U.S. Department of Labor
Wage and Hour Division

U.S. Wage and Hour Division
(February 2013)

Fact Sheet #28M(b): Military Caregiver Leave for a Veteran under the Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles eligible employees who work for covered employers to take unpaid, job-protected leave to care for a family member who is a covered veteran with a "serious injury or illness". FMLA leave for this purpose is called "military caregiver leave."

MILITARY CAREGIVER LEAVE ENTITLEMENTS

Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or "next of kin" of a covered veteran with a serious injury or illness to take up to a total of **26 workweeks** of unpaid leave during a "single 12-month period" to provide care for the veteran.

A veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness is a **covered veteran** if he or she:

- was a member of the Armed Forces (including a member of the National Guard or Reserves);
- was discharged or released under conditions other than dishonorable; and
- was 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.

SERIOUS INJURY OR ILLNESS

A serious injury or illness means an injury or illness that was incurred by the covered veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran's active duty and was aggravated by service in the line of duty on active duty, and that is either:

1. a continuation of a serious injury or illness that was incurred or aggravated when the 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 veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the need for military caregiver leave is related to that condition; *or*

3. a physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; *or*

4. an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Any *one* of these definitions meets the FMLA's definition of a serious injury or illness for a covered veteran regardless of whether the injury or illness manifested before or after the individual became a veteran.

NEXT OF KIN

The "next of kin" of a covered veteran is the nearest blood relative, other than the veteran's spouse, parent, son, or daughter, in the following order of priority:

1. a blood relative who has been designated *in writing* by the servicemember as the next of kin for FMLA purposes
2. blood relative who has been granted legal custody of the servicemember
3. brothers and sisters
4. grandparents
5. aunts and uncles
6. first cousins

When the veteran designates in writing a blood relative as next of kin for FMLA purposes, that individual is deemed to be the veteran's <u>only</u> FMLA next of kin. When the veteran has not designated in writing a next of kin for FMLA purposes, and there are multiple family members with the same level of relationship to the veteran, all such family members are considered the veteran's next of kin and may take FMLA leave to provide care to the veteran.

For example, if the veteran has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the veteran's next of kin. Alternatively, where the veteran has one or more siblings and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the veteran's next of kin.

SINGLE 12-MONTH PERIOD

The single 12-month period for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by the employer for other FMLA leave reasons.

An eligible employee is limited to a *combined* total of 26 workweeks of leave for **any** FMLA-qualifying reasons during the single 12-month period. Up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than military caregiver leave. For example, if an employee uses 10 weeks of FMLA leave for his or her own serious health condition during the single 12-month period, the employee has up to 16 weeks of FMLA leave left for military caregiver leave.

Military caregiver leave is available to an eligible employee once per veteran, per serious injury or illness. However, an eligible employee may take an additional 26 weeks of leave in a different 12-month period to care for the same veteran if he or she has another serious injury or illness. For example, if an eligible employee takes caregiver leave to care for a veteran who sustained severe burns that rendered the him unable to perform his military duties when he was a current servicemember and for which he continues to need care as a veteran, the employee would be entitled to an additional 26 weeks of caregiver leave in a different 12-month period if the veteran is later diagnosed with a traumatic brain injury that was incurred in the same incident as the burns.

An eligible employee may also take military caregiver leave to care for more than one covered veteran or current servicemember with a serious injury or illness at the same time, but the employee is limited to a total of 26 weeks of military caregiver leave in any single 12-month period. Additionally, an eligible employee may be able to take military caregiver leave for the same family member with the same serious injury or illness both when the family member is a current servicemember and when the family member is a veteran.

CERTIFICATION REQUIREMENTS

An employer may require that leave to care for a veteran be supported by a certification completed by an authorized health care provider. 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 certify that the veteran has a serious injury or illness. This documentation is sufficient regardless of whether the employee is the named caregiver. However, if the employee submits such documents, the employee may still be required to provide confirmation of family relationship and documentation of discharge date and status for a complete certification. Employees may use the U. S. Department of Labor's optional form WH-385-V.

An authorized health care provider may be a:

(1) United States Department of Defense ("DOD") health care provider;

(2) United States Department of Veterans Affairs ("VA") health care provider;

(3) DOD TRICARE network authorized private health care provider;

(4) DOD non-network TRICARE authorized private health care provider; or

(5) non-military-affiliated health care provider.

An employer may request a second and third opinion of a covered veteran's serious injury or illness only when a certification is provided by a non-military-affiliated health care provider.

ENFORCEMENT

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA. *See* Fact Sheet 77B: Protections for Individuals under the FMLA. The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

For information on the effective date, click here.

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