



Arkansas Army National Guard
Office of Legal Assistance
Building 7300, Camp Joseph T. Robinson
North Little Rock, Arkansas
Phone: 501-212-5502

Legal Assistance Website: <https://arkansas.nationalguard.mil/Home/JAG-Legal/>
Legal Assistance email: ng.ar.ararng.list.legal-assistance-mailbox-managers@army.mil



Provide Feedback

Employment Leave for Families of Servicemembers

Federal law grants unpaid leave to families of deploying and deployed servicemembers, and grants leave to care for a covered servicemember with a serious injury or illness. The family members can only use the leave for specific issues highlighted below. The leave flows through the Family Medical Leave Act (“FMLA”). As with all provisions of the FMLA, the Department of Labor enforces compliance with the military leave provisions.

The Family Medical Leave Act (FMLA) Dependent Leave

In 2008, Congress expanded federal law to create two types of military-related FMLA leave: (1) qualifying exigency leave, which provides covered employees up to twelve weeks of unpaid leave to deal with circumstances that arise from having a deployed family member; and (2) military caregiver leave, which provides up to twenty-six weeks of job-protected leave to care for a covered service member with a serious injury or illness. 29 U.S.C. § 2612(a)(1)(E).

FMLA Military Coverage of National Guard Members

FMLA leave applies to individuals who work approximately twenty-four (24) hours per week for “covered employers.” “Covered employers” include all public agencies, including state, local and federal employers, local education agencies, and private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year.

1. Eligibility for qualifying exigency leave includes spouses, children, and parents of service members on active-duty service outside the United States. Under the FMLA “active duty” only includes federal deployment to foreign countries, state active duty and domestic deployments do not qualify. This leave can last up to twelve (12) weeks, and an employee does not have to use it all at once. 29 CFR 825.202
2. Military caregiver leave includes family members a covered veteran undergoing medical treatment, or veterans who served within five years of the

date of treatment. Additionally, "serious injury or illness" includes SMs with pre-existing injuries aggravated during active duty. This leave can last up to twenty-six (26) weeks.

See 29 U.S.C. § 2611 for the precise definitions.

Reasons a Family Member may use the FMLA Military Leave

As it relates to the qualifying exigencies, there are eight (8) reasons which allow a family member to use this type of leave. The reasons all arise from or relate to active duty or calls to active-duty status. This includes:

1. any issue involving a short-notice deployment of up to seven days.
2. military events and related activities.
3. childcare and school activities.
4. financial and legal arrangements.
5. counseling that is provided by someone other than a health care provider.
6. up to five days of time to spend with a covered service member who is home for R&R during deployment.
7. post-deployment activities; and
8. any other activity for which the employer and employee agree.

29 C.F.R. § 825.126(b)(1)-(9) contains the full description of each of these reasons for using qualifying exigency leave.

Military caregiver leave only applies to leave taken to care for an eligible SM, but does have a few caveats. Caregiver leave applies once per servicemember, per serious injury or illness. Eligible employees may take an additional 26 weeks of leave in a different 12-month period to care for the same SM if another serious injury or illness occurs. For example, if an eligible employee takes caregiver leave to care for a SM who sustained severe burns, the employee could take an additional 26 weeks of caregiver leave in a different 12-month period if the same servicemember is later diagnosed with a traumatic brain injury that was incurred in the same incident as the burns.

Legal Protections

The U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for administering and enforcing the Family and Medical Leave Act for most employees. To contact the Wage and Hour Division office nearest you, visit:
www.dol.gov/whd/america2.htm.

Individuals with rights violated under the FMLA may also seek to bring a private cause of action in court.

This handout is distributed by the Arkansas Office of the Staff Judge Advocate, Office of Legal Assistance as a preventive law service. This document and other helpful information on similar personal legal affairs topics can be found on the office's website located at <https://arkansas.nationalguard.mil/Home/JAG-Legal/>

For more information on this topic or to consult with a legal assistance attorney contact the Arkansas National Guard Office of Legal Assistance at 501-212-5040 to establish eligibility and appointment times.