



## Ohio National Guard Federal Employee Benefits Bulletin

<b>Bulletin Number:</b> OH-08	<b>Date:</b> 31 March 2021
<b>Applicability:</b> National Guard (NG) Technicians (T5 and T32)	<b>Subject:</b> Family and Medical Leave Act (FMLA) Guidance

**Background:** The Family and Medical Leave act (FMLA) entitles eligible employees to take un-paid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions if the employee had not taken leave.

**Eligible Employees:** An eligible employee is someone who has worked for the agency for at least 12 months; have at least 1,250 hours of service in the 12 months before taking leave. Employee must be in a permanent position prior to taking the leave. Temporary technicians are not eligible but the time they serve with the agency will count for qualifying time should they convert to a permanent position.

**Leave Entitlement:** Eligible employees may take up to 12 work weeks of leave in a 12-month period for one or more of the following reasons:

- The birth of a son or daughter, or placement of a son or daughter with the employee for adoption or foster care;
- To care for a spouse, son, daughter, or parent who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- For a qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

An eligible employee may also take up to **26 work weeks** of leave during a "single 12-month period" to care for a covered service member with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the service member.

Under some circumstances, employees may take FMLA leave on an intermittent or reduced schedule basis. This means an employee may take leave in separate blocks of time or by reducing the time he or she works each day or week for a single qualifying reason. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations. If FMLA leave is for the birth, adoption, or foster placement of a child, use of intermittent or reduced schedule leave requires the agency's prior approval.

**FMLA Notice:** Employees generally must request leave 30 days in advance when the need for leave is foreseeable. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances. Employees do not have to share a

medical diagnosis, but must provide enough information to HRO in order to determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must also inform HRO if the need for leave is for a reason for which FMLA leave was previously taken or certified.

**Certification:** The employee must provide HRO with the FMLA certification and any applicable supporting documentation. When an employee requests FMLA leave due to his or her own serious health condition they need to supply a completed WH-380-E and provide any applicable supporting documentation. If the employee is requesting FMLA for a covered family member's serious health condition they would need to supply the WH-380-F and certification in support of the leave from a health care provider. HRO will provide the employee with an approval memo for their FMLA time. The employee must provide the approval memo to the employee's corresponding payroll office and all leave slips taken in conjunction with the approved FMLA time will need to be marked with "I hereby invoke my entitlement to family and medical leave." FMLA also requires that the employee notify HRO as soon as practicable if dates of the scheduled leave change or are extended.

**Job Restoration and Health Benefits:** Upon return from FMLA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot be counted against the employee under a "no-fault" attendance policy. Employers are also required to continue group health insurance coverage for an employee on FMLA leave under the same terms and conditions as if the employee had not taken leave

**FMLA and Federal Employee's Paid Parental Leave Act (FEPLA):** If an employee intends to use the FEPLA leave they must also invoke their FMLA entitlement. An approval memo from HRO is also required and must be supplied to payroll for certification. Please reference our Federal Employee Benefits Bulletin (OH-03) and HRO policy #20-030 for more information about FEPLA leave.

For any other questions or concerns regarding any of the information listed above or on any Technician Benefits, please contact the Benefits email distro at:

[ng.oh.oharng.list.j1-hro-benefits@mail.mil](mailto:ng.oh.oharng.list.j1-hro-benefits@mail.mil)

# EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

## LEAVE ENTITLEMENTS

Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within one year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;\* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

\*Special "hours of service" requirements apply to airline flight crew employees.

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

## BENEFITS & PROTECTIONS

## ELIGIBILITY REQUIREMENTS

## REQUESTING LEAVE

## EMPLOYER RESPONSIBILITIES

## ENFORCEMENT

For additional information or to file a complaint:

**1-866-4-USWAGE**

(1-866-487-9243) TTY: 1-877-889-5627

**www.dol.gov/whd**

U.S. Department of Labor | Wage and Hour Division

