

# Family and Medical Leave Act (As Amended) - Procedures

**Applies to:** All eligible classified and appointed employees under the jurisdiction of the Mayor and City Council.

**Synopsis:** The Family Medical Leave Act (FMLA) provides eligible employees with the right to request up to 12 weeks in any 12 months for the birth of a child or placement of a child with the employee for adoption or foster care, to care for a family member with a serious health condition, for an employee's own serious health condition and when a family member is under a Federal call or order to a covered active duty. The FMLA also provides 26 weeks of unpaid leave in a single 12-month period for an employee caring for a family member recovering from an illness or injury suffered while on active military duty. The City will provide these leave benefits to employees who have worked 1250 hours during a 12 month period immediately preceding the requested leave.

**Links to Regulations:** [FMLA](#)

**Last Updated:** January 1, 2018

**Administering Department:** Human Resources

**Contact:** The Standard

**Phone:** 844-573-0232

**Note:** As part of the life and disability insurance contract with The Standard Insurance Company (The Standard), The Standard will be providing leave administration services for FMLA leaves beginning January 1, 2018. The City is committed to making this a smooth transition for your leave. Please do not hesitate to reach out to the HR-Benefits team on the ServiceNow portal on your City desktop and enter your question under FMLA/Other Leave of Absence Inquiry. After January 1, please contact The Standard for your leave questions and requests at 844-573-0232.

## I. Purpose

To establish City of Minneapolis policy guidelines under which appointed or classified employees who are not members of a recognized bargaining unit, or whose collective bargaining agreement specifies otherwise, may request a leave under the Family and Medical Leave Act of 1993 (as amended).

## II. Eligibility

Any City of Minneapolis employee who has:

- 1) Been employed for at least 12 months and;
- 2) Worked at least 1250 hours in the 12 month period immediately preceding the request.
- 3) Has not exceeded 480 FMLA hours in the 12 month period immediately preceding the request.

## III. Type of Leaves Available

The following events may qualify an eligible employee for leave under the City's FMLA policy:

- A. For birth of a son or daughter or to care for the newborn child;
- B. For placement with the employee of a son or daughter for adoption or foster care;
- C. For the care of the employee's spouse, son, daughter or parent with a serious health condition;
- D. For the employee's own serious health condition that makes the employee unable to perform the functions of the job;
- E. For any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a member of any branch of the military, including the National Guard or Reserves who is deployed or called to duty in a foreign country;

- F. For the care of a covered service member who is a current member or a veteran of the Regular Armed Forces, National Guard, or Reserves who is undergoing medical treatment, recuperation or therapy within five (5) years of a serious injury or illness incurred in the line of duty while on covered active duty, provided that such injury or illness renders the servicemember medically unfit to perform the duties of his/her office, grade, rank, or rating; and includes an illness or injury that was aggravated while on covered active duty. To qualify the employee must be the spouse, son, daughter, parent or next of kin of the service member. (For more information, see Section XVI. – Definitions – [Military Service Related Definitions](#))

## **IV. How Leave May be Taken**

Leaves under the FMLA may be taken as described below:

- A. Leave may be taken in solid blocks of time, intermittently, or in the form of a reduced leave schedule.
- B. Leave to care for a newborn or newly placed child (a.k.a. bonding leave) will only be granted in solid blocks of time. Department heads also have the authority to approve a reduced leave schedule that immediately follows the leave taken as a solid block of time. For example, leave taken for eight weeks in full, followed by leave taken for five weeks working one day per week.

The City will charge an employee's FMLA usage by the shortest period of time that the department uses to account for absences for payroll purposes.

If the employee requires continuing intermittent leave for foreseeable planned medical treatments and the taking of that leave would substantially impair the operations of the City, the employee may be transferred, temporarily, during the period of intermittent leave, to an available alternate position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. The alternate position must have equivalent pay and benefits. The transfer to an alternate position may require compliance with any applicable collective bargaining agreement, federal law (such as the Americans with Disabilities Act) and state law. Consult the HR Business Partner (HRBP), before taking such action.

## **V. Employee Rights**

Employees have the right to continuation of health care coverage while on leave, restoration to the same or equivalent position upon expiration of leave, freedom from discrimination or retaliation for exercising FMLA rights.

## **VI. Amount of Leave Available**

- A. Up to 12 weeks of unpaid leave per twelve month period for leave types described in III. A., B., C., D. and/or E. above; or
- B. Up to 26 weeks of unpaid leave during a single twelve month period for the leave type described in III. F. above.

The City of Minneapolis uses a 12-month "rolling" period measured backward from the date the employee first applies for FMLA leave.

If spouses are employed with the City and using the leave for birth, adoption, foster care, to care for child after birth or to care for the employee's parent with a serious health condition, the amount of leave is limited to a combined total of 12 weeks of leave.

## **VII. Employee Pay Status and Use of Accrued Leave**

**A. Pay Status and Use of Accrued Leave** - FMLA leave is unpaid. Where an eligible employee has accrued paid vacation and/or sick leave and/or compensatory time (a.k.a. comp time) the employee may elect to use accrued vacation, sick leave and/or compensatory time concurrently with FMLA leave to remain in paid status. Absences, which are paid from the employees compensatory time balance, shall be counted against the employee's FMLA leave entitlement. Exempt Employees who are on an approved FMLA will be expected to use accrued vacation and/or sick leave for partial day absences to remain in paid status when these absences are for FMLA related purposes.

**B. Notification** - The employee must notify the FMLA Coordinator if and how they want to be paid during the leave.

## VIII. Roles and Responsibilities

City employees play important roles to ensure compliance with the administration of leaves under the FMLA and in accordance with federal law and City of Minneapolis FMLA policy. City employees must perform the responsibilities as outlined below and in accordance with the procedures developed for this policy.

Role	Responsibility
Employees	<ol style="list-style-type: none"> <li>1. Comply with City of Minneapolis policies, applicable labor agreements, and Civil Service Rules concerning the use of sick leave, vacation usage, compensatory time and other types of leaves of absence.</li> <li>2. Comply with notification requirements by notifying The Standard and/or immediate supervisor of their need for a leave of absence.</li> <li>3. Notify FMLA Coordinator of desire for paid or unpaid leave.</li> <li>4. Participate and cooperate fully in the initial certification process, requests for any clarifications, any recertification, a second or third opinion, or a fitness for duty certificate, including:               <ol style="list-style-type: none"> <li>a. Providing complete, sufficient and authentic certification to support the employee's FMLA request.</li> <li>b. Furnishing the health care provider with any necessary authorization from the employee or the employee's family member so the health care provider can release a complete and sufficient certification to the City.</li> </ol> </li> <li>5. Follow departmental policy and practice with regard to absence notification, use of accrued sick leave, vacation leave and compensatory time.</li> <li>6. Make a reasonable effort to schedule any planned treatment so as not to unduly disrupt operations.</li> </ol>
Department Heads, Managers & Supervisors	<ol style="list-style-type: none"> <li>1. Recognize the need for potentially FMLA qualifying leave based on actions or statements of employees.</li> <li>2. Notify The Standard of potential FMLA event.               <ul style="list-style-type: none"> <li>• Phone call to The Standard at 844-573-0232.</li> <li>• Email to The Standard at <a href="mailto:absence@standard.com">absence@standard.com</a>.</li> </ul> </li> <li>3. Monitor and manage FMLA absences.</li> <li>4. Notify FMLA Coordinator when employee returns to work.</li> <li>5. Ensure that managers and supervisors in their departments comply with the FMLA policy and procedures.</li> </ol>
The Standard	<ol style="list-style-type: none"> <li>1. Respond to employee requests for leaves of absence including leaves governed by the FMLA</li> <li>2. Provide employee with the appropriate FMLA forms:               <ol style="list-style-type: none"> <li>a. Prepare and complete the Notification of Eligibility and Roles &amp; Responsibilities form.</li> <li>b. Provide Certification of Health Care Provider Form to employee requesting the leave.</li> </ol> </li> <li>3. Prepare and complete the FMLA Designation Notice.</li> <li>4. Determine if an employee is eligible for FMLA and if requests for leaves of absence are FMLA qualifying.</li> <li>5. Notify employee and supervisor of employee's FMLA status by providing necessary FMLA related paperwork. This paperwork will communicate length and frequency of leave.</li> </ol>

	<ol style="list-style-type: none"> <li>6. Prepare letter of notification to employees and supervisor that FMLA will be ending.</li> <li>7. Ensure consistency between City departments in the administration of the FMLA policy and procedures.</li> </ol>
FMLA Coordinator	<ol style="list-style-type: none"> <li>1. Enter applicable information into job data panels in COMET.</li> <li>2. Run reports of FMLA absences/usage.</li> <li>3. Return employee from leave in COMET.</li> <li>4. Ensure consistency between City departments in the administration of the FMLA policy and procedures.</li> <li>5. Develop and maintain procedures, training materials, internal websites and forms.</li> <li>6. Monitor FMLA regulations.</li> <li>7. Act as a point of contact for Benefits and Worker's Compensation staff to maintain communication lines.</li> <li>8. Conduct FMLA training throughout the year.</li> <li>9. Handle escalated leave management issues.</li> </ol>
HRBP	<ol style="list-style-type: none"> <li>1. Provide support and counsel to employees on the FMLA policy and procedures.</li> </ol>
HR Director	<ol style="list-style-type: none"> <li>1. Develop and maintain procedures for implementation and ongoing maintenance of the FMLA Policy.</li> <li>2. Ensure HR Staff are carrying out their responsibilities.</li> <li>3. Ensure that the City is complying with the FMLA.</li> <li>4. Determine appropriate means of communicating the FMLA procedures to all employees.</li> </ol>
Department Medical File Rep	<ol style="list-style-type: none"> <li>1. File applicable paperwork in the employee's medical file.</li> </ol>
Payroll	<ol style="list-style-type: none"> <li>1. Enter applicable payroll codes for employee-designated FMLA.</li> <li>2. Audit COMET to ensure information is up to date.</li> <li>3. Notify FMLA Coordinator if employee codes times under FMLA and leave is not indicated in COMET.</li> </ol>
FMLA Resources (City Attorney and Labor Relations)	<ol style="list-style-type: none"> <li>1. Serve as consultant to HR Business Partners, managers and supervisors on the FMLA policy and procedures.</li> <li>2. Provide education to managers and supervisors on the FMLA policies and procedures.</li> <li>3. Ensure consistency between City departments in the administration of the FMLA policy and procedures.</li> <li>4. Bargain amendments to collective bargaining agreements to reflect changes in federal FMLA law and regulations.</li> </ol>
Worker's Compensation	<ol style="list-style-type: none"> <li>1. Notify FMLA Coordinator if employee is injured on the job.</li> </ol>

## IX. Notice of FMLA

There are three ways that the City may receive notice that an employee's absences should be designated as FMLA.

**A. Employee Requests Leave** - The employee requests the leave for the reasons described under Section III.

- 1. Foreseeable Leave Request** - With regard to an employee requesting the leave, the Act mandates that if the necessity for the leave is foreseeable, the employee is required to give at least 30 days advance notice to the City. Examples of foreseeable leave include planned surgeries and planned medical appointments. Failure to provide such notice without reasonable excuse allows the City to delay the taking of the FMLA leave until at least 30 days after the date the employee provides notice of his or her need for leave.
- 2. Unforeseeable Leave Request** - If the necessity for the leave is unforeseeable, the employee should give notice to the City "as soon as practicable under the facts and circumstances of the particular case." Examples of unforeseeable leave include premature birth, a child suddenly becoming available for adoption, short-notice military deployment or a medical emergency

requiring immediate treatment.

**B. Actions or Statements of Employee Suggests Entitlement to Leave** - The employee's actions or statements are such that the supervisor (or The Standard ) should inquire whether the leave is potentially FMLA qualifying for the reasons described under Section III. And if so, designate accordingly.

**1. Serious Health Condition for Self or Family Member's Condition** - With regard to an employee's actions or statements that mandate the supervisor (or The Standard) to inquire further, the Act states the employee does not have to expressly assert rights under FMLA or even mention the Act. All that is needed is enough information to determine that the employee or family member has a serious health condition as described in Section XVI.- Definitions, or has a need for leave to care for a newborn or newly placed child.

Examples of employee actions or statements where the supervisor must inquire further include but are not limited to:

- a) Hearing an employee state that their upcoming surgery will require hospitalization;
- b) Learning from an employee that their son or daughter had been wounded while serving in the military and that they need to take time off to visit and care for them;
- c) Mentioning that they will need to take time off to care for a spouse, son, daughter or parent with a serious health condition as defined in Section XVI – Definitions – [Qualifying Exigency](#).

**2. Qualifying Exigency for Military Family Leave** – The statements or actions of employees who are eligible for FMLA under Section III. E, also require the supervisor (or The Standard) to make further inquiries.

Examples of employee actions or statements where the supervisor must inquire further include but are not limited to:

- a) Notification that the employee needs to participate in military related activities;
- b) Statements or actions related to those items that constitute a Qualifying Exigency as described in Section XVI. – Definitions – [Qualifying Exigency](#).

**C. Work Related Injury** - The employee sustains a work related injury that results in a serious health condition.

## **X. Notice of Eligibility and Rights & Responsibilities (Pre-Certification Receipt)**

Before a qualifying leave is designated as FMLA, the City must determine if the employee is eligible to take FMLA leave. Once this determination is made the City must notify the employee of their rights and responsibilities under FMLA. This is done by giving the employee Notice of Eligibility and Rights & Responsibilities.

The City must notify employees in writing of eligibility or non-eligibility within five (5) business days (absent extenuating circumstances) and thereafter during the same FMLA leave year, only if the employee's eligibility status changes.

The eligibility notice must state:

1. Whether or not the employee is eligible; and
2. If not eligible, at least one reason why the employee is not eligible (i.e. does not have one (1) year of service and or does not meet 1250 hours requirement).

If the employee has exhausted their 12-week FMLA entitlement in the preceding 12 months, the request should be denied.

## **XI. Certification**

The Department of Labor, effective January 16, 2009, issued four (4) separate Certification of Health Care Provider forms, which have been adapted for City use. Certification forms must be returned within 15 days.

The following are examples of when a certification form may or may not be needed:

- A.** Serious Health Condition Leave (Self or Family member).
- B.** Leave because a covered servicemember has been called to covered active duty. This type of leave shall also require the employee to obtain certification from the service member's branch of the Armed Forces.
- C.** Leave to care for a newborn or newly placed child.

The certification form:

- A.** Covers a specific serious health condition and is only effective for the length of time designated by the health care provider on the Certification of Health Care Provider Form but shall not exceed a total of 12 weeks during any 12 month period.
- B.** Covers an employee caring for a family member recovering from an illness or injury suffered while on active military duty but shall not exceed 26 weeks of unpaid leave in a single 12-month period.
- C.** Explains the type of serious health condition or the injury or illness necessitating the leave and its probable duration.
- D.** States whether the employee requires leave on an intermittent basis or as a single block of time.

In all instances in which certification is requested, it is the employee's responsibility to provide The Standard with a complete and sufficient certification. If the health care provider's information is incomplete, The Standard may require the employee to cure the deficiencies by providing written notice to the employee of what specific information is still needed and give the employee ten (10) days to cure the deficiencies. If the employee fails to cure the deficiencies, The Standard can deny the leave.

Assuming the Certification of Health Care Provider Form is complete, the original health care provider's opinion may still be disputed. In that instance, the City can seek second and third opinions (at the City's expense) to ascertain the validity of the original opinion. If contemplating these options, consult The Standard.

## **XII. Designating the Leave (Post-Certification Receipt)**

The City requires medical certification for all serious health condition leaves. Therefore, ultimate designation in this instance will occur after receiving the properly completed certification form.

The FMLA Designation Notice is completed after the certification form is submitted, or 15 days have elapsed. Even if the medical certification ultimately fails to confirm that the leave is FMLA qualifying, The Standard must provide the employee with a FMLA Designation Notice. If the information provided by the employee is incomplete or insufficient, The Standard will provide the employee with ten (10) days to cure the deficiencies. The information that is incomplete or insufficient must be noted on the FMLA Designation Notice.

## XIII. Recertification

Under appropriate circumstances, The Standard may request recertification. The following are examples of when The Standard may request a recertification:

- A. Solid Blocks of Time** - For those employees who use FMLA leave in solid blocks of time, The Standard may request recertification if the employee requests an extension of the originally approved leave, circumstances described in previous certification change significantly (e.g., the duration of the illness, the nature of the illness) or The Standard receives information that casts doubt upon the continuing validity of the certification. (**Note:** Leave for a different medical matter is not covered by the original certification and will require its own certification.)
- B. Intermittent Leave** - For those employees who use FMLA leave intermittently, The Standard may request recertification if the employee requests an extension of the originally approved leave, circumstances described in previous certification have changed significantly (e.g., the duration of the illness, the nature of the illness) or The Standard receives information that casts doubt upon the continuing validity of the certification. The Standard may not request recertification in less than the minimum duration of the leave, as noted by the health care provider.

### C. Medical Recertification – Frequency

**1. Less Than 30 Days** - If the duration of the leave is less than 30 days, (i.e. period that the employee is unable to work continuously or intermittently) a request for recertification is not permitted unless:

- a) An extension to the original leave is requested by the employee;
- b) If there are significant changes since the original certification was received (i.e. complications, duration/frequency of absences, nature severity of illness); or
- c) If The Standard receives information that casts doubt upon continuing validity of the existing certification.

**2. More Than 30 Days** - If the duration of the leave is more than 30 days (i.e. period that the employee is unable to work continuously or intermittently) a recertification can be requested:

- a) Upon expiration of a period of incapacity specified on the certification;
- b) Every six months in connection with an absence; and
- c) For the reasons listed below:
  1. An extension to the original leave is needed;
  2. If there are significant changes since the original certification was received (i.e. complications, duration/frequency of absences, nature severity of illness) "Significant change" includes pattern of absences before/after scheduled days off or longer duration of days of absences than specified on certification for most recent two or more episodes of incapacity;
  3. If The Standard receives information that casts doubt about continuing validity of the certification;
  4. If The Standard receives information casting doubt about the employee's stated reason for absence ("doubt" could include reliable information that the employee's off-duty activities are inconsistent with the need for FMLA.)

In all instances in which recertification is requested, it is the employee's responsibility to provide The Standard with a complete and sufficient recertification. If the health care provider's information is incomplete and insufficient, The Standard may require the employee to cure the deficiencies by providing written notice to the employee of what specific information is still needed and give the employee seven days to cure the deficiencies. If the employee fails to cure the deficiencies, The Standard can withdraw the previously approved and designated leave.

In cases of recertification, requests for second and third on a medical recertification are not permitted.

## XIV. Deficiencies in Certification and Recertification Forms

Employees have a responsibility to cooperate and provide the complete forms and sufficient information necessary to determine if a leave is qualifying under the FMLA. Where deficiencies exist, The Standard can seek to authenticate or clarify information in a certification or recertification form that has been received from an employee's health care provider.

**A. Types of Deficiencies** Listed below are three types of deficiencies that may exist in a certification or recertification:

- 1. Incomplete and Insufficient** - If certification or recertification form is returned but is incomplete and insufficient, The Standard must provide written notice of what specific information is still needed and give the employee seven calendar days to cure the deficiencies (unless seven days is not practicable under the particular circumstances despite the employee's diligent, good faith efforts). If the employee fails to cure the certification's deficiency, The Standard may deny the leave.
- 2. Unreturned** - If the certification or recertification form is not returned at all within 15 days and employee has not provided information about their diligent, good faith efforts, the leave can be denied.

If certification or recertification is not returned at all within any required seven day cure period (and employee has not provided information about his/her diligent, good faith efforts), or is timely returned but does not cure the deficiencies, leave can be denied.

- 3. Validity of Certification** - If The Standard has reason to doubt the validity of the certification, the City may obtain a second opinion, and if necessary, a third opinion. Second and third opinion providers may request HIPAA consent from employee to obtain relevant medical info/records from employee's or his/her family member's Health Care Provider, and if employee/family member fails or refuses to give consent, leave may be denied (**Note:** The employer may not require a HIPAA consent at any time, such as at time leave is requested)

### B. Curing Deficiencies

- 1. FMLA Designation Notice** – The Standard will provide the employee ten (10) days to cure the deficiencies noted in the FMLA Designation Notice. The supervisor will note the information that is incomplete or insufficient on the FMLA Designation Notice.
- 2. Authentication and Clarification** – After providing an employee with the opportunity to cure an incomplete and insufficient medical certification, The Standard may contact the health care provider to verify that the information on the certification was completed or authorized by the health care provider and/or to understand the handwriting on the medical certification or to understand the meaning of the response.
- 3. Who May Contact the Employee's Health Care Provider** - To make such contact, the City must use a health care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances, however, may the employee's immediate supervisor contact the employee's health care provider.

## XV. Returning to Work after FMLA

As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition, The Standard may require the employee to submit a medical certification (i.e., a fitness for duty certification that the employee is able (or unable) to return to work provided that the Department requires all similarly-situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain a fitness for duty certification.)



The Standard may seek a fitness for duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification from the employee's health care provider must certify that the employee is able to resume work. Additionally, the City may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. In order to require such a certification, the City must provide an employee with a list of the essential functions of the employee's job no later than with the designation notice and must indicate in the designation notice that the fitness-for-duty certification must address the employee's ability to perform those essential functions. If the City satisfies these requirements, the employee's health care provider must certify that the employee can perform the identified essential functions of his or her job. The cost of the fitness for duty certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification. No second or third opinions on a fitness-for-duty certification may be required.

When initially approving the leave, note the need to present a fitness for duty certificate on the FMLA Designation Notice.

After returning to work, the employee must be reinstated to the same or equivalent position, pay, benefits, and conditions of employment as they had prior to exercising their right to take the leave.

## **XVI. Definitions**

**Authentication** - Means providing Health Care Provider with a copy of the certification or recertification and requesting verification that the information contained on the form was completed and/or authorized by the Health Care Provider. No employee or HIPAA consent is required.

**Clarification** - Means contacting the Health Care Provider to understand the handwriting on the form or to understand the meaning of a response, but does not include asking for information beyond that required by the form; HIPAA consent may be required by an employee's Health Care Provider.

**Child** - Includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability. For purposes of military leave, the child of a covered service member may be of any age.

**Health Care Provider** - Includes: 1) A doctor of medicine or osteopathy who is authorized to practice medicine; or 2) Any other person determined by the Secretary of Labor to be capable of providing health care services. Others capable of providing health care services' includes but is not limited to: a) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors; b) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants; c) Christian Science; and d) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country.

**Incapacity** - Inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

**Injured on Duty (IOD)** – Relates to injuries of peace officers and firefighters while on duty.

### **Needed to Care For –**

- A.** Situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.
- B.** Situations where the employee may be needed to substitute for others who normally care for the family member or covered servicemember, or to make arrangements for changes in care, such as transfer to a nursing home. The employee need not be the only individual or family member available

to care for the family member or covered servicemember.

- C. An employee's intermittent leave or a reduced leave schedule necessary to care for a family member, covered servicemember includes not only a situation where the condition of the family member, covered servicemember itself is intermittent, but also where the employee is only needed intermittently - such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party.

**Parent** - Includes a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. Parent does not include parents "in-law."

**Prenatal Care** - A spouse is entitled to FMLA leave to care for a pregnant spouse who has severe morning sickness or other prenatal complications (and may need physical care) and to accompany the pregnant spouse to prenatal doctors' appointments (and may need to be driven or need psychological care). Such leave is not available to a non-spouse father of the child (e.g. boyfriend or fiancé).

**Regimen of Continuing Treatment** - Includes, for example, a course of prescription medication (e.g. an antibiotic) or therapy requiring special equipment to resolve or alleviate the condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

**Serious Health Condition** - Means an illness, injury, impairment, or physical or mental condition that involves one of the following:

**A. Hospital Care** - Inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (i.e. inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; or

**B. Absence Plus Treatment** - Continuing treatment by a health care provider, which includes any one or more of the following:

**1. A period of incapacity lasting more than three consecutive, full calendar days**, and any subsequent treatment or period of incapacity relating to the same condition that also includes:

a. Treatment two or more times by or under the supervision of a health care provider (i.e., in-person visits, the first within seven days and both within 30 days of the first day of incapacity); or

b. One treatment by a health care provider (i.e., an in-person visit within seven days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); or

**2. Pregnancy** - Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or

**3. Chronic Conditions Requiring Treatments** - Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence incapacity (e.g., asthma, diabetes, epilepsy, etc.); or

**4. Permanent/Long-term Conditions Requiring Supervision** - A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment (e.g. Alzheimer's, a severe stroke or the terminal stages of a disease) ; or

**5. Conditions Requiring Multiple Treatments** - Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider

of health care services under orders of, or on referral by, a health care provider, either 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 calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

**Treatment** - Includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

### **Military Service Related Definitions**

**Covered Active Duty or "Call to Covered Active Duty"** - For purposes of exigency leave, the term "covered active duty" means duty under a federal call or order to active duty (not State unless under order of the President of the United States) and requires deployment to a foreign country.

**Covered Servicemember** - For purposes of military caregiver leave, a covered servicemember is a current member of the Regular Armed Forces, National Guard, Reserve, or a covered veteran(1) and includes those on the temporary disability retired list (TDRL), but not including former members or members on the permanent disability retired list.

**1. Covered Veteran** - A veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness if he or she was:

- A member of the Armed Forces (including a member of the National Guard or Reserves);
- Discharged or released under conditions other than dishonorable; and
- Discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him or her.\*

\* For a veteran who was discharged prior to March 8, 2013, the effective date of the FMLA Final Rule, the period between October 28, 2009 and March 8, 2013 will not count towards the determination of the five-year period. For example, if a servicemember retired on October 28, 2007, he or she would have had three years remaining of the five-year period on October 28, 2009. The family member requesting FMLA leave will have three years to begin military caregiver leave starting on March 8, 2013. Likewise, if a servicemember was discharged on December 1, 2010, the five-year period will begin on March 8, 2013 and extend until March 8, 2018.

**Family Relationships under Military Leave** – Includes a "parent of a covered servicemember," "son or daughter of a covered servicemember," "next of kin of a covered servicemember," and "son or daughter on covered active duty or call to covered active duty status."

**Next of Kin** (with respect to an individual) - Means the nearest blood relative of that individual.

**Outpatient Status** (pertaining to a covered servicemember) - Means the status of a member of the Armed Forces assigned to a:

- A. Military medical treatment facility as an outpatient; or
- B. Unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

**Qualifying Exigency**- A qualifying exigency is a non-medical activity that is directly related to the military member's covered active duty or call to covered active duty status. For an activity to qualify as an exigency, it must fall within one of eight categories of activities or be mutually agreed to by the employer and employee. The seven categories of qualifying exigencies are:

- A. Short-notice deployment (leave permitted up to seven days if the military member receives seven or less days' notice of a call to a covered active duty)
- B. Military events and related activities,
- C. Certain temporary childcare arrangements and school activities (but not ongoing childcare),

- D. Financial and legal arrangements,
- E. Counseling by a non-medical counselor (such as a member of the clergy),
- F. Rest and recuperation (leave permitted up to fifteen days when the military member is on temporary rest and recuperation leave), and
- G. Post-deployment military activities.
- H. Certain activities arising from the military member's covered active duty related to **care of the military member's parent** who is incapable of self-care, such as arranging for alternative care, providing care on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers.
  - **Note:** The employee taking FMLA qualifying exigency leave does not need to be related to the military member's parent. However, (1) the military member must be the parent, spouse, son or daughter of the employee taking FMLA leave, and (2) the parent must be the parent of the military member (including an individual who stood in loco parentis to the military member when the member was a child).
- I. Additional Activities - Leave to address other events which arise out of the military member's covered active duty or call to covered active duty status provided the employer and employee agree that such leave shall constitute a qualifying exigency, and agree to both the timing and duration of the leave.

### Serious Injury or Illness

- A. **Pertaining to a member of the Armed Forces, including a member of the National Guard or Reserves** - Means an injury or illness incurred by the member in line covered active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating, or a pre-existing illness that was aggravated while on covered active duty.
- B. **Pertaining to a covered veteran, including a veteran of the National Guard or Reserves** – Means an injury or illness that was incurred or aggravated by the member in the line of duty on covered active duty in the Armed Forces and manifested itself before or after the member became a veteran and is:
  1. 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 servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; OR
  2. A physical or mental condition for which the covered veteran has received a VA 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 caregiver leave; OR
  3. A physical or mental condition that substantially impairs the 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
  4. 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.