HRDG 4630 - Absence and Leave - Section F - Subsection c

Last Modified:

Subchapter 4630 - Absence and Leave
Section F - Family and Medical Leave
Subsection c - - FMLA for a Qualifying Exigency

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Description

Employees may be granted up to 12 administrative work weeks of unpaid FMLA leave during any 12-month period for a qualifying exigency occurring as a result of the employee's spouse, son, daughter, or parent being on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. (See National Defense Authorization Act [NDAA] for Fiscal Year 2010 [Pub. L. 111-84, 10-28-09.])

For a qualifying exigency, leave may be used:

- Intermittently, or
- On a reduced leave schedule.

Employees may substitute annual or sick leave, as appropriate, for any unpaid leave.

When the qualifying exigency leave is foreseeable, employees must provide reasonable notice to the supervisor.

Definitions

- Covered Service Member
- Family Member (Updated 10/13)
- Military Member
- Serious Illness or Injury
- Veteran

A “qualifying exigency” is an event entitling an employee to FMLA leave. While not all inclusive, qualifying exigency leave may be used as described below.

Type of Activity:	**Leave may be granted to:**
Short-notice deployment	Address any issue that arises when a military member is notified seven (7) or fewer calendar days prior to the date of deployment of an impending call or order to covered active duty.
Military events and related activities	• Attend any official ceremony, program, or event sponsored by the military, or • 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 or call to covered active duty status.
	• Arrange for alternative childcare when the covered active duty or call to covered active duty status necessitates a change in the existing childcare arrangement for a biological, adopted, or foster child, stepchild, or a legal ward of a military member, or a child for whom a military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental/physical disability at the time that FMLA leave is to commence. • Provide childcare on an urgent, immediate need basis (but not on a routine, regular or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty for a biological, adopted, or foster child, stepchild, or a legal ward of a

Exclusions	Voluntary active duty (under 10 U.S.C. 12301 [d]) or annual training duty (under 10 U.S.C. 10147 or 12301 [b]) is excluded.

Eligibility

In order for an employee to be eligible to use FMLA leave for a qualifying exigency for a member of a reserve component of the Armed Forces, the reservist must be:

- Deployed under a call or order to active duty in a foreign country (under 10 U.S.C. 101 [a] [13] [B]) and,
- Must be covered by one of the following Title 10 U.S.C. provisions:

U.S.C. Section:	Authorizes:
688	Ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service.
12301(a)	Ordering all reserve component members to active duty in the case of war or national emergency.
12302	Ordering any unit or unassigned member of the Ready Reserve to active duty.
12304	Ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty.
12305	The suspension of promotion, retirement or separation rules for certain Reserve components.
12406	Calling the National Guard into Federal service in certain circumstances.
Chapter 15 (Including Sections 331, 332, and 333)	Calling the National Guard and state military into Federal service in the case of insurrections and national emergencies.
	Any other provision of law during a war or national emergency declared by the President or Congress.

Until OPM develops Federal forms, the **DOL Form WH-384** must be used for documentation purposes.

Note: The DOL form contains citations of DOL's regulations which are not applicable authority for Federal employees governed by OPM's FMLA authorities.

Also, the first time an employee requests leave under these provisions, the Program may require the employee to provide:

Documentation to Support a FMLA Request for a Qualifying Exigency

- 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 or call to covered active duty status,
- The dates of the covered military member's active duty service,
- A signed employee statement or description of appropriate facts regarding the qualifying exigency. It must identify the type of qualifying exigency and any available written documentation that supports the leave request, e.g., a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs,
- Approximate date the exigency will commence (or had commenced),
- If the request is for a single, continuous period of time, the beginning and ending dates for the absence,
- If the request is on an intermittent or reduced schedule basis, an estimate of its frequency and duration, and
- If the request is due to meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting, e.g. name, title, organization, address, telephone, fax number, email address and a brief description of the purpose of the meeting.

The information only needs to be provided once, however, a copy of new active duty orders or other documentation issued by the military must be provided to the Program if the need for

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