

Welcome!

Event Materials

Visit the **event page** to download a copy of the presentation slides and any additional resources.

Let's Chat!

Select **All Panelists & Attendees** from the drop-down when commenting in the chat pod.

Tech Support

Email us if you need tech support or have questions!
MilFamLN@gmail.com

Event Page:
<https://militaryfamilieslearningnetwork.org/event/34441/>

1

Welcome!

Latest Podcast

PCS Caregiving. Features unique caregiver issues, tips, strategies, resources, & subject matter experts.

Recording Available

Family & Medical Leave Act (FMLA)

Upcoming Event

Moral Injury: Suicide Risk, Survivor's Guilt, & Other Clinical Manifestations
April 15, 2020

Visit Our Website:
MilitaryFamiliesLearningNetwork.org

2

Connecting military family service providers
and Cooperative Extension professionals to
research and to each other through engaging
online learning opportunities

<https://militaryfamilieslearningnetwork.org>



This material is based upon work supported by the National Institute of Food and Agriculture, U.S. Department of Agriculture, and the Office of Military Family Readiness Policy, U.S. Department of Defense under Award Numbers 2015-48770-24368 and 2019-48770-30366.

3

3

Family & Medical Leave Act (FMLA)



Event Materials

Visit the **event page** to download a copy of the presentation slides and any additional resources.



Continuing Education

This webinar has been approved to offer continuing education credit. Please stay tuned for more information!



Event Page:

<https://militaryfamilieslearningnetwork.org/event/34441/>

4

4

Today's Presenter



Olivia Jones

Ms. Jones is a Senior Analyst for the Division of Family and Medical Leave Act (FMLA), Office of Policy, in the U.S. Department of Labor Wage and Hour Division's National Office in Washington, D.C. She began her career with the Department over 25 years ago working as a Wage Hour Investigator. She has been a part of the Division's National Office in Washington, D.C. for the past 8 years.



5

NEED TIME?



6

The Family & Medical Leave Act

Presented by the
U.S. Department of Labor
Wage and Hour Division
1-866-4USWAGE
www.dol.gov/whd

7

7

Disclaimer

The presentation is intended as general information only and does not carry the force of legal opinion.

The Department of Labor is providing this information as a public service. This information and related materials are presented to give the public access to information on Department of Labor programs. You should be aware that while we try to keep the information timely and accurate, there will often be a delay between official publications of the materials and the modification of these pages. Therefore, we make no express or implied guarantees. The Federal Register and the Code of Federal Regulations remain the official sources for regulatory information published by the Department of Labor. We will make every effort to keep this information current and to correct errors brought to our attention.

8

8

Purpose of the FMLA

§ 825.101

▶ Purpose:

- ❖ Balance work and family life
- ❖ Promote economic security of families and serve national interest in preserving family integrity

▶ Shared Responsibilities:

- ❖ Communication is key

9

Introduction to the FMLA

Topics of Discussion

- ▶ Employer Coverage and Employee Eligibility
- ▶ Qualifying Reasons for Leave
- ▶ Amount of Leave
- ▶ Employer Rights and Responsibilities
- ▶ Employee Rights and Responsibilities
- ▶ Military Family Leave Provisions

10

Employer Coverage

§ 825.104

- ▶ Private sector employers with 50 or more employees
- ▶ Public Agencies
- ▶ Public and private elementary and secondary schools

11

11

Employee Eligibility

§ 825.110

- ▶ Employed by covered employer
- ▶ Worked at least 12 non-consecutive months
- ▶ Have at least 1,250 hours of service during the 12 months before leave begins
- ▶ Employed at a work site with 50 employees within 75 miles

12

12

Qualifying Leave Reasons

§ 825.112

Eligible employees may take FMLA leave:

- ▶ For the birth or placement of a child for adoption or foster care
- ▶ To care for a spouse, son, daughter, or parent with a serious health condition
- ▶ For their own serious health condition
- ▶ Military Family Leave
 - ❖ Because of a qualifying reason arising out of the covered active duty status of a military member who is the employee's spouse, son, daughter, or parent (qualifying exigency leave)
 - ❖ To care for a covered servicemember with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember (military caregiver leave)

13

13

Qualifying Family Members

§ 825.122

- ▶ Parent - A biological, adoptive, step or foster father or mother, or someone who stood in loco parentis to the employee when the employee was a son or daughter. Parent for FMLA purposes does not include in-laws.
- ▶ Spouse - A husband or wife as defined or recognized in the state where the employee was married and includes individuals in a same-sex marriage or common law marriage.
- ▶ Son or Daughter - For leave other than military family leave, 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 18 years of age, or 18 or older and incapable of self-care because of a mental or physical disability.

14

14

Qualifying Leave Reasons - Serious Health Condition

§ 825.113 - 825.115

Illness, injury, impairment or physical or mental condition involving:

- ▶ Inpatient Care
- or
- ▶ Continuing Treatment by a Health Care Provider

15

15

Inpatient Care
<ul style="list-style-type: none"> An overnight stay in a hospital, hospice, or residential medical care facility. Includes any period of incapacity or any subsequent treatment in connection with the overnight stay.
Continuing Treatment by a Health Care Provider (any one or more of the following)
<p style="text-align: center;"><u>Incapacity Plus Treatment</u></p> <p>A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:</p> <ul style="list-style-type: none"> - Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity; or, - At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider. For example, the health provider might prescribe a course of prescription medication or therapy requiring special equipment.
<p style="text-align: center;"><u>Pregnancy</u></p> <p style="text-align: center;">Any period of incapacity due to pregnancy or for prenatal care.</p>
<p style="text-align: center;"><u>Chronic Conditions</u></p> <p>Any period of incapacity due to or treatment for a chronic serious health condition, such as diabetes, asthma, migraine headaches. A chronic serious health condition is one which requires visits to a health care provider (or nurse supervised by the provider) at least twice a year and recurs over an extended period of time. A chronic condition may cause episodic rather than a continuing period of incapacity.</p>
<p style="text-align: center;"><u>Permanent or Long-term Conditions</u></p> <p>A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider, such as Alzheimer's disease or the terminal stages of cancer.</p>
<p style="text-align: center;"><u>Conditions Requiring Multiple Treatments</u></p> <ul style="list-style-type: none"> Restorative surgery after an accident or other injury; or, A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days if the employee or employee's family member did not receive the treatment.

16

16

Amount of Leave

§ 825.200, 825.205 & 825.802

- ▶ Employee's workweek is basis for entitlement
- ▶ Eligible employees may take up to 12 workweeks* of FMLA leave:
 - ❖ for the birth or placement of a child for adoption or foster care;
 - ❖ to care for a spouse, son, daughter, or parent with a serious health condition; and
 - ❖ for the employee's own serious health condition.

* Eligible airline flight crew employees are entitled to 72 days of FMLA leave.

17

17

Amount of Leave - Intermittent Leave

§ 825.205

- ▶ In calculating the amount of leave, employer must use the shortest increment the employer uses to account for other types of leave, provided it is not greater than one hour *
- ▶ Shortest increment may vary during different times of day or shift
- ▶ Required overtime not worked may count against an employee's FMLA entitlement

* Special rules apply for calculating leave for airline flight crew employees.

18

18

Employer Responsibilities

- ▶ Provide notice
- ▶ Maintain group health insurance
- ▶ Restore the employee to same or equivalent job and benefits
- ▶ Maintain records

19

19

Employer Responsibilities - Provide General Notice

§ 825.300

- ▶ Employers must inform employees of FMLA:
 - ❖ Post a General Notice (FMLA poster), and
 - ❖ Provide General Notice in employee handbook or, if no handbook, distribute to new employees upon hire
- ▶ Electronic posting and distribution permitted
- ▶ Languages other than English required where significant portion of workforce not literate in English
- ▶ Civil Money Penalty for failure to post

20

20

Employer Responsibilities - Provide Notice of Eligibility

§ 825.300

- ▶ Within 5 business days of leave request (or knowledge that leave may be FMLA-qualifying)
- ▶ Eligibility determined on first instance of leave for qualifying reason in applicable 12-month leave year
- ▶ New notice for subsequent qualifying reason if eligibility status changes
- ▶ Provide a reason if employee is not eligible
- ▶ May be oral or in writing (optional WH-381)

21

21

Employer Responsibilities - Provide Notice of Rights & Responsibilities

§ 825.300

- ▶ Provided when eligibility notice required
- ▶ Must be in writing (optional WH-381)
- ▶ Notice must include:
 - ❖ Statement that leave may be counted as FMLA
 - ❖ Applicable 12-month period for entitlement
 - ❖ Certification requirements
 - ❖ Substitution requirements
 - ❖ Arrangements for premium payments (and potential employee liability)
 - ❖ Status as “key” employee
 - ❖ Job restoration and maintenance of benefits rights

22

22

Employer Responsibilities - Provide Notice of Designation

§ 825.300

- ▶ Within 5 business days of having enough information to determine leave is FMLA-qualifying
- ▶ Once for each FMLA-qualifying reason per applicable 12-month period (additional notice if any changes in notice information)
- ▶ Include designation determination; substitution of paid leave; fitness for duty requirements
- ▶ Must be in writing (optional WH-382)
- ▶ If leave is determined not to be FMLA-qualifying, notice may be a simple written statement

23

23

Employer Responsibilities - Group Health Plan Benefits

§ 825.209

- ▶ Group health plan benefits must be maintained throughout the leave period
- ▶ Same terms and conditions as if employee were continuously employed

24

24

Employer Responsibilities - Job Restoration

§ 825.214 - .219

- ▶ Same or equivalent job
 - ❖ equivalent pay
 - ❖ equivalent benefits
 - ❖ equivalent terms and conditions
- ▶ Employee has no greater right to reinstatement than had the employee continued to work
- ▶ Bonuses predicated on specified goal may be denied if goal not met
- ▶ Key employee exception

25

25

Prohibited Employment Actions

§ 825.220

Employers cannot:

- ▶ interfere with, restrain or deny employees' FMLA rights
- ▶ discriminate or retaliate against an employee for having exercised FMLA rights
- ▶ discharge or in any other way discriminate against an employee because of involvement in any proceeding related to FMLA
- ▶ use the taking of FMLA leave as a negative factor in employment actions

26

26

Employer Responsibilities - Maintain Records

§ 825.500

- ▶ Basic payroll information
- ▶ Dates FMLA leave is taken
- ▶ Hours of leave if leave is taken in less than one full day
- ▶ Copies of leave notices
- ▶ Documents describing benefits/policies
- ▶ Premium payments
- ▶ Records of disputes

27

27

Employee Responsibilities

- ▶ Provide sufficient and timely notice of the need for leave.
- ▶ If requested by the employer:
 - ❖ Provide certification to support the need for leave
 - ❖ Provide periodic status reports
 - ❖ Provide fitness-for-duty certification

28

28

Employee Responsibilities - Notice Requirements

§ 825.302 - .303

- ▶ Provide sufficient information to make employer aware of need for FMLA-qualifying leave.
- ▶ Specifically reference the qualifying reason or the need for FMLA leave for subsequent requests for same reason.
- ▶ Consult with employer regarding scheduling of planned medical treatment.
- ▶ Comply with employer's usual and customary procedural requirements for requesting leave absent unusual circumstances.

29

29

Employee Responsibilities - Provide Certification

§ 825.305

Medical Certification for serious health condition (optional WH-380-E and 380-F)

- ▶ Submit within fifteen calendar days
- ▶ Employer must identify any deficiency in writing and provide seven days to cure
- ▶ Annual certification may be required
- ▶ Employee responsible for any cost

30

30

Employee Responsibilities - Recertification

§ 825.308 & .313

Recertification

- ▶ No more often than every 30 days and with an absence
 - ❖ If the minimum duration on the certification is greater than 30 days, the employer must wait until the minimum duration expires
 - ❖ In all cases, may request every six months with an absence
- ▶ More frequently than every 30 days if:
 - ❖ the employee requests an extension of leave, or
 - ❖ circumstances of the certification change significantly, or
 - ❖ employer receives information that casts doubt on the reason for leave

Consequences of failing to provide certification

- ▶ Employer may deny the FMLA leave request until the certification is received

31

31

Employee Responsibilities - Fitness-for-Duty Certification

§ 825.312

- ▶ For an employee's own serious health condition, employers may require certification that the employee is able to resume work
 - ❖ Employer must have a uniformly-applied policy or practice of requiring fitness-for-duty certification for all similarly-situated employees
- ▶ If state or local law or collective bargaining agreement is in place, it governs the return to work
- ▶ Not permitted for intermittent or reduced schedule leave unless reasonable safety concerns exist
- ▶ Authentication and clarification
- ▶ Employee responsible for any cost

32

32



MILITARY FAMILY LEAVE
under the Family and
Medical Leave Act

NEED TIME?



Family and Medical Leave Act

33

33



FMLA Military Family Leave

The FMLA military family leave provisions include:

- ▶ Qualifying exigency leave, which provides up to 12 workweeks of FMLA leave to help families manage their affairs when a military member has been deployed to a foreign country; and
- ▶ Military caregiver leave, which provides up to 26 workweeks of FMLA leave to help families care for covered servicemembers with a serious injury or illness
- ▶ Generally, FMLA rules and requirements continue to apply

34

34

Qualifying Exigency Leave

§ 825.126

- ▶ Eligible employees may take up to 12 workweeks* of FMLA leave because of a qualifying reason that arises out of the fact that the employee's spouse, son, daughter, or parent is on, or has been notified of an impending call, to "covered active duty"
- ▶ For qualifying exigency leave, son or daughter refers to a son or daughter of any age
- ▶ Leave for this reason counts against an employee's normal FMLA entitlement for other leave reasons within the 12-month leave year

* Eligible airline flight crew employees are entitled to 72 days.

35

35

Qualifying Exigency Leave - Covered Active Duty

§ 825.126

Regular Armed Forces:

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

Reserve components of the Armed Forces (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 support of a contingency operation

36

36

Qualifying Exigencies

§ 825.126

- ▶ Short-notice deployment (up to seven days)
- ▶ Military events and related activities
- ▶ Childcare and school activities
- ▶ Financial and legal arrangements
- ▶ Non-medical counseling
- ▶ Care of the military member's parent
- ▶ Rest and recuperation (up to fifteen days)
- ▶ Post-deployment activities (90-day period)
- ▶ Additional activities by agreement

37

37

Employee Responsibilities - Provide Certification

§ 825.309

An employer may require an appropriate certification with a:

- ▶ copy of the military member's active duty orders
- ▶ qualifying exigency certification (optional Form WH-384)
 - ❖ Statement of facts
 - ❖ Dates of leave
 - ❖ Frequency and duration of intermittent leave
 - ❖ Contact information for any third-party meeting

The employer may verify meetings with a third party and may contact DOD to verify the military member's covered active duty status

38

38

Military Caregiver Leave

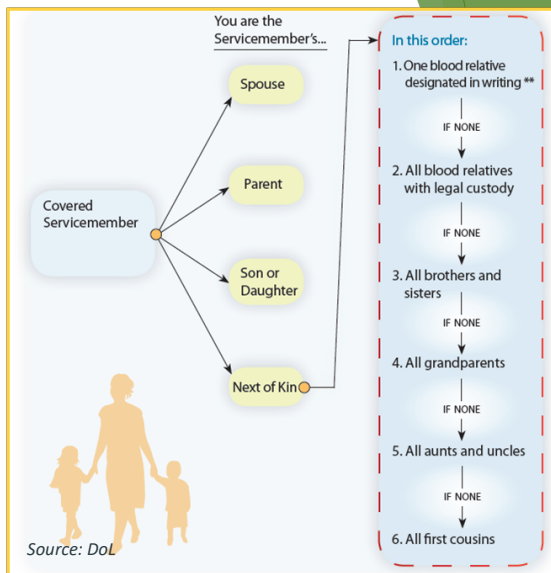
§ 825.127

- ▶ Eligible employees may take up to 26 workweeks* of FMLA leave in a “single 12-month period” to care for a “covered servicemember” with a “serious injury or illness” if the employee is the covered servicemember’s spouse, parent, son, daughter, or next of kin
- ▶ For military caregiver leave, son or daughter refers to a son or daughter of any age
- ▶ All FMLA leave is limited to a combined total of 26 workweeks during the “single 12-month period”, no more than 12 workweeks can be taken for other leave reasons

* Eligible airline flight crew employees are entitled to 156 days

39

39



Qualifying Family Relationships Under Military Caregiver Leave

§ 825.127

* Designated for purposes of military caregiver leave under the FMLA.

40

40

Covered Servicemember

§ 825.127

A covered service member may be a:

- ▶ current member of the Armed Forces
- OR
- ▶ veteran of the Armed Forces.

41

41

Covered Current Servicemember

§ 825.127

A current member of the Armed Forces, including a member of the National Guard or Reserves:

- ▶ undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

42

42

Current Servicemember - Serious Injury or Illness

§ 825.127

A serious injury or illness is one that:

- ▶ was incurred by a servicemember in the line of duty on active duty; or
- ▶ existed before the servicemember's active duty and that was aggravated by service in the line of duty on active duty; and
- ▶ may cause the servicemember to be medically unfit to perform the duties of his or her office, grade, rank, or rating

43

43

Employee Responsibilities - Certification for a Current Servicemember

§ 825.310

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

44

44

Covered Servicemember - Veteran

§ 825.127

A veteran of the Armed Forces is a covered servicemember if he or she:

- ▶ is undergoing medical treatment, recuperation, or therapy for a serious injury or illness; and
- ▶ was discharged under conditions other than dishonorable within the five-year period before the employee first takes military caregiver leave.*

** Special rules may apply if the servicemember was discharged before March 8, 2013.*

45

45

Veteran Serious Injury or Illness

§ 825.127

An injury or illness that was incurred or aggravated by service in the line of duty on active duty in the Armed Forces, that manifested before or after the servicemember became a veteran, and that is either:

- ▶ a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces; or

46

46

Veteran Serious Injury or Illness (Continued)

§ 825.127

- ▶ a condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater (the rating may be based on multiple conditions); or
- ▶ a condition that substantially impairs the veteran's ability to work because of a disability related to military service, or would do so absent treatment; or
- ▶ an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers

47

47

Employee Responsibilities - Certification for a Veteran

§ 825.310

An employer may require that leave to care for a veteran be supported by a certification completed by an authorized health care provider (optional WH-385-V)

- ▶ Authentication and clarification
- ▶ Limited second and third opinions

48

48

Certification for a Veteran Employee Responsibilities - (Continued)

§ 825.310

- ▶ 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

49

49

Military Caregiver Leave - Application of Leave

§ 825.127

- ▶ "Single 12-month period"
- ▶ Per covered service member, per injury
- ▶ Limitations on leave
 - ❖ 26 workweeks for all qualifying reasons
 - ❖ Designation of caregiver leave
 - ❖ Spouses working for same employer

50

50

FMLA Enforcement Mechanisms

§ 825.400

- ▶ To enforce FMLA rights, employees may:
 - ▶ File a complaint with Wage and Hour Division
 - ▶ File a private lawsuit (Section 107(a))
- ▶ Action must be taken within 2 years after the last action which the employee contends was in violation of the Act, or 3 years if the violation was willful

51

51

FMLA Compliance Assistance Materials

- ▶ Title I of the FMLA, as amended (29 U.S.C. 2601—2654)
- ▶ The 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
- ▶ FMLA Fact Sheets
- ▶ FMLA Poster (WH-1420)
- ▶ FMLA Frequently Asked Questions
- ▶ FMLA elaws Advisor

52

52

Additional Information

- ▶ Visit the WHD homepage at:
<http://www.wagehour.dol.gov>
- ▶ Call the WHD toll-free information and helpline at: 1-866-4US-WAGE (1-866-487-9243)
- ▶ Call or visit the nearest Wage and Hour Division Office

53

53

Evaluation & Continuing Education



This webinar has been approved for the following continuing education (CE) credits:

- **Social Work, LPC, LMFT:** 1.0 CE from the University of Texas at Austin, Steve Hicks School of Social Work for social workers, LPCs, and LMFTs
- **Case Manager:** 1.0 clock hour from the Commission for Case Manager Certification (CCMC) for case managers
- **Board Certified Patient Advocates:** 1.0 CE from the Patient Advocate Certification Board to Board Certified Patient Advocates (BCPA)
- **Certified Family Life Educators (CFLE):** This program has been approved by the National Council on Family Relations (NCFR) for 1.0 CE credit for CFLE.
- **A certificate of completion**

Evaluation Link

Go to the event page for evaluation and post-test link.

[Continuing Education](#)

Questions?

Email Rachel Brauner:
rbrauner@ag.tamu.edu

Event Page:

<https://militaryfamilieslearningnetwork.org/event/34441/>



54

54

Upcoming Event

Moral Injury: Suicide Risk, Survivor's Guilt, & Other Clinical Manifestations



April 15, 2020

11:00 a.m. – 12:00 p.m. EST

Event Page:

<https://militaryfamilieslearningnetwork.org/event/61155/>

This presentation begins by briefly reviewing the definition of moral injury and describing a theoretical model that highlights some of the clinical manifestations of moral injury.

Continuing education credit will be available for this webinar!



For archived and upcoming webinars visit: MilitaryFamiliesLearningNetwork.org/AllEvents

55

55

Subscribe and Stay Connected!



Monthly Newsletter

- Upcoming Events
- Latest Podcast Episode
- Articles of Interest



Topics of Interest:

- Family Caregivers
- Wounded Warriors
- Individuals with Special Needs

Subscribe Here!



MilitaryFamiliesLearningNetwork.org/Military-Caregiving/



@MFLNMC



56

56

Connect with the MFLN

Explore upcoming events, articles, resources, & more
<https://militaryfamilieslearningnetwork.org>

