



employee relations **BULLETIN**

January 8, 2010
(Supplementing ER Bulletin dated February 6, 2009)

To: Heads of All Departments
Departmental Personnel Directors

Subject: REVISED MILITARY FAMILY LEAVE ENTITLEMENT PROVISIONS OF THE FAMILY AND MEDICAL LEAVE ACT

The military family leave entitlements of the Family and Medical Leave Act of 1993 (FMLA) have been revised as a result of the Fiscal Year 2010 National Defense Authorization Act (Public Law 111-84), signed into law by President Obama on October 28, 2009. Although updated Department of Labor (DOL) regulations have not yet been promulgated, the revised military family leave entitlements are effectively immediately. The revisions, which are described below, affect both types of FMLA military family leave entitlements – Military Caregiver Leave and Military Exigency Leave. Revised FAQs are attached to this Bulletin.

Further notification will be provided by the Office of the City Administrative Officer to Departments and Bureaus upon the DOL issuing revised military family leave forms and a revised FMLA poster. Until such time, the forms available through the City's electronic forms repository on the City's intranet should continue to be used. (Go to "InsideLA," click on the link for "Citywide Electronic Forms" under "Citywide Services," and then use the term "FMLA" in the search box to get to the index/links for the FMLA forms, including federal military family leave forms WH-384 (exigency leave) and WH-385 (caregiver leave).)

Military Caregiver Leave

The FMLA was previously amended to provide unpaid leave for up to a total of 26 work weeks in a single 12-month period for an employee to care for a covered servicemember with a serious injury or illness incurred in the line of duty on active duty in the Armed Forces who is the employee's spouse, son, daughter, parent, or next of kin. Earned or accrued paid leave may be substituted for the unpaid leave.

Under the recent amendment enacted under Public Law 111-84, the definition of "covered servicemember" has been expanded. Covered servicemember now includes honorably discharged veterans who were members of the Armed Forces (including a member of the National Guard or Reserves) at any time within the five-year period preceding their medical treatment, recuperation, or therapy for the serious injury or illness. In addition, under the new

statute eligible employees may use Military Caregiver Leave to care for an active servicemember or veteran who had a pre-existing injury that was aggravated in the line of duty while on active duty. "Covered active duty" has now been defined to cover only serious injuries or illnesses occurring in the line of duty during active duty deployment to a foreign country.

Qualifying Exigency Leave

The FMLA was previously amended to provide up to 12 work weeks of unpaid leave in any 12-month FMLA period for an employee to spend time due to a "qualifying exigency" with his or her spouse, son, daughter, or parent who is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation. Earned or accrued paid leave may be substituted for the unpaid leave.

Under this previous amendment, Qualifying Exigency Leave could only be used by employees for eligible family members who were called to active duty as members of the National Guard, Reserve, or as retired members of the Regular Armed Forces or Reserve. Public Law 111-84 has expanded this provision to include employees' eligible family members who are active-duty service members of the Regular Armed Forces. Further, the covered active duty or call to duty no longer has to be "in support of a contingency operation." As with the Military Caregiver Leave, deployment has to be to a foreign country.

Qualifying time off used by eligible employees for California Military Spouse Leave (AB 392; California Military and Veterans Code Section 395.10) shall run concurrently with Qualifying Exigency Leave provided under the FMLA. Section 395.10 of the California Military and Veterans Code provides up to ten days of unpaid leave for an employee who is the spouse of a qualifying military member (active duty or National Guard/Reservists called to duty) on leave from deployment during a period of military conflict in a combat theater or combat zone designated by the President of the United States. (The complete text of AB 392 is attached to this Bulletin.)

Any questions regarding this bulletin or attachments may be directed to the City's Family/Medical Leave Coordinator in the CAO's Office, Employee Relations Division, at (213) 978-7676.

TAC:CEC:mbg145

Attachments

FREQUENTLY ASKED QUESTIONS (FAQs)
FMLA – MILITARY CAREGIVER AND QUALIFYING EXIGENCY LEAVES
CITY OF LOS ANGELES

Military Caregiver Leave

1. What is Military Caregiver Leave?

An eligible employee may take 26 work weeks (1,040 hours) of unpaid leave during a single 12-month period to care for a covered servicemember with a serious injury or illness. An eligible employee may elect, or the employer may require the employee, to substitute available paid leave, which would normally be provided in this situation (such as accrued vacation or family illness time), for the unpaid leave. Military Caregiver Leave may be taken as a continuous block of time, or on a reduced schedule or intermittent basis. Partial-day deductions are permitted for both hourly and salaried employees.

2. Who is eligible to take Military Caregiver Leave?

An employee who has been employed by the City for at least 12 months, worked at least 1,250 hours during the previous 12-month period, and is the spouse, son, daughter, parent, or next of kin of a covered servicemember.

3. Definitions:

Covered Servicemember – a member of the Armed Forces of the United States, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary (not permanent) disability retired list, for a serious injury or illness; or a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy for a serious injury or illness.

Covered Active Duty – duty, or under a call or order to active duty as a reservist, during deployment with the Armed Forces to a foreign country.

Serious Injury or Illness – incurred by the covered servicemember in the line of duty on active duty (or existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) in the Armed Forces that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating; or in the case of the veteran, the serious injury or illness incurred in or exacerbated by the line of duty on active duty, manifested itself before or after the member became a veteran.

Spouse – a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

Son or Daughter – the servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the servicemember stood in loco parentis, and who is of any age.

Parent – a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law."

Next of Kin – the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter.

4. How should an employee provide notice of the need for Military Care Leave?

An employee requesting Military Care Leave is required to provide "reasonable and practicable" notice. Employees should use Form Gen. 191 "Employee Request for Family or Medical Leave" and Form WH-385 "Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave" (or a comparable certification).

5. How should Management respond to an employee's request for, and/or designate, Medical Care Leave?

By completing and providing to the employee Form Gen. 192 "Employer Response to Employee Request for Family or Medical Leave, and Employer Notice of Eligibility and Notice of Designation of Family or Medical Leave." Management's notice of eligibility and designation responsibilities are the same for Medical Care Leave as it is for traditional FMLA leave.

6. How is Military Caregiver Leave counted in conjunction with other FMLA or California Family Rights Act (CFRA) leave?

The first day that Military Care Leave is taken starts the first day of the single 12-month period for tracking Military Care Leave, regardless of any other 12-month period that may already be in place for an employee who has used FMLA leave for a "traditional" reason other than Military Care Leave. Therefore, this could possibly result in the tracking of two different 12-month periods.

However, during the single 12-month period in which Military Care Leave is taken, an employee is limited to a combined total of 26 work weeks (1,040 hours) of FMLA leave for any qualifying reason.

For example: if an employee used 26 work weeks for Military Care Leave, then no other FMLA leave would be available to take in the 12-month period that started the first day Military Care Leave began.

If an employee used three weeks for Military Care Leave, then based on the City's Family and Medical Leave benefit that provides 18 weeks (720 hours) of FMLA leave (which is

more generous than the 12 weeks provided by the FMLA) the employee would still have 18 weeks (720 hours) available to use for a traditional, non-Military Care Leave FMLA purpose. In no case shall a City employee be entitled to more than 18 weeks (720 hours) of leave for traditional FMLA leave reasons.

In the case of leave that qualifies both as leave to care for a covered servicemember and leave to care for a family member with a serious health condition during the single 12-month period, Management must designate such leave as Military Care Leave. The same leave cannot be designated and counted as both types of FMLA leave (Military Care Leave and traditional FMLA leave) at the same time.

Traditional FMLA leave, for a non-pregnancy condition, will continue to run concurrently with CFRA leave. Only CFRA bonding leave (up to 18 weeks per the City's Family and Medical Leave benefit) for a pregnant employee may be taken in addition to the aggregate 26-work weeks allowed for Military Care Leave, if the pregnant employee would otherwise qualify for the bonding leave.

City employees requesting Military Care Leave for the same covered servicemember (e.g., son or daughter) who are husband and wife (terms used in the final DOL regulations) are limited to an aggregate 26 work weeks of leave in a single 12-month period.

7. Is retroactive designation by Management of Military Care Leave permitted?

Yes.

8. Is health benefit coverage maintained during Military Care Leave?

Yes. The City must continue the employee's same health and dental coverage for the duration of Military Care Leave, as if the employee had been continuously employed during the period of leave taken.

Qualifying Exigency Leave

1. What is Qualifying Exigency Leave?

An eligible employee may take 12 work weeks (480 hours) of FMLA leave for one or more "qualifying exigencies" arising from a covered military member who is on active duty status or has been notified of an impending call or order to active duty. An eligible employee may elect, or the employer may require the employee, to substitute available paid leave, which would normally be provided in this situation (such as accrued vacation time), for the unpaid leave. Qualifying Exigency Leave may be taken as a continuous block of time, or on a reduced schedule or intermittent basis. Partial-day deductions are permitted for both hourly and salaried employees.

2. Who is eligible to take Qualifying Exigency Leave?

An employee who has been employed by the City for at least 12 months, worked at least 1,250 hours during the previous 12-month period, and is the spouse, son, daughter, or parent of the covered military member.

3. Definitions:

Covered Military Member – the employee's spouse, son, daughter, or parent who is deployed on active duty by the military to a foreign country (see Covered Active Duty).

Covered Active Duty – duty, or as a reservist under a call or order to active duty, during deployment with the Armed Forces to a foreign country.

Spouse – a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

Son or Daughter on Active Duty or Call to Active Duty Status – the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty, and who is of any age.

Parent – an employee's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee. This term does not include parents "in law."

4. What is a qualifying exigency?

An issue that arises from an employee's spouse, son, daughter, or parent being on covered active duty (or being notified of an impending call or order to covered active duty) in the Armed Forces. Examples include:

Short-Notice Deployment – to address any issue prior to the date of deployment that arises from a covered military member being notified of an impending call or order to active duty. Leave taken for this purpose can be used beginning on the date of notification by the military and cannot exceed seven (7) calendar days.

Military Events and Related Activities – to attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of a covered military member; and to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organization or the American Red Cross that are related to the active duty or call to active duty status of a covered military member.

Childcare and School Activities – when the need arises from the active duty or call to active duty status of a covered military member relating to his/her child/children, to arrange for alternative childcare, to provide childcare on an urgent, immediate basis (not on a routine, regular, or everyday basis), to enroll or transfer the child to a new school or day care facility, and/or to attend meetings with staff at a school or daycare facility.

Financial and Legal Arrangements – to make or update financial or legal arrangements to address the covered military member's absence while on active duty or call to active duty status; and/or to act as the covered military member's representative before a federal, state, or local agency relating to the provision of military service benefits and for a period of 90 days following the termination of the covered military member's active duty status.

Counseling – to attend counseling in support of the covered military member or his/her child/children (not for the employee provided by the employee's health care provider) arising from the active duty or call to active duty status of a covered military member.

Rest and Recuperation – to spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment. Eligible employees may take up to five (5) days of leave for each instance of rest and recuperation.

Post-Deployment Activities – to attend arrival ceremonies, briefings and events and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status; or to address issues and make arrangements that arise from the death of a covered military member while on active duty status.

Additional Activities - to address other events that arise out of the covered military member's active duty or call to active duty status provided that Management and the employee agree that such leave shall qualify as an "exigency," and agree both to the timing and duration of such leave.

5. How should an employee provide notice of the need for Qualifying Exigency Leave?

An employee requesting Qualifying Exigency Leave is required to provide "reasonable and practicable" notice. Employees should use Form Gen. 191 "Employee Request for Family or Medical Leave" and Form WH-384 "Certification of Qualifying Exigency for Military Family Leave" (or a comparable certification) along with any required documentation.

6. How should Management respond to an employee's request for, and/or designate, Qualifying Exigency Leave?

By completing and providing to the employee Form Gen. 192 "Employer Response to Employee Request for Family or Medical Leave, and Employer Notice of Eligibility and Notice of Designation of Family or Medical Leave." Management's notice of eligibility and designation responsibilities are the same for Qualifying Exigency Leave as it is for traditional FMLA leave.

7. How is Qualifying Exigency Leave counted in conjunction with other FMLA or California Family Rights Act (CFRA) leave?

Leave taken as Qualifying Exigency Leave (up to 12 work weeks [480 hours]) is counted as traditional FMLA leave time and is charged against an employee's annual FMLA entitlement (City's Family and Medical Leave benefit of 18 weeks [720 hours]). However, unlike traditional FMLA leave, Qualifying Exigency Leave cannot run simultaneously with CFRA leave because CFRA does not have comparable provisions. Therefore, a City employee using Qualifying Exigency Leave under FMLA would still have CFRA leave (up to 18 weeks [720 hours] based on the City's Family and Medical Leave benefit) available to use for a CFRA-eligible condition, if he/she otherwise qualified to use CFRA. That CFRA time would still run concurrently with any remaining traditional FMLA leave that does not constitute Qualifying Exigency Leave.

8. Is retroactive designation by Management of Qualified Exigency Leave permitted?

Yes, under conditions consistent with the provisions for traditional FMLA.

9. Is health benefit coverage maintained during Qualified Exigency Leave?

Yes, in the same manner as for traditional FMLA.

Assembly Bill No. 392
(California Military Spouse Leave)

CHAPTER 361

An act to add Section 395.10 to the Military and Veterans Code, relating to military benefits, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 2007. Filed with
Secretary of State October 9, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 392, Lieu. Military service: benefits.

Existing law provides certain benefits for qualifying members of the Armed Forces of the United States, National Guard, and Reserves.

This bill would require a qualified employer to allow a qualified employee who is a spouse of a qualified member of the Armed Forces, National Guard, or Reserves to take up to 10 days of unpaid leave during a qualified leave period, as provided.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 395.10 is added to the Military and Veterans Code, to read:

395.10. (a) Notwithstanding any other provision of law, a qualified employer shall allow a qualified employee to take up to 10 days of unpaid leave during a qualified leave period.

(b) For purposes of this section:

(1) "Period of military conflict" means either of the following:

(A) A period of war declared by the United States Congress.

(B) A period of deployment for which a member of a reserve component is ordered to active duty pursuant to either of the following:

(i) Sections 12301 and 12302 of Title 10 of the United States Code.

(ii) Title 32 of the United States Code.

(2) "Qualified employee" means a person who satisfies all of the following:

(A) Is the spouse of a qualified member.

(B) Performs service for hire for an employer for an average of 20 or more hours per week, but does not include an independent contractor.

(C) Provides the qualified employer with notice, within two business days of receiving official notice that the qualified member will be on leave from deployment, of his or her intention to take the leave provided for in subdivision (a).

(D) Submits written documentation to the qualified employer certifying that the qualified member will be on leave from deployment during the time the leave provided for in subdivision (a) is requested.

(3) "Qualified employer" includes any individual, corporation, company, firm, state, city, county, city and county, municipal corporation, district, public authority, or any other governmental subdivision, that employs 25 or more employees.

(4) "Qualified member" means a person who is any of the following:

- (A) A member of the Armed Forces of the United States who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States.
 - (B) A member of the National Guard who has been deployed during a period of military conflict.
 - (C) A member of the Reserves who has been deployed during a period of military conflict.
- (5) "Qualified leave period" means the period during which the qualified member is on leave from deployment during a period of military conflict.
- (c) A qualified employer shall not retaliate against a qualified employee for requesting or taking the leave provided for in this section.
- (d) The leave provided for in this section shall not affect or prevent a qualified employer from allowing a qualified employee to take a leave that the qualified employee is otherwise entitled to take.
- (e) This section shall not affect a qualified employee's rights with respect to any other employee benefit provided for in other laws.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to serve the families of those troops currently serving in military conflicts in Iraq and Afghanistan, and to assure that these families are able to spend time together during the qualified member's leave from deployment, it is necessary that this act take effect immediately.

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