



CIVILIAN PERSONNEL SECTION FACTSHEET

Current as of Mar 19

FAMILY AND MEDICAL LEAVE ACT (FMLA)

Applicable to U.S. appropriated fund civilian employees

PURPOSE: Provide Federal employees up to 12 administrative workweeks of leave without pay (LWOP) during any 12-month period for certain family and medical needs, with employment and benefits protections.

COVERED EMPLOYEES: FMLA is available to full-time and part-time employees. An employee must have completed 12 months of federal service (not required to be recent or consecutive). Prior military service does not count as federal service. Employees on intermittent appointment or temporary appointment of one year or less are excluded.

EMPLOYEE ENTITLEMENT: The amount necessary to manage the circumstances that prompted the need for leave, up to a total of 12 administrative workweeks of job-protected LWOP within a 12-month period. The 12-month period begins on the date the employee first takes leave after invoking FMLA, and ends 12 months after that date. It can be used for one or more of the qualifying events listed below:

- Birth of a child and to care for the newborn child within one year of birth;
- The placement of a son or daughter with the employee for adoption or foster care within the first year;
- The care of the employee's spouse, son, daughter, or parent with a serious* health condition;
- A serious* health condition of the employee that makes the employee unable to perform any one or more of the essential functions of his or her position;
- Military family exigencies. Employees with a spouse, son, daughter, or parent on covered active duty to a foreign country or in support of a contingency operation, or notified of an impending call or order to covered active duty status in the Armed Forces (which includes Reserves or National Guard) may use their 12-week entitlement for one or more of the following qualifying exigencies: (1) to address within 7 calendar days of departure any issue that arises due to short-notice (7 days or less) of deployment; (2) military events and related activities; (3) childcare and school activities; (4) financial and legal requirements; (5) counseling related to the active duty call-up; (6) up to 5 days of rest and recuperation with the activated military member; (7) post-deployment activities within 90 days after covered active duty is terminated; and (8) additional activities the agency and employee agree are qualifying. Reference 5 CFR 630.1204 for more specifics.
- Servicemember caregiving. Employees with a spouse, son, daughter, parent, or next of kin of a covered servicemember (of the Armed Forces or a veteran who was a member of the Armed Forces within the preceding 5 years), who suffers a serious* injury or illness incurred on active duty and is undergoing medical treatment, recuperation, or therapy, may take the amount of FMLA leave necessary to provide care, up to a total of 26 administrative workweeks within a 12-month period. This entitlement shall only be available one time.

*Serious health condition as defined in 5 CFR 630.1202

SUBSTITUTION OF PAID TIME OFF: An employee may elect to substitute accrued or advanced annual or sick leave, and donated leave for LWOP under FMLA when requested in advance. The employee must meet all other regulatory leave requirements for the approved leave (i.e., sick leave must be granted only for qualifying purposes and may not exceed the yearly maximum allowed by law for family care).

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INVOKING FMLA ENTITLEMENT: The employee must provide notice to the supervisor of his or her intent to take family and medical leave not less than 30 days before leave is to begin or, in emergencies, as soon as practicable. The notification should specify the dates of the leave period, and if the employee elects to take sick leave, annual leave or leave without pay. An SF-52 is required if leave without pay exceeds 30 consecutive days. The employee does not have to take the leave in consecutive days. The employee needs to annotate in ATAAPS the dates and hours of family medical leave being requested, and proper leave requests procedures must be followed each time FMLA is requested.

REQUIRED CERTIFICATION: The employee must also provide acceptable administrative or medical certification as applicable to the reason for FMLA within 15 calendar days of the request. Certification for birth/placement and/or care of the employee's child in the first year must be supported by evidence that is administratively acceptable to the supervisor (e.g., legal documentation supporting adoption of a child). Medical certification must be completed by a qualified health care provider, and the following Department of Labor forms (or other documentation with equivalent information on it) must be provided, applicable to the reason FMLA was invoked, and IAW 5 CFR 630.1208. The Department of Labor forms can be found at the following link, but all references to 29 CFR in the forms should be disregarded as they do not apply to Federal employees:

<https://www.dol.gov/whd/fmla/forms.htm>

- If the circumstances described in the original certification change significantly, or is incomplete or requires clarification, the employee may be required to provide an updated certification to remain entitled to FMLA.
- An employee or the employee's family member for whom a serious health condition is claimed must comply with any requirement from the agency to submit to examination (though not treatment) to obtain a second and possibly a third medical certification, at the agency's expense, to remain entitled to FMLA.

SUPERVISOR RESPONSIBILITIES: Supervisors have the primary responsibility for determining FMLA eligibility, approval, tracking, and maintaining of related documentation. Due to the complex nature of FMLA, it is highly recommended supervisors contact their Employee Relations Specialist (contact information found in the footer below) as soon as an employee requests FMLA information or invokes their entitlement, and throughout the process as needed.

- Supervisors may **NOT** contact the employee's health care provider to request information.
- Initiate a request for personnel action if the employee will be on LWOP for more than 30 consecutive days

ACCOUNTABILITY:

- If an employee believes the agency has not fully complied with the requirements of the FMLA, he/she may file a grievance under the administrative grievance system or they may file a discrimination complaint with the Equal Opportunity Office, if applicable.
- If an employee's absence exceeds the amount the employee is entitled to under FMLA, disciplinary or other administrative action could result.
- Disciplinary action, up to and including removal, may be taken against an employee who provides false certification and/or uses FMLA leave for other than approved purposes.

REFERENCE:

5 USC 6381 to 6387

5 CFR Part 630, *Absence and Leave*, Subpart L- *Family and Medical Leave*

[AFI 36-815](#), *Absence and Leave*, Chapter 12

Additional guidance on this topic is available from your Employee Relations Specialist. Contact information found in the footer below.

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