

Introduction to the Family and Medical Leave Act of 1993 (FMLA)

FMLA entitles most federal employees up to 12 workweeks of unpaid leave during any 12-month period for a qualifying event. It provides employment and benefit protections (like an umbrella) for qualified individuals as defined by law, the Code of Federal Regulations, and agency policy and procedures. Due to the complex and changing nature of the laws and regulations that encompass FMLA, the information provided in this guide cannot cover all potential situations or questions; therefore, it is highly recommended that supervisors consult with their Employee-Management Relations (EMR) Specialist in the Civilian Personnel Section (CPS), 75 FSS/FSMC.

Table of Contents

	<u>Page(s)</u>
Covered Employees	2
Entitlements of Covered Employees	2
Qualifying Events	2-3
Protection of Employment Benefits	3
Substitution of Paid Leave	3
Employee Responsibilities	3-4
Supervisor Responsibilities	5-7
Intermittent Leave Usage	7
Return to Duty	7
Rights and Responsibilities	8
FMLA Forms and Related Documents	8
Definition of Serious Health Condition; References	9-10

Hill AFB Guidelines and Procedures

1. The following are the Hill AFB Guidelines and Procedures for the Family Medical Leave Act (FMLA) of 1993, which must be utilized and interpreted in conjunction with Title 5 United States Code (USC) 6381 to 6387, and Title 5 Code of Federal Regulations (CFR), [Part 630, Subpart L, Family and Medical Leave](#). It entitles most federal employees to a total of up to 12 administrative workweeks of leave without pay (LWOP) during a 12-month period for certain family and medical needs, with employment and benefits protections.
2. Most federal civilian employees, as defined in [5 USC 6381\(1\)](#), who have completed at least 12 months of cumulative, qualified service are covered. Employees on intermittent appointment or temporary appointment of one year or less are excluded.
3. **Covered employees with an approved FMLA request are entitled to:**
 - a. The amount necessary to manage the circumstances that prompted the need for leave, up to a total of 12 administrative workweeks (0001 Sunday to 2400 on the next Saturday) of job-protected LWOP within a 12-month period. The 12-month period begins on the date the employee first takes leave after invoking FMLA, and ends 12 months after that date. It can be used for one or more of the qualifying events listed below:
 - (1) Birth of a son or daughter of the employee and in order to care for such son or daughter within the first year (from date of birth, or use that began prior to birth).
 - (2) Placement of son or daughter with the employee for adoption or foster care within the first year (from date of placement, or use that began prior to placement).
 - (3) To care for the employee's **spouse, son, daughter, or parent**, due to their serious health condition. As of 26 June 2013, "spouse" is defined as a partner in any legally recognized marriage, regardless of the employee's state of residency. The term "spouse" does not include unmarried domestic partners, unless they meet the requirements of being spouses in a common law marriage in states where such marriages are legally recognized.
 - (4) An employee's own serious health condition which makes the employee unable to perform one or more of the "essential functions" of his or her position (fundamental duties as determined by the supervisor and described in the position description/core document and/or performance plan).
 - (5) **Military Family Exigencies**. Eligible employees with a spouse, son, daughter, or parent on covered active duty (to a foreign country or in support of a contingency operation) or notified of an impending call or order to covered active duty status in the Armed Forces (which includes Reserves or National Guard) may use their 12-week entitlement for one or more of the following qualifying exigencies: (1) to address within 7 calendar days of departure any issue that arises due to short-notice (7 days or less) of deployment ; (2) military events and related activities; (3) childcare and school activities; (4) financial and legal requirements; (5) counseling related to the active duty call-up; (6) up to 5 days of rest

and recuperation with the activated military member; (7) post-deployment activities within 90 days after covered active duty is terminated); and (8) additional activities the agency and employee agree are qualifying. Reference [5 CFR 630.1204](#) for more specifics.

- (6) **Servicemember Caregiving.** An eligible employee who is the 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 injury or illness incurred on active duty and is undergoing medical treatment, recuperation, or therapy, may take the amount of FMLA leave necessary, up to a total of 26 administrative workweeks within a 12-month period. This entitlement shall only be available one time.
- b. [Protection of employment and benefits](#) accrued prior to the date leave began. An employee who takes approved FMLA leave is entitled upon return:
- (1) To be restored to the position held by the employee when leave began, or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.
 - (2) To the same employment benefits previously provided, e.g., life insurance, health benefits, retirement coverage, and leave accrual. If elected, current Federal Employees Health Benefits will continue while in a non-pay status (up to 365 days). Utilizing the **Non-pay Status Benefits Election form**, the employee may elect termination or retention of health benefits, with a designation of how the employee's share of the premiums will be paid.
- c. [Substitution of Paid Leave Which Counts Towards the FMLA Entitlement.](#) Accrued or advanced annual or sick leave may be substituted for unpaid leave under FMLA, consistent with current law and regulations governing the use of annual or sick leave, and **when requested in advance** (see also local procedures for advanced sick leave). Leave donated to the employee under the Voluntary Leave Donation Program may also be substituted under FMLA when requested in advance. Substitution of paid leave for unpaid leave under FMLA cannot be done retroactively. **Exclusions:** Compensatory time in lieu of overtime or for travel, and credit hours earned under a flexible work schedule, **cannot** be substituted under FMLA.

4. Employee Responsibilities:

- a. Invoke FMLA entitlement: invoke at least 30 days in advance of the event when the purpose is foreseeable (e.g., birth, placement of a child for adoption or foster care, or planned treatment); otherwise, as soon as practicable before use. To invoke, use **block 5** of [OPM Form 71, Request for Leave or Approved Absence](#), in addition to completing blocks 1 through 7b regarding the employee's information, type(s) of leave by date, with the employee's signature and date; alternatively, the Automated Time Attendance and Production System (ATAAPS) can be used to initiate the leave request (the system creates an OPM Form 71 pdf file). Identify the qualifying event (military family exigencies and servicemember caregiving must be added in the remarks section) and type of leave desired (LWOP and/or substituted paid annual, sick or donated leave IAW current law and regulation governing their use). Paid leave may not be substituted retroactively. Provide the leave request to the immediate supervisor.

Intermittent use must be requested in accordance with established leave requesting procedures, and specify the approved FMLA purpose. For information about intermittent use see paragraph 6.

- b. Provide the supervisor with written administrative or medical certification as applicable to the reason for FMLA, within 15 calendar days after FMLA is invoked. If this is not feasible after the employee has made a good faith effort to secure the certification, he/she may be allowed additional time but must provide it no later than 30 calendar days after FMLA was invoked. Certification for birth/placement and/or care of the employee's child in the first year must be supported by evidence that is administratively acceptable to the supervisor (e.g. legal documentation supporting adoption of a child). Medical certification must be completed by a qualified health care provider, and the following Department of Labor forms (or other documentation with equivalent information on it) must be provided, applicable to the reason FMLA was invoked, and IAW 5 CFR 630.1208 (disregard all references to 29 CFR in the forms, as it is not applicable):
- [**WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition**](#). The employee must give the health care provider documentation on the "[essential functions](#)" of their position, as obtained from their supervisor (fundamental duties described in the position description/core document and/or performance plan), to determine duty-related limitations/restrictions.
 - [**WH-380-F, Certification of Health Care Provider for Family Member's Serious Health Condition**](#)
 - [**WH-384, Certification of Qualifying Exigency for Military Family Leave**](#)
 - [**WH-385, Certification for Serious Injury or Illness of Covered Servicemember**](#)
 - [**WH-385V, Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave**](#)
- c. In emergency situations, notice from the employee or designated personal representative (spouse, domestic partner, family member, or other responsible party) must be given within a reasonable time. The employee or representative will provide the leave form and medical certification as specified above. However, if the need for leave is foreseeable and the employee fails to give 30 days advance notice, with no reasonable excuse for a delay, the supervisor may delay the use of FMLA entitlements until at least 30 calendar days after the date the employee provided notice of the need.
- d. Normally, an employee may not retroactively invoke his or her entitlement to FMLA leave. However, if an employee and any personal representative are physically or mentally incapable of invoking the employee's entitlement to FMLA leave during the entire period of absence from work, due to a qualifying event, the employee may retroactively invoke the entitlement within two workdays after returning to work. Medical certification regarding the employee's incapacity must then be provided within 15 calendar days of invoking the entitlement. In addition to the medical certification, within 15 calendar days of invoking the entitlement, the employee must provide acceptable documentation explaining the inability of any

representative to contact the agency and invoke the employee's entitlement to FMLA during the entire period of absence.

- e. If the circumstances described in the original certification change significantly, or is incomplete or requires clarification, the employee may be required to provide an updated certification.
- f. An employee or the employee's family member for whom a serious health condition is claimed must comply with any requirement from the agency to submit to examination (though not treatment) to obtain a second and possibly a third medical certification, at the agency's expense, to remain entitled to FMLA.

5. Supervisor responsibilities:

- a. Supervisors have the primary responsibility for determining FMLA eligibility, approval, tracking, and maintaining of related documentation. Due to the complex nature of FMLA, it is highly recommended to contact your servicing EMR specialist in the Civilian Personnel Section (CPS), 75 FSS/FSMC as soon as an employee requests FMLA information or invokes their entitlement, and throughout the process as needed.
- b. Once determined eligible, confirm that the employee is invoking his or her entitlement to FMLA by providing and requesting the employee complete **block 5** of [OPM Form 71, Request for Approved Absence](#), in addition to them completing blocks 1 through 7b; alternatively, the automated OPM Form 71 within ATAAPS can be submitted. It should also identify the qualifying event (military family exigencies and servicemember caregiving must be added in the remarks section) and type of leave desired (LWOP and/or substituted paid annual, sick or donated leave IAW current law and regulations governing their use). Intermittent use must be requested IAW established leave requesting procedures, and specify the approved FMLA purpose. For more information about intermittent use of FMLA, see paragraph 6.
- c. Provide this guidance and the applicable forms listed on page 8 (or the CPS SharePoint site). Example: For the employee's own serious health condition, provide the Form WH-380-E.
 - (1) Complete Section I of Form WH-380E and provide it with a copy of the position description/core document, and/or performance plan describing the essential functions/fundamental duties, for the employee to share with the healthcare provider. Note: An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence.
 - (2) As soon as reasonably possible, respond to the employee's request by annotating section 8a or 8b on the OPM Form 71 as follows:
 - **"Approved."** Do this based on receipt of acceptable evidence or medical certification for the qualifying event, OR, in section 8b annotate **"Provisional approval pending"**** receipt and evaluation of certification of a qualifying event.
 - **"Disapproved."**** In section 8b, "Reason for Disapproval," annotate the reason you cannot approve due to any of the following:

- Insufficient information
- Failed to provide the medical certification within timeframe specified
- Does not meet FMLA eligibility criteria (employed less than 12-months; requested for individual other than spouse, son, daughter or parent; or, intermittent or temporary appointment of one year or less)
- Stated FMLA condition is not recognized as valid for FMLA purposes
- Certification is not based on a qualifying event

****Recommend contacting your EMR Specialist for assistance, prior to taking action.**

- d. **Administrative or Medical Certification.** The written medical certification must include the information requested in the applicable referenced forms (for ease in filing) or the equivalent IAW 5 CFR 630.1208. Non-medical qualifying events must be supported with written evidence that is administratively acceptable to the supervisor. Form WH-384 may be used for military family exigencies.
- e. Supervisors are advised to gather the FMLA documents provided and consult with the assigned EMR Specialist. If the validity of the certification is in doubt, if the reasonableness of the amount of leave or treatment is in doubt, if it is incomplete, or if it is not received timely, this can be addressed in EMR consultation. As a supervisor, you cannot directly contact the employee's health care provider to request additional information regarding the employee's condition. Options to prevent and respond to abuse of FMLA may include obtaining additional medical evaluations (at agency expense), recertification, or verification of the authenticity of the certification form itself.
- f. For LWOP of more than 30 consecutive days, initiate a Request for Personnel Action (RPA) through your organization's Resource Manager, and another RPA for return to duty as appropriate. This is in addition to regular timekeeping requirements (reference AFI 36-815, Absence and Leave).
- g. The supervisor will monitor the amount of leave used under FMLA, maintain these records within the Supervisor's Employee Record/971 File, and ensure FMLA leave does not exceed 12 administrative workweeks during any 12-month period. Your employee may have multiple active FMLA requests/events simultaneously; however, they cannot exceed 12 administrative workweeks in the 12-month period. The employee is not entitled to 12 additional workweeks of FMLA leave until the previous 12-month period ends and an event occurs that entitles the employee to another period of FMLA leave (may include continuation of a previous situation).

Example: Jane Doe invokes FMLA on 2 Jan 14 for her own medical condition, needing intermittent time off up to 3-4 days per month. She begins using it on 25 Jan 14. On 5 Mar 14, Jane invokes FMLA to care for her spouse who needs care and assistance before and after a surgical procedure, beginning 5 Mar 14 and estimated to finish 30 Mar 14. Both requests are approved and the supervisor should track all FMLA requests on the same tracking document. For one year following her first use after invoking FMLA (25 Jan 14), she only has one "pool" of 12 administrative workweeks available, regardless of the number of valid FMLA requests/events she submits. When Jane reaches a total of 12 workweeks (or equivalent, 480 hours for most), she exhausts her FMLA entitlement until 25 Jan 15.

- h. Supervisors shall safeguard medical certification from unauthorized access, use, modification, destruction, or disclosure. Ensure the records are secured in a sealed envelope with the Supervisor's Employee Record/971 File, in a locked storage space, whenever they are not in use or under the direct control of authorized persons. **A copy of the medical certification that pertains to the employee's own medical condition must be forwarded to Occupational Medicine Services (OMS).** Supervisors shall maintain original FMLA-related documentation until no longer applicable (minimum of 12 months). Comply with Supervisor's Employee Record/971 File procedures for proper retention and safeguarding of medical documents.
 - i. If the employee requests an extension of the original leave period, or the circumstances described in the original medical certification change significantly, or receipt of information casts doubt upon validity of the original medical certification, the employee may be required to provide updated medical certification. When these situations arise, supervisors will contact their EMR Specialist for assistance prior to taking action.
6. **Intermittent Leave Usage** (leave taken in separate blocks of time, rather than for one continuous period of time).
- a. Supervisors may authorize intermittent FMLA usage or a reduced leave schedule, subject to notice and certification when medically necessary for the employee's or family member's serious health condition, if mutually agreed between the employee and the agency for birth or placement-and-care of a son or daughter, or for military family exigencies. When leave is required on an intermittent basis, the employee must request each period of leave for the approved FMLA purpose IAW established leave requesting procedures and within the parameters of the certification. The employee must consult with the supervisor and make a reasonable effort to schedule leave and treatment so as not to unduly disrupt the operations of the agency.
 - b. During foreseeable intermittent absences or a reduced leave schedule based on planned medical treatment or recovery from a serious health condition, the agency may place the employee temporarily on an alternate position for which the employee is qualified, to better accommodate recurring periods of leave. The position must have equivalent pay, benefits, and other terms and conditions of employment within the same commuting area, but not necessarily equivalent duties.

7. Return to Duty Requirement:

- a. An employee who takes leave under FMLA for his/her own serious health condition which directly relates to the essential functions of their position, will report to Occupational Medicine Services (OMS), building 249, upon returning to work and as required and scheduled by the supervisor, in order to obtain a release for duty.
- b. If OMS determines that the employee is not fully recovered upon return to work, other leave may be requested and considered IAW applicable policies and procedures. If the employee will be unable to return to work, the supervisor will contact their EMR Specialist for assistance.

8. Rights and Responsibilities:

- a. Disciplinary action, up to and including removal, may be taken against an employee who provides false certification and/or uses FMLA leave for other than approved purposes.
- b. If an employee believes the agency has not fully complied with the requirements of the FMLA, he/she may file a grievance under the agency's negotiated grievance procedures or administrative grievance system (as applicable), or they may file a discrimination complaint with the Equal Opportunity Office, if applicable.

9. Links to FMLA forms and related documents:

Benefits Summary for Civilian Employees on LWOP
(<http://hr.od.nih.gov/Benefits/documents/LWOPnotice.pdf>)

OPM Form 71, Request for Approved Absence
(http://www.opm.gov/forms/pdf_fill/opm71.pdf or as prepared in ATAAPS)

The following forms are utilized for convenience; however, references to 29 CFR should be disregarded. As previously stated, these guidelines and procedures are applicable to and must be read with 5 USC 6381 to 6387 and 5 CFR Subpart L (630.1201 to 1213).

Form WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition (<http://www.dol.gov/whd/forms/wh-380-e.pdf>)

Form WH-380-F, Form WH 380-F, Certification of Health Care Provider for Family Member's Serious Health Condition (<http://www.dol.gov/whd/forms/wh-380-f.pdf>)

Form WH-384, Certification of Qualifying Exigency for Military Family Leave
(<http://www.dol.gov/whd/forms/wh-380-f.pdf>)

Form WH-385, Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (<http://www.dol.gov/whd/forms/WH-385.pdf>)

Form WH-385V, Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave (<http://www.dol.gov/whd/forms/wh385V.pdf>)

Civilian Personnel Section, 75 FSS/FSMC SharePoint
(<https://org.eis.afmc.af.mil/sites/75ABW/75MSG/75FSS/FSMC/FSMCE/default.aspx>)

10. Definition of *Serious Health Condition* (excerpt from 5 CFR 630.1202):

- (1) Serious health condition means** an illness, injury, impairment, or physical or mental condition that involves—
- (i) Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or
 - (ii) Continuing treatment by a healthcare provider that includes (but is not limited to) examinations to determine if there is a serious health condition, and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists. Continuing treatment by a healthcare provider may include one or more of the following—
 - (A) A period of incapacity of more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves—
 - (1) Treatment two or more times by a healthcare provider, by a different healthcare provider under the direct supervision of the affected individual's health careprovider, or by a provider of healthcare services under orders of, or referral by, a healthcare provider; or,
 - (2) Treatment by a healthcare provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the healthcare provider (e.g., a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).
 - (B) Any period of incapacity due to pregnancy, childbirth, or prenatal care, even if the affected individual does not receive active treatment from a healthcare provider during the period of incapacity, or the period of incapacity does not last more than 3 consecutive calendar days.
 - (C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that—
 - (1) Requires periodic visits for treatment by a healthcare provider or by a different healthcare provider under the direct supervision of the affected individual's healthcare provider,
 - (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and,
 - (3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). The condition is covered even if the affected individual does not receive active treatment from a healthcare provider during the period of incapacity, or the period of incapacity does not last more than 3 consecutive calendar days.
 - (D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider (e.g., Alzheimer's, severe stroke, or terminal stages of a disease).

(E) Any period of absence to receive multiple treatments (including any period of recovery) by a healthcare provider or by a provider of healthcare services, under orders of or referral by, a healthcare provider, either for restorative surgery after injury or for a condition that would likely result in a period of incapacity or more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease).

(2) A “serious health condition” **does not include:** routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or complications develop; or an absence because of an employee's illegal use or abuse of a substance, unless the employee is receiving treatment for substance abuse by a healthcare provider or by a provider of healthcare services referred by a healthcare provider. Unless complications arise, ordinarily the common cold, flu, earaches, upset stomach, minor ulcers, non-migraine headaches, routine dental or orthodontia problems, and periodontal disease are not “serious health conditions.” Allergies, restorative dental or plastic surgery, removal of a cancerous growth, and mental illness from stress may be “serious health conditions” only if such conditions require inpatient care or continuing treatment by a healthcare provider.

11. References:

5 USC 6381 to 6387

5 CFR PART 630, ABSENCE AND LEAVE, [Subpart L—Family and Medical Leave](#)

§630.1201 Purpose, applicability, and administration

§630.1202 Definitions

§630.1203 Leave entitlement

§630.1204 Qualifying exigency leave

§630.1205 Intermittent leave or reduced leave schedule

§630.1206 Substitution of paid leave

§630.1207 Notice of leave

§630.1208 Medical certification

§630.1209 Certification for leave taken because of a qualifying exigency

§630.1210 Protection of employment and benefits

§630.1211 Health benefits

§630.1212 Greater leave entitlements

§630.1213 Records and reports

AFI 35-815, Absence and Leave