



**OFFICE OF THE STAFF JUDGE ADVOCATE
501st COMBAT SUPPORT WING
RAF ALCONBURY / RAF CROUGHTON, UK**



FAMILY AND MEDICAL LEAVE ACT

Entitlement

The Family and Medical Leave Act of 1993 (FMLA) entitles U.S. Federal government civilian employees up to 12 work weeks of unpaid leave (leave without pay) during any 12-month period for the following purposes:

- the birth of a child of the employee and the care of such child;
- the placement of a son or daughter with the employee for adoption or foster care;
- the care of spouse, son or daughter, or parent of the employee who has a serious health condition (as defined in 5 CFR 630.1202);
- serious health condition of the employee that makes the employee unable to perform the essential functions of his or her positions; or
- any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.
- servicemember caregiving: Employees with a spouse, son, daughter, parent, or next of kin of a covered servicemember (of the Armed Forces or a veteran who was a member of the Armed Forces within the preceding 5 years), who suffers a serious (as defined in 5 CFR 630.1202) injury or illness incurred on active duty and is undergoing medical treatment, recuperation, or therapy, may take the amount of FMLA leave necessary to provide care, up to a total of 26 administrative workweeks within a 12-month period. This entitlement shall only be available one time.

Covered Employees and Effective Date

The FMLA is available to most full-time and part-time U.S. civilian employees who have completed 12 months of service. The FMLA does not apply to military members. The 12-month period begins on the date the employee first takes leave for a family or medical need and continues for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event occurs that entitles the employee to another period of family or medical leave.

Advance Notice

The employee must notify his agency of his intent to take FMLA leave not less than 30 days before leave is to begin or, in emergencies, as soon as is practicable. The notification should specify the dates of the leave period, and if the employee elects to take sick leave, annual leave or leave without pay. The employee does not have to take the leave in consecutive days. An

employee cannot invoke his entitlement to FMLA leave retroactively. However, if an employee or his personal representative are physically or mentally incapable of invoking entitlement to FMLA leave *during the entire period of the absence*, the employee may retroactively invoke his entitlement to FMLA leave within 2 workdays after returning to work. The employee must provide written medical certification from his health care provider attesting to his incapacity, and documentation acceptable to the employee's agency explaining his personal representative's inability to invoke entitlement to FMLA leave. The agency may delay the start of the employee's FMLA leave for at least 30 days where the employee fails to give 30 days' notice and provides no reasonable excuse for the delayed notification.

Medical Certification

An agency may request medical certification for FMLA leave taken because of a serious health condition (employee or spouse, son, daughter, or parent). An employee must provide medical documentation within 15 calendar days. In the event this is not possible, despite the employee's diligent, good faith efforts, medical certification must be provided within a reasonable period, but no later than 30 calendar days after the date the employee's agency requests such medical certification. An employee that does not comply with the request for sufficient medical certification is not entitled to leave under FMLA. If the employee is unable to provide the requested medical certification before leave begins, or there is a question about the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the employee's agency will grant the leave provisionally pending final written medical certification. The Department of Labor forms that must be provided can be found at the following link, but all references to 29 CFR in the forms should be disregarded as they do not apply to Federal employees: <https://www.dol.gov/whd/fmla/forms.htm>.

Leave

An employee may only take the amount of FMLA leave necessary to manage the circumstances that prompted the need for leave. The employee may take FMLA leave intermittently or work a reduced schedule. The employee may substitute annual leave and/or sick leave, as appropriate, for any unpaid leave under FMLA. However, paid leave cannot be substituted retroactively for FMLA leave. Advanced annual or sick leave and/or leave made available to the employee under the Voluntary Leave Transfer Program may also be available.

Job Benefits and Protection

Upon return from FMLA leave, an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment, except as provided by law. An employee who takes FMLA leave is entitled to maintain health benefits coverage under the Federal Employees Health Benefit (FEHB) Program. The employee must agree to either continue paying the current FEHB premiums or allow his agency to recover the debt (total accrued unpaid premiums) from his salary or other sources.

Covered Active Duty (Including Call to Covered Active Duty and Notification of Impending Call/Order to Active Duty)

Covered active duty means the deployment of an active duty member of the Armed Forces to a foreign country, or the deployment of a member of the reserve component to a foreign country in support of a contingency operation under Title 10 United States Code, or other provision of law during war or a national emergency declared by the President or Congress.

Qualifying Exigency

An employee may take FMLA leave while the employee's covered military member (spouse, son, daughter, or parent) is on covered active duty for one or more of the following:

- Short-notice deployments (7 or fewer calendar days notification) – to address any issues related to short-notice deployment for up to 7 calendar days beginning on the date a covered military member is notified of an impending call/order to covered active duty;
- Military events and related activities – to attend any official military ceremony, program, or event related to covered active duty, and attend family support or assistance and information briefings sponsored by the military, military service organization or American Red Cross related to a covered military member's covered active duty;
- Childcare and school activities – to arrange alternative childcare and school enrollment and/or activities when the covered military member's active duty status necessitates a change;
- Financial and legal arrangements – to make financial and legal arrangements, and represent covered military member before Federal, State, or local agency to obtain, arrange, or appeal military service benefits during period of covered active duty or for 90 days following the termination of the covered military member's active duty status;
- Counseling – to attend counseling for self, covered military member, or child provided by someone other than health care provider for matters arising from covered active duty;
- Rest and recuperation – to take up to 5 days to spend with covered military member who is on rest and recuperation;
- Post-deployment activities – to attend arrival ceremonies, reintegration briefings and events, and other official ceremony or program sponsored by the military for 90 days following termination of the covered military member's covered active duty status; and to address issues arising from the death of the covered military member; or
- Additional activities – The employee and his agency must agree that the additional activities qualify as an exigency, as well as to the duration and timing of the leave.

Resources

5 USC §§6381 - 6387 - <https://uscode.house.gov/view.xhtml?path=/prelim@title5/part3>

[/subpartE/chapter63/subchapter5&edition=prelim](#)

5 CFR Part 630, *Absence and Leave*, Subpart L- *Family and Medical Leave*

<https://www.ecfr.gov/current/title-5/chapter-I/subchapter-B/part-630/subpart-L>

DoDI 1400.25, Volume 630, *Leave*, 14 November 2019

https://static.e-publishing.af.mil/production/1/af_a1/publication/dodi1400.25v630_afi36815/dodi1400.25.v630_afi36-815.pdf

Department of Labor Family and Medical Leave Act - <https://www.dol.gov/agencies/whd/fmla>

Conclusion

Federal employees are entitled up to 12 administrative work weeks of leave without pay during any 12-month period for certain family and medical needs, with employment and benefits protections. For questions, contact your servicing civilian personnel office.

RAF Alconbury and RAF Croughton Legal Office Hours

All Services by Appointment Only (email 501cswja@us.af.mil)

Tuesdays and Thursdays 1000-1200 & 1300-1400

Current as of May 2022