

FAMILY AND MEDICAL LEAVE ACT OF 1993 GUIDANCE DOCUMENT

I. ELIGIBLE EMPLOYEES

A. To be eligible for FMLA leave, the employee must meet the following criteria:

1. been employed for at least 12 months (needn't be consecutive unless break in service more than 7 years [exceptions for National Guard or Reserve Service and written agreements] and may include 52 weeks of partial or whole employment -- 29 CFR §825.110[a][1] and [b]).
2. been employed for at least 1,250 hours of service during the 12 calendar months immediately preceding the commencement of the leave (29 CFR §825.110[a][2]). (Exception for employee retiring from National Guard or reserve military obligation.)
3. qualification for leave is measured twelve (12) months backward from the leave commencement date (29 CFR §825.110[d]). An employee may be on non-FMLA leave at the time he meets the eligibility requirements, and in that event, any portion of leave taken for an FMLA qualifying reason would be FMLA leave.
4. Executive, administrative and professional employees (including teachers) under the FLSA will be presumed to have worked at least 1,250 hours during the previous 12 months (29 CFR §825.110[c]), since records of their hours are not maintained (29 CFR §825.500[d]).
5. Teacher assistants and aides are treated along with non-instructional employees for the purposes of counting hours of employment. (29 CFR § 825.800).

II. LEAVE ENTITLEMENTS

A. A total of 12 work weeks of leave during any 12 month period for one or more of the following purposes:

1. child care for birth of an employee's son or daughter.
2. adoption or foster care of a child by an employee.
3. care for a spouse, child or parent with a serious health condition.
4. an employee's own serious health condition which renders him/her unable to perform work functions [disability within the meaning of the Americans with Disabilities Act, 42 USC §12101 et. seq.; 29 CFR Part 30] (FMLA §102[a]; 29 CFR §825.112).

5. because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.
6. to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member for a total of 26 work weeks during a single 12-month period.

B. DEFINITIONS

Lakeland Central School District

1. Employer - _____.
2. Spouse - A husband or wife, as defined or recognized under State Law (29 CFR §825.122[a]).
3. Parent - The biological adoptive, step or foster parent of the employee as well as an individual who stood in loco parentis or his/her legal guardian; and not an in-law (29 CFR §825.122[b]).
4. Son or Daughter - A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis of a child under 18, or over 18 and in need of assistance with or supervision over daily living skills due to mental or physical disabilities (29 CFR §825.122[c]).
5. Serious Health Condition
 - (a) For purposes of FMLA, "serious health condition" entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves:
 - (1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or
 - (2) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - (i) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment

therefore, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(A) Treatment two or more times by a health care provider within 30 days (unless extenuating circumstances - such as the health care provider does not have any available appointments during that time period), by a nurse or physician's assistant 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

(B) 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 requires an in person visit. The first (or only) in-person treatment visit must take place within 7 days of the incapacity.

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

(iii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(A) Requires periodic visits for treatment by a health care provider, or by a nurse (at least twice a year) 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, etc.).

(iv) 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.

(v) 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, either 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 calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(b) Treatment for purposes of paragraph (a) of this section 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. Under paragraph (a)(2)(i)(B), a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(c) 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 stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of this section are met.

(d) Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(vi) Absences attributable to incapacity under paragraphs (a)(2) (ii) or (iii) qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for

work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness. (29 CFR §825.114).

6. Health Care Provider - Health care provider means:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or

(2) 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 as defined under State law; and

(3) Nurse practitioners, nurse-midwives and 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; and

(4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

(5) Any health care provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

(6) A health care provider as defined above who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country. (29 CFR §825.125).

C. THE APPLICABLE 12 MONTH PERIOD

While the employee is entitled to a total of 12 work weeks of leave during a 12 month period, the employer has chosen in determining the 12 month measure, the following:

12 months backward from the employee's first FMLA leave date.

D. NATURE OF LEAVES

1. Child Care for Pregnancy or Birth

- a. leave rights apply equally to fathers and mothers in the case of child care leaves (29 CFR §825.120[a]).
- b. child care leave may begin before the birth for prenatal reasons (29 CFR §825.120[a]).
- c. child care leave may begin before actual placement of a child in foster care or adoption of a child (e.g., time for counseling sessions, court appearance, attorney-client and physician meetings or examinations) (see 29 CFR §825.121[a]).

2. Child Care For Adoption or Foster Care

- a. there is no age maximum on the adoption of a child or a child received into foster care placement.
- b. the time within which a child care adoption or foster care leave must be taken is 12 months from the birth, adoption or placement of the child (FMLA §102[a][2] - 29 CFR §825.121[a][2]).
- c. if spouses work for the same employer, only a combined 12 weeks may be taken within the 12 month period for the purposes of child care (29 CFR §825.121[a][3]).
- d. intermittent leave for the purposes of child care, foster care and adoption is subject to the employer's permission and is not a right granted by law (29 CFR §825.121[b]).

3. Intermittent Leave or Reduced Leave Schedule

- a. This leave refers to serious health conditions as described at II(B)(4), *Supra*, at page 2.
- b. in addition to the availability of up to 12 consecutive weeks of leave, intermittent leave is available, as is reduced schedule leave, when the same is medically necessary (FMLA §102[b][1]).
- c. medical necessity refers to the health care provider's certification that the medical need "can be best accommodated" through an intermittent or reduced leave schedule (29 CFR §825.202[b]).
- d. spouses working for the same employer are entitled to a combined 12 weeks of leave to care for a parent (but not an in-law) (29 CFR §825.201[b]).
- e. intermittent leave is leave that is taken in separate blocks of time, rather than continuously, broken down to units upon the same basis as the breakdown employed for sick leave use (e.g., for medical appointments, chemotherapy, radiation, physical therapy for severe arthritis and dialysis) (see 29 CFR §825.201[b]). If FMLA leave is taken for a period ending

with the school year and beginning the following semester, it will be deemed to be consecutive, rather than intermittent leave. (29 CFR §825.202[a])

- f. reduced leave schedule refers to a diminished number of hours in the workday (e.g., from 8 to 6 hours, due to limited health capacity -- see 29 CFR §825.202[a]).
- g. the increment of time for intermittent leave may be as brief as the minimum interval of time used in the employer's payroll system to account for absences (e.g., one hour or less) (29 CFR §825.205[a]).
- h. where the need for intermittent or reduced schedule leave is foreseeable, at least 30 days prior written notice shall be given by the employee to the employer. (FMLA §102[e][1] and [2]; 29 CFR §825.302-303).
- i. the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations (FMLA §102[e][2][a]); (29 CFR 825.203).
- j. the medical certification should be presented, upon the employer's request, at the time of leave, but must be presented within 15 calendar days of the employer's request, where practicable (29 CFR §825.305[a] and [b]).
- k. an employee requesting intermittent or reduced schedule leave due to a planned medical treatment may be required to transfer temporarily to an available alternative position:
 - 1. for which the employee is qualified;
 - 2. with equivalent pay and benefits;
 - 3. which better accommodates the treatment schedule (see FMLA §102[b][2]; 29 CFR §825.204[a]).
- l. an employee able to return to work full-time must be restored to the same or equivalent position held at the time intermittent or reduced schedule leave commenced.

4. Leave because of a qualifying exigency.

- a. Eligible employees may take FMLA leave while the employee's spouse, son, daughter, or parent is on active duty or called to active duty status for one or more qualifying exigency (29 CFR 825.126[a]).
- b. A qualifying exigency is defined as: short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment

activities and additional activities where the employer and employee agree to the leave.

5. Leave to care for a covered service member with a serious injury or illness.

a. An eligible employee is entitled to 26 workweeks of leave to care for a covered service members with a serious injury or illness during a single 12 month period.

E. EMPLOYEE NOTICE REQUIREMENTS

1. Foreseeable Leave

If the leave is foreseeable, at least 30 days prior verbal or written notice of the timing and expected duration of the leave is required by the employer. The employee does not have to specifically ask for FMLA leave, but must provide a FMLA qualifying reason for the leave. Where unforeseeable, notice must be given as soon as possible and practical (within one or two working days of the need for leave becoming known to the employee) (see 29 CFR §825.302 and §825.303) or else the employer may deny the leave until there is 30 days actual notice (see 29 CFR §825.304[b]).

2. Employee Notice for Unforeseeable Leave

When thirty (30) days notice is not possible, an employee must provide notice to the employer as soon as practicable.

III. PAID AND UNPAID LEAVE

A. The employer shall not be required to provide notice to the employee of its intent to designate leave as FMLA leave time until the employer has had an opportunity to ascertain whether a medical condition constitutes a serious health condition or, in the case of child-care leaves, when reasonable evidence is presented to support such leave. The employer shall be permitted to retroactively designate leave time as FMLA leave time. If an employee alleges prejudice or harm as a result of a retroactive designation, that employee must prove impairment of his or her FMLA rights and the resulting prejudice. The employer must then evaluate that employee's individual situation to determine the appropriate remedy.

B. Either an eligible employee or employer may choose to substitute accrued paid leave for FMLA leave. The paid leave would then run concurrently with the unpaid FMLA leave (29 CFR 825.207 [a]).

C. If the employee is receiving workers' compensation or disability benefits, the employer may run FMLA leave concurrently (29 CFR 825.207[e]).

D. Where an employer provides a greater period of unpaid leave than FMLA, the designation by the employer determines the FMLA leave. An employee may not elect when the FMLA leave begins and ends. (29 CFR § 825.700[a]).

Unpaid leave under FMLA has a neutral effect upon exempt status under FLSA (FMLA § 102[c]).

E. Instructional employees on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

IV. CERTIFICATION OF LEAVES

A. This employer requires timely certification of a medical leave application pursuant to these standards:

1. date when serious health condition commenced;
2. its probable duration;
3. relevant medical facts within the health care provider's knowledge which the employer should need to know;
4. in the case of caring for another by the eligible employee, a statement of the need for the employee to provide care, including a time requirements estimate;

[NOTE: "Care" includes physical and psychological, and may be provided intermittently, where several family members share in the care duties (29 CFR §825.116)]

5. where the medical leave is the employee's own, a statement that s/he is unable to perform the functions of the position;
 6. in the case of intermittent leave for planned medical treatment, the dates on which the treatment is scheduled to be given and its duration (see FMLA §103[a] and [b]).
 7. Appendix "A" to this Guidance Document are the forms to be used which indicate the information needed to meet medical certification requirements for a serious health condition leave (29 CFR §825.306).
 8. Appendix "B" to this Guidance Document is the employer's response to the employee's request for leave, to be furnished to the employee. This form sets forth the consequences for failure to timely furnish medical certifications. Appendix "B" also contains follow-up designation notice.
- B. This employer may require that an employee's leave because of a qualifying exigency or to care for a covered service member with a serious injury or illness be supported by a certification.
- C. The employer, by either a health care provider, human resources professional, leave administrator or management official (but in no circumstances direct supervisor), may contact the employee's health care provider directly for purposes of clarifying or authenticating a medical certificate only (29 CFR §825.307[a]).

V. SECOND OPINIONS AND CONFLICTING OPINIONS REGARDING CERTIFICATION

- A. When the employer has reason to doubt the validity of a medical opinion regarding a medical leave, the employer may require, at its expense, that the employee obtain a second health care provider's opinion by one designated or approved by the employer. Such designee may not be employed by the employer or regularly utilized by the employer (FMLA §103[d][1]; 29 CFR §825.307[a] and [b]).
- B. A third health care provider resolves conflicts between the first and second opinions via a final and binding decision (FMLA §103[d][2]; 29 CFR 825.307).
- C. Subsequent recertifications may be required by an employer no more often than 30 days unless an exception exists (e.g.: a requested extension of leave, circumstances such as the

duration or frequency of absences have changed or the employer receives information which casts doubt on the validity of the absence) (FMLA §103[e]; 29 CFR §825.308).

VI. FITNESS-FOR-DUTY CERTIFICATION

- A. As a condition of job restoration, the employer may require that the employee obtain and present certification from the employee's health care provider that the employee is able to return to work (29 CFR §312[a]).
- B. The FMLA designation notice shall advise the employee that the employer will require a fitness-for-duty certification to return to work and whether the fitness-for-duty certification must address the employee's ability to perform the essential job functions (29 CFR §312[d]).

VII. RESTORATION TO POSITION UPON RETURN TO REGULAR WORK SCHEDULE

- A. Upon return from a covered leave, the employee must be restored by the employer to the position from which leave was granted; or
- B. Restored to a position which is virtually identical to the position previously held in terms of pay, benefits and working conditions, including privileges, perquisites and status (FMLA §104[a][1]; 29 CFR §825.214 and §825.215). If, for example, the employee went on leave from the night shift, s/he must be restored to the night shift (29 CFR §825.216[a]).
- C. Restoration may be avoided if it can be shown that the employee would have been laid-off anyway.
- D. The employer may require an employee to periodically report on intent to return status (29 CFR §825.311[a]).
- E. If an employee gives the employer an unequivocal notice of intent not to return to work, the employer's obligations to maintain health benefits (except pursuant to COBRA requirements) and restore to position cease (29 CFR §825.311[b]).
- F. The employer has adopted a fitness for duty certification policy, which uniformly applies to employees returning from medical leaves of the same nature (29 CFR §825.312[a]).
- G. Fitness for duty review must be limited to the condition(s) for which the FMLA leave was granted (29 CFR §825.312[b]).

H. The terms in a collectively negotiated agreement, if any, shall supersede the return to work (fitness for duty) requirements of FMLA, so long as they do not run afoul of the Americans with Disabilities Act (Id.).

I. This employer may deny restoration from leave until the employee furnishes a required fitness for duty certification, but only if the notice requirements of §825.312[d] have been met. (The §825.301 “notice of rights” to FMLA leave applicants, including fitness for duty requirements upon return to work and a specific individualized notice of certification requirement, must be given at or immediately after leave commencement unless the employer could not foresee the need for such notice when the leave commenced (such as when leave begun as paid vacation, but due to intervening unforeseen accident, became a leave for a serious health condition) -- see 29 CFR §825.312[e]).

J. If an employee on FMLA leave voluntarily accepts a light duty assignment, the employee retains rights to job restoration to the same or equivalent position held prior to the start of the leave for a cumulative period of up to 12 workweeks. The period of time in a light duty assignment cannot count, however against the 12 weeks of FMLA leave (§825.220[d] and §702[d][2]).

K. Fraudulent actions by employees are not protected under FMLA (see 29 CFR §825.216[d]).

VIII. HEALTH BENEFITS DURING LEAVE

A. The employer shall maintain group health plan coverage for employees on FMLA leaves as if they were actively engaged at work for the duration of the leave (FMLA §104[c]; 29 CFR §825.209 and §825.800).

B. The Employer does not maintain group health insurance benefits for employees who are laid off during the course of FMLA leave and employment is terminated, unless pursuant to a collectively negotiated agreement (29 CFR §825.216[a][1]).

C. Instructional employees on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

D. Group health care coverage shall extend beyond health insurance, alone, to any other health related benefits provided such as dental care, vision care, mental health counseling (e.g., EAP) and substance abuse treatment (29 CFR §825.209[b]).

E. Improvements in benefits accrete to an employee on FMLA leave, as if s/he was actively engaged at work (29 CFR §825.209[c]).

F. Window periods for plan or coverage changes must be made on notice to those on FMLA leaves, giving them an opportunity to participate (29 CFR §825.209[d]).

G. While on FMLA leave, an employee may opt-out from coverage, but must be allowed to re-enter the plan(s) unconditionally upon return to work (e.g., without waiting period or physical examination -- 29 CFR §825.209[e]).

H. Employees on an FMLA leave become immediately ineligible for employer health premium funding as soon as the employer is informed of an intent not to return from leave, except as required by COBRA (29 CFR §825.209[f]).

I. Where employee premium contributions exist, those on FMLA leaves shall be required to remit their shares to the employer or the carrier, without any additional charges (29 CFR §825.210[c]).

J. If the employee on FMLA leave is more than 30 days late in paying his/her share of the premium, the employer's obligation to pay its share ceases (29 CFR §825.212[a]).

K. If coverage lapses during a FMLA leave due to the employee's failure to make premium share payments, the coverage must be unconditionally restored upon return to work (29 CFR §825.212[c]).

L. The employer shall recover from the employee who was on FMLA leave the employee's premium share, if the employer made a voluntary payment to avoid a lapse in coverage (29 CFR §825.212[b]).

M. The employer shall recover its premium payments from an employee who fails to return from FMLA leave, unless:

1. the serious health condition persists beyond the time of leave;

2. there are circumstances beyond the employee's control occur (e.g., spouse is transferred to a job location more than 75 miles away; the employee is needed for the health care of an immediate family member; the employee is laid-off while on leave; the employee is a key employee who was given notice not to return at the end of the leave; but not to extend child care leave).

N. Return to work means resumption of duties for at least 30 days (29 CFR §825.213[c]).

IX. ANTI-DISCRIMINATION AND ENFORCEMENT PROVISIONS

A. The employer is prohibited from interfering with or denying an employee the opportunity to exercise rights provided under FMLA (FMLA §105[a]; 29 CFR §220[a]).

B. Protected activities include: filing a charge, instituting a proceeding, furnishing information and testifying (FMLA §105[b]; 29 CFR §825.220[a]).

C. Discouraging an employee from using FMLA leave constitutes a violation (29 CFR §825.220[b]).

D. Individual rights are not delegable to the collective negotiations process (29 CFR §825.220[d]).

E. The U.S. Secretary of Labor is empowered with investigative authority under the FMLA (FMLA §106[a]).

F. Records must be preserved by employers pursuant to standards set forth in the FLSA at §11(c) (29 USC §211[c]) and are subject to annual submission for inspection, unless reasonable cause warrants more frequent inspection (FMLA §106[b] and [c]).

G. Employees may file complaints administratively with the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor (29 CFR §825.400-401).

X. POSTING AND NOTICE REQUIREMENTS

This employer shall post and maintain conspicuously in places where employees are employed a notice explaining the Act and providing the procedures for filing complaints of violations with the Wage and Hour Division (29 CFR §300[a]). [See Appendix “D” hereto]

XI. EMPLOYER RECORDKEEPING REQUIREMENTS

A. In the form required by §11(c) of the FLSA, the following FMLA relevant information must be retained for at least three (3) years:

1. basic payroll data;
2. FMLA leave dates (all employees) and so designated as such in records;
3. days and hours (where applicable) of FMLA taken by employees;
4. copies of employee notices of FMLA leave given to the employer; copies of employer notices (both general and specific) given to employees. Copies may be maintained in employee personnel file;
5. documents which describe employee benefits, policies and practice regarding the taking of paid and unpaid leaves;
6. premium payments of employee benefits;
7. written records of disputes about FMLA leave conferral issues (29 CFR §500[a] and [b]).

B. For employees not subject to FLSA recordkeeping requirements (e.g., exempt), the employer need not keep records of actual hours worked if:

1. eligibility for FMLA leave is presumed;
2. intermittent or reduced leave schedule hours are agreed upon between employer and employee (e.g., the parties agree what the regular or average hours of work are) (29 CFR §825.500[d]).

C. Medical certification and recertification documents shall be maintained in separate files/records from the usual personnel files and treated confidentially, except when supervisors and/or safety personnel have a need to know (29 CFR §825.500[e][1] and [2]).

D. Government officials investigating compliance with FMLA must be provided with relevant information upon request (29 CFR §825.500[e][3]).

XII. SPECIAL RULES FOR SCHOOL TEACHING PERSONNEL

A. Whenever primarily instructional employees will miss more than 20% of the working days during the intended FMLA leave for planned treatment of serious health condition (personal or family member), the employer may require:

1. the employee to take leave for periods of a particular duration, but not in excess of the leave period;
2. to transfer temporarily to an alternative position for which the employee is qualified which:
 - a. has equivalent pay and benefits;
 - b. better accommodates recurring periods of leave than the regular employment position (FMLA §108[c][1]; 29 CFR §825.601).

B. To be eligible for the 20% leave described in paragraph “A”, above, the employee must make a reasonable effort to schedule treatments in a manner which will not unduly disrupt the employer’s operation and, if practicable, give at least 30 days prior notice (FMLA §102[e][2] and §108[c][2]).

C. For leaves near the conclusion of an academic term (semester), the following rules may be applied by the employer in the case of primarily instructional employees:

1. If the leave commences at least five (5) weeks before the end of an academic term and the leave is of at least three (3) weeks duration, leave may be required until the end of the term if the return date would otherwise be within the last three (3) weeks of the term (FMLA §108[d][1]).

2. If a FMLA leave, other than for an employee's own medical condition, begins within the last five (5) weeks before the end of an academic term, the employer may require the leave to extend through the end of the term if it is for more than two (2) weeks duration and the return date would be within the last two (2) weeks of the term (FMLA §108[d][2]; 29 CFR §825.602).
3. If a FMLA leave, other than for an employee's own medical condition, begins less than three (3) weeks before the end of an academic term and would last for more than five (5) working days, the employer may require the leave to extend to the end of the term (FMLA §108[d][3]).

D. Periods of one or more weeks when school is closed and employees are not expected to report to work do not count toward FMLA leave. Examples include school closings during the Christmas/New Year holidays, summer vacation, or closings for maintenance and repairs.

However, when a particular holiday falls during a week taken as FMLA leave, the entire week is counted as FMLA leave.

E. Restoration to an equivalent position upon return from leave regarding all school employees is to be governed by school board policy and practices or collectively negotiated provisions (FMLA §108[e]; 29 CFR §825.600[d]).

F. "Instructional employees" are defined as those whose principal function is to teach and instruct students in class, a small group or individual settings, coaches, special education assistants such as signers for the hearing impaired. It does not include counselors, psychologists, curriculum specialists, non-instructional personnel and teaching assistants or aides, unless their principal job is actually teaching or instructing (29 CFR §825.600[c]).

G. If FMLA leave is extended at the employer's option, the extension is considered to be FMLA leave time as well, including health benefits and restoration rights (29 CFR §825.603[b]).

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV



U.S. Wage and Hour Division

The Applicable 12 Month Period

While the employee is entitled to a total of 12 work weeks of leave during a 12 month period, the employer has chosen in determining the 12 month measure, the following:

- 12 months backward from the employee's first FMLA leave date.

Paid and Unpaid Leave

A. The employer shall not be required to provide notice to the employee of its intent to designate leave as FMLA leave time until the employer has had an opportunity to ascertain whether a medical condition constitutes a serious health condition or, in the case of child-care leaves, when reasonable evidence is presented to support such leave. The employer shall be permitted to retroactively designate leave time as FMLA leave time. If an employee alleges prejudice or harm as a result of a retroactive designation, that employee must prove impairment of his or her FMLA rights and the resulting prejudice. The employer must then evaluate that employee's individual situation to determine the appropriate remedy.

B. Either an eligible employee or employer may choose to substitute accrued paid leave for FMLA leave. The paid leave would then run concurrently with the unpaid FMLA leave (29 CFR §825.207[a]).

C. If the employee is receiving workers' compensation or disability benefits, the employer may run FMLA leave concurrently (29 CFR §825.207[e]).

D. Where an employer provides a greater period of unpaid leave than FMLA, the designation by the employer determines the FMLA leave. An employee may not elect when the FMLA leave begins and ends (29 CFR §825.700[a]).

Unpaid leave under FMLA has a neutral effect upon exempt status under FLSA (FMLA & 102[c]).

E. Instructional employees on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

Special Rules For School Teaching Personnel

A. Whenever primarily instructional employees will miss more than 20% of the working days during the intended FMLA leave for planned treatment of serious health condition (personal or family member), the employer may require:

1. the employee to take leave for periods of a particular duration, but not in excess of the leave period;
2. to transfer temporarily to an alternative position for which the employee is qualified which:
 - a. has equivalent pay and benefits;
 - b. better accommodates recurring periods of leave than the regular employment position (FMLA §108[c][1]; 29 CFR §825.601).

B. To be eligible for the 20% leave described in paragraph "A", above, the employee must make a reasonable effort to schedule treatments in a manner which will not unduly

disrupt the employer's operation and, if practicable, give at least 30 days prior notice (FMLA §102[e][2] and §108[c][2]).

C. For leaves near the conclusion of an academic term (semester), the following rules may be applied by the employer in the case of primarily instructional employees.

1. If the leave commences at least five (5) weeks before the end of an academic term and the leave is of at least three (3) weeks duration, leave may be required until the end of the term if the return date would otherwise be within the last three (3) weeks of the term (FMLA §108[d][1]).
2. If a FMLA leave, other than for an employee's own medical condition, begins within the last five (5) weeks before the end of an academic term, the employer may require the leave to extend through the end of the term if it is for more than two (2) weeks duration and the return date would be within the last two (2) weeks of the term (FMLA §108[d][2]; 29 CFR §825.602).
3. If a FMLA leave, other than for an employee's own medical condition, begins less than three (3) weeks before the end of an academic term and would last for more than five (5) working days, the employer may require the leave to extend to the end of the term (FMLA §108[d][3]).

D. Periods of one or more weeks when school is closed and employees are not expected to report to work do not count toward FMLA leave. Examples include school closings during the Christmas/New Year holidays, summer vacation, or closings for maintenance and repairs.

However, when a particular holiday falls during a week taken as FMLA leave, the entire week is counted as FMLA leave.

E. Restoration to an equivalent position upon return from leave regarding all school employees is to be governed by school board policy and practices or collectively negotiated provisions (FMLA §108[e]; 29 CFR §825.600[d]).

F. "Instructional employees" are defined as those whose principal function is to teach and instruct students in class, a small group or individual settings, coaches, special education assistants such as signers for the hearing impaired. It does not include counselors, psychologists, curriculum specialists, non-instructional personnel and teaching assistants or aides, unless their principal job is actually teaching or instructing (29 CFR §825.600[c]).

G. If FMLA leave is extended at the employer's option, the extension is considered to be FMLA leave time as well, including health benefits and restoration rights (29 CFR §825.603[b]).

A complete copy of the District's FMLA Guidance document can be obtained on the District's website and in the Human Resources Office.

APPENDIX "A"

Certification of Health Care Provider for
Employee's Serious Health Condition
(Family and Medical Leave Act)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



OMB Control Number: 1215-0181
Expires: 12/31/2011

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies.

Employer name and contact: _____

Employee's job title: _____ Regular work schedule: _____

Employee's essential job functions: _____

Check if job description is attached: _____

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 20 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b).

Your name: _____
First Middle Last

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice / Medical specialty: _____

Telephone: () Fax: ()

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

Probable duration of condition: _____

Mark below as applicable:

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

___ No ___ Yes. If so, dates of admission:

Date(s) you treated the patient for condition:

Will the patient need to have treatment visits at least twice per year due to the condition? ___ No ___ Yes.

Was medication, other than over-the-counter medication, prescribed? ___ No ___ Yes.

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?
___ No ___ Yes. If so, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy? ___ No ___ Yes. If so, expected delivery date: _____

3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition: ___ No ___ Yes.

If so, identify the job functions the employee is unable to perform:

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

PART B: AMOUNT OF LEAVE NEEDED

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? ___ No ___ Yes.

If so, estimate the beginning and ending dates for the period of incapacity: _____

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? ___ No ___ Yes.

If so, are the treatments or the reduced number of hours of work medically necessary?
___ No ___ Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Estimate the part-time or reduced work schedule the employee needs, if any:

_____ hour(s) per day; _____ days per week from _____ through _____

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? ___ No ___ Yes.

Is it medically necessary for the employee to be absent from work during the flare-ups?
___ No ___ Yes. If so, explain:

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours or _____ day(s) per episode

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

Signature of Health Care Provider

Date

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.**

Certification of Health Care Provider for
Family Member's Serious Health Condition
(Family and Medical Leave Act)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



OMB Control Number: 1215-0181
Expires: 12/31/2011

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies.

Employer name and contact: _____

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form to your employer. 29 C.F.R. § 825.305.

Your name: _____
First Middle Last

Name of family member for whom you will provide care: _____
First Middle Last

Relationship of family member to you: _____

If family member is your son or daughter, date of birth: _____

Describe care you will provide to your family member and estimate leave needed to provide care:

Employee Signature

Date

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice / Medical specialty: _____

Telephone: (_____) _____ Fax: (_____) _____

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

Probable duration of condition: _____

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

___ No ___ Yes. If so, dates of admission: _____

Date(s) you treated the patient for condition: _____

Was medication, other than over-the-counter medication, prescribed? ___ No ___ Yes.

Will the patient need to have treatment visits at least twice per year due to the condition? ___ No ___ Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

___ No ___ Yes. If so, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy? ___ No ___ Yes. If so, expected delivery date: _____

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

PART B: AMOUNT OF CARE NEEDED: When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? ☐ No ☐ Yes.

Estimate the beginning and ending dates for the period of incapacity: _____

During this time, will the patient need care? ☐ No ☐ Yes.

Explain the care needed by the patient and why such care is medically necessary:

5. Will the patient require follow-up treatments, including any time for recovery? ☐ No ☐ Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Explain the care needed by the patient, and why such care is medically necessary: _____

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery? ☐ No ☐ Yes.

Estimate the hours the patient needs care on an intermittent basis, if any:

_____ hour(s) per day; _____ days per week from _____ through _____

Explain the care needed by the patient, and why such care is medically necessary:

7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? ____ No ____ Yes.

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: ____ times per ____ week(s) ____ month(s)

Duration: ____ hours or ____ day(s) per episode

Does the patient need care during these flare-ups? ____ No ____ Yes.

Explain the care needed by the patient, and why such care is medically necessary: _____

ADDITIONAL INFORMATION. IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

Signature of Health Care Provider

Date

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210.

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

Certification of Qualifying Exigency
For Military Family Leave
(Family and Medical Leave Act)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



OMB Control Number: 1215-0181
Expires: 12/31/2011

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA leave due to a qualifying exigency to submit a certification. Please complete Section I before giving this form to your employee. Your response is voluntary, and while you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. § 825.309.

Employer name: _____

Contact Information: _____

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II fully and completely. The FMLA permits an employer to require that you submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a qualifying exigency. Several questions in this section seek a response as to the frequency or duration of the qualifying exigency. Be as specific as you can; terms such as “unknown,” or “indeterminate” may not be sufficient to determine FMLA coverage. Your response is required to obtain a benefit. 29 C.F.R. § 825.310. While you are not required to provide this information, failure to do so may result in a denial of your request for FMLA leave. Your employer must give you at least 15 calendar days to return this form to your employer.

Your Name: _____
First Middle Last

Name of covered military member on active duty or call to active duty status in support of a contingency operation:

First Middle Last

Relationship of covered military member to you: _____

Period of covered military member's active duty: _____

A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes written documentation confirming a covered military member's active duty or call to active duty status in support of a contingency operation. Please check one of the following:

- ☐ A copy of the covered military member's active duty orders is attached.
- ☐ Other documentation from the military certifying that the covered military member is on active duty (or has been notified of an impending call to active duty) in support of a contingency operation is attached.
- ☐ I have previously provided my employer with sufficient written documentation confirming the covered military member's active duty or call to active duty status in support of a contingency operation.

PART A: QUALIFYING REASON FOR LEAVE

1. Describe the reason you are requesting FMLA leave due to a qualifying exigency (including the specific reason you are requesting leave):
- _____
- _____
- _____
- _____
- _____
- _____
2. A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes any available written documentation which supports the need for leave; such documentation may 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 services for the handling of legal or financial affairs. Available written documentation supporting this request for leave is attached. ☐ Yes ☐ No ☐ None Available

PART B: AMOUNT OF LEAVE NEEDED

1. Approximate date exigency commenced: _____
Probable duration of exigency: _____
2. Will you need to be absent from work for a single continuous period of time due to the qualifying exigency? ☐ No ☐ Yes.
If so, estimate the beginning and ending dates for the period of absence:

3. Will you need to be absent from work periodically to address this qualifying exigency? ☐ No ☐ Yes.
Estimate schedule of leave, including the dates of any scheduled meetings or appointments: _____

- Estimate the frequency and duration of each appointment, meeting, or leave event, including any travel time (i.e., 1 deployment-related meeting every month lasting 4 hours):
- Frequency: _____ times per _____ week(s) _____ month(s)
- Duration: _____ hours _____ day(s) per event.

PART C:

If leave is requested to meet with a third party (such as to arrange for childcare, to attend counseling, to attend meetings with school or childcare providers, to make financial or legal arrangements, 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, or to attend any event sponsored by the military or military service organizations), a complete and sufficient certification includes the name, address, and appropriate contact information of the individual or entity with whom you are meeting (*i.e.*, either the telephone or fax number or email address of the individual or entity). This information may be used by your employer to verify that the information contained on this form is accurate.

Name of Individual: _____ Title: _____

Organization: _____

Address: _____

Telephone: (_____) _____ Fax: (_____) _____

Email: _____

Describe nature of meeting: _____

PART D:

I certify that the information I provided above is true and correct.

Signature of Employee

Date

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution AV, NW, Washington, DC 20210. **DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION; RETURN IT TO THE EMPLOYER.**

Certification for Serious Injury or
Illness of Covered Servicemember - -
for Military Family Leave (Family and
Medical Leave Act)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



OMB Control Number: 1215-0181

Expires: 12/31/2011

Notice to the EMPLOYER INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA leave due to a serious injury or illness of a covered servicemember to submit a certification providing sufficient facts to support the request for leave. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. § 825.310. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies.

SECTION I: For Completion by the EMPLOYEE and/or the COVERED SERVICEMEMBER for whom the Employee Is Requesting Leave INSTRUCTIONS to the EMPLOYEE or COVERED SERVICEMEMBER: Please complete Section I before having Section II completed. The FMLA permits an employer to require that an employee submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a serious injury or illness of a covered servicemember. If requested by the employer, your response is required to obtain or retain the benefit of FMLA-protected leave. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to do so may result in a denial of an employee's FMLA request. 29 C.F.R. § 825.310(f). The employer must give an employee at least 15 calendar days to return this form to the employer.

SECTION II: For Completion by a UNITED STATES DEPARTMENT OF DEFENSE ("DOD") HEALTH CARE PROVIDER or a HEALTH CARE PROVIDER who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; or (3) a DOD non-network TRICARE authorized private health care provider INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed on Page 2 has requested leave under the FMLA to care for a family member who is a member of the Regular Armed Forces, the National Guard, or the 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. For purposes of FMLA leave, a serious injury or illness is one that was incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

A complete and sufficient certification to support a request for FMLA leave due to a covered servicemember's serious injury or illness includes written documentation confirming that the covered servicemember's injury or illness was incurred in the line of duty on active duty and that the covered servicemember is undergoing treatment for such injury or illness by a health care provider listed above. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave.

Certification for Serious Injury or Illness
of Covered Servicemember - - for
Military Family Leave (Family and
Medical Leave Act)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



SECTION I: For Completion by the EMPLOYEE and/or the COVERED SERVICEMEMBER for whom the Employee Is Requesting Leave: (This section must be completed first before any of the below sections can be completed by a health care provider.)

Part A: EMPLOYEE INFORMATION

Name and Address of Employer (this is the employer of the employee requesting leave to care for covered servicemember):

Name of Employee Requesting Leave to Care for Covered Servicemember:

First

Middle

Last

Name of Covered Servicemember (for whom employee is requesting leave to care):

First

Middle

Last

Relationship of Employee to Covered Servicemember Requesting Leave to Care:

☐ Spouse ☐ Parent ☐ Son ☐ Daughter ☐ Next of Kin

Part B: COVERED SERVICEMEMBER INFORMATION

- (1) Is the Covered Servicemember a Current Member of the Regular Armed Forces, the National Guard or Reserves? ☐ Yes ☐ No

If yes, please provide the covered servicemember's military branch, rank and unit currently assigned to:

Is the covered servicemember assigned to a military medical treatment facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit)? ☐ Yes ☐ No If yes, please provide the name of the medical treatment facility or unit:

- (2) Is the Covered Servicemember on the Temporary Disability Retired List (TDRL)? ☐ Yes ☐ No

Part C: CARE TO BE PROVIDED TO THE COVERED SERVICEMEMBER

Describe the Care to Be Provided to the Covered Servicemember and an Estimate of the Leave Needed to Provide the Care:

SECTION II: For Completion by a United States Department of Defense ("DOD") Health Care Provider or a Health Care Provider who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; or (3) a DOD non-network TRICARE authorized private health care provider. If you are unable to make certain of the military-related determinations contained below in Part B, you are permitted to rely upon determinations from an authorized DOD representative (such as a DOD recovery care coordinator). (Please ensure that Section I above has been completed before completing this section.) Please be sure to sign the form on the last page.

Part A: HEALTH CARE PROVIDER INFORMATION

Health Care Provider's Name and Business Address:

Type of Practice/Medical Specialty: _____

Please state whether you are either: (1) a DOD health care provider; (2) a 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: _____

Telephone: () _____ Fax: () _____ Email: _____

PART B: MEDICAL STATUS

(1) Covered Servicemember's medical condition is classified as (Check One of the Appropriate Boxes):

☐ **(VSI) Very Seriously Ill/Injured** – Illness/Injury is of such a severity that life is imminently endangered. Family members are requested at bedside immediately. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

☐ **(SI) Seriously Ill/Injured** – Illness/injury is of such severity that there is cause for immediate concern, but there is no imminent danger to life. Family members are requested at bedside. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

☐ **OTHER Ill/Injured** – a serious injury or illness that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.

☐ **NONE OF THE ABOVE** (Note to Employee: If this box is checked, you may still be eligible to take leave to care for a covered family member with a "serious health condition" under § 825.113 of the FMLA. If such leave is requested, you may be required to complete DOL FORM WH-380 or an employer-provided form seeking the same information.)

(2) Was the condition for which the Covered Service member is being treated incurred in line of duty on active duty in the armed forces? ☐ Yes ☐ No

(3) Approximate date condition commenced: _____

(4) Probable duration of condition and/or need for care: _____

(5) Is the covered servicemember undergoing medical treatment, recuperation, or therapy? ☐ Yes ☐ No. If yes, please describe medical treatment, recuperation or therapy: _____

PART C. COVERED SERVICEMEMBER'S NEED FOR CARE BY FAMILY MEMBER

- (1) Will the covered servicemember need care for a single continuous period of time, including any time for treatment and recovery? ☐ Yes ☐ No

If yes, estimate the beginning and ending dates for this period of time: _____

- (2) Will the covered servicemember require periodic follow-up treatment appointments?

☐ Yes ☐ No If yes, estimate the treatment schedule: _____

- (3) Is there a medical necessity for the covered servicemember to have periodic care for these follow-up treatment appointments? ☐ Yes ☐ No

- (4) Is there a medical necessity for the covered servicemember to have periodic care for other than scheduled follow-up treatment appointments (e.g., episodic flare-ups of medical condition)? ☐ Yes ☐ No If yes, please estimate the frequency and duration of the periodic care:

Signature of Health Care Provider: _____ **Date:** _____

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years, in accordance with 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution AV, NW, Washington, DC 20210. **DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION; RETURN IT TO THE PATIENT.**

APPENDIX "B"

Notice of Eligibility and Rights & Responsibilities
(Family and Medical Leave Act)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



OMB Control Number: 1215-0181
Expires: 12/31/2011

In general, to be eligible an employee must have worked for an employer for at least 12 months, have worked at least 1,250 hours in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form by employers is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. § 825.300(b), which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by 29 C.F.R. § 825.300(b), (c).

[Part A – NOTICE OF ELIGIBILITY]

TO: _____
Employee

FROM: _____
Employer Representative

DATE: _____

On _____, you informed us that you needed leave beginning on _____ for:

- _____ The birth of a child, or placement of a child with you for adoption or foster care;
- _____ Your own serious health condition;
- _____ Because you are needed to care for your _____ spouse; _____ child; _____ parent due to his/her serious health condition.
- _____ Because of a qualifying exigency arising out of the fact that your _____ spouse; _____ son or daughter; _____ parent is on active duty or call to active duty status in support of a contingency operation as a member of the National Guard or Reserves.
- _____ Because you are the _____ spouse; _____ son or daughter; _____ parent; _____ next of kin of a covered servicemember with a serious injury or illness.

This Notice is to inform you that you:

- _____ Are eligible for FMLA leave (See Part B below for Rights and Responsibilities)
- _____ Are **not** eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):
- _____ You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately _____ months towards this requirement.
- _____ You have not met the FMLA's 1,250-hours-worked requirement.
- _____ You do not work and/or report to a site with 50 or more employees within 75-miles.

If you have any questions, contact _____ or view the
FMLA poster located in _____.

[PART B-RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE]

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. **However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by _____.** (If a certification is requested, employers must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

- _____ Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request _____ is/ _____ is not enclosed.
- _____ Sufficient documentation to establish the required relationship between you and your family member.
- _____ Other information needed: _____

_____ No additional information requested

If your leave does qualify as FMLA leave you will have the following responsibilities while on FMLA leave (only checked blanks apply):

Contact _____ at _____ to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.

You will be required to use your available paid _____ sick, _____ vacation, and/or _____ other leave during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA leave and counted against your FMLA leave entitlement.

Due to your status within the company, you are considered a "key employee" as defined in the FMLA. As a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We _____ have/_____ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us.

While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every _____. (Indicate interval of periodic reports, as appropriate for the particular leave situation).

If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on the reverse side of this form, you will be required to notify us at least two workdays prior to the date you intend to report for work.

If your leave does qualify as FMLA leave you will have the following rights while on FMLA leave:

- You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:
 - _____ the calendar year (January -- December).
 - _____ a fixed leave year based on _____.
 - _____ the 12-month period measured forward from the date of your first FMLA leave usage.
 - _____ a "rolling" 12-month period measured backward from the date of any FMLA leave usage.
- You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on _____.
- Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.
- You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. (If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.)
- If you do not return to work following FMLA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.
- If we have not informed you above that you must use accrued paid leave while taking your unpaid FMLA leave entitlement, you have the right to have _____ sick, _____ vacation, and/or _____ other leave run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA leave.

_____ For a copy of conditions applicable to sick/vacation/other leave usage please refer to _____ available at: _____.

_____ Applicable conditions for use of paid leave: _____

Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA leave and count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact:

_____ at _____.

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

It is mandatory for employers to provide employees with notice of their eligibility for FMLA protection and their rights and responsibilities. 29 U.S.C. § 2617; 29 C.F.R. § 825.300(b), (c). It is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION.**