

# Family and Medical Leave Act (FMLA) Regulations

## Summary of Changes

### Standard FMLA Leave

Several new provisions have been added to the FMLA regulations that will clarify both employer and employee obligations and will change employee notice and medical certification requirements. The sections of the FMLA regulations have been reorganized to group related information together, and thus changed the section numbers. The information in this section, "Standard FMLA Leave," outlines the changes related to leave for an employee or family member illness, or the birth, adoption, or foster placement of a child.

Subject	Existing Regulations	Regulations Effective 1-16-2009	Change
<b><i>Qualifying Event</i></b>	<ul style="list-style-type: none"> <li>• May be used for personal or family illness.</li> <li>• May be used for the birth, adoption, or foster placement of a child.</li> </ul>	<ul style="list-style-type: none"> <li>• Qualifying exigency resulting from a family member being called to active military duty is added to the list of qualifying events for the standard 12 weeks of FMLA leave.</li> <li>• Military caregiver leave (26 weeks in a separate 12 month period) to care for a family member who becomes ill or injured while on active military duty is added.</li> </ul>	<ul style="list-style-type: none"> <li>• Adds provisions for new family military leave which are described in detail in a separate section of this chart (Military Caregiver Leave).</li> </ul>
<b><i>Eligibility: Care for a Family Member</i></b>	<ul style="list-style-type: none"> <li>• Children over the age of 18 are covered only if they have a disability as defined by the Americans with Disabilities Act.</li> </ul>	<ul style="list-style-type: none"> <li>• The adult child's disability at the time leave commences must be considered to determine eligibility.</li> <li>• An employee need not be the only individual or family member available to care for a family member.</li> </ul>	<ul style="list-style-type: none"> <li>• Clarifies that facts and circumstances occurring after leave commences are not considered.</li> <li>• Clarifies that the employee is eligible for leave even if there are others available to care for the family member.</li> </ul>
<b><i>Eligibility: Employee Must Be Employed by the District for 12 Months</i></b>	<ul style="list-style-type: none"> <li>• The 12 months do not have to be consecutive, and any past employment must be counted.</li> </ul>	<ul style="list-style-type: none"> <li>• Separate periods of employment are counted unless there is a break in service that exceeds seven years.</li> <li>• Employment periods preceding a break in service are counted if the break was due to military service in the National Guard or Reserves or there is a written agreement reflecting an employer's intention to rehire the employee after the break-in-service (e.g., unpaid leave of absence).</li> </ul>	<ul style="list-style-type: none"> <li>• Limits previous periods of employment an employer must include when determining employee eligibility.</li> </ul>

<p><b>Serious Health Condition</b></p>	<ul style="list-style-type: none"> <li>• A serious health condition requires continuing treatment by a health care provider and more than three days of incapacity.</li> <li>• Chronic health conditions require periodic visits to a health care provider.</li> </ul>	<ul style="list-style-type: none"> <li>• The three days of incapacity must be three full, consecutive calendar days.</li> <li>• Treatment is defined as an in-person visit to a health care provider.</li> <li>• The first in-person treatment must take place within seven days of the first day of incapacity.</li> <li>• The need for additional visits or a regimen of continuing treatment is determined by the health care professional, not the employee.</li> <li>• Continuing treatment involves at least two visits to the health care provider within 30 days of the first day of incapacity.</li> <li>• Periodic visits for a chronic condition are defined as at least two visits to a health care provider per year.</li> </ul>	<ul style="list-style-type: none"> <li>• Provides clarification of the amount of treatment required by a health care provider to establish that a condition is “serious.”</li> </ul>
<p><b>Intermittent Leave</b></p>	<ul style="list-style-type: none"> <li>• Employees must attempt to schedule intermittent or reduced schedule leave so as not to disrupt the employer’s operations.</li> </ul>	<ul style="list-style-type: none"> <li>• Employees are expected to consult with the employer and make a reasonable effort to schedule planned medical treatment on a schedule which best suits the needs of both the employer and employee. <ul style="list-style-type: none"> <li>➢ The employer can initiate such a discussion.</li> <li>➢ If there is a medical necessity for a particular treatment schedule, as determined by the health care provider, the district must grant the intermittent or reduced schedule leave.</li> </ul> </li> <li>• All hours normally worked, including overtime, must be taken into account when calculating the amount of leave used for intermittent leave. Note: This is an important consideration for employees in more than one position (e.g., teacher/bus driver, custodian/bus driver).</li> </ul>	<ul style="list-style-type: none"> <li>• Clarifies employee’s responsibility to work with the employer to schedule intermittent leave.</li> <li>• Clarifies procedures for accounting for intermittent leave.</li> </ul>
<p><b>Employee Notice</b></p>	<ul style="list-style-type: none"> <li>• Employees are required to notify the district of their need for leave, but need not assert their rights under FMLA or even mention FMLA to be eligible.</li> </ul>	<ul style="list-style-type: none"> <li>• Employee must provide sufficient information to indicate need for FMLA leave and anticipated duration of leave. Employee must also respond to the employer’s questions designed to determine if the absence is FMLA-qualifying. Failure to do so may result in denial of FMLA protection if the employer is unable to determine that leave is FMLA qualifying.</li> <li>• An employee’s failure to comply with the employer’s procedures for reporting absences can result in the delay or denial of FMLA leave or ability to use paid</li> </ul>	<ul style="list-style-type: none"> <li>• Clarifies employee’s responsibility to provide information to employer.</li> <li>• Requires employees to comply with the employer’s absence reporting procedures.</li> <li>• Establishes circumstances when employee’s FMLA and paid leave may be delayed or denied.</li> </ul>

		<p>leave, except in unusual circumstances (e.g., employee is unable to call due to his or her medical condition).</p> <ul style="list-style-type: none"> <li>• Employees must comply with the employer's paid leave reporting requirements and policies in order to access paid leave concurrently with FMLA leave. <ul style="list-style-type: none"> <li>➤ Use of paid leave may be denied if the employee fails to comply. However, the unpaid FMLA leave must be granted if the FMLA notice requirements are met.</li> </ul> </li> </ul>	
<p><b>Notice Requirements: General Notice</b></p>	<ul style="list-style-type: none"> <li>• General notice of rights and responsibilities must be posted for employees and applicants.</li> <li>• A separate notice of employee rights and responsibilities must be included in the employee handbook or provided each time an employee requests FMLA leave.</li> </ul>	<ul style="list-style-type: none"> <li>• The FMLA poster and notice of rights must be posted and distributed. <ul style="list-style-type: none"> <li>➤ Notice must be posted in places that are accessible to both applicants and employees.</li> <li>➤ Notice must also be distributed by including it in the employee handbook or providing it to each new hire.</li> </ul> </li> <li>• Electronic posting and distribution is allowed providing: <ul style="list-style-type: none"> <li>➤ The posting is in a conspicuous place on the employer's Web site.</li> <li>➤ It is accessible to all applicants and current employees.</li> <li>➤ All employees have access to employer's computers.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Combines the FMLA poster and employee notice of rights and responsibilities into one general notice.</li> <li>• Allows the general notice to be posted electronically.</li> </ul>
<p><b>Notice Requirements: Eligibility and Designation of Leave</b></p>	<ul style="list-style-type: none"> <li>• Employers have two business days to provide employees with written notice of designation of FMLA leave and rights and responsibilities under FMLA.</li> <li>• Designation must be made before leave can be counted against the 12-week entitlement.</li> </ul>	<ul style="list-style-type: none"> <li>• Employers have five business days, absent extenuating circumstances, to provide employees with written notice of their <u>eligibility</u> for FMLA leave. Notice of <u>eligibility</u> must be provided at the beginning of leave for each FMLA qualifying reason in the applicable 12-month period. <ul style="list-style-type: none"> <li>➤ All absences for the same reason are considered a single leave and employee eligibility does not change during the 12-month period (e.g., intermittent leave).</li> <li>➤ If an employee has a subsequent need for leave due to a different reason, and the employee's eligibility status has not changed, no additional notice is required.</li> <li>➤ If an employee is not eligible for leave, then the employer must provide notice that states at least one reason why they are not eligible.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Provides employers with three additional business days to provide notice of eligibility to employees.</li> <li>• Addresses circumstances under which notice is required and methods for providing notice(s) to employees.</li> <li>• Specifies that notice of designation is not required at the same time notice of eligibility is given. Notice of designation may be delayed until medical certification is received.</li> </ul>

		<ul style="list-style-type: none"> <li>• Written notice of <u>designation</u> must be provided within five business days after the employer has sufficient information to determine if leave qualifies (e.g., <i>after</i> medical certification is received).</li> </ul>	
<b>Retroactive Designation</b>	<ul style="list-style-type: none"> <li>• Retroactive designation of leave is not generally permitted.</li> </ul>	<ul style="list-style-type: none"> <li>• An employer may retroactively designate leave as FMLA leave with appropriate notice to the employee, provided the employer's failure to timely designate leave does not cause harm or injury to the employee.</li> <li>• An employee and employer may agree to retroactively designate an absence as FMLA-protected.</li> </ul>	<ul style="list-style-type: none"> <li>• Provides for retroactive designation of leave.</li> </ul>
<b>Medical Certification</b>	<ul style="list-style-type: none"> <li>• Employer can require medical certification.</li> <li>• Employer cannot have direct contact with the employee's health care provider.</li> <li>• One prototype medical certification is provided.</li> </ul>	<ul style="list-style-type: none"> <li>• Employees must provide complete and sufficient certification of the need for leave. <ul style="list-style-type: none"> <li>➢ Certification is considered incomplete if one or more entries have not been completed or if the information provided is vague, ambiguous, or non-responsive.</li> <li>➢ The employee's request for FMLA may be denied if the employee's request is unclear and the employee refuses to address deficiencies or does not grant the employer permission to speak to the health care provider to obtain clarification (i.e., if the employee fails to provide a Health Insurance Portability and Accountability Act (HIPAA) authorization).</li> <li>➢ The employer must provide the employee seven days to cure any deficiencies.</li> </ul> </li> <li>• After the employee has been provided an opportunity to cure any deficiencies, an employer may contact the employee's health care provider for authentication or clarification purposes. <ul style="list-style-type: none"> <li>➢ The employer may use a human resource professional, a leave administrator, or management official, as well as a health care provider, to contact the employee's health care provider.</li> <li>➢ The employee's direct supervisor is prohibited from contacting the health care provider.</li> </ul> </li> <li>• The employee's permission is not required for the employer to contact the health care provide for</li> </ul>	<ul style="list-style-type: none"> <li>• Strengthens the employee's responsibility to provide adequate medical certification.</li> <li>• Allows direct contact between the employer and the employee's health care provider and defines parameters for the contact.</li> <li>• Provides new forms for medical certification that allow doctors to include diagnoses.</li> </ul>

		<p>authentication.</p> <ul style="list-style-type: none"> <li>• Under HIPAA, the employee must complete a written authorization for the employer to contact the health care provider for clarification. Clarification is defined as contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response.</li> <li>• Upon request, an employee must provide the employer with an English translation of medical certification provided by a foreign health care provider.</li> <li>• Two medical certification forms are provided. One is to certify the employee's own serious health condition and the other is for the serious health condition of a family member.</li> </ul>	
<b><i>Frequency of Recertification</i></b>	<ul style="list-style-type: none"> <li>• Recertification may be required every 30 days, unless the certification indicates that the minimum duration is more than 30 days.</li> <li>• Recertification may be required before the time set if circumstances change, there is doubt as to the validity of the certification, or if the employee requests additional time.</li> <li>• Recertification may be requested every 30 days in connection with absences for chronic and permanent conditions.</li> </ul>	<ul style="list-style-type: none"> <li>• The 30-day certification rules are maintained. However, additional options are provided: <ul style="list-style-type: none"> <li>➢ If the certification form indicates that the minimum duration is more than 30 days, the employer may request recertification at the end of the minimum duration, or every six months, whichever is less.</li> <li>➢ Recertification in less than 30 day intervals can be required when an employee requests an extension of his or her leave, circumstances have significantly changed, or the employer receives information that casts doubt on the original certification.</li> <li>➢ Employer may provide the health care provider with the employee's attendance records and ask whether leave is "consistent" with the employee's serious health condition.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Clarifies when medical recertification can be required.</li> </ul>
<b><i>Fitness for Duty Certification</i></b>	<ul style="list-style-type: none"> <li>• Employer may require a simple statement addressing the employee's fitness for duty when returning to work after taking a continuous block</li> </ul>	<ul style="list-style-type: none"> <li>• Employer must notify employees in its designation notice whether a fitness for duty certification will be required. If this notice is provided and the employee fails to provide a fitness-for-duty certification, the employee loses reinstatement rights under the law, unless the employee has requested additional</li> </ul>	<ul style="list-style-type: none"> <li>• Clarifies and more clearly defines the parameters for fitness for duty certification.</li> <li>• Requires employers to provide health care providers with a list of job duties when</li> </ul>

	<p>of leave time.</p> <ul style="list-style-type: none"> <li>• Fitness for duty for each intermittent absence is not permitted.</li> </ul>	<p>FMLA leave.</p> <ul style="list-style-type: none"> <li>• The fitness for duty certification must certify that the employee is able to resume work. The employer may require that the certification specifically address the employee's ability to perform essential job functions by providing notice of such requirement, along with a list of essential job functions, no later than the designation notice.</li> <li>• Employer may require fitness for duty certification every 30 days if the employee has used intermittent leave during that period and reasonable safety concerns exist regarding the employee's ability to perform his or her duties. <ul style="list-style-type: none"> <li>➢ Employer may not terminate an employee while awaiting such fitness for duty certification.</li> <li>➢ The prohibition against requesting fitness for duty certification after each period of intermittent leave remains.</li> </ul> </li> </ul>	<p>requesting fitness for duty certifications.</p>
<b><i>Use of Paid Leave</i></b>	<ul style="list-style-type: none"> <li>• Comp time may not be counted against an employee's 12-week leave entitlement.</li> </ul>	<ul style="list-style-type: none"> <li>• Compensatory time (comp time) used for an FMLA qualifying event may be counted against an employee's 12-week leave entitlement. The use of comp time may be at the employee's request or required by the employer.</li> </ul>	<ul style="list-style-type: none"> <li>• Allows comp time to run concurrently with FMLA.</li> </ul>
<b><i>Bonuses</i></b>	<ul style="list-style-type: none"> <li>• Employee cannot be disqualified from any attendance incentive because of FMLA leave.</li> </ul>	<ul style="list-style-type: none"> <li>• Employee may be disqualified from any contingent bonus or award that the employee fails to achieve due to his or her FMLA absence (e.g., perfect attendance), so long as disqualification applies to all types of leave.</li> </ul>	<ul style="list-style-type: none"> <li>• Allows employee to be disqualified from attendance awards when the reason for absence is designated as FMLA.</li> </ul>

## Military Caregiver Leave

Employees who meet the standard FMLA qualifying tests (i.e., 12 months of service, 1250 hours worked in 12 months) are entitled to take up to 26 workweeks of leave in a “single 12-month period” to care for a family member who is a current member of the military and is seriously injured or becomes ill in the line of duty while on active duty.

Subject	Regulations Effective 1-16-2009	Key Points
<b>Qualifying Event</b>	<p>Eligible employees may take leave to care for a family member who is a <u>current</u> member of the Armed Forces (including a member of the National Guard or Reserves) who has been seriously injured or becomes ill in the line of duty while on active duty and meets one of the following designations:</p> <ul style="list-style-type: none"> <li>• Undergoing medical treatment, recuperation, or therapy.</li> <li>• In outpatient status.</li> <li>• On the <u>temporary disability</u> retired list.</li> </ul>	<ul style="list-style-type: none"> <li>• Provides rules for implementing leave to care for a family member injured in the line of duty.</li> <li>• Defines “serious injury or illness.”</li> <li>• Defines “outpatient status.”</li> <li>• Limits use to families of current members of the Armed Forces.</li> </ul>
<b>Eligibility</b>	<p>Employee must be the spouse, son, daughter, parent, or next of kin of a covered servicemember.</p> <ul style="list-style-type: none"> <li>• The employee’s son or daughter may be of any age.</li> <li>• “Next of kin” is the nearest blood relative in the following order of priority: <ul style="list-style-type: none"> <li>➤ Blood relative with a court decree or statutory legal custody of the servicemember.</li> <li>➤ Blood relative designated by the servicemember as caregiver under FMLA.</li> <li>➤ Brothers and sisters.</li> <li>➤ Grandparents.</li> <li>➤ Aunts and uncles.</li> <li>➤ First cousins.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Provides a definition of child that is different from one used for standard FMLA.</li> <li>• Adds “next of kin” to list of family members.</li> </ul>

<p><b>Entitlement</b></p>	<p>An eligible employee is entitled to 26 weeks of leave during “a single 12-month period” for military caregiver leave.</p> <ul style="list-style-type: none"> <li>• The “single 12-month period” begins on the first day the eligible employee takes military caregiver leave and ends 12 months later, regardless of the method used to determine the employee’s 12 workweeks of leave for other FMLA-qualifying reasons.</li> <li>• An eligible employee may take multiple 26-week periods of leave: <ul style="list-style-type: none"> <li>➤ To care for a different covered servicemember.</li> <li>➤ To care for the same servicemember with a subsequent serious injury or illness.</li> </ul> </li> <li>• For multiple leave events, the employee is limited to taking no more than 26 workweeks of leave in each “single 12-month period.”</li> <li>• Leave for any of the other FMLA-qualifying reasons is limited to 12 weeks. After an employee exhausts military caregiver leave, the employee may take regular FMLA leave for the same reason, if the employee meets eligibility criteria. An employer may not run military caregiver leave concurrently with regular FMLA leave.</li> <li>• A husband and wife who work for the same employer are limited to a combined total of 26 workweeks of leave.</li> </ul>	<ul style="list-style-type: none"> <li>• Adds up to 14 weeks of leave to the 12 weeks already established for other FMLA qualifying events.</li> <li>• Defines a “single 12-month period.”</li> <li>• Establishes parameters for requests for multiple 26 week periods of leave.</li> </ul>
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## Leave for a Qualifying Exigency

An employee who meets the standard FMLA qualifying tests (i.e., 12 months of service, 1250 hours worked in 12 months) and whose family member is either a reservist, member of the National Guard, or retired military member who has been called to active duty in support of a contingency operation is entitled to up to 12 workweeks of leave for a related qualifying exigency. Excludes employees whose family members are members of the Regular Armed Forces.

Leave for a qualifying exigency is added to the list of existing qualifying events for 12 weeks of FMLA leave (e.g., personal or family illness and birth, adoption or foster placement of a child). Leave taken for any of these reasons is limited to a total of 12 weeks in the 12 months designated by the district.

Subject	Regulations Effective 1-16-2009	Key Points
<b>Qualifying Event</b>	<p>An eligible employee may take leave while the employee's family member is on active duty or called to active duty status for any of the following qualifying exigencies:</p> <ul style="list-style-type: none"> <li>• Short-Notice Deployment               <ul style="list-style-type: none"> <li>➤ To address any issue that results from a covered military member being ordered to active duty seven or less calendar days before the date of deployment.</li> <li>➤ Limited to seven calendar days of leave beginning on the date the covered military member receives a call to active duty.</li> </ul> </li> <li>• Military Events and Related Activities               <ul style="list-style-type: none"> <li>➤ To attend any official ceremony, program, or event sponsored by the military.</li> </ul> </li> <li>• Childcare and School Activities (for the child of a covered military member) for the following purposes, when necessitated by active duty or a call to active duty:               <ul style="list-style-type: none"> <li>➤ To arrange for alternative child care.</li> <li>➤ To provide childcare on an urgent, immediate need basis.</li> <li>➤ To enroll or transfer the child to a new school or day care facility.</li> <li>➤ To attend school meetings.</li> </ul> <p>For these purposes, "child" is defined the same as for regular FMLA leave.</p> </li> <li>• Financial and Legal Arrangements               <ul style="list-style-type: none"> <li>➤ To make financial or legal arrangements that result from the covered military member's absence while on active duty.</li> <li>➤ To act as the covered military member's representative for purposes of obtaining, arranging, or appealing military service benefits.</li> </ul> </li> <li>• Counseling               <ul style="list-style-type: none"> <li>➤ To attend counseling, provided by someone other than a health care provider, for oneself, the covered military member, or the covered military member's child, provided that the need for counseling arises from the active duty or call to active duty.</li> </ul> </li> <li>• Rest and Recuperation</li> </ul>	<ul style="list-style-type: none"> <li>• Defines qualifying exigencies through an <i>exclusive</i> list.</li> <li>• Limits leave time for certain qualifying exigencies.</li> </ul>

	<ul style="list-style-type: none"> <li>➤ To spend time with a covered service member who is on short term, temporary rest and recuperation leave during the period of deployment.</li> <li>➤ Limited to five days of leave for each instance.</li> <li>• Post-Deployment Activities <ul style="list-style-type: none"> <li>➤ To attend programs sponsored by the military for a period of 90 days following termination of the covered military member's active duty status.</li> <li>➤ To address issues resulting from the death of a covered military member while on active duty.</li> </ul> </li> <li>• Additional Activities <ul style="list-style-type: none"> <li>➤ To address any other activity that both the employee and employer agree qualifies as an exigency.</li> </ul> </li> </ul>	
<b>Eligibility</b>	<p>An employee is eligible whose spouse, son, daughter, or parent is on active duty or called to active duty status.</p> <ul style="list-style-type: none"> <li>• A son or daughter for military leave purposes is defined as a child of any age.</li> <li>• The employee must meet the qualifying tests of standard FMLA leave (i.e., has been employed by the district for 12 months and has worked 1,250 hours in the 12 months immediately preceding the need for leave).</li> <li>• "Active duty or call to active duty status" means duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation which orders the following members to active duty in case of war or <u>national</u> emergency: <ul style="list-style-type: none"> <li>➤ Reserves</li> <li>➤ Retired Regular Armed Forces or Reserves</li> <li>➤ National Guard</li> </ul> </li> <li>• An employee whose family member is a member of the Regular Armed Forces is not eligible to take leave because of a qualifying exigency.</li> </ul>	<ul style="list-style-type: none"> <li>• Provides a definition of son or daughter specific to this type of leave.</li> <li>• Defines "active duty or call to active duty status."</li> <li>• Excludes employees whose family members are members of the Regular Armed Forces.</li> </ul>
<b>Entitlement</b>	<p>Up to 12 weeks of leave is available in the 12-month period as defined by the employer.</p> <ul style="list-style-type: none"> <li>• Leave taken is counted against the 12 weeks of leave available for other FMLA reasons. It is not a separate 12 week period.</li> </ul>	<ul style="list-style-type: none"> <li>• Limits time available to 12 weeks and includes any time taken for other qualifying reasons for FMLA leave.</li> </ul>

## Forms and Notices

The forms and notices used in administering FMLA have been revised, and new forms for certification of family military leave have been added. They were developed by the Department of Labor and include all of the information an employer may request. Employers may use alternate forms containing the same basic information. However, no information beyond what is specified in the FMLA regulations may be requested by the employer. Outlined below is a description of the new forms and notices, suggestions for using them, and where they are located in the online HR Library available to member districts.

Form/Notice Title	Description/Suggestions for Use
<p><a href="#"><u><b>Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act)</b></u></a></p> <p><i>HR Library</i></p>	<p>To be completed by the employee's health care provider to establish the employee's initial eligibility for FMLA leave for his or her own serious health condition, for second and third opinions, and for recertification purposes.</p> <ul style="list-style-type: none"> <li>• Attach a job description if the health care provider is required to state whether or not the employee is able to perform the essential functions of his or her position.</li> <li>• Must be maintained in a separate confidential file as required by the Americans with Disabilities Act.</li> </ul>
<p><a href="#"><u><b>Certification of Health Care Provider for Family Member's Serious Health Condition (Family and Medical Leave Act)</b></u></a></p> <p><i>HR Library</i></p>	<p>To be completed by the family member's health care provider to establish and recertify the employee's eligibility for FMLA leave to care for a spouse, child, or parent.</p>
<p><a href="#"><u><b>Employee Rights and Responsibilities Under the Family and Medical Leave Act</b></u></a></p> <p><i>HR Library</i></p> <ul style="list-style-type: none"> <li>• <i>Federal Work-Site Postings for Texas Public Employers</i></li> <li>• <i>Model Employee Handbook</i></li> </ul>	<p>Must be posted by every covered employer, regardless of whether the employer has any eligible employees and distributed to applicants and employees.</p> <ul style="list-style-type: none"> <li>• Must also be provided to each new hire.</li> <li>• Must be posted in places that are accessible to both applicants and employees.</li> <li>• If the employer has any eligible employees, the notice must also be distributed (e.g., in the employee handbook or any written guidance on employees benefits and leaves).</li> <li>• Must be provided in all languages in which a significant portion of the workers are literate.</li> <li>• Electronic posting and distribution is allowed provided:             <ul style="list-style-type: none"> <li>➤ The posting is in a conspicuous place on the employer's Web site.</li> <li>➤ The posting is accessible to all applicants and current employees.</li> <li>➤ All employees have access to employer's computers.</li> </ul> </li> </ul>

<p><b><u>Notice of Eligibility and Rights &amp; Responsibilities (Family and Medical Leave Act)</u></b></p> <p>HR Library</p>	<p>Must be provided at the commencement of leave for each FMLA-qualifying reason in the applicable 12-month period.</p> <ul style="list-style-type: none"> <li>• Employers have 5 business days, absent extenuating circumstances, from notice of need for leave to provide employees with written notice of their <u>eligibility</u> for FMLA leave.</li> <li>• All absences for the same reason are considered a single leave, and employee eligibility does not change during the 12-month period (e.g., intermittent leave).</li> <li>• If an employee has a subsequent need for leave due to a different reason and the employee's eligibility status has not changed, no additional notice is required.</li> <li>• If an employee is not eligible for leave, then the employer must provide notice that states at least one reason why they are not eligible.</li> <li>• Notice of Rights and Responsibilities (separate from the general posting) must be provided with each Eligibility Notice, addressing: <ul style="list-style-type: none"> <li>➢ That leave will be designated as FMLA.</li> <li>➢ Any requirements for medical certification.</li> <li>➢ Any requirements for substitution of paid leave.</li> <li>➢ Rights and requirements regarding continuation of health insurance.</li> <li>➢ Rights regarding job restoration.</li> </ul> </li> <li>• This notice must be written, but may be provided electronically if certain conditions are satisfied.</li> </ul>
<p><b><u>Designation Notice (Family and Medical Leave Act)</u></b></p> <p>HR Library</p>	<p>Must be provided within five business days after the employer has sufficient information to determine if leave qualifies.</p> <ul style="list-style-type: none"> <li>• Does not have to be provided at the same time notice of eligibility is given.</li> <li>• May be delayed until medical certification is received.</li> <li>• Addresses: <ul style="list-style-type: none"> <li>➢ Whether leave will be designated as FMLA.</li> <li>➢ Whether a fitness for duty certification will be required and, if so, whether this certification must address the employee's ability to perform essential job functions (in which case, list of essential job functions must be provided)</li> </ul> </li> <li>• If known at the time, the number of hours, days, or weeks that will be counted against FMLA entitlement.</li> </ul>
<p><b><u>Certification of Qualifying Exigency For Military Family Leave (Family and Medical Leave Act)</u></b></p> <p>HR Library</p>	<p>Can be used to certify the need for leave for a qualifying exigency for a military family member.</p> <ul style="list-style-type: none"> <li>• Upon the first request for leave, the employer may require a documentation of active duty.</li> <li>• May require employee to identify type of qualifying exigency and provide supporting documentation.</li> <li>• If the qualifying exigency involves meeting with a third party, the employer may contact the individual or entity with whom the employee is meeting to verify the meeting or appointment schedule and the nature of the meeting. <ul style="list-style-type: none"> <li>➢ No additional information may be requested.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>➤ Employee's permission is not required.</li> <li>• An employer may contact an appropriate unit of the Department of Defense to request verification that a covered military member is on active duty or call to active duty status.</li> <li>➤ No additional information may be requested.</li> <li>➤ Employee's permission is not required.</li> </ul>
<p><a href="#"><u>Certification for Serious Injury or Illness of Covered Servicemember For Military Family Leave (Family and Medical Leave Act)</u></a></p> <p><i>HR Library</i></p>	<p>To be completed by employee and health care provider of covered service member.</p> <ul style="list-style-type: none"> <li>• Information on the certification must relate only to the serious injury or illness for which the current need for leave exists.</li> <li>• Recertification and second or third opinions are not permitted for leave to care for a military family member.</li> <li>• Employer must accept an employee's invitational travel orders (ITOs) or invitational travel authorizations (ITAs) as certification and may not require the employee to complete the certification form.</li> <li>• Employer may seek authentication and clarification of the ITO or ITA. <ul style="list-style-type: none"> <li>➤ No additional information may be requested.</li> </ul> </li> <li>• Employee can be required to provide confirmation of his or her family relationship to the seriously injured or ill servicemember.</li> </ul>