

## **FAMILY MEDICAL LEAVE ACT (FMLA) MILITARY FAMILY LEAVE**

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| <b>Policy Number:</b>  | BP # 109   |
| <b>Effective Date:</b> | Approved by the <b>Eastern Washington State Historical Society (EWSHS)</b> Board of Trustees on January 6, 2016. |
| <b>Application:</b>    | Applies to all employees of the EWSHS with covered family members in the Armed Forces.                           |
| <b>History:</b>        | This Policy Replaces HR # 119.   |

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### **Article I PURPOSE**

The FMLA is a federal law passed in 1993 to grant family and temporary medical leave to eligible employees under certain circumstances. In 2008 and again in 2009, the National Defense Authorization Act(s) (NDAA) amended the FMLA to allow eligible employees to take up to 12 workweeks of leave in a 12-month period for any “qualifying exigency” due to the covered active duty or call to covered active duty of a spouse, son, daughter or parent. The amendments also amended the FMLA to allow eligible employees to take up to 26 workweeks of leave in a single 12-month period to care for a covered service member with a serious injury or illness. These two types of FMLA leave are known as the military family leave entitlements. **This policy should be read together with the FMLA policy as the 12 workweek entitlements do not apply separately.** It offers valuable protection for eligible employees to maintain employment and benefits while dealing with family or medical situations related to covered family members in the armed forces that takes them from the work place for an extended period of time either in a single block or intermittently.

### **Article II DEFINITIONS**

#### **A. Serious Injury or Illness**

1. In the case of a member of the Armed Forces, including the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating, and
2. In the case of a covered veteran an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces or that existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in Armed Forces, and manifested itself before or after the member became a veteran, and is:
  - a) a continuation of a serious injury or illness incurred or aggravated while a member of the Armed Forces and rendered the service member unable to perform the duties of his/her office grade, rank or, rating; or
  - b) a physical or mental condition for which the covered veteran has received a Veterans Affairs Service-Related Disability Rating, and the rating is based in whole or in part, on the condition precipitating the need for leave; or

- c) a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability (s) related to military service, or would do so absent treatment; or
- d) an injury including a psychological injury on the basis of which the covered veteran has been enrolled in the Department of Veteran's Affairs Program of Comprehensive Assistance for Family Caregivers.

**Article III  
ELIGIBILITY**

**A. Eligibility Requirements:** To be eligible, an employee must have worked for the state for at least 12 months (not necessarily consecutively) and worked at least 1,250 non-overtime hours in the 12 months immediately preceding the first day of leave. Paid leave will not be counted as hours worked toward the 1,250 hour requirement. The employee must have worked at a work site which employs at least 50 employees within a 75 mile radius.

**B. Provisions:** Military Caregiver Leave - The EWSHS will grant an eligible employee who is a spouse, son, daughter, parent or next of kin, (defined below), of a covered service member, (defined below), with a serious injury or illness, (defined above), up to a total of 26 workweeks of leave during a single 12-month period to care for the service member.

**C. Covered Service Member**

1. A member of the Armed Forces, including National Guard or Reserves, who is 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., or
2. A covered veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness. A covered veteran is one who was a member of the Armed Forces, including the National Guard or Reserves, and was discharged or released under conditions other than dishonorable at any time during the 5 year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

**D. Next of Kin:** Used with respect to an individual means the nearest blood relative of that individual other than spouse, parent or child, in the following order of priority:

- Blood relatives who have been granted legal custody of the service member.
- Brothers and sisters.
- Grandparents.
- Aunts and uncles.
- Cousins.

If the covered service member designates another blood relative as their nearest blood relative, that designation takes precedent over the above list. That person would be the only next of kin.

The "single 12-month period" for leave to care for a covered service member with a serious injury or illness begins on the first day the employee takes 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 reason during the "single 12-month period." (Only 12 of the 26 weeks may be for a FMLA qualifying reason other than to care for a covered service member.)

**E. Qualifying Exigency Leave:** The EWSHS will grant an eligible employee up to a total of 12 workweeks of leave during a 12-month period for FMLA leave for qualifying exigencies arising out of the fact that the employee's spouse, child of any age, or parent is on covered active duty or has been notified of an impending call or order to covered active duty. Covered active duty is defined as:

1. In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country.

2. In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10 United States Code (USC).

**F. Qualifying Exigencies Include:**

1. Issue arising from a covered military member's short notice deployment (e.g. deployment with seven or less days of notice) for a period of seven days from the date of notification.
2. Military events and related activities, such as official ceremonies, programs or events sponsored by the military, 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 active duty or call to active duty status of a covered military member.
3. Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member.
4. Making or updating financial and legal arrangements to address a covered military member's absence.
5. Attending counseling provided by someone other than a health care provider for oneself, the covered military member or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member.
6. Taking up to five days of leave to spend time with a covered military member who is on short-term temporary rest and recuperation leave during deployment.
7. Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the end of the covered military member's active duty status or addressing issues arising from the death of a covered military member.
8. Parental Care
9. Additional Activities – anything the Employer and Employee agree upon relating to the exigency.

**NOTE:** FMLA Military Family Leave is not an additional leave category. It is simply the designation indicating leave for one of the purposes stated above to ensure leave entitlement and continuation of benefits during instances of leave without pay. During absences designated as FMLA Military Family leave, an employee may choose to use accrued paid leave to cover all or part of their FMLA absence. Accrued paid leave includes sick leave, vacation leave, temporary salary reduction leave, and personal holiday accrued as indicated on leave records. If applicable, shared leave or leave without pay may also be used. Substitution of sick leave is allowed only for those purposes that sick leave use is normally allowed pursuant to state laws or EWSHS policies regarding sick leave use.

The use of any leave, paid or unpaid, for a FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA for that event. Absences covered by worker's compensation will also run concurrently with FMLA, assuming they are qualifying conditions.

**Article IV  
ADMINISTRATION**

**A. Counting Absences Toward The Use Of FMLA**

1. **Military Caregiver Leave** - Employee absences that qualify as FMLA absences under Military Caregiver leave will be counted toward the FMLA 26-work week allowance beginning with the first day of the employee's use of leave (or leave without pay) for reasons that meet the FMLA military caregiver leave criteria. The Department of Enterprise Services (DES) Human Resource (HR) Consultant will verify reasons for absence to ensure they meet the criteria to be designated as FMLA Military Caregiver leave. The first day of the approved designated absence will also count as the first day of the 12-month rolling period.

The 12 month period is measured forward from the date the requesting employee begins leave under the FMLA. The employee's next 12 month period would begin the first time leave under the FMLA is taken after completion of the previous 12 month period

2. **Qualifying Exigency Leave** - Employee absences that qualify as FMLA absences under Qualifying Exigency leave will be counted toward the FMLA 12-work week allowance beginning with the first day of the employee's use of leave (or leave without pay) for reasons that meet the FMLA qualifying exigency leave criteria. The DES HR Consultant will verify reasons for absence to ensure they meet the criteria to be designated as FMLA qualifying exigency leave. The first day of the approved designated absence will also count as the first day of the 12-month rolling period.

Under some circumstances, employees may take leave designated as FMLA intermittently, which means taking leave in blocks of time or by reducing their normal weekly or daily work schedule.

FMLA leave amounts may be counted in hourly increments and the actual hours available will depend on the FTE of the employee, e.g., a full time FTE will have 480 hours or 12 work weeks available in the 12 month period and a  $\frac{3}{4}$  FTE will have 360 hours available.

- B. Intermittent FMLA:** Leave designated as FMLA may be taken intermittently if medically necessary. Medical documentation of the need for the leave on an intermittent basis or for leave on a reduced schedule may be required. If the need for intermittent leave is foreseeable based on planned medical treatment of the covered service member, the employee is responsible for scheduling treatment in a manner that does not unduly disrupt the employer's operations subject to the approval of the health care provider. Intermittent leave may also be taken for military exigency leave.

It may be necessary to transfer an employee temporarily to an alternative job with equivalent pay and benefits that better accommodates intermittent leave for the planned medical treatment.

- C. Notification:** When the employee's absence is designated by the DES HR Consultant as FMLA military family leave qualifying, the employee will be notified of the decision in writing by the DES HR Consultant. This notification will also outline the employee's responsibilities in relation to their leave.

Whenever possible, the employee shall provide at least 30 days written notice to the agency and the DES HR Consultant of the need to take FMLA military family leave. When this is not possible, the employee should communicate in writing the need to take leave as soon as it is known. This should include anticipated beginning and ending dates of the requested leave, the reason for the leave, the service member's name, and the employee's relationship to the service member.

**D. Required Certification:** The DES HR Consultant may require that an employee’s request for military family leave be supported by an appropriate certification. Medical certification may be requested for service member caregiver leave as allowed by law.

The EWSHS requires:

1. Leave for a qualifying exigency is supported by a copy of the covered military member’s active duty orders and information providing the facts related to the qualifying exigency.
2. Leave to care for a covered service member with a serious injury or illness requires certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member’s family.

**E. Impact On Benefits:** The EWSHS will provide health insurance and other benefits to employees on leave as required by law. If leave without pay is taken for eligible or approved FMLA leave, the employee will not be required to take eight hours of leave per month to retain medical or dental benefits.

The employee's payroll deducted self-paid health insurance premiums, optional life or long term disability insurance may be continued on a self-pay basis during FMLA leave. Arrangements should be made as to how these self-payments will be made. These arrangements should be discussed prior to the start of the leave; however, the payments are not required to be made in advance.

**F. Returning To Work:** The employee should provide notice to the DES HR Consultant indicating when the employee plans to return to work.

The employee returning from military family leave will be reinstated to the same job or to an equivalent job with equivalent status and pay in the same geographic area. If the same position or one of equivalent status and pay is not available due to layoff or other operational reasons, the employee will be treated in the same manner as though the employee were not absent at the time of the layoff.

**G. Other Impacts:** An employee’s anniversary and seniority dates will be adjusted for any period of leave without pay which exceeds 15 consecutive calendar days. The adjustment made will be equal to the amount of time that the employee has taken leave without pay.

If an employee uses leave without pay for an entire work shift while serving a probationary period or trial service period, the probationary period or trial service period will be extended by one work day for each work shift of leave without pay.

An employee’s periodic increment date will be adjusted for any period of leave without pay which exceeds 15 consecutive calendar days. The adjustment made will be equal to the amount of time that the employee has taken leave without pay.

**H. Primary roles and responsibilities for FMLA Military Family Leave within the EWSHS.**

| Role            | Responsibilities   |
|-----------------|--|
| <b>Employee</b> | <ul style="list-style-type: none"><li>• If possible, notify your supervisor of the need to take FMLA, 30 days prior to the anticipated absence.</li><li>• Provide certification as requested/required.</li><li>• Provide status reports to the DES HR Consultant when out on FMLA.</li></ul> |

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|                                | <ul style="list-style-type: none"> <li>• Notify the DES HR Consultant of your intention to return to work.</li> <li>• If applicable, continue employee-paid insurance premiums during FMLA absence.</li> <li>• Submit leave requests associated with the absence as outlined in the Leave Policy.</li> </ul>   |
| <b>Supervisor/<br/>Manager</b> | <ul style="list-style-type: none"> <li>• Communicate with the DES HR Consultant when an employee requests FMLA or when an employee requests leave you feel may qualify for FMLA.</li> <li>• Ensure that the employee’s position is protected during an FMLA absence.</li> </ul>  |
| <b>DES HR<br/>Consultant</b>   | <ul style="list-style-type: none"> <li>• Determine if employee meets FMLA Military Family Leave eligibility requirements.</li> <li>• Designate the leave as FMLA. Notify the employee regarding eligibility. Send FMLA pre-approval or denial letter.</li> <li>• Request certification from the employee.</li> <li>• Determine if absence meets FMLA Military Family Leave qualification requirements. Send FMLA approval or denial letter.</li> <li>• Notify the employee when the FMLA Military Family Leave allowance is near conclusion.</li> <li>• Update the supervisor on employee status.</li> <li>• Notify the supervisor of employee’s intention to return to work and the date.</li> <li>• Communicate with the agency payroll office.</li> </ul> |

**I. Interaction with Laws and Regulations:** This policy will be construed in accordance with the FMLA and its accompanying regulations as currently written or as hereafter amended. To the extent items or aspects of the FMLA or its accompanying regulations are not covered in this policy or are, or become, inconsistent with this policy, those gaps or inconsistencies will be construed in accordance with the FMLA and its regulations.

**WAC’s and references that apply to this policy**

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| 357-31-135 (sick leave procedure)  | 357-31-200 (reasons vacation req. approval)  |
| 357-31-285 (family care emergency)   | 357-31-290 (what qualifies for family care)  |
| 357-31-300 (entitlement for family care leave)   | 357-31-305 (approval process for family care)  |
| 357-31-325 (leave with pay entitlements)   | 357-31-335 (employer limit to LWOP status)   |
| 357-31-373 (call to active duty)   | 357-31-400 (shared leave limits)   |
| 357-31-390 (criteria to be eligible for shared leave)  | 357-31-495 (parental leave/FMLA)   |
| 357-31-405 (med certification for shared leave)  | 357-31-745 (temporary salary reduction leave)  |
| 357-31-535 (criteria for FMLA allowance)   |  |
| 29 U.S.C. § 2601 et. Seq. (United States Code, title 29, chapter 28, Family & Medical Leave Act of 1993) | 29 C.F.R. Part 825 (Code of Federal Regulations, Part 825, Family & Medical Leave Act of 1993) |