

A. Purpose

To provide guidance to Frederick County Public Schools' (FCPS) employees on the benefits afforded under the Family and Medical Leave Act (FMLA).

B. Background

The FMLA entitles eligible employees to take up to twelve (12) weeks of unpaid, job-protected leave per year for specific to the needs of military families. The Military Family Leave provision, added to the FMLA in 2008, affords families leave to care for an injured servicemember, arrange for alternative childcare when a spouse is deployed to a foreign country, or for attending arrival ceremonies when a love one returns from a deployment. Military Family Leave is provided for up to twenty-six (26) weeks for a spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty. By providing job safety for employees of military families during these challenging times, the military leave provision fosters a more compassionate workplace environment.

C. Definitions

1. "Contingency Operation" is defined to mean a military operation that:
 - a. Is designated by the United States Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
 - b. Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.
2. "Covered Service Member - Military Caregiver Leave" is defined to mean a current member of the Regular Armed Forces, current member of the National Guard or Reserves, and member of the Regular Armed Forces, the National Guard and the Reserves who are on the temporary disability retired list, or a military veteran.
3. "Covered Service Member - Qualifying Exigency Leave" is defined to mean on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. Under the terms of the statute, qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves or Active-Duty members of the military who are to be deployed overseas.

4. “Covered Veteran” is defined to mean an individual who was discharged or released at any time during the five (5)-year period prior to the first date the eligible employee takes FMLA to care for the covered veteran. A dishonorable discharge disqualifies the veteran from coverage. The period between the October 28, 2009 enactment of the law and the March 8, 2013 effective date of the Final Rule is excluded in the determination of the five-year period for covered veteran status.
5. “Eligible employee” is defined to mean
 - a. A benefitted employee who has been employed for at least twelve (12) months by FCPS and has been employed in and actively worked the equivalent of at least a 0.5 Full-Time Employment (FTE) regular position during the twelve (12)-month period immediately preceding the commencement of the leave. Time spent in service under the Uniformed Services Employment and Reemployment Rights Act (USERRA) must be counted toward the twelve (12)-month employment period; and
 - b. Temporary employees that have been employed for at least one (1) year and worked 1,250 hours during the previous twelve (12) months are eligible for the Military Family Leave.
6. “Health Care Provider” is defined to mean a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; or any other person as defined by the United States Department of Labor to be capable of providing health care services.
7. “Key Employee” is defined to mean a salaried FMLA-eligible employee who is among the highest paid ten (10) percent of all the employees employed by the employer within seventy-five (75) miles of the employee's worksite.
8. “Next of Kin” is defined to mean the nearest blood relative of a covered service member.
9. “Parent” is defined to mean the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.
10. “Qualifying Exigency” is defined to mean any of the following:
 - a. Issues arising from a covered military member’s short notice deployment (i.e., deployment on seven (7) or less days of notice) for a period of seven (7) days from the date of notification.
 - b. Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active-duty status of a covered military member.
 - c. Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or daycare facility, and attending certain meetings at a school or a daycare facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member.

- d. Making or updating financial and legal arrangements to address a covered military member's absence.
 - e. Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the active duty or call to active-duty status of the covered military member.
 - f. Taking up to fifteen (15) days of leave to spend time with a covered temporary, rest and recuperation leave during deployment.
 - g. Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of ninety (90) days following the termination of the covered military member's active-duty status and addressing the issues arising from the death of a covered military member.
 - h. Care for a covered service member's parent who is incapable of self-care when necessitated by the member's covered active duty.
11. "Reduced Leave Schedule" is defined to mean a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.
12. "Serious Illness or Injury Sustained in the Line of Duty on Active Duty" is defined to mean an injury or illness incurred by the covered service member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. This may include pre-existing conditions which were aggravated by military service. For veterans, the definition of a serious injury or illness for a covered veteran includes four alternatives, only one of which must be met:
- a. A continuation of a serious injury or illness that was incurred when the covered veteran was a member of the Armed Forces;
 - b. A physical or mental condition for which the covered veteran has received a VA Service-Related Disability Rating of 50% or greater;
 - c. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a gainful occupation; or
 - d. An injury for which the covered veteran has been enrolled in the VA's Program of Comprehensive Assistance for Family Caregivers.
13. "Son or Daughter" is defined to mean the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or called to active-duty status, is a military veteran, and who is of any age.
14. "Spouse" is defined to mean the person to whom the employee is legally married.
15. "Teacher" is defined as an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches and special education instructional assistants. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers,

maintenance workers, bus drivers, or other primarily noninstructional employees.

16. "Twelve-Month Period" is defined for Military Caregiver Leave (26 weeks) as beginning with the first day the employee takes off for this purpose. All other types of FMLA leave, the calendar will run concurrent with the fiscal year.

D. Procedures

1. Request Submission

- a. To submit a request for Military Family Leave, employees will use the following process:
 - i. The employee may submit either a Medical Certification of Health Care Provider Form, or [WH-384 Certification of Qualifying Exigency For Military Family Leave \(PDF\)](#), or [WH-385 Certification for Serious Injury or Illness of Covered Service-member -- for Military Family Leave \(PDF\)](#), or [WH-385V Certification for Military Caregiver Leave of a Veteran \(PDF\)](#) along with appropriate supporting documentation to the Benefits Office within fifteen (15) calendars days of the request. The health care provider does not have to specify a diagnosis.
 - ii. For foreseeable leave, submit a Leave Request to the Benefits Office. An appropriate Leave Request is a copy of a Leave Request Form with Military Family Leave selected, or the completion of the Projected Leave Request Form.
 - iii. For leave that is unforeseeable, provide enough notice of a potential serious health condition to the immediate supervisor that leave may qualify. This should occur as soon as the employee has knowledge of the need for leave.
 - iv. It is the responsibility of the employee to request leave under Military Family Leave by completing the appropriate request and/or by giving proper notice of such leave.
 - v. Requests for leave under Military Family Leave shall be followed up by military orders or medical certification for the service member.
 - vi. After the designation of Military Family Leave, any absences taken that are related to the original Military Family Leave occurrence, must be clearly stated as being related. This is noted on the Leave Request Form by selecting the Family Medical Leave Act (FMLA) box or by specifically communicating this relationship to the supervisor when circumstances prevent a Leave Request Form from being completed. Forward copies of Leave Requests Forms for related absences to the Benefits Office.

2. **Notification Requirements.** An employee must provide FCPS at least thirty (30) days' advance notice before Military Family Leave is to begin of the need for the leave. If thirty (30) days' notice is not practicable, notice must be given as soon as practicable.

3. Leave Eligibility

- a. Eligible employees are entitled to a total of twelve (12) workweeks of leave between each period of July-June because of a "qualifying exigency" arising out of one of the following:
 - i. The spouse, son, daughter, or parent of the employee is on active duty, in support of a contingency operation.

- ii. The spouse, son, daughter, or parent of the employee has been notified of an impending call to active-duty status, in support of a contingency operation.
- b. Eligible employees are entitled to up to twenty-six (26) weeks of leave in a single twelve (12)-month period in order to provide care for a spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty. *See* Section C(11), Definition of “Reduced Leave Schedule.”
- c. Eligible employees are entitled to a combined total of up to twenty-six (26) weeks of all types of FMLA leave during the single twelve (12)-month period.
- d. Employees must have worked at least the number of hours below in the twelve (12) months immediately preceding the leave in order to qualify for FMLA under FCPS’s policy:

SCHEDULE	MINIMUM HOURS
180 DAY 7 HOUR	630
180 DAY 8 HOUR	720
182 DAY 7 HOUR	637
182 DAY 8 HOUR	728
183 DAY 7 HOUR	640.5
188 DAY 7 HOUR	658
188 DAY 8 HOUR	752
189 DAY 7 HOUR	661.5
190 DAY 7 HOUR	665
195 DAY 8 HOUR	780
208 DAY 7 HOUR	728
243 DAY 7 HOUR	850.5
243 DAY 8 HOUR	972
244 DAY 7 HOUR	854
260 DAY 7 HOUR	910
260 DAY 8 HOUR	1040

4. Determining the twelve (12)-week or twenty-six (26) FMLA Period

- a. For purposes of determining the amount of leave used by either a full-time or eligible part-time employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. For example, if an employee is on FMLA leave during the week in which the Martin Luther King Jr. holiday falls, the employee's leave time is not extended by one day. If the school system temporarily closes for one or more weeks, the days the school system's activities have ceased do not count against the employee's FMLA leave entitlement.
- b. For Military Caregiver Leave, the twelve (12)-month period in which the employee is entitled to twenty-six (26) weeks of leave begins with the first day the employee takes off for this purpose. For all other types of FMLA leave, the calendar will run concurrent with the fiscal year.

5. **Scheduling Requirement.** The Military Family Leave provides that when planning medical treatment or appointments, the employee should consult with the employer and make a reasonable effort to schedule the leave so as not to disrupt unduly the employer's operations. Employees are ordinarily expected to consult with their employers prior to the scheduling of leave in order to work out a schedule which best suits the needs of both the employer and the employee. In any event, when notice is given of the need for leave, an employer may, for justifiable cause, require an employee to attempt to reschedule the appointments or leave when it is reasonable and practical to do so.

6. **Classification of Leave.** Military Family Leave may consist of paid or unpaid leave. All accrued paid leave shall be applied to the employee's absences before unpaid leave begins. Whether leave is paid or unpaid, the time off from work counts toward the twelve (12)-week or the twenty-six (26)-week entitlement.
 - a. **Unpaid leave.** If accrued paid leave is available for fewer than twelve (12) workweeks, the additional weeks of leave necessary to attain the twelve (12) workweeks of leave required will be without compensation.
 - b. **Paid Leave**
 - i. An eligible employee shall use all the accrued paid annual leave, sick leave, or personal leave of the employee for maternity, foster care, or adoption leave.
 - ii. In the case of a serious health condition, the eligible employee shall use all accrued paid sick leave, annual leave, or personal leave, and may use approved leave from the sick leave bank. The paid leave runs concurrently with the Military Family Leave period.
 - iii. In the case of a serious health condition of a spouse, child, or parent, accrued paid annual leave or personal leave shall be used if the employee has such leave. Sick leave shall be taken in accordance with current FCPS system sick leave regulations and the negotiated agreements, if applicable.
 - c. **Military Family Leave**
 - i. FCPS may ask an employee requesting leave to explain the reasons for the leave so that FCPS can determine if the leave qualifies as Military Caregiver Leave and Qualifying Exigency Leave.
 - ii. If the employee was absent for Military Family Leave and the supervisor did not learn the reason for the absence until the employee's return, FCPS may, upon the employee's return to work, promptly (within five (5) business days of the employee's return to work) designate the leave retroactively with appropriate notice to the employee.

7. **Leave Conditions**
 - a. **Expiration of Entitlement**
 - i. When an employee provides affirmative notice of their desire not to return from FMLA leave, the obligation of job reinstatement and the continuation of benefits cease, as FMLA ends
 - ii. If certification is not received within the appropriate timeframe, FMLA coverage may be delayed, denied or cease.
 - b. **Leave Taken Intermittently or on a Reduced Leave Schedule.** The law provides that if an employee requests intermittent leave or leave on a reduced leave schedule

that is foreseeable based on planned medical treatment, including during a period of recovery from a serious health condition, the employer may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. An alternative position for these purposes does not have to have equivalent duties. The employer may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary.

8. **Both Parents Employed by FCPS.** If both parents entitled to leave are both employed by the FCPS system, they are limited to a combined total of twenty-six (26) workweeks of leave during the relevant twelve (12)-month period if the leave taken is to care for a covered service member or a combination of leave taken to care for a covered service member and leave for the birth or placement of a healthy child or to care for a parent with a serious health condition.

9. **Employment and Benefits Protection**

a. **Restoration to Position**

- i. An employee eligible for Military Family Leave (with the exception of employees designated as "key employees" per section 10B) will be restored to his or her old position or to a position with equivalent pay, benefits, and other terms and conditions of employment. An attempt will be made to restore an employee returning from Military Family Leave to his or her original position. If an employee's original position is unavailable, the employee will be placed in an "equivalent position".
- ii. The taking of leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.
- iii. Nothing shall be construed to entitle any restored employee to any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave, except the accrual of any seniority or leave during any period of unpaid leave.

b. **Exemption Concerning Certain Highly Compensated Employee – Key Employees**

- i. Denial of restoration: FCPS may deny restoration to any eligible employee as described in B.2 if:
- ii. Such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;
 1. The employer notifies the employee of the intent of the employer to deny restoration on such basis at which time the employer determines that such injury would occur; and
 2. In any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.
- iii. Affected employees: A salaried, eligible employee who is among the highest paid 10% of the employees of the school system.
- iv. Although an affected employee may be denied restoration, the employee is still entitled to leave.

c. **Maintenance of Health Benefits**

- i. FCPS shall maintain health and dental coverage under any "group health plan" for the duration of such leave at the level and under the condition's coverage would have been provided if the employee had continued in employment. If the Military Family Leave is paid, premium contributions will be made on a payroll deduction basis. If the Military Family Leave is unpaid, any required premium contributions may be billed to employee. Checks are payable to FCPS and should be sent to the Accounts Payable Office, Central Office Building, 191 South East Street, Frederick, MD 21701.
 - ii. If an employee fails to return from leave, FCPS may recover the premium that the employer paid for maintaining coverage for the employee, and, if applicable, for the employee's dependents under such group health plan during any period of unpaid leave if the employee fails to return from leave after the period of leave to which the employee is entitled has expired. This does not apply in cases where the employee fails to return for reasons beyond the control of the employee.
 - iii. In order to maintain dependent coverage, payment must be made to the benefits office by the employee within the designated time. FCPS will provide the employee with advance written notice of terms and conditions under which these payments must be made.
 - iv. In instances of failure to make required premium payments, FCPS may drop the coverage for an employee whose premium payment is more than thirty (30) days late. Employees will be notified fifteen (15) days before coverage is to cease, advising that coverage will be dropped on a specified date at least fifteen (15) days after the date of the letter unless the payment has been received by that date.
- d. **Experience Credit.** Employees on unpaid leave in excess of twelve (12) weeks will not automatically receive experience credit.

10. School System Special Conditions

- a. If a teacher begins Military Family Leave five (5) or more weeks prior to the end of the semester, and the period of leave is for more than three (3) weeks, then FCPS can require an employee seeking to return within the last three (3) weeks to wait until the next semester.
- b. If the teacher begins Military Family Leave less than five (5) weeks before the end of the semester and the period of leave is greater than two (2) weeks, then FCPS can require an employee seeking to return within the last two (2) weeks to wait until the next semester.
- c. If the teacher begins Military Family Leave three (3) or fewer weeks before the end of the semester and the period of leave is greater than five (5) working days, then FCPS may require the employee seeking to return to wait until the next semester.
- d. The two (2) academic terms occurring during the year are designated as a semester.

11. Recordkeeping

- a. The Benefits Office will manage the Military Family Leave recordkeeping system and notify the employee of approval of Military Family Leave or any issues thereof.
- b. Principals, supervisors, and work site managers are responsible for the proper coding of all annual, personal, and/or sick leave as Military Family Leave.

E. Related Information

1. **Board Policy**
 - a. [Policy 300, Personnel](#)

2. **Federal Law**
 - a. [Family Medical Leave Act \(FMLA\)](#)
 - b. [Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#)

3. **FCPS Regulation**
 - a. [Regulation 300-42, Family and Medical Leave \(FMLA\) – Non-Military](#)

4. **U.S. Department of Labor Military Leave Forms**
 - a. [WH-384 Certification of Qualifying Exigency for Military Family Leave](#)
 - b. [WH-385 Certification for Serious Injury or Illness of Covered Service-Member for Military Family Leave](#)
 - c. [WH-385V Certification for Military Caregiver Leave of a Veteran](#)

F. Regulation History (Maintained by Legal Services)

<i>Responsible Office</i>	Human Resources
Adoption Dates	05/17/17
Review Dates	11/15/23
Revision Dates	11/15/23