

# FMLA for Public Agencies

Presented by



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## Mission: Compliance



To promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce.

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## Public Agency

"Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

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## Public Agency

### *Employer*

Any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

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## Public Agency

### *Employee*

Any individual employed by a State, political subdivision of a State, or an interstate governmental agency, except for those not subject to applicable civil service laws and who—

- holds a public elective office
  - is selected by the holder of such an office to be a member of his personal staff,
  - is appointed by such an officeholder to serve on a policymaking level,
  - is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or
  - is an employee in the legislative branch or legislative body and is not employed by the legislative library
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## Public Agency

### *Volunteer*

The term "employee" does not include any individual who volunteers to perform services for a public agency if—

- the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
- such services are not the same type of services which the individual is employed to perform for such public agency.

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## Family & Medical Leave Act



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§ 825.101

## Introduction to the FMLA

### Purpose:

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

### Shared Responsibilities:

- Communication is key

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## 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

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§ 825.104

## Employer Coverage

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

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§ 825.110

## Employee Eligibility

- Employed by covered employer
- Worked at least 12 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

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## Qualifying Leave

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 will be discussed later in this presentation.

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## Amount of Leave

- 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.

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## 12-Month Period

Method determined by employer

- Calendar year
- Any fixed 12-month leave year
- A 12-month period measured forward
- A rolling 12-month period measured backward

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### Substitution of Paid Leave

- "Substitution" means paid leave provided by the employer runs concurrently with unpaid FMLA leave and normal terms and conditions of paid leave policy apply
- Employees may choose, or employers may require, the substitution of accrued paid leave for unpaid FMLA leave
- Employee remains entitled to unpaid FMLA if procedural requirements for employer's paid leave are not met

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### Substitution of Paid Leave *Limitations*

- Workers' compensation leave
  - may count against FMLA entitlement
  - "topping off" allowed if state law permits
- Disability leave
  - may count against FMLA entitlement
  - "topping off" allowed if state law permits
- Compensatory time off (public sector only)
  - may count against FMLA entitlement
  - subject to FLSA requirements

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### Employer Responsibilities

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

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### Employer Responsibilities

#### General Notice (WH-1420)

- Employers must inform employees of FMLA:
  - Post a General Notice, 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
- CMP for willful posting violation

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### Employer Responsibilities

#### Notice of Eligibility (WH-381)

- Within five 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)

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### Employer Responsibilities

#### Notice of Rights & Responsibilities (WH-381)

- 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

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§ 825.300

## Employer Responsibilities

### *Notice of Designation (WH-382)*

- Within five 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

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§ 825.300 - .301

## Employer Responsibilities

### *Notice of Designation (WH-382)*

- Employer must notify employee of the amount of leave counted against entitlement, if known; may be payroll notation
- If amount of leave is unknown (e.g., unforeseeable leave), employer must inform employee of amount of leave designated upon request (no more often than 30 days)
- Retroactive designation permitted provided that failure to timely designate does not cause harm to employee

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§ 825.209

## Employer Responsibilities

### *Maintain Group Health Plan Benefits*

- Group health plan benefits must be maintained throughout the leave period
- Same terms and conditions as if employee were continuously employed
- Employee must pay his/her share of the premium
- Even if employee chooses not to retain coverage during leave, employer obligated to restore same coverage upon reinstatement
- In some circumstances, employee may be required to repay the employer's share of the premium if the employee does not return to work after leave

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### Employer Responsibilities

#### *Job Restoration*

- 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

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### Employer Responsibilities

#### *Maintain Records*

- 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

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### Prohibited Employment Actions

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

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## 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

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§ 825.302 - .303

## Employee Responsibilities

### *Notice Requirements*

- 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

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§ 825.305

## Employee Responsibilities

### *Provide Certification*

- 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

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§ 825.311

## Employee Responsibilities

*Periodic Status Reports*

Employee must respond to employer's request for information about status and intent to return to work.

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§ 825.312

## Employee Responsibilities

*Fitness for Duty*

- 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
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§ 825.206, 600-.604

## Other Issues

- Salaried employees:
    - Deductions from certain "exempt" employees' salaries
    - Deductions for employees paid overtime on a fluctuating workweek method
  - Special rules for schools
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# Military Family Leave

under the FMLA



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## 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

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§ 825.126

## FMLA Military Family Leave Qualifying Exigencies

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

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### FMLA Military Family Leave Qualifying Exigencies

- 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*

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### FMLA Military Family Leave Military Caregiver Leave

- Eligible employees may take up to 26 workweeks of FMLA leave in a "single 12-month period" to care for a "covered service member" with a "serious injury or illness" if the employee is the covered service member'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

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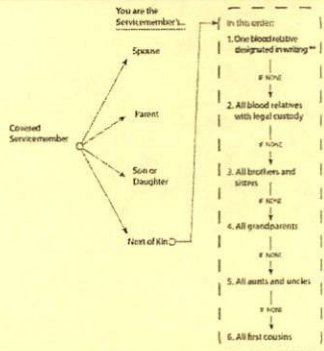
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### FMLA Military Family Leave Qualifying Family Relationships



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

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## Compliance Assistance Materials

- The Fair Labor Standards Act
  - FMLA Employer's Guide
  - The Regulations (29 C.F.R. Part 500-899)
  - Interpretive Guidance (opinion letters, field operations handbook, and field bulletins)
  - FLSA Poster
  - Handy Reference Guide
  - Fact Sheets
  - Information for New Businesses
  - Department of Labor Home Page
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## Additional Information

- Visit the WHD homepage at:  
[www.dol.gov/whd](http://www.dol.gov/whd)
  - Call the WHD toll-free information and helpline at 1-866-4US-WAGE (1-866-487-9243)
  - Use the DOL interactive advisor system - ELAWS (Employment Laws Assistance for Workers and Small Businesses) at:  
[www.dol.gov/elaws](http://www.dol.gov/elaws)
  - Call the nearest Wage and Hour Division Office  
OKC 405-231-4158      Tulsa 918-581-6303
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