

POLICY 405A: MILITARY FAMILY AND MEDICAL LEAVE

ADOPTED: JUNE 30, 2009 (REVISED: NOVEMBER 9, 2010)

Policy:

Employees of Lee County who are otherwise eligible to take leave under the Family & Medical Leave Act (FMLA) may qualify for military family leave under the 2008 amendments to the law.

Comments/Procedures:

To be eligible, an employee must meet the same requirements as for regular FMLA. **Employees using Military FMLA are also subject to all other provisions and requirements of FMLA including notice of the need for leave, certification, communications with employer, use of accruals during the leave, and scheduling of intermittent time. (Refer to Policy 405 – FMLA) The employee must contact Human Resources to discuss details of certifications and other authentications required to protect leave taken under Military FMLA.**

Two types of Military FMLA are available - Military Caregiver Leave and Military Exigency Leave

Purpose and Terms of Military Caregiver FMLA:

Military Caregiver Leave - an employee who is the spouse, son, daughter, parent or next-of-kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty, may be granted up to 26 weeks in a single 12-month period in order to care for the service member.

“Serious illness or injury” is defined as one that renders the service member medically unfit to perform the duties of the member’s military position.

“Covered service member” is one who is undergoing medical treatment, recuperation or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list due to the injury or illness.

“Next of kin” is defined as nearest blood relative.

Military Caregiver Leave may be taken intermittently, on a reduced schedule, or continuously, but only during a single 12-month period. The “single 12-month period” is measured forward from the date an employee first takes leave to care for the service member and ends 12 months later. Caregiver Leave is granted for a single injury/illness. An aggravation or complication of an earlier injury/illness is still considered to be the same. Any unused amount is forfeited.

During the single 12-month period, Caregiver Leave is combined with regular FMLA leave and the total cannot exceed 26 weeks. Only 12 of the 26 weeks total may be for an FMLA-qualifying reason other than to care for a covered service member.

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If leave qualifies as both military caregiver leave and FMLA medical leave to care for a family member with a serious health condition, it must be counted as Caregiver Leave.

Purpose and Terms of Qualifying Exigency (“Active Duty”) FMLA:

Qualifying Exigency Leave – an employee who has a spouse, son, daughter, or parent in the National Guard or Reserves may be granted up to 12 weeks of leave during the normal 12-month period established by the employer for FMLA leave for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on federal active duty or is called (or has been notified of an impending call) to federal active duty in support of a contingency operation. Family members of members of the Regular Armed Forces and members of the National Guard called to active duty by the governor in response to a state emergency are not eligible for this type of leave.

Qualifying Exigency Leave may be taken continuously, intermittent, or on a reduced schedule; the employee may not be transferred to an alternative job while on leave.

Qualifying Exigency Leave is part of regular FMLA leave, so the maximum amount of leave is 12 weeks within the employer’s designated 12-month period, and includes all other types of regular FMLA leave except Military Caregiver Leave.

Any one or more of the following non-medical, non-routine activities and no others are included in the definition of “Qualifying Exigency”:

1. Short-term deployment activities – If a military member receives 7 or less calendar days’ notice prior to the date of deployment, an employee may take FMLA leave to address any issues arising from the short notice. An employee may take FMLA leave for up to 7 calendar days beginning on the date the military order is received, even if the 7-day period ends after the military member has been deployed.
2. Military events and related activities – to attend official events sponsored by the military that are related to the active duty call or status, and to attend family support or assistance programs and informational briefings sponsored by the military, military service organizations, or American Red Cross that are related to the active duty call or status of the military member.
3. Childcare and school activities – certain childcare and related activities arising from the call to active duty or active duty status such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child to a new school or day care facility, and attending certain meetings at a school or day care facility.

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4. Financial and legal arrangements – to make or update arrangements to address the military member's absence such as obtaining power of attorney, transferring bank account authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and/or to act as the military member's representative before a federal, state or local agency for certain purposes relating to military service benefits while the military member is on active duty or call to active duty, and up to a period of 90 days following the termination of the military member's active duty status.
5. Counseling activities – to attend counseling, provided the need for counseling arises from the military member's active duty call or status, and that such counseling is provided by someone other than a health care provider, such as a chaplain or pastor. The counseling must be for the employee, the military member, and/or the military member's child.
6. Rest and recuperation activities – leave may be taken to spend time with the military member that has been granted short-term, temporary, rest and recuperation leave during the deployment period. This leave is limited to a maximum of 5 days for each instance of rest and recuperation.
7. Post-deployment activities – to attend certain post-deployment activities sponsored by the military for a period of approximately 90 days following termination or the military member's active duty status, or to address issues that arise from the death of a military member on active duty status.
8. Additional activities – leave for other exigencies may be granted provided it arises out of the military member's call to active duty or status, and the employee and employer mutually agree on both the timing and the duration of the leave.