

RESPONSIBILITIES

Employee is responsible for:

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

Employer is responsible for:

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

ELIGIBILITY REQUIREMENTS [29 CFR §825.110](#)

Employees who have

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

1250 hours of work means actual work hours and does not include holidays, time spent in paid or unpaid leave, vacation leave, sick leave, or personal leave, compensatory time off, time spent receiving benefits under the State's Short/Long Term Disability Plan or time during the elimination period prior to receiving benefits under the Disability Plan. In determining whether a veteran meets this requirement, the hours that were actually worked for the state should be combined with the hours that would have been worked during the twelve months prior to the start of family-medical leave but for the military service. [29 CFR §825.110\(c\)\(1\) & \(2\)](#)

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

Allotment of family-medical leave means

- 12 workweeks in a 12-month period for the following qualifying events: (1) birth of the employee's child and to care for the newborn; (2) placement with the employee of a child by adoption or foster care and to care for the newly-placed child; (3) to care for the employee's spouse, child, or parent with a serious health condition; (4) because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his/her job; and (5) because of any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on active duty or call to active duty status in support of a contingency operation. [29 CFR §825.200](#) OR
- 26 workweeks in a single 12-month period [29 CFR §825.127\(e\)](#) to care for a covered service member with a serious injury or illness incurred in the line of duty on active duty.
- Under no circumstances can the amount of leave taken during a 12-month period exceed 26 workweeks, and that is possible only if one of the reasons for leave is to care for a covered service member. Any combination of reasons for leave #1-5 above is limited to a maximum total of 12 workweeks in the State's chosen 12-month period of the fiscal year (July 1 – June 30).
- Additional limitations can be found in this policy under Parenting Leave for Newborn, Adopted, or Foster Child(ren), and Leave to Care for Covered Service Member. [29 CFR §825.200](#)

Applicable time period means

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

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

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

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

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PROTECTION OF INSURANCE BENEFITS AND EMPLOYMENT

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

The employer must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. Employees in an unpaid status for a full pay period while under an approved FML leave are responsible for only the employee share of premiums.

The employee's portion of that premium payment will be deducted from the employee's paycheck(s) upon return to pay status. The amount deducted from each paycheck will depend upon the number and amount of premiums required to cover the full unpaid absence.

If the employee does not return to pay status or if any of the missed premiums are not recovered prior to the end of the calendar year through payroll deductions, the employee will be billed at home by the insurance carrier(s) for the employee portion of the missed premiums. Employees will have a minimum thirty (30) day grace period in which to make premium payments for health insurance. The employee's health insurance can only be cancelled if the employee is given at least fifteen (15) days written notice that payment has not been received. Failure to submit payment will result in termination of coverage retroactive to the date for which the last full premium was paid. The employee will be responsible for any claims incurred in the affected benefit timeframe if coverage is terminated for non-payment.

If coverage lapsed for a period during an unpaid leave of absence due to an employee's failure to pay the employee portion of the premiums, coverage will be reinstated four days after the employee's first paycheck upon returning to pay status. Coverage for a returning service member is immediate.

If the employer provides a new health plan or benefits or changes health benefits or plans while an employee is on FML, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. This includes participation in open enrollment and the opportunity to change coverage due to qualifying events. Therefore, the employer must provide notice and necessary forms to the employee for these purposes.

JOB RESTORATION [29 CFR §825.214 & 29 CFR §825.215](#)

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

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

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

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

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

<p style="text-align: center;">LEAVE FOR SERIOUS HEALTH CONDITION OF EMPLOYEE 29 CFR §825.112(a)(4) and 29 CFR §825.123 and 29 CFR §825.306</p>
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DEFINITIONS

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

Employee means a person who has been employed in agency(s) subject to the executive authority of the Governor for an aggregate twelve (12) months of service *and* who has performed at least 1250 hours of work in such agency(s) during the twelve (12)-month period immediately preceding the need for family-medical leave *and* who has not exhausted the applicable allotment of family-medical leave during the applicable time period. 29 CFR §825.110

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

- doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;

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

[29 CFR §825.125](#)

Incapacity means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom. [29 CFR §825.113\(b\)](#)

Intermittent leave means family-medical leave taken in separate blocks of time due to a single qualifying reason. [29 CFR §825.202](#)

Reduced schedule means a leave schedule that reduces an employee's usual number of working hours per workweek or hours per workday for a period of time. [29 CFR §825.202](#)

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

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

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

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

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

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

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

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

A chronic condition which:

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTICE AND CERTIFICATION – EMPLOYEE RESPONSIBILITIES

1. Employee must submit a request through the PeopleSoft® Self-Service system. If the absence is foreseeable, such notice is required 30 calendar days in advance or on the same or next business day the employee learns of the need for leave if that is less than 30 calendar days in advance. If the absence is unforeseeable (an emergency), then notice must be provided on the first day of absence in accordance with the employing agency's call-in and attendance policies and followed-up promptly with a request through the PeopleSoft® Self-Service system. Employee must comply with agency leave request / call-in procedures and time limits for each day of absence unless the employee is incapable of providing notice in that manner and/or within those time frames. [29 CFR §825.303](#)
2. It is the employee's responsibility to provide a complete and sufficient certification in accordance with [29 CFR §825.306](#) and to do so within a timely manner. Such certification may be submitted at the same time as the employee's request/notice of need for leave but must be submitted within 15 calendar days of that request or the first day of an unforeseeable absence unless it cannot be done under the particular circumstances even with the employee's diligent, good faith efforts. Failure to submit a completed certification prior to a foreseeable absence or within the 15-day time frame (or any extension requested during that time frame and granted by management due to extenuating circumstances) will result in denial of FML and can result in unauthorized leave subject to disciplinary action. [29 CFR § 825.302, -.303, and -.304](#)
3. Employee shall have the opportunity to clarify documentation and may authorize a designated management official to contact a health care provider directly to authenticate or clarify a document submitted to support a request for FML. A certification is considered incomplete if one or more of the applicable entries have not been completed. A certification is considered insufficient if the information provided is vague, ambiguous, or non-responsive. The employee's opportunity to cure such deficiencies is seven (7) calendar days. Failure to cure the deficiency within that time frame (or any extension requested during that time frame and granted by management due to extenuating circumstances) will result in denial of FML and can result in unauthorized leave subject to disciplinary action. [29 CFR §825.305\(c\)](#) Additional information cannot be requested during authentication or clarification. [29 CFR §825.307\(a\)](#)
 - a. *Authentication* means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document.
 - b. *Clarification* means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response.
4. Planned Medical Treatments
 - a. When planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the leave so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider. The employee shall also consult with the employer to determine a periodic check-in schedule, report a change in circumstances, make return to work arrangements, etc. [29 CFR §825.302\(e\)](#)

- b. Treatment of substance abuse by a health care provider or by a provider of health care services on referral by a health care provider will be covered by family-medical leave. However, absence because of the employee's abuse of the substance, rather than for treatment, does not qualify for family-medical leave. Treatment for substance abuse does not preclude disciplinary action in instances where the employee has violated the employer's policy against substance abuse, even during a time period of treatment covered by family-medical leave. [29 CFR §825.119](#)
- c. Failure to provide timely documentation may delay the start of family-medical leave and can result in unauthorized leave subject to disciplinary action. [29 CFR §825.304\(d\)](#)

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

1. Employer must inquire further to determine whether an absence may be covered by FML in circumstances where information provided by the employee, or the employee's spokesperson if the employee is unable to provide the information personally, indicates that FML may be appropriate but additional information is required for a definitive determination. [29 CFR §825.301\(a\)](#)
2. Employer must notify the employee within five (5) business days whether s/he is an eligible employee for purposes of FML and must designate an absence as FML in all circumstances where the definitions above are met through information provided by the employee him/herself or by an adult family member or other responsible party if the employee is unable to provide the information personally. A designation may be oral, but if so, must then be followed-up in writing provided no later than the following payday, unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday. [29 CFR §825.300\(b\)](#)
3. Employer must provide the required forms and identify the fifteen (15) calendar day time limit for submission of completed forms and the consequences for failure to submit the documentation within the fifteen (15) calendar day time limit. FML may be provisionally designated pending receipt of required documentation. [29 CFR §825.300\(c\)](#)
4. Employer must make a reasonable effort to work with the employee who is planning medical treatment to schedule the leave so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider. The employer shall also work with the employee to determine a periodic check-in schedule, report a change in circumstances, make return to work arrangements, etc. [29 CFR §825.202, and .203](#)
5. Employer must give an employee seven (7) calendar days to clarify the information provided by a health care provider or cure any deficiency in the documentation. This time frame may be extended due to extenuating circumstances if requested during this time period and granted by management. [29 CFR §825.305\(c\)](#)
6. Employer may require a second medical opinion by a health care provider who does not regularly contract with the employer of an original certification. The employer must reimburse an employee or the employee's spouse, parent, or child for any reasonable "out of pocket" travel expenses incurred to obtain the second opinion. If the employee's and the employer's designated health care providers differ, the employer shall require the employee to obtain certification from a third health care provider, again at the employer's expense. This third opinion shall be final and binding. The third health care provider must be

designated or approved by both employee and employer acting in good faith to attempt to reach an agreement. The employer shall provide the employee with a copy of the second and third medical opinions upon request. [29 CFR §825.307](#)

RECERTIFICATION [29 CFR §825.308](#)

1. Employer shall require employees to provide a new certification annually for each fiscal year for any medical condition for which the need for leave may be expected to continue beyond that fiscal year. The annual certification is subject to calculation of eligibility and second and third opinions may be obtained. [29 CFR §825.305\(e\)](#)
2. Employer may require employees to provide recertification of the medical necessity for intermittent leave in any event every six (6) months. [29 CFR §825.308\(b\)](#)
3. Except as provided above, employer may request recertification no more than once every thirty (30) days in conjunction with an employee's absence unless: [29 CFR §825.308\(c\)](#)
 - a. the employee requests an extension of the leave;
 - b. circumstances described by the previous certification have changed significantly (e.g. the duration of the illness, the nature of the illness, complications); or
 - c. the agency receives information that casts doubt upon the continuing validity of the certification.
4. Employee must provide completed recertification form(s) within the specified time frame and pay any expenses related to any recertification. No second or third opinion on recertification may be required other than the annual certification described above. [29 CFR §825.308\(f\)](#)
5. Employer must provide the required forms and identify the fifteen (15) calendar day time limit for submission of completed forms and the consequences for failure to submit the documentation within the fifteen (15) calendar day time limit. [29 CFR §825.308\(d\)](#)

LEAVE FOR SERIOUS HEALTH CONDITION OF SPOUSE, CHILD, OR PARENT
[29 CFR §825.122 and 29 CFR §825.124 and 29 CFR §825.306](#)

DEFINITIONS

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

- (1) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" or "instrumental activities of daily living." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, or using a post office.
- (2) "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR Sec. 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., define these terms.

[29 CFR §825.122\(c\)](#)

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

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

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

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

[29 CFR §825.125](#)

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

Incapacity [29 CFR §825.113\(b\)](#) means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

Intermittent leave [29 CFR §825.202](#) means family-medical leave taken in separate blocks of time due to a single qualifying reason.

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

Reduced schedule [29 CFR §825.202](#) means a leave schedule that reduces an employee's usual number of working hours per workweek or hours per workday for a period of time.

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

(1) Hospital Care 29 CFR §825.114

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

(2) Incapacity Plus Continuing Treatment 29 CFR §825.115(a)

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

(3) Pregnancy 29 CFR §825.115(b)

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

(4) Chronic Conditions Requiring Treatments 29 CFR §825.115(c)

A chronic condition which:

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

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

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

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

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(6) Multiple Treatments (Non-Chronic Conditions) 29 CFR §825.115(e)

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

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

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

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

Spouse means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either: (1) Was entered into in a State that recognizes such marriages; or (2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State. [29 CFR §825.122\(a\)](#).
(rev 2015-Mar)

NOTICE AND CERTIFICATION

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

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

[29 CFR §825.120](#) and [29 CFR §825.121](#)

DEFINITIONS

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

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

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

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

Intermittent leave means family-medical leave taken in separate blocks of time due to a single qualifying reason. [29 CFR §825.202](#)

Reduced schedule means a leave schedule that reduces an employee's usual number of working hours per workweek or hours per workday for a period of time. [29 CFR §825.202](#)

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

1. Employee must submit a request for Parenting Leave through the PeopleSoft® Self-Service system. If the absence is foreseeable, such notice is required 30 calendar days in advance or on the same or next business day the employee learns of the need for leave if that is less than 30 calendar days in advance. While exact dates of birth, adoption, or placement for foster care may not be foreseeable, generally the expectation of a birth, adoption, or foster care placement is known in advance; therefore, employees who anticipate such events must provide advance notice of the impending addition to the family or the fact the employee is certified by the State to provide foster care on an as-needed basis.
2. In particular situations where foster care is the result of an emergency not related to the general authorization to be a foster parent (as when placement is made unexpectedly with a relative due to a determination that the child must be removed from parental custody immediately), advance notice may not be possible. In such cases, then notice must be provided on the first day of absence in accordance with the employing agency's call-in and attendance policies and followed-up promptly with a request through the PeopleSoft® Self Service system. Employee must comply with agency leave request / call-in procedures and time limits for each day of absence unless the employee is incapable of providing notice in that manner and/or within those time frames. [29 CFR §825.303](#)
3. It is the employee's responsibility to provide sufficient documentation of the facts/dates of the birth, adoption, or foster care event(s) for which leave is needed and to do so within a timely manner. Such documentation may be submitted at the same time as the employee's request/notice of need for leave but must be submitted within 15 calendar days of that request or the first day of an unforeseeable absence unless it cannot be done under the particular circumstances even with the employee's diligent, good faith efforts. Failure to submit supporting documentation prior to a foreseeable absence or within the 15-day time frame (or any extension requested during that time frame and granted by management due to extenuating circumstances) will result in denial of FML and can result in unauthorized leave subject to disciplinary action. [29 CFR § 825.302, -.303, and -.304](#)
4. Employee shall have the opportunity to clarify documentation and may authorize a designated management official to contact a health care provider directly to authenticate or clarify a document submitted to support a request for FML. A certification is considered incomplete if one or more of the applicable entries have not been completed. A certification is considered insufficient if the information provided is vague, ambiguous, or non-

responsive. The employee's opportunity to cure such deficiencies is seven (7) calendar days. Failure to cure the deficiency within that time frame (or any extension requested during that time frame and granted by management due to extenuating circumstances) will result in denial of FML and can result in unauthorized leave subject to disciplinary action. [29 CFR §825.305\(c\)](#) Additional information cannot be requested during authentication or clarification. [29 CFR §825.307\(a\)](#)

- a. *Authentication* means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document.
- b. *Clarification* means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response.

NOTICE AND CERTIFICATION – EMPLOYER RESPONSIBILITIES

Employer responsibilities for Notice and Certification for Parenting Leave are the same as stated above under Leave for Serious Health Condition of Employee.

LIMITATIONS ON PARENTING LEAVE FOR A NEWBORN, ADOPTED, OR FOSTER CHILD [29 CFR §825.120\(a\)\(3\)](#) & [29 CFR §825.121\(a\)\(3\)](#)

1. Spouses who are eligible for FML and are both employed in agencies covered by this policy are limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken to care for employees' newborn, adopted, or foster child.
2. Parenting leave for a newborn, adopted, or foster child cannot be taken intermittently or on a reduced schedule without the approval of the employer. [29 CFR §825.202\(c\)](#)

LEAVE for QUALIFYING EXIGENCY due to MILITARY DEPLOYMENT [29 CFR §825.122](#) and [29 CFR §825.126](#) and [29 CFR §825.309](#)

DEFINITIONS

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

1. "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" or "instrumental activities of daily living." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, or using a post office.
2. "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR Sec. 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., define these terms.

[29 CFR §825.122\(c\)](#)

Child (of the covered service member for purposes of whether an employee qualifies to take family-medical leave for a qualifying exigency) means the employee requesting leave is the biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member stood in loco parentis, and may be of any age. [29 CFR §825.122\(i\)](#)

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

Covered active duty or call to covered active duty status means

- A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
- B) in the case of a member of a reserve component of the Armed Forces or National Guard unit, duty during the deployment of the member with the Armed Forces to a foreign country under call or order to active duty under a provision of law referred to in Title 10, United States Code.

[29 CFR §825.126\(a\)](#)

Covered military member means the employee's spouse, child, or parent on covered active duty under a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States. [29 CFR §825.122\(a\)](#)

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

Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the U.S. including international waters.

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

Parent of a covered military member means a covered service member's biological, adoptive, step, or foster parent, or any other individual who stood *in loco parentis* to the covered service member. In-laws do not qualify. [29 CFR §825.122\(j\)](#)

Qualifying exigency means that the employee who is a spouse, child, or parent of a covered military member requires leave for one or more of the following events: (a) short-notice deployment; (b) military events and related activities; (c) child care and school activities; (d) financial and legal arrangements; (e) counseling; (f) rest and recuperation; (g) post-deployment activities; (h) parental care, and (i) additional military activities provided the employer and employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave. [29 CFR §825.126\(b\)](#)

Spouse means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either: (1) Was entered into in a State that recognizes such marriages; or (2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State. [29 CFR §825.122\(a\)](#).
(rev 2015-Mar)

NOTICE AND CERTIFICATION – EMPLOYEE RESPONSIBILITIES

1. Employee must submit a request through the PeopleSoft® Self-Service system. If the absence is foreseeable, such notice is required 30 calendar days in advance or on the same or next business day the employee learns of the need for leave if that is less than 30 calendar days in advance. If the absence is unforeseeable (an emergency), then notice must be provided on the first day of absence in accordance with the employing agency's call-in and attendance policies and followed-up promptly with a request through the PeopleSoft® Self-Service system. Employee must comply with agency leave request / call-in procedures and time limits for each day of absence unless the employee is incapable of providing notice in that manner and/or within those time frames. [29 CFR §825.303](#)
2. It is the employee's responsibility to provide a complete and sufficient certification in accordance with [29 CFR §825.309](#) and to do so within a timely manner. Such certification may be submitted at the same time as the employee's request/notice of need for leave but must be submitted within 15 calendar days of that request or the first day of an unforeseeable absence unless it cannot be done under the particular circumstances even with the employee's diligent, good faith efforts. Failure to submit a completed certification prior to a foreseeable absence or within the 15-day time frame (or any extension requested during that time frame and granted by management due to extenuating circumstances) will result in denial of FML and can result in unauthorized leave subject to disciplinary action. [29 CFR § 825.302, -.303, and -.304](#)
3. Qualifying exigencies are usually events for which advance notice is available and required. In those unusual circumstances where advance notice is not available, then employee must comply with agency leave request / call-in procedures and time limits for each day of absence. [29 CFR §825.303](#)
4. Employee may be required to provide documentation of his/her family relationship to the covered military member to support the leave request. [29 CFR §825.122\(k\)](#)

5. Recertifications are not permitted for FMLA leave for qualifying exigencies. If the certification is complete, then no additional information can be required; however, verification of the certification and documentation is permitted. [29 CFR §825.309\(d\)](#)
6. Leave for Qualifying Exigency can be taken for the following reasons if such activity is directly related to the covered active duty of a covered military member and documentation supporting the request is submitted. [29 CFR §825.126\(a\)](#)
 - a. Short-notice deployment: To address any issue that arises from the fact that a covered military member is notified of an impending call or order to covered active duty seven or fewer calendar days prior to the date of deployment. Leave for this purpose can be used for a period of seven calendar days beginning on the date a covered military member is notified of an impending call or order to covered active duty;
 - b. Military events and related activities: To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty of a covered military member; and to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty of a covered military member;
 - c. Childcare and school activities: To arrange for alternative childcare, to provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis), to enroll or transfer a child into a new school or daycare facility, and/or to attend meetings with staff at a school or daycare facility (e.g. meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors) when the covered active duty of a covered military member necessitates these events for a child of the covered military member;
 - d. Financial and legal arrangements: To make or update financial or legal arrangements to address the covered military member's absence while on covered active duty such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and to act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on covered active duty and for a period of 90 days following the termination of the covered military member's active duty status;
 - e. Counseling: To attend counseling provided by someone other than a health care provider for oneself (employee taking leave as the spouse, child, or parent of a covered military member) or for the child of the covered military member provided the need for counseling arises from the covered active duty call of the covered military member;
 - f. Rest and recuperation: To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment for a period of up to fifteen (15) days of leave for each instance of rest and recuperation;
 - g. Post-deployment activities: To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's covered active duty status, and to address issues that arise from the death of a covered military member while on covered active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements;
 - h. Parental care: To arrange for alternative eldercare, to provide eldercare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis), to admit or transfer a parent to a care facility, and/or to attend meetings with staff at a care facility (e.g. meetings with hospice or social service providers) when the covered active duty of

- a covered military member necessitates these events for a parent of the covered military member (but not for routine or regular meetings); and
- i. Additional activities: Upon mutual agreement of the employee and employer that other event(s) not specifically listed here will be considered a qualifying exigency and upon agreement of the timing and duration of such leave, additional activities may be allowed. Such agreements shall be in writing and included in all recordkeeping concerning Leave for Qualifying Exigency by the affected employee.
7. Employee must submit documentation of each of the events described above to support the request for leave to address such event(s). If the leave involves a meeting with a third party, employer may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the employer. If the qualifying exigency involves Rest and Recuperation (R&R) leave, documentation is a copy of the military member's R&R orders or other documentation issued by the military which indicates the military member has been granted R&R, and the dates of his/her R&R leave. [29 CFR §825.309](#)
 8. Employee must submit a copy of the covered military member's active duty orders or other documentation which indicates that the covered military member is on covered active duty. Such documentation can only be required the first time an employee requests leave due to a qualifying exigency; however, new active duty orders or other documentation issued by the military shall be provided to the employer if the need for leave arises out of a different covered active duty of the same or a different covered military member. Employer may contact an appropriate unit of the Department of Defense to request verification that a covered military member is on covered active duty; no additional information may be requested and the employee's permission is not required. [29 CFR §825.309](#)

NOTICE AND CERTIFICATION – EMPLOYER RESPONSIBILITIES

Employer responsibilities for Notice and Certification for Parenting Leave are the same as stated above under Leave for Serious Health Condition of Employee.

LEAVE TO CARE FOR COVERED MILITARY SERVICEMEMBER

29 CFR §825.124 and 29 CFR §825.127 and 29 CFR §825.310

DEFINITIONS

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

Child of a covered service member means the service member's biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the service member stood *in loco parentis* and who is of any age. [29 CFR §825.127\(d\)\(1\)](#)

Covered service member with a serious injury or illness means

- A) a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or otherwise on the temporary disability retired list for a serious injury or illness; or
- B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) or was discharged or released under conditions other than dishonorable at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
 - a. The applicable five (5) year period is calculated backward from the date the eligible employee first takes family-medical leave to care for the covered veteran except that the period from October 28, 2009 to March 8, 2013 must be excluded from the calculation for any veteran discharged or released prior to March 8, 2013.
 - b. The single 12-month period for leave to provide care may extend beyond the end of the applicable five (5) year period if it does, in fact, begin during that period.

[29 CFR §825.127\(b\)](#)

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

Documentation of serious injury or illness of covered service member [29 CFR §825.310](#) means

- A certification completed by the following health care providers: (1) a US Department of Defense (DOD) health care provider; (2) a US Department of Veterans' Affairs (VA) health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider and containing sufficient information to determine whether a serious injury or illness exists. Second and third opinions and recertifications are not permitted for FMLA leave to care for a covered service member whose certification was completed by one of these four providers.
- A certification completed by a health care provider described in 29 CFR 825.125 (see list in Definitions for Serious Health Condition of Employee). Second and third opinions and recertification are permitted when the certification was completed by a health care provider who is not affiliated with the military.
- Documentation of the service member's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers is sufficient certification of the service member's serious injury or illness to support the employee's request for military caregiver leave regardless whether the employee is the named caregiver in the enrollment documentation.
- See also Invitational Travel Orders or Authorization defined below.

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

Incapacity means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom. [29 CFR §825.113\(b\)](#)

Intermittent leave means family-medical leave taken in separate blocks of time due to a single qualifying reason. [29 CFR §825.202](#)

Invitational Travel Orders (ITO) or Invitational Travel Authorization (ITA) means a document issued to any family member to join an injured or ill service member at his or her bedside. An ITO or ITA is sufficient certification of a serious injury or illness of a covered service member for the duration of time specified in the ITO or ITA regardless of whether the employee is named in the order or authorization. Second and third opinions and recertifications are not permitted during the time period covered by the ITO or ITA. Requests for additional leave other than the time period specified in the ITO/ITA require additional documentation as defined above at the definition: "Documentation of serious injury or illness of covered service member." [29 CFR §825.310\(e\)](#)

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

Outpatient status means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. [29 CFR §825.127\(b\)\(1\)](#)

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

Reduced schedule means a leave schedule that reduces an employee's usual number of working hours per workweek or hours per workday for a period of time. [29 CFR §825.202](#)

Serious injury or illness [29 CFR §825.127 \(c\)](#)

A) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves) means an injury or illness that was incurred by a covered service member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the

Armed Forces) that may render the service member medically unfit to perform the duties of the service member's office, grade, rank, or rating; and

- B) in the case of a veteran, means a qualifying injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran *and is*:
- a. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank, or rating; *or*
 - b. A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; *or*
 - c. A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; *or*
 - d. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Single 12-month period to care for a covered service member means the period beginning on the first day the eligible employee takes FMLA leave to care for a covered service member and ends 12 months after that date without regard to the fiscal year used by the State to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons. [29 CFR §825.127\(e\)](#)

Spouse means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either: (1) Was entered into in a State that recognizes such marriages; or (2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State. [29 CFR §825.122\(a\)](#).
(rev 2015-Mar)

Veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) and was discharged or released therefrom under conditions other than dishonorable (as defined in 39 USC Sec. 101) at any time during the five (5) year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

NOTICE AND CERTIFICATION – EMPLOYEE RESPONSIBILITIES

1. Employee must submit a request through the PeopleSoft® Self-Service system. If the absence is foreseeable, such notice is required 30 calendar days in advance or on the same or next business day the employee learns of the need for leave if that is less than 30 calendar days in advance. If the absence is unforeseeable (an emergency), then notice must be provided on the first day of absence in accordance with the employing agency's

call-in and attendance policies and followed-up promptly with a request through the PeopleSoft® Self-Service system. Employee must comply with agency leave request / call-in procedures and time limits for each day of absence unless the employee is incapable of providing notice in that manner and/or within those time frames. [29 CFR §825.303](#)

2. It is the employee's responsibility to provide a complete and sufficient certification in accordance with [29 CFR §825.310](#) and to do so within a timely manner. Such certification may be submitted at the same time as the employee's request/notice of need for leave but must be submitted within 15 calendar days of that request or the first day of an unforeseeable absence unless it cannot be done under the particular circumstances even with the employee's diligent, good faith efforts. Failure to submit a completed certification prior to a foreseeable absence or within the 15-day time frame (or any extension requested during that time frame and granted by management due to extenuating circumstances) will result in denial of FML and can result in unauthorized leave subject to disciplinary action. [29 CFR § 825.302, -.303, and -.304](#)
3. Employee must comply with agency leave request / call-in procedures and time limits for each day of absence unless the employee is incapable of providing notice in that manner and/or within those time frames. [29 CFR §825.303](#)
4. Employee may be required to provide documentation of his/her family relationship to the covered service member to support the leave request. [29 CFR §825.122\(k\)](#) & [29 CFR §825.310\(c\)\(2\)](#)
5. Certification of the serious injury or illness of a covered service member must be completed and submitted within the time limits described above. Forms are available on SPD's webpage. Choose the correct form for either a current or veteran service member. See Definition of Documentation of serious injury or illness of covered service member above for list of providers and other information. [29 CFR §825.310](#)
6. In all circumstances, it is the employee's responsibility to provide the employer with complete and sufficient certification and failure to do so may result in the denial of FML and can result in unauthorized leave subject to disciplinary action. [29 CFR §825.310\(f\)](#) & [29 CFR §825.305\(c\)](#)

NOTICE AND CERTIFICATION – EMPLOYER RESPONSIBILITIES

Employer responsibilities for Notice and Certification for Care of Service Member are the same as stated above under Leave for Serious Health Condition of Employee with these additions in accordance with [29 CFR §825.310](#):

1. Second and third opinions are not allowed if the certification was completed by a military-affiliated provider.
2. Second and third opinions are allowed if the certification was completed by a non-military-affiliated provider.
3. Clarification and authentication are allowed for all certifications, including ITOs and ITAs.
4. Employer may not concurrently designate the same leave spent caring for a covered service member as leave to care for the serious health condition of a spouse, child, or parent. [29 CFR §825.127\(e\)\(4\)](#)

LIMITATIONS ON LEAVE TAKEN TO CARE FOR A COVERED SERVICEMEMBER [29 CFR §825.127\(e\)](#)

Any unused portion of service member caregiver leave is forfeited; it cannot be used to extend leave for other FMLA-qualifying reasons. Service member caregiver leave is applied on a per-covered-service member, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered service members or to care for the same service member with a subsequent serious injury or illness, except that not more than 26 workweeks of leave may be taken within any single 12-month period. Should periods of service member caregiver leave overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period.

REFERENCES

29 CFR Part 825
IC 4-15-2.2-10
31 IAC 5-8
31 IAC 5-9
FMC on Job Classifications Normally Eligible for Premium Overtime
Leaves of Absence Policy/R&P
Vacation Leave Policy/R&P
Sick Leave Policy/R&P
Personal Leave Policy/R&P
Military Family Leave Policy/R&P
Hours of Work and Overtime Policy/R&P
Worker's Compensation Law and Rules
PeopleSoft® Self-Service log-in [link](#)
<http://www.in.gov/spd/2397.htm> for additional information