

WAC 357-31-525 What is an employee entitled to under the Family and Medical Leave Act of 1993?

(1) The Family and Medical Leave Act (FMLA) of 1993 (29 U.S.C. 2601 et seq.) and its implementing rules, 29 C.F.R. Part 825, and additional amendments and subsequent regulations provide that an eligible employee must be granted, during a twelve-month period, a total of twelve work weeks of absence:

- (a) As a result of the employee's serious health condition;
- (b) To care for an employee's parent, spouse, or minor/dependent child who has a serious health condition;
- (c) For the birth of and to provide care to an employee's newborn, adopted or foster child as provided in WAC 357-31-460; and/or
- (d) Due to a qualifying exigency (as described in the Family and Medical Leave Act of 1993 and its amendments (29 U.S.C. 2601 et seq.) and its implementing rules, 29 C.F.R. Part 825) arising from the fact that the employee's spouse, child of any age, or parent is on covered active duty or has been notified of pending call to covered active duty in the armed forces.

(i) Subsection (1)(d) only applies if the spouse, child, or parent of the employee is a member of the National Guard, Reserves, or regular armed forces.

(ii) Subsection (1)(d) only applies to federal calls to active duty and the deployment must be to a foreign country.

(2) An eligible employee who is the spouse, son, daughter, parent of a child of any age, or next of kin of a covered service member shall be entitled to a total of twenty-six work weeks of leave during a twelve-month period to care for the service member who is suffering from a serious illness or injury arising from injuries incurred in the line of duty. The leave described in this paragraph shall only be available during a single twelve-month period. This twelve-month period begins on the first day leave is taken pursuant to this subsection.

(a) For purposes of this section, "covered service member" is:

(i) A current 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

(ii) 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 National Guard or Reserves, and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

(b) For purposes of this section, "next of kin" with respect to an individual means the nearest blood relative of that individual other than the individual's spouse, parent, or child in the following order of priority:

(i) Blood relatives who have been granted legal custody of the service member;

(ii) Siblings;

(iii) Grandparents;

(iv) Aunts and uncles;

(v) Cousins;

(vi) The service member can designate another blood relative as the "nearest blood relative" and that designation takes precedent over the above list.

(c) For purposes of this section, "serious illness or injury" means:

(i) In the case of a current member of the armed forces, including a member of the National Guard or Reserves, an illness or injury incurred by the covered service member in the line of duty while 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 the line of duty while on active duty in the armed forces and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(ii) In the case of a covered veteran an illness or injury that was incurred by the member in the line of duty while 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 while on active duty in the armed forces) and manifested itself before or after the member became a veteran and meets one of the four criteria outlined in 29 C.F.R. 825.102.

(3) During the twelve-month period described in subsection (2) above, an eligible employee shall be entitled to a combined total of twenty-six work weeks of leave under subsections (1) and (2) above. Nothing in this section shall be construed to limit the availability of leave under subsection (1) during any other twelve-month period.

(4) For general government employers, the twelve-month period in subsections (1) and (2) above is measured forward from the date the requesting employee begins leave under the Family and Medical Leave Act of 1993. The employee's next twelve-month period would begin the first time leave under the Family and Medical Leave Act is taken after completion of the previous twelve-month period. Higher education employers must define within their family and medical leave policy how the twelve months are measured. With respect to leave to care for a covered service member in subsection (2) of this section, higher education institutions must measure the twelve-month period forward from the day the leave begins regardless of what method is used for other FMLA purposes.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-06-008, § 357-31-525, filed 2/20/14, effective 3/24/14; WSR 09-17-056 and 09-18-113, § 357-31-525, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-11-066, § 357-31-525, filed 5/14/09, effective 6/16/09; WSR 08-11-008, § 357-31-525, filed 5/9/08, effective 6/10/08; WSR 05-12-086, § 357-31-525, filed 5/27/05, effective 7/1/05; WSR 05-08-140, § 357-31-525, filed 4/6/05, effective 7/1/05.]