

A close-up photograph of a silver stethoscope resting on the blue field of an American flag, which features white stars. The stethoscope's tubing is black, and its chest piece is a polished metal. The background shows the red and white stripes of the flag, slightly out of focus.

The Family and Medical Leave Act

Military Family Leave

Military Family Leave under the FMLA

Presented by the
U.S. Department of Labor
Wage and Hour Division



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*See Employee Guide to
Military Family Leave*

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Topics of Discussion

- About the FMLA
- Military Family Leave
 - Qualifying Exigency Leave
 - Military Caregiver Leave
- Notice Requirements
- Resources



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About the FMLA



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See Fact Sheet #28

Employer Coverage

The FMLA applies to:

- Private sector employers with 50 or more employees
- All public agencies
- All public and private elementary and secondary schools



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Employee Eligibility

At the time FMLA leave will start, the employee:

- Works for a covered employer
- Works at a worksite where the employer employs at least 50 employees within 75 miles
- Has worked for the employer in total at least 12 months
- During the previous 12 months, worked at least 1,250 hours



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USERRA

- Eligibility for servicemembers under the Uniformed Services Employment and Reemployment Rights Act (USERRA)
- Any period of absence from work due to USERRA-covered services counts toward an employee's months and hours of service requirements for FMLA leave eligibility



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Airline Flight Crew Employees

- Special hours of service requirement applies to flight attendants, pilots, co-pilots, flight engineers, and flight navigators who work for airlines
- In the 12 months before the leave begins the employee must have worked or been paid:
 - Not less than 60% of the applicable total monthly guarantee, or its equivalent, and
 - Not less than 504 duty hours



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See Fact Sheet #28J

What the FMLA Requires

- Leave from work for qualifying family and medical reasons
- Continuation of group health benefits under the same conditions as if the employee did not use leave
- Return to the same or virtually identical job at the end of leave
- Protection from interference and retaliation



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[See Fact Sheet #28A](#)

FMLA Leave Reasons

- Birth or placement of a child
- To care for a spouse, child, or parent with a serious health condition
- Because of the employee's serious health condition
- For reasons related to a family member's service in the military



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See Fact Sheet #28F

FMLA Military Family Leave

The FMLA military family leave provisions include:

Qualifying Exigency Leave

- Leave for certain reasons related to a family member's foreign deployment

Military Caregiver Leave

- Leave when a family member is a current servicemember or recent veteran with a serious injury or illness



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See Fact Sheet #28M

Qualifying Exigency Leave



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See Fact Sheet #28M(c)

Availability of Qualifying Exigency Leave

- Up to 12 workweeks of leave
 - Employee's spouse, son or daughter of any age, or parent
 - On covered active duty or under an impending call to covered active duty
- Airline flight crew leave entitlement is up to 72 days



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Covered Active Duty

Regular Armed Forces:

- Duty during deployment of the member with the Armed Forces to a foreign country

Members of the National Guard and Reserves:

- Duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation



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Qualifying Exigencies

- Short-notice deployment
- Military events and related activities
- Childcare and related activities
- Care of the military member's parent
- Financial and legal arrangements
- Attending counseling
- Rest and recuperation
- Post-deployment activities
- Other events



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Qualifying Exigency Certification

- Certification may require:
 - A copy of the military member's active-duty orders
 - Appropriate facts related to the qualifying exigency
 - A copy of the military member's rest and recuperation orders
- The employer may verify meetings with a third party and may contact DOD to verify the military member's covered active-duty status



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Military Caregiver Leave



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Covered Servicemember Leave

An eligible employee who is the spouse, child, parent, or next of kin of a covered servicemember may use up to 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness.



For airline flight crew employees, an eligible employee may use up to 156 days during a single 12-month period for military caregiver leave.



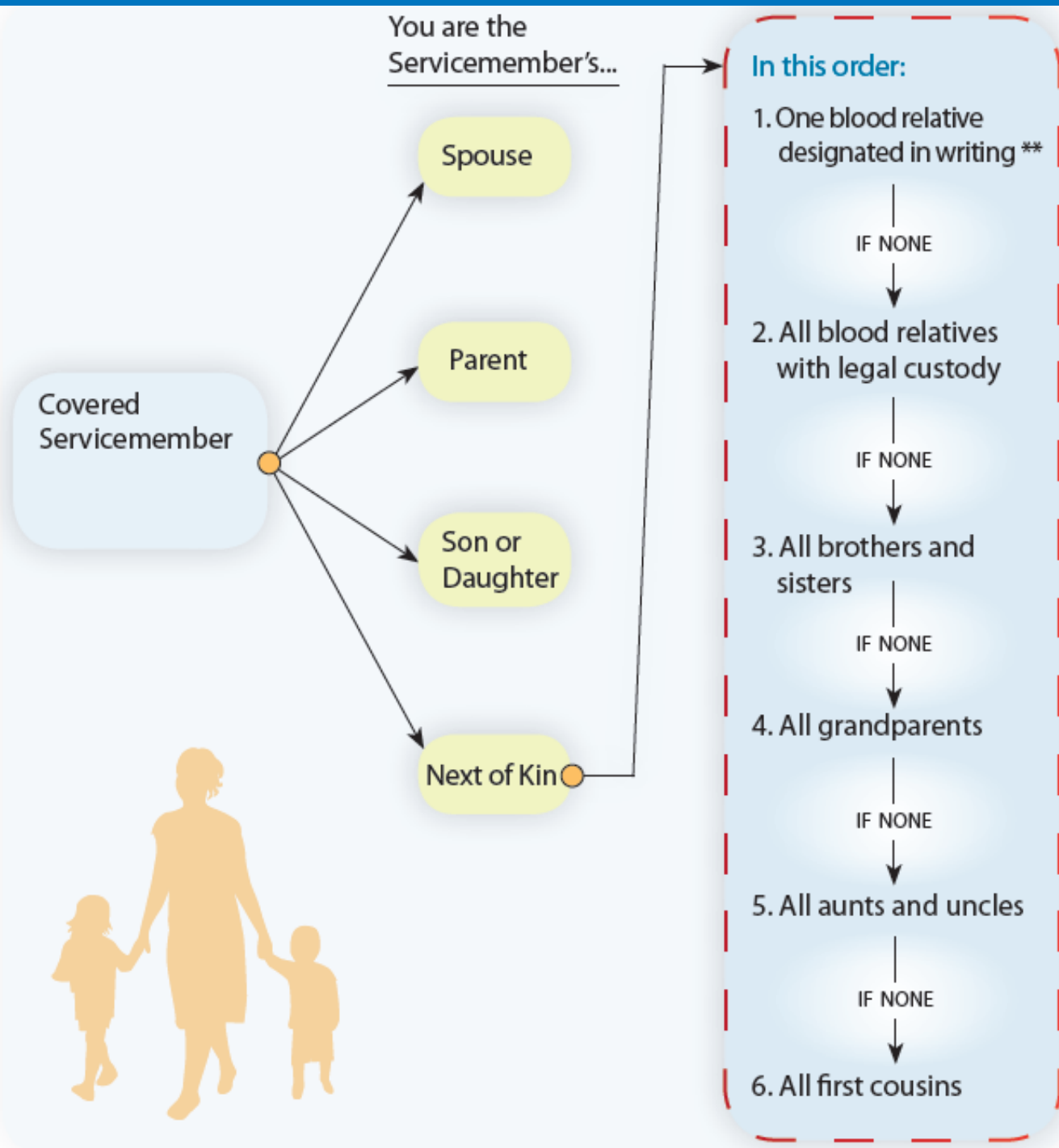
The single 12-month period begins on the first day the employee uses leave for this reason and ends 12 months later. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during this period.



Qualifying Family Relationships for Military Caregiver Leave



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Current Servicemember

- Current member of the Armed Forces, National Guard or Reserves
- Undergoing medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list
- For a serious injury or illness



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See Fact Sheet #28M(a)

Veteran

- Veteran of the Armed Forces, National Guard or Reserves
- Undergoing medical treatment, recuperation, or therapy for a serious injury or illness
- Discharged within the previous five years before the employee first uses FMLA leave for the veteran's care



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See Fact Sheet #28M(b)

Current Servicemember, Serious Injury or Illness

- Incurred by the servicemember in the line of duty on active-duty, or
- Existed before the servicemember's active-duty and was aggravated by service in the line of duty on active duty, and
- May cause the servicemember to be medically unfit to perform his or her military duties



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Veteran, Serious Injury or Illness

Incurred in the line of duty when the veteran was on active duty, including any injury or illness that resulted from the aggravation of a preexisting condition in the line of duty on active duty

- Must have made the veteran medically unfit to perform his or her military duties, or
- Qualifies the veteran for certain benefits from the Department of Veterans Affairs, or
- Substantially impairs his or her ability to work



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Certification, Care for a Current Servicemember

- An employer may require that leave to care for a covered servicemember be supported by a certification completed by an authorized health care provider (optional WH-385), or an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA)
- Authentication and clarification
- Limited second and third opinions



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Certification, Care for a Veteran

- An employee may submit a copy of a VASRD rating determination or enrollment documentation from the VA Program of Comprehensive Assistance for Family Caregivers to support the veteran's serious injury or illness
- Additional information may be needed to establish the other requirements for a complete certification such as:
 - Confirmation of family relationship
 - Documentation of discharge date



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Notice Requirements



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Covered Employer Notice Requirements

General Notices

- Display a general notice (poster)
- Provide general notice to employees individually upon hire or in handbook

Specific Notices

- Eligibility
- Rights and Responsibilities
- Designation



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See Fact Sheet #28D

Employee Notice Requirements

Qualifying Exigencies

- As soon as possible and practical

Military Caregiver Leave

- Foreseeable leave: at least 30 days advance notice
- Unforeseeable leave: as soon as possible and practical



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See Fact Sheet #28E

Using FMLA Leave

- Intermittent or reduced schedule leave
- Substitution of paid leave
- Job protection
- Group health plan benefits



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Enforcement of the FMLA

- To enforce FMLA rights, employees may:
 - File a complaint with Wage and Hour Division
 - File a private lawsuit
- Action must be taken within two years after the last action which the employee contends was in violation of the Act, or three years if the violation was willful



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Other Laws

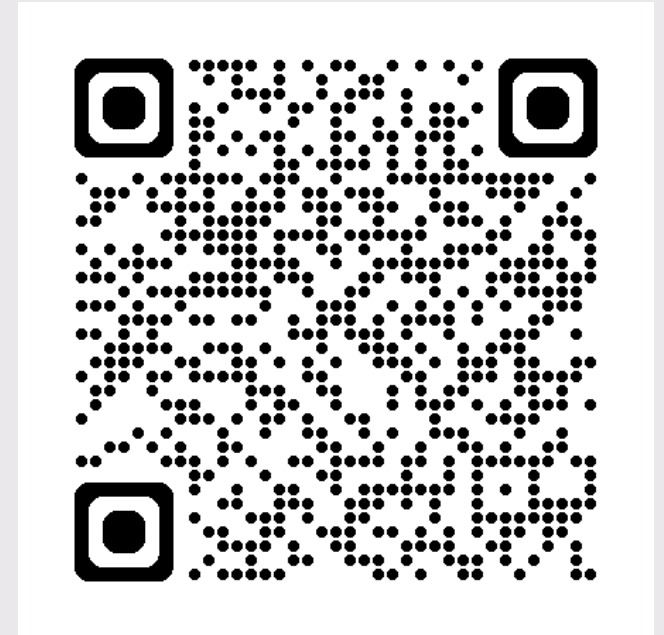
- The FMLA may apply in addition to other federal laws, state laws, an employer's policies, or a collective bargaining agreement (CBA)
- Nothing in the FMLA supersedes any provision of state or local law that provides greater family or medical leave rights than those provided by the FMLA
- An employer's practices, policies, benefit programs, or plans, including a CBA, may not reduce or deny FMLA benefits and protections



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FMLA Resources

- ✓ Title I of the FMLA, as amended (29 U.S.C. 2601—2654)
- ✓ Regulations (29 C.F.R. Part 825)
- ✓ The Employer's Guide to the FMLA
- ✓ The Employee's Guide to the FMLA
- ✓ The Employee's Guide to Military Family Leave under the FMLA
- ✓ FMLA Forms and Forms Frequently Asked Questions
- ✓ FMLA Fact Sheets
- ✓ FMLA Posters (WH-1420)
- ✓ FMLA Frequently Asked Questions
- ✓ FMLA elaws Advisor



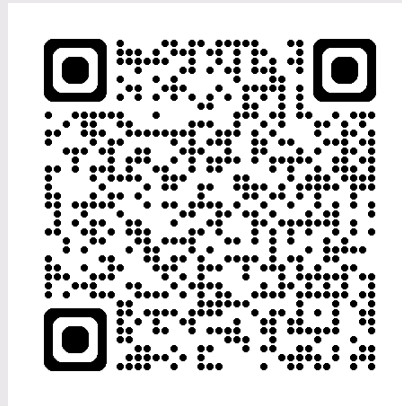
dol.gov/agencies/whd/fmla



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