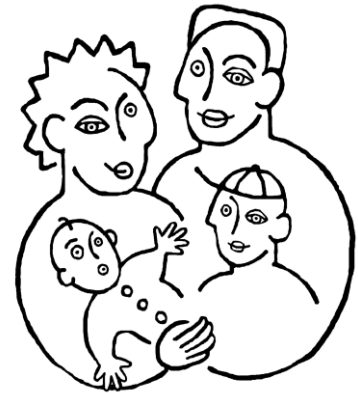




## Time Off from Work: Family in the Military

You may be able to take unpaid leave (time off) from work to deal with issues around a family member in the military. You have to be eligible for the **Family and Medical Leave Act (FMLA)**. If you are eligible, you have the rights to take leave related to family in the military.

Leave is unpaid, but under certain conditions, employees and employers may decide to “substitute” sick or vacation leave to cover some of the time off. During the leave, your employer has to continue the same health care coverage that you had while you were at work. But you have to keep paying your part of the premium.



- **Military Caregiver Leave (MCL):** If you have a spouse, child, parent, or next-of-kin in the military that got sick or was hurt in the military, you can take up to 26 weeks of leave once in a 12-month period to care for them. This includes members of the regular armed forces, National Guard or Reserves, and veterans who were discharged in the past 5 years.
  - **Qualifying Exigency Leave (QEL):** If you have a spouse, child, or parent who is called to covered active duty, you may be entitled to time off to deal with the situation. Covered active duty means:
    - For members of the Regular Armed Forces- duty during deployment of the member with the Armed Forces to a foreign country or
    - For members of the Reserve components of the Armed Forces (like the National Guard and reserves) – duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation
- QEL can be used for various things related to your family member’s military duty. Things like:
- Short-notice deployment issues (less than a week)
  - Military events/ceremonies
  - Non-routine childcare
  - Making legal/financial arrangements
  - Counseling sessions
  - Up to 15 calendar days to spend with the family member during the family member’s rest and recuperation leave
  - Post-deployment activities, like an arrival ceremony
  - Issues that come up from the death of a military member

For more information go to the U.S. Department of Labor website at:  
[www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla).

### First of all, can I get FMLA?

In order to be eligible to take leave under the FMLA, you must

- 1) work for a covered employer,
- 2) work 1,250 hours during the 12 months prior to the start of leave,
- 3) work at a location where 50 or more employees work or where 50 or more employees work within 75 miles of it, and
- 4) have worked for the employer for 12 months.

**Note:** This information can be confusing. For more information, fact sheets and the forms talked about in this fact sheet go to: [www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla). Or call the U.S. Department of Labor at 1-(866) 4USWAGE or (1-(866) 487-9243).

### What do I need to do to get the leave?

You should give your employer as much notice as you can. After you have given notice, they have 5 business days to give you a form called “Notice of Eligibility and Rights and Responsibilities” (form WH-381). The employer must also send you a “Designation Notice” (WH-382). This notice lets you know if the leave is approved or not.



### → If you are asking for MCL leave:

You need to give 30 days’ notice if you need to take leave for planned medical treatment for a serious injury or illness of a covered service member. If you know you will need to take leave but can’t give 30 days’ notice, you have to give notice as soon as possible.

Your employer may say you have to get a medical certification. The form you need is called "Certification for Serious Injury or Illness of Covered Service Member - for Military Family Leave (Family and Medical Leave Act)" (Form WH-385). The form has to be filled out by an authorized health care provider of the covered service member. Your employer has to give you the form if they say you have to complete it.

### Do I have to take the leave all at once?

No. You can take the leave in parts if it is medically necessary to care for your family member with a serious injury or illness. If you need to take some leave for planned medical treatment, let your employer know as soon as possible and **try** to schedule it to not disrupt work.

→ **If you are asking for QEL leave:**

When you find out that you will need the leave, try to let your employer know immediately.

If you are asking for QEL, your employer may say you have to fill out a form called, "Certification of Qualifying Exigency for Military Family Leave" (Form WH-384). Your employer has to give you the form if they say you have to complete it.

You may have to give your employer a copy of the covered military service member's active duty orders the first time you ask for QEL. Your employer lets you know if they want it or not. You only have to give this information once for each call to active duty. Your employer also may ask for more information.

**Do I have to take the leave all at once?**

No. QEL may be taken in pieces depending on your needs.

**What if my employer won't give me time off?**

File a claim with the U.S. Department of Labor. Call them at 1-(866) 4USWAGE or (1-(866) 487-9243). Or go to their website: [www.dol.gov/whd](http://www.dol.gov/whd).

You can also get a lawyer and file a lawsuit.



**Fact Sheets are legal information NOT legal advice. See a lawyer for advice.**

*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

© 2020 Minnesota Legal Services Coalition. This document may be reproduced and used for non-commercial personal and educational purposes only. All other rights reserved. This notice must remain on all copies. Reproduction, distribution, and use for commercial purposes are strictly prohibited.