



# County Technical Assistance Service

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## Military-related Leave

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Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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## Military-related Leave

**Reference Number:** CTAS-1021

The 2008 amendments to the FMLA, and additional amendments made in 2009 in the National Defense Authorization Act for FY 2010 (NDAA 2010), added provisions for qualifying exigency leave when the employee's family member is serving on active duty or is called to active duty in a foreign country, and military caregiver leave to care for a family member who becomes seriously injured or ill in the line of duty while on active duty. These new provisions allow eligible employees to take up to 12 workweeks to attend to qualifying exigencies when the employee's spouse, son, daughter or parent is on covered active duty or is called to covered active duty, and up to 26 workweeks in a single 12-month period to care for the employee's spouse, son, daughter, parent, or next of kin with a serious injury or illness incurred in the line of duty on active duty.<sup>[1]</sup>

Protections afforded by Uniformed Services Employment and Reemployment Rights Act (USERRA) extend to all military members (active duty and reserve), and all periods of absence from work due to or necessitated by USERRA-covered service is counted in determining an employee's eligibility for FMLA leave. (29 CFR § 825.110).

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[1] 29 C.F.R. §§ 825.126, 825.127.

## Leave for Qualifying Exigency

**Reference Number:** CTAS-1022

An eligible employee is entitled to take FMLA leave for any "qualifying exigency" arising 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."<sup>[1]</sup> "Covered active duty" means (1) in the case of a member of the regular component of the Armed Forces, duty during deployment to a foreign country, and (2) in the case of a member of the reserve component of the Armed Forces, duty during deployment with the Armed Forces to a foreign country under a call to active duty.<sup>[2]</sup> "Qualifying exigency" includes the following: short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation and post-deployment activities. It also includes any additional activities that are agreed upon by the employee and employer.<sup>[3]</sup>

Eligible employees may take FMLA leave for the following "qualifying exigencies" that occur in connection with covered active duty or a call to covered active duty of the employee's spouse, son, daughter or parent:

1. Short notice deployment. Leave may be taken to address any issues arising from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven calendar days or less prior to the date of deployment. Leave for this purpose can be used for seven calendar days after the notice is received.
2. Military events and related activities. Leave may be taken to attend official ceremonies and events sponsored by the military related to the call to active duty, or to attend support or assistance programs or informational briefings.
3. Childcare and school activities. Leave may be taken to arrange for alternative childcare, to provide childcare on an urgent, immediate need basis, to enroll in or transfer to a new school or daycare facility, or to attend school meetings necessitated by the call to active duty.
4. Financial and legal arrangements. Leave may be taken to make legal and financial arrangements to address the military member's absence while on active duty, or to act as the military member's representative before a federal, state, or local agency regarding military service benefits.
5. Counseling. Leave may be taken to attend counseling provided by someone other than a health care provider.

6. Rest and recuperation. Up to fifteen days of leave may be taken to spend time with the military member on rest and recuperation leave during the period of deployment.

7. Post-deployment activities. Leave may be taken to attend arrival ceremonies, reintegration events, and other official ceremonies or programs sponsored by the military for 90 days after termination of active duty status, or to address issues arising from death of a military member while on active duty.

8. Parental care. Care for a military member's parent who is incapable to self-care when the care is necessitated by the member's covered active duty. Such care may include arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility. 29 C.F.R. § 825.126.

9. Additional activities. Leave may be taken for other events related to the military member's active duty or call to active duty as long as the employee and the employer agree that the leave qualifies as an exigency and agree on the timing and duration of the leave.

Employees seeking qualifying exigency leave are required to give their employer reasonable notice if the exigency is foreseeable. The notice must advise the employer that a covered family member is on active duty or call-to-active-duty status, give a listed reason for the leave, and give the anticipated length of the absence. Covered active duty requires deployment to a foreign country. 29 CFR § 825.126.

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[1] 29 C.F.R. § 825.126.

[2] FMLA Section 101, as amended by NDAA 2010.

[3] 29 C.F.R. § 825.126.

## Military Caregiver Leave

**Reference Number:** CTAS-1023

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a "covered servicemember" is entitled to take FMLA leave to care for the covered servicemember with a "serious injury or illness".<sup>[1]</sup> A "covered servicemember" is (1) a current member of the Armed Forces, 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 disability retired list, for a serious injury or illness; or (2) a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces (including National Guard and Reserves) at any time during the period of five years preceding the date on which the veteran undergoes the treatment, recuperation, or therapy.<sup>[2]</sup> "Next of kin" means the nearest blood relative of that individual. A "serious injury or illness" means in the case of a current member of the Armed Forces, including the National Guard or Reserves, an injury or illness incurred in the line of duty on active duty (or which existed prior to active duty but 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. 29 CFR § 825.127.

A serious injury or illness for a covered veteran means an injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is-

1. A continuation of a serious injury or illness that was incurred or aggravated when the covered 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 covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or
3. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or
4. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. 29 C.F.R. § 825.127.

Leave under this category is calculated differently than other types of FMLA leave. Unlike the other types of leave under the FMLA, eligible employees are entitled to 26 workweeks in a single 12-month period to care for the covered servicemember with a serious injury or illness. The single 12-month period begins on the first day the employee takes leave to care for the servicemember and continues for 12 months thereafter, regardless of the method used to calculate other types of FMLA leave. If the employee does not take all of the 26-workweek entitlement during this single 12-month period, the remainder is forfeited. The leave entitlement applies on a per-covered-servicemember, per-injury basis, so an eligible employee could be entitled to more than one 26-week period of leave if more than one family member is involved or subsequent illness or injury occurs, but no more than 26 workweeks can be taken within any single 12-month period.

An employee is limited to a combined total of no more than 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period, and is limited to a total of 12 workweeks for all other FMLA leave (birth or placement of a child, serious health condition of employee or immediate family or qualifying exigency).

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[1] 29 C.F.R. § 825.127.

[2] 29 C.F.R. §825.127, FMLA Section 101, as amended by NDAA 2010.

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