINITIONS**

**Documentation for a serious health condition** means a completed Certification of Health Care Provider form or other document containing sufficient information to determine whether a serious health condition exists. 29 CFR §825.301(b) Providing such documentation is the responsibility of the employee. 29 CFR §825.306

**Employee** means a person who has been employed in agency(s) subject to the executive authority of the Governor for an aggregate twelve (12) months of service and who has

performed at least 1250 hours of work in such agency(s) during the twelve (12)-month period immediately preceding the need for family-medical leave. [29 CFR §825.800](#)

**Health care provider** [29 CFR §825.125](#) means one of the following persons who may complete a Certification for Health Care Provider form and certify a serious health condition:

- doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
- podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice under State law;
- nurse practitioners, nurse-midwives, clinical social workers, and physician's assistants authorized to practice under State law and 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;
- any health care provider recognized by the employer or the employer's group health plan's benefit manager; and
- a health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

**Serious health condition** [29 CFR §825.113 -115](#) means an illness, injury, impairment, or physical or mental condition that involves one of the following:

(1) Hospital Care [29 CFR §825.114](#)

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

(2) Absence Plus Continuing Treatment [29 CFR §825.115\(a\)](#)

A period of incapacity of more than three (3) consecutive calendar days that also involves in-person treatment by a health care provider on at least one occasion within seven (7) days of the beginning of the incapacity which results in a regimen of continuing treatment under the supervision of the health care provider involving either (a) additional visit(s) required by the health care provider within thirty (30) days of the beginning of the incapacity; or (b) the prescription of medications, therapy requiring special equipment, or other treatment that can only be initiated on orders of a health care provider.

(3) Pregnancy [29 CFR §825.115\(b\)](#)

Any period of incapacity due to pregnancy or for prenatal care.

(4) Chronic Conditions Requiring Treatments [29 CFR §825.115\(c\)](#)

A chronic condition which:

- (a) Requires at least two (2) visits annually for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- (b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- (c) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).

(5) Permanent/Long-term Conditions Requiring Supervision [29 CFR §825.115\(d\)](#)

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care

provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(6) Multiple Treatments (Non-Chronic Conditions) [29 CFR §825.115\(e\)](#)

Any absences to receive multiple treatments for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three consecutive days if not treated, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), and kidney disease (dialysis).

Non-eligible medical conditions include (but are not limited to): taking over-the-counter medications, bed-rest, drinking plenty of fluids, or any similar activities that can be initiated without a visit to a health care provider unless something more serious is involved. The common cold, flu, ear aches, upset stomach, minor ulcers, headaches, routine dental problems, and periodontal diseases are conditions that do not qualify for family-medical leave. Cosmetic treatments and plastic surgery are not serious health conditions unless inpatient hospital care is required or complications develop. [29 CFR §825.113\(c\) & \(d\)](#)

Family-medical leave may not be used for short-term conditions for which treatment and recovery are brief, such as minor illnesses and out-patient surgical procedures with expected brief recuperating periods. It does not provide for the intermittent care of a child for such commonplace illnesses as colds and flu. Routine medical, dental or vision examinations do not qualify for FML. [29 CFR §825.113\(c\) & \(d\)](#)

For intermittent leave or leave on a reduced schedule, there must be a medical necessity for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition must meet the requirement for certification of the medical necessity of intermittent leave or leave on a reduced schedule. Employees needing intermittent leave or a reduced schedule must attempt to schedule their leave so as not to disrupt the employer's operations. In addition, an employer may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent leave or reduced schedule due to planned medical treatment. [29 CFR §825.202](#)

WORKERS' COMPENSATION [29 CFR §825.207\(e\)](#)

Family-medical leave runs concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition. As the workers' compensation absence is not unpaid leave, the provision for substitution of the employee's accrued paid leave is not applicable. However, if the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the employer's offer of a "light duty job." As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FML until the twelve (12)-week entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and the employer requires the use of compensatory time off by eligible employees and then accrued paid sick leave. The employee may choose to use other accrued paid leave upon the exhaustion of his/her sick leave balance.

STATE'S SHORT/LONG TERM DISABILITY PROGRAM 29 CFR §825.207(d)

Family-medical leave runs concurrently with the elimination and benefits periods under the State's Short/Long Term Disability Plan.

NOTICE AND CERTIFICATION – EMPLOYEE RESPONSIBILITIES

1. It is the employee's responsibility to provide complete documentation and sufficient information that a determination can be made whether the absence qualifies for FML, and to do so in a timely manner. Fifteen (15) calendar days is the usual time period for submission of documentation to support a request for FML. Failure to submit a completed certification within that time frame (or any extension requested during that time frame and granted by management due to extenuating circumstances) will result in denial of FML and can result in unauthorized leave subject to disciplinary action. 29 CFR §825.302(b) & 29 CFR §825.303(b)
2. Employee shall have the opportunity to clarify documentation and may authorize a designated management official to contact a health care provider directly to authenticate or clarify a document submitted to support a request for FML. A certification is considered incomplete if one or more of the applicable entries have not been completed. A certification is considered insufficient if the information provided is vague, ambiguous, or non-responsive. The employee's opportunity to cure such deficiencies is seven (7) calendar days. Failure to cure the deficiency within that time frame (or any extension requested during that time frame and granted by management due to extenuating circumstances) will result in denial of FML and can result in unauthorized leave subject to disciplinary action. 29 CFR §825.305(c) Additional information cannot be requested during authentication or clarification. 29 CFR §825.307(a)
  - a. *Authentication* means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document.
  - b. *Clarification* means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response.
3. Foreseeable Absences 29 CFR §825.302 & 29 CFR §825.304
  - a. Employee must complete and submit a Request for Family-Medical Leave form to the human resources office at least thirty (30) days in advance of foreseeable absence(s). In other cases, employees are responsible for providing the employer with as much notice as they have received: That is, on the same day the employee receives notice from the health care provider of the need for leave or the next business day after the employee learns of the need for leave. Failure to provide advance notice may delay the start of family-medical leave and can result in unauthorized leave subject to disciplinary action.
  - b. Employee must submit a completed Certification of Health Care Provider form. This Certification should be provided to the designated human resources representative with the Request for Family-Medical Leave whenever possible and no later than fifteen (15) calendar days after submitting the Request for Family-Medical Leave form or prior to the beginning of the leave, whichever occurs first. It is expected that Certification for foreseeable absences will be submitted prior to the beginning of the leave, and failure to provide timely documentation may delay the start of family-medical leave and can result in unauthorized leave subject to disciplinary action.

4. Unforeseeable Absences / Emergencies [29 CFR §825.303](#) & [29 CFR §825.304](#)
  - a. Employee must notify the employer as soon as practicable. That is usually within the time frames and procedures required by agency policy for reporting absences under other leave policies unless the employee is incapable of providing notice within those time frames. The employee must complete and submit a Request for Family-Medical Leave form and completed Certification of Health Care Provider form to the designated human resources representative within fifteen (15) calendar days of the beginning of the absence. Failure to submit a completed certification within that time frame (or any extension requested during that time frame and granted by management due to extenuating circumstances) will result in denial of FML and can result in unauthorized leave subject to disciplinary action.
  - b. Employee must comply with agency leave request / call-in procedures and time limits for each day of absence unless the employee is incapable of providing notice in that manner and/or within those time frames. [29 CFR §825.303](#)
5. Planned Medical Treatments [29 CFR §825.203](#) & [29 CFR §825.204](#) & [29 CFR §825.205](#)
  - a. When planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the leave so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider. The employee shall also consult with the employer to determine a periodic check-in schedule, report a change in circumstances, make return to work arrangements, etc. [29 CFR §825.302\(e\)](#)
  - b. Treatment of substance abuse by a health care provider or by a provider of health care services on referral by a health care provider will be covered by family-medical leave. However, absence because of the employee's abuse of the substance, rather than for treatment, does not qualify for family-medical leave. Treatment for substance abuse does not preclude disciplinary action in instances where the employee has violated the employer's policy against substance abuse, even during a time period of treatment covered by family-medical leave. [29 CFR §825.119](#)
  - c. Failure to provide timely documentation may delay the start of family-medical leave and can result in unauthorized leave subject to disciplinary action. [29 CFR §825.304\(d\)](#)

**NOTICE AND CERTIFICATION – EMPLOYER RESPONSIBILITIES** [29 CFR §825.300](#)

1. Employer must inquire further to determine whether an absence may be covered by FML in circumstances where information provided by the employee, or the employee's spokesperson if the employee is unable to provide the information personally, indicates that FML may be appropriate but additional information is required for a definitive determination. [29 CFR §825.301\(a\)](#)
2. Employer must notify the employee within five (5) business days whether s/he is an eligible employee for purposes of FML and must designate an absence as FML in all circumstances where the definitions above are met through information provided by the employee him/herself or by an adult family member or other responsible party if the employee is unable to provide the information personally. A designation may be oral, but if so, must then be followed-up in writing provided no later than the following payday, unless the payday is

less than one week after the oral notice, in which case the notice must be no later than the subsequent payday. [29 CFR §825.300\(b\)](#)

3. Employer must provide the required forms and identify the fifteen (15) calendar day time limit for submission of completed forms and the consequences for failure to submit the documentation within the fifteen (15) calendar day time limit. FML may be provisionally designated pending receipt of required documentation. [29 CFR §825.300\(c\)](#)
4. Employer must make a reasonable effort to work with the employee who is planning medical treatment to schedule the leave so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider. The employer shall also work with the employee to determine a periodic check-in schedule, report a change in circumstances, make return to work arrangements, etc. [29 CFR §825.203](#)
5. Employer must give an employee seven (7) calendar days to clarify the information provided by a health care provider or cure any deficiency in the documentation. This time frame may be extended due to extenuating circumstances if requested during this time period and granted by management. [29 CFR §825.304\(c\)](#)
6. Employer may require a second medical opinion by a health care provider who does not regularly contract with the employer of an original certification. The employer must reimburse an employee or the employee's spouse, parent, or child for any reasonable "out of pocket" travel expenses incurred to obtain the second opinion. If the employee's and the employer's designated health care providers differ, the employer shall require the employee to obtain certification from a third health care provider, again at the employer's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved by both employee and employer acting in good faith to attempt to reach an agreement. The employer shall provide the employee with a copy of the second and third medical opinions upon request. [29 CFR §825.307](#)

#### RECERTIFICATION [29 CFR §825.308](#)

1. Employer shall require employees to provide a new certification annually for each fiscal year for any medical condition for which the need for leave may be expected to continue beyond that fiscal year. The annual certification is subject to calculation of eligibility and second and third opinions may be obtained. [29 CFR §825.304\(e\)](#)
2. Employer may require employees to provide recertification of the medical necessity for intermittent leave in any event every six (6) months. [29 CFR §825.308\(b\)](#)
3. Except as provided above, employer may request recertification no more than once every thirty (30) days in conjunction with an employee's absence unless: [29 CFR §825.308\(c\)](#)
  - a. the employee requests an extension of the leave;
  - b. circumstances described by the previous certification have changed significantly (e.g. the duration of the illness, the nature of the illness, complications); or
  - c. the agency receives information that casts doubt upon the continuing validity of the certification.

4. Employee must provide completed recertification form(s) within the specified time frame and pay any expenses related to any recertification. No second or third opinion on recertification may be required other than the annual certification described above. [29 CFR §825.308\(f\)](#)
5. Employer must provide the required forms and identify the fifteen (15) calendar day time limit for submission of completed forms and the consequences for failure to submit the documentation within the fifteen (15) calendar day time limit. [29 CFR §825.308\(d\)](#)

## LEAVE FOR SERIOUS HEALTH CONDITION OF SPOUSE, CHILD, OR PARENT

### Request for FML

### Certification of Health Care Provider for Serious Health Condition of Spouse, Child, or Parent

### DEFINITIONS

**Child** means a biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the employee has day-to-day responsibility for care and financial support, who is either under age 18 or age 18 or older and "incapable of self-care because of a mental or physical disability."

(1) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" or "instrumental activities of daily living." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, or using a post office.

(2) "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR Sec. 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., define these terms. [29 CFR §825.122\(c\)](#)

**Documentation for purposes of confirming family relationship** means the employer may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, or a court document. The employer is entitled to examine documentation such as a birth certificate, but the employee is entitled to the return of the official document submitted for this purpose. [29 CFR §825.122\(j\)](#)

**Documentation for a serious health condition** means a completed Certification of Health Care Provider form or other document containing sufficient information to determine whether a serious health condition exists. [29 CFR §825.301\(b\)](#) Providing such documentation is the responsibility of the employee. [29 CFR §825.306](#)

**Health care provider** means one of the following persons who may complete a Certification for Health Care Provider form and certify a serious health condition:

- doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
- podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as

demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice under State law;

- nurse practitioners, nurse-midwives, clinical social workers, and physician's assistants authorized to practice under State law and 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;
- any health care provider recognized by the employer or the employer's group health plan's benefit manager; and
- a health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country. [29 CFR §825.125](#)

***in loco parentis*** means those persons with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, the persons who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary. [29 CFR §825.122\(c\)\(3\)](#)

**Parent** means a biological, adoptive, or foster parent or an individual who had day-to-day responsibility for care and support of the employee when the employee was a child as defined above. In-laws do not qualify. [29 CFR §825.122\(b\)](#)

**Serious health condition** [29 CFR §825.113 - .115](#) means an illness, injury, impairment, or physical or mental condition that involves one of the following:

(1) Hospital Care [29 CFR §825.114](#)

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

(2) Absence Plus Continuing Treatment [29 CFR §825.115\(a\)](#)

A period of incapacity of more than three (3) consecutive calendar days that also involves in-person treatment by a health care provider on at least one occasion within seven (7) days of the beginning of the incapacity which results in a regimen of continuing treatment under the supervision of the health care provider involving either (a) additional visit(s) required by the health care provider within thirty (30) days of the beginning of the incapacity or (b) the prescription of medications, therapy requiring special equipment, or other treatment that can only be initiated on orders of a health care provider.

(3) Pregnancy [29 CFR §825.115\(b\)](#)

Any period of incapacity due to pregnancy, or for prenatal care.

(4) Chronic Conditions Requiring Treatments [29 CFR §825.115\(c\)](#)

A chronic condition which:

(a) Requires at least two (2) visits annually for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(c) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).

(5) Permanent/Long-term Conditions Requiring Supervision [29 CFR §825.115\(d\)](#)

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the

continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(6) Multiple Treatments (Non-Chronic Conditions) [29 CFR §825.115\(e\)](#)

Any absences to receive multiple treatments for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three consecutive days if not treated, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), and kidney disease (dialysis).

Non-eligible medical conditions include (but are not limited to): taking over-the-counter medications, bed-rest, drinking plenty of fluids, or any similar activities that can be initiated without a visit to a health care provider unless something more serious is involved. The common cold, flu, ear aches, upset stomach, minor ulcers, headaches, routine dental problems, and periodontal diseases are conditions that do not qualify for family-medical leave. Cosmetic treatments and plastic surgery are not serious health conditions unless inpatient hospital care is required or complications develop. [29 CFR §825.113\(c\) & \(d\)](#)

Family-medical leave may not be used for short-term conditions for which treatment and recovery are brief, such as minor illnesses and out-patient surgical procedures with expected brief recuperating periods. It does not provide for the intermittent care of a child for such commonplace illnesses as colds and flu. Routine medical, dental or vision examinations do not qualify for FML. [29 CFR §825.113\(c\) & \(d\)](#)

For intermittent leave or leave on a reduced schedule, there must be a medical necessity for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition must meet the requirement for certification of the medical necessity of intermittent leave or leave on a reduced schedule. Employees needing intermittent leave or a reduced schedule must attempt to schedule their leave so as not to disrupt the employer's operations. In addition, an employer may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent leave or reduced schedule for planned medical treatment. [29 CFR §825.202](#)

**Spouse** means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides. Most state employees reside in Indiana or the surrounding states where neither common law nor same sex marriages are recognized. [29 CFR §825.122\(a\)](#)

#### NOTICE AND CERTIFICATION

Employee and Employer responsibilities for Notice and Certification and Recertification for Serious Health Conditions of Spouse, Child, or Parent are the same as stated above under Leave for Serious Health Condition of Employee.

### **PARENTING LEAVE FOR NEWBORN, ADOPTED, OR FOSTER CHILD(REN)**

Request for FML

## DEFINITIONS

**Adoption** means legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child is not a factor in determining eligibility for family-medical leave. [29 CFR §825.122\(e\)](#)

Use of the term **Birth** means that the employee is seeking parenting leave for his/her newborn, biological child. Leave to care for an employee's spouse during pregnancy, childbirth, and/or recovery therefrom is covered under Leave for Serious Health Condition of Spouse, Child, or Parent.

**Documentation of birth or placement of child** means a birth certificate, adoption papers, authorization to provide foster care as well as documentation of each foster care placement which must indicate that the employee is the biological, adoptive, or foster parent for a particular child and the date of the birth or on which such placement is effective. Leave needed for participation in meetings, counseling and other events related to prenatal, pre-adoption, or foster care certification purposes also qualify for FML coverage and documentation of those dates/times is required to support the leave request. [29 CFR §825.122\(j\)](#)

**Foster Care** means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home or pursuant to a judicial determination of the necessity for foster care and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody. [29 CFR §825.122\(f\)](#)

## NOTICE AND CERTIFICATION – EMPLOYEE RESPONSIBILITIES [29 CFR §825.304](#)

1. It is the employee's responsibility to provide complete documentation and sufficient information that a determination can be made whether the absence qualifies for FML, and to do so in a timely manner. Fifteen (15) calendar days is the usual time period for submission of documentation to support a request for FML. Failure to submit a completed certification within that time frame (or any extension requested during that time frame and granted by management due to extenuating circumstances) will result in denial of FML and can result in unauthorized leave subject to disciplinary action. [29 CFR §825.302\(b\)](#) & [29 CFR §825.303\(b\)](#)
2. Employees shall have the opportunity to clarify documentation submitted to support a request for FML within seven (7) calendar days after notice of the deficiency. Failure to cure the deficiency within that time frame (or any extension requested during that time frame and granted by management due to extenuating circumstances) will result in denial of FML and can result in unauthorized leave subject to disciplinary action. [29 CFR §825.305\(c\)](#)
3. While exact dates of birth, adoption, or placement for foster care may not be foreseeable, generally the expectation of a birth, adoption, or foster care placement is known in advance. Therefore, employees who anticipate such events should provide advance notice of the impending addition to the family or the fact the employee is certified by the State to provide foster care on an as-needed basis. In particular situations where foster care is the result of

an emergency not related to the general authorization to be a foster parent (as when placement is made unexpectedly with a relative due to a determination that the child must be removed from parental custody immediately), advance notice may not be possible. In such cases, the employee must provide notice in compliance with the agency's usual leave policy requirements unless extenuating circumstances exist. [29 CFR §825.121](#)

#### NOTICE AND CERTIFICATION – EMPLOYER RESPONSIBILITIES

1. Employer must inquire further to determine whether an absence may be covered by FML in circumstances where information provided by the employee, or the employee's spokesperson if the employee is unable to provide the information personally, indicates that FML may be appropriate but additional information is required for a definitive determination. [29 CFR §825.301\(a\)](#)
2. Employer must notify the employee within five (5) business days whether s/he is an eligible employee for purposes of FML and must designate an absence as FML in all circumstances where the definitions above are met through information provided by the employee him/herself or by an adult family member or other responsible party if the employee is unable to provide the information personally. A designation may be oral, but if so, must then be followed-up in writing provided no later than the following payday, unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday. [29 CFR §825.300\(b\)](#)

#### LIMITATIONS ON PARENTING LEAVE FOR A NEWBORN, ADOPTED, OR FOSTER CHILD [29 CFR §825.120\(a\)\(6\) & 29 CFR §825.121\(a\)\(4\)](#)

1. A husband and wife who are eligible for FML and are both employed in agencies covered by this policy are limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken to care for employees' newborn, adopted, or foster child.
2. Parenting leave for a newborn, adopted, or foster child cannot be taken intermittently or on a reduced schedule without the approval of the employer.

### LEAVE FOR QUALIFYING EXIGENCY

Certification of Qualifying Exigency

#### DEFINITIONS

**Active duty or call to active duty status** means duty under a call or order to active duty (or notification of an impending call or order to active duty) for a covered military member in support of a contingency operation. [29 CFR §825.126\(b\)\(2\)](#)

**Child (of the covered military member)** means a biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the covered military member has day-to-day responsibility for care and financial support, who is either under age 18 or age 18 or older and "incapable of self-care because of a mental or physical disability."

1. "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" or "instrumental

activities of daily living." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, or using a post office.

2. "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR Sec. 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., define these terms. [29 CFR §825.122\(c\)](#)

**Child on active duty or call to active duty status** means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status in the National Guard or Reserves and who is of any age. [29 CFR §825.126\(b\)\(1\)](#)

**Contingency operation** means a military operation that:

- (1) 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
- (2) results in the call or order to, or retention on, active duty of members of the uniformed services under designated sections 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. [29 CFR §825.126\(b\)\(2\)](#) & [29 CFR §825.800](#)

**Covered military member** means the employee's spouse, child, or parent on active duty or call to active duty status in the National Guard or Reserves. [29 CFR §825.126\(b\)](#)

**Documentation of qualifying exigency** means that the first time an employee requests leave because of a qualifying exigency arising out of the active duty or call to active duty status of a covered military member the employee must submit a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation. Additional documentation can be required for subsequent active duty calls. Further, the employee requesting leave because of a qualifying exigency must complete the appropriate forms regarding dates and duration of leave, identifying the events which support the need for leave and providing contact information for any third party with whom the employee is meeting with a brief description of the purpose of the meeting. Examples of documentation include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for the handling of legal or financial affairs. [29 CFR §825.309](#)

**in loco parentis** means those persons with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, the persons who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary. [29 CFR §825.122\(c\)\(3\)](#)

**Parent of a covered military member** means a covered servicemember's biological, adoptive, step, or foster parent, or any other individual who stood *in loco parentis* to the covered servicemember. In-laws do not qualify. [29 CFR §825.127\(b\)\(2\)](#)

**Qualifying exigency** means that the employee who is a spouse, child, or parent of a covered military member requires leave for one or more of the following events: (1) short-notice deployment; (2) military events and related activities; (3) child care and school activities; (4) financial and legal arrangements; (5) counseling; (6) rest and recuperation; (7) post-deployment activities; and (8) additional military activities provided the employer and employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave. [29 CFR §825.126\(a\)](#)

**Spouse** means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides. Most state employees reside in Indiana or the surrounding states where neither common law nor same sex marriages are recognized. [29 CFR §825.122\(a\)](#)

#### NOTICE AND CERTIFICATION – EMPLOYEE RESPONSIBILITIES

1. It is the employee's responsibility to provide complete documentation and sufficient information that a determination can be made whether the absence qualifies for FML, and to do so in a timely manner. Advance notice of thirty (30) calendar days is required for foreseeable absences. In other cases, employees are responsible for providing the employer with as much notice as they have received: That is, on the same day the employee receives notice of the need for leave or the next business day after the employee learns of the need for leave. Failure to provide advance notice may delay the start of family-medical leave and can result in unauthorized leave subject to disciplinary action. [29 CFR §825.302\(b\)](#)
2. Fifteen (15) calendar days from notice of the need for leave or the first day of leave, whichever occurs first, is the usual time period for submission of documentation to support a request for FML. Failure to submit a completed certification within that time frame (or any extension requested during that time frame and granted by management due to extenuating circumstances) will result in denial of FML and can result in unauthorized leave subject to disciplinary action. [29 CFR §825.302\(b\)](#) & [29 CFR §825.303\(b\)](#)
3. Employee must comply with agency leave request / call-in procedures and time limits for each day of absence unless the employee is incapable of providing notice in that manner and/or within those time frames. [29 CFR §825.303](#)
4. Employee may be required to provide documentation of his/her family relationship to the covered military member to support the leave request. [29 CFR §825.122\(j\)](#) & [29 CFR §825.127\(b\)\(3\)](#)
5. Recertifications are not permitted for FMLA leave for qualifying exigencies. If the certification is complete, then no additional information can be required; however, verification of the certification and documentation is permitted. [29 CFR §825.309\(d\)](#)

6. Leave for Qualifying Exigency can be taken for the following reasons if such activity is directly related to the active duty or call to active duty status of a covered military member and documentation supporting the request is submitted. [29 CFR §825.126\(a\)](#)
- a. Short-notice deployment: To address any issue that arises from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or fewer calendar days prior to the date of deployment. Leave for this purpose can be used for a period of seven calendar days beginning on the date a covered military member is notified of an impending call or order to active duty in support of a contingency operation;
  - b. Military events and related activities: To attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of a covered military member; and 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 active duty or call to active duty status of a covered military member;
  - c. Childcare and school activities: To arrange for alternative childcare, to provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis), to enroll or transfer a child into a new school or daycare facility, and/or to attend meetings with staff at a school or daycare facility (e.g. meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors) when the active duty or call to active duty status of a covered military member necessitates these events for a child of the covered military member;
  - d. Financial and legal arrangements: To make or update financial or legal arrangements to address the covered military member's absence while on active duty or call to active duty status such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and to act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on active duty or call to active duty status and for a period of 90 days following the termination of the covered military member's active duty status;
  - e. Counseling: To attend counseling provided by someone other than a health care provider for oneself (employee taking leave as the spouse, child, or parent of a covered military member) or for the child of the covered military member provided the need for counseling arises from the active duty call or call to active duty status of the covered military member;
  - f. Rest and recuperation: To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment for a period of up to five (5) days of leave for each instance of rest and recuperation;
  - g. 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 90 days following the termination of the covered military member's active duty status, and to address issues that arise from the death of a covered military member while on active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements; and
  - h. Additional activities: Upon mutual agreement of the employee and employer that other event(s) not specifically listed here will be considered a qualifying exigency and upon agreement of the timing and duration of such leave, additional activities may be allowed.

Such agreements shall be in writing and included in all recordkeeping concerning Leave for Qualifying Exigency by the affected employee.

7. Employee must submit documentation of each of the events described above to support the request for leave to address such event(s). If the leave involves a meeting with a third party, employer may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the employer. [29 CFR §825.309\(d\)](#)
8. Employee must submit a copy of the covered military member's active duty orders or other documentation which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation. Such documentation can only be required the first time an employee requests leave due to a qualifying exigency; however, new active duty orders or other documentation issued by the military shall be provided to the employer if the need for leave arises out of a different active duty or call to active duty status of the same or a different covered military member. Employer may contact an appropriate unit of the Department of Defense to request verification that a covered military member is on active duty or call to active duty status; no additional information may be requested and the employee's permission is not required. [29 CFR §825.309](#)

#### NOTICE AND CERTIFICATION – EMPLOYER RESPONSIBILITIES

1. Employer must inquire further to determine whether an absence may be covered by FML in circumstances where information provided by the employee, or the employee's spokesperson if the employee is unable to provide the information personally, indicates that FML may be appropriate but additional information is required for a definitive determination. [29 CFR §825.301\(a\)](#)
2. Employer must notify the employee within five (5) business days whether s/he is an eligible employee for purposes of FML and must designate an absence as FML in all circumstances where the definitions above are met through information provided by the employee him/herself or by an adult family member or other responsible party if the employee is unable to provide the information personally. A designation may be oral, but if so, must then be followed-up in writing provided no later than the following payday, unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday. [29 CFR §825.300\(b\)](#)

<b>LEAVE TO CARE FOR COVERED SERVICEMEMBER <a href="#">29 CFR §825.127</a></b>
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Certification of Health Care Provider for Serious Injury or Illness of Covered Servicemember

#### DEFINITIONS

**Amount of leave available to care for a covered servicemember** is a maximum of 26 workweeks in a single 12 month period. Any unused portion of servicemember caregiver leave is forfeited; it cannot be used to extend leave for other FMLA-qualifying reasons. Servicemember caregiver leave is applied on a per-covered-servicemember, per-injury basis

such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that not more than 26 workweeks of leave may be taken within any single 12-month period. Should periods of servicemember caregiver leave overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period. [29 CFR §825.127\(c\)](#)

**Child of a covered servicemember** means the servicemember's biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the servicemember stood *in loco parentis* and who is of any age. [29 CFR §825.122\(h\)](#)

**Covered servicemember with a serious injury or illness** means a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. The term does not provide leave to care for former members of the Armed Forces, former (discharged or retired) members of the National Guard or Reserves, or members on the permanent disability retired list. [29 CFR §825.127\(a\)](#)

**Documentation for purposes of confirming family relationship** means the employer may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, or a court document. The employer is entitled to examine documentation such as a birth certificate, but the employee is entitled to the return of the official document submitted for this purpose. [29 CFR §825.122\(j\)](#)

**Documentation of serious injury or illness of covered servicemember** means a certification completed by the following health care providers: (1) a US Department of Defense (DOD) health care provider; (2) a US Department of Veterans' Affairs (VA) health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider and containing sufficient information to determine whether a serious injury or illness exists. Second and third opinions and recertifications are not permitted for FMLA leave to care for a covered servicemember. See also Invitational Travel Orders or Authorization defined below. [29 CFR §825.310](#)

***in loco parentis*** means those persons with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, the persons who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary. [29 CFR §825.122\(c\)\(3\)](#)

**Invitational Travel Orders (ITO) or Invitational Travel Authorization (ITA)** means a document issued to any family member to join an injured or ill servicemember at his or her bedside. An ITO or ITA is sufficient certification of a serious injury or illness of a covered servicemember for the duration of time specified in the ITO or ITA regardless of whether the employee is named in the order or authorization. Second and third opinions and recertifications are not permitted during the time period covered by the ITO or ITA. Requests for additional leave other than the time period specified in the ITO/ITA require additional documentation as

defined above at the definition: “Documentation of serious injury or illness of covered servicemember.” 29 CFR §825.310(e)

**Next of kin of a covered servicemember** means the nearest blood relative other than the covered servicemember’s spouse, child, or parent in the following order of priority: (1) blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, (2) brothers and sisters, (3) grandparents, (4) aunts and uncles, and (5) first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purpose of military caregiver leave under the FMLA. When such designation has been made, the designated individual shall be deemed to be the servicemember’s only next of kin. However, if no such designation has been made by the covered servicemember and there are multiple family members at the same level of relationship to the covered servicemember, all shall be considered to be his/her next of kin and may take FMLA leave to provide care to the covered servicemember either consecutively or simultaneously. 29 CFR §825.127(b)(3)

**Outpatient status** means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. 29 CFR §825.800

**Parent of a covered servicemember** means a covered servicemember’s biological, adoptive, step, or foster parent, or any other individual who stood *in loco parentis* to the covered servicemember. In-laws do not qualify. 29 CFR §825.127(b)(2)

**Serious injury or illness** means an injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the servicemember’s office, grade, rank, or rating. 29 CFR §825.127 (a)(1)

**Single 12-month period to care for a covered servicemember** means the 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 without regard to the fiscal year used by the State to determine the employee’s 12 workweeks of leave entitlement for other FMLA-qualifying reasons. 29 CFR §825.127(c)(1)

**Spouse** means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides. Most state employees reside in Indiana or the surrounding states where neither common law nor same sex marriages are recognized. 29 CFR §825.122(a)

## NOTICE AND CERTIFICATION – EMPLOYEE RESPONSIBILITIES

1. It is the employee’s responsibility to provide complete documentation and sufficient information that a determination can be made whether the absence qualifies for FML, and to do so in a timely manner. Advance notice of thirty (30) calendar days is required for foreseeable absences. In other cases, employees are responsible for providing the employer with as much notice as they have received: That is, on the same day the employee receives notice of the need for leave or the next business day after the employee learns of the need for leave. Failure to provide advance notice may delay the start of family-

medical leave and can result in unauthorized leave subject to disciplinary action. [29 CFR §825.302\(b\)](#)

2. Fifteen (15) calendar days from notice of the need for leave or the first day of leave, whichever occurs first, is the usual time period for submission of documentation to support a request for FML. Failure to submit a completed certification within that time frame (or any extension requested during that time frame and granted by management due to extenuating circumstances) will result in denial of FML and can result in unauthorized leave subject to disciplinary action. [29 CFR §825.302\(b\)](#) & [29 CFR §825.303\(b\)](#)
3. Employee must comply with agency leave request / call-in procedures and time limits for each day of absence unless the employee is incapable of providing notice in that manner and/or within those time frames. [29 CFR §825.303](#)
4. Employee may be required to provide documentation of his/her family relationship to the covered servicemember to support the leave request. [29 CFR §825.122\(j\)](#) & [29 CFR §825.127\(b\)\(3\)](#)
5. Certification of the serious injury or illness of a covered servicemember will be completed by the following health care providers: (1) a US Department of Defense (DOD) health care provider; (2) a US Department of Veterans' Affairs (VA) health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider and containing sufficient information to determine whether a serious injury or illness exists. [29 CFR §825.310\(a\)](#) & [\(b\)](#)
6. Information that can be required is identified on the Certification of Health Care Provider for Serious Injury or Illness of Covered Servicemember available at the link above. [29 CFR §825.310\(c\)](#)
7. Invitational Travel Orders or Authorization are sufficient certification to document the entitlement to leave for the duration of time specified in the ITO/ITA; additional documentation cannot be required. During that time period, an eligible employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis. If employee needs leave beyond the time period specified in the ITO or ITA, s/he must submit additional documentation to support the additional leave. [29 CFR §825.310\(e\)](#)
8. In all circumstances, it is the employee's responsibility to provide the employer with complete and sufficient certification and failure to do so may result in the denial of FML and can result in unauthorized leave subject to disciplinary action. [29 CFR §825.310\(f\)](#) & [29 CFR §825.305\(d\)](#)

#### NOTICE AND CERTIFICATION – EMPLOYER RESPONSIBILITIES

1. Employer must inquire further to determine whether an absence may be covered by FML in circumstances where information provided by the employee, or the employee's spokesperson if the employee is unable to provide the information personally, indicates that FML may be appropriate but additional information is required for a definitive determination. [29 CFR §825.301\(a\)](#)

2. Employer must notify the employee within five (5) business days whether s/he is an eligible employee for purposes of FML and must designate an absence as FML in all circumstances where the definitions above are met through information provided by the employee him/herself or by an adult family member or other responsible party if the employee is unable to provide the information personally. A designation may be oral, but if so, must then be followed-up in writing provided no later than the following payday, unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday. [29 CFR §825.300\(b\)](#)
3. Second and third opinions and recertifications are not permitted for FMLA leave to care for a covered servicemember. Authentication and clarification of the Certification or an ITO/ITA are permitted. *Authentication* means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document. *Clarification* means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response. Additional information cannot be requested during authentication or clarification. [29 CFR §825.310\(d\)](#) & [29 CFR §825.310\(e\)\(2\)](#)
4. Employer may not concurrently designate the same leave spent caring for a covered servicemember as leave to care for the serious health condition of a spouse, child, or parent. [29 CFR §825.127\(c\)\(4\)](#)

#### LIMITATIONS ON LEAVE TAKEN TO CARE FOR A COVERED SERVICEMEMBER

Any unused portion of servicemember caregiver leave is forfeited; it cannot be used to extend leave for other FMLA-qualifying reasons. Servicemember caregiver leave is applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that not more than 26 workweeks of leave may be taken within any single 12-month period. Should periods of servicemember caregiver leave overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period. [29 CFR §825.127\(c\)](#)

<b>REFERENCES</b>
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29 CFR Part 825  
31 IAC 1-9  
31 IAC 2-11  
FMC 2007-5  
Vacation Leave Policy  
Sick Leave Policy  
Personal Leave Policy  
Military Family Leave Policy  
31 IAC 3  
Workers' Compensation Law and Rules