

## **FAMILY MEDICAL LEAVE ACT (FMLA) MILITARY FAMILY LEAVE**

<b>Policy Number:</b>	HR-201
<b>Effective Date:</b>	Approved by the <b>Eastern Washington State Historical Society (EWSHS)</b> Board of Trustees on January 6, 2021.
<b>Application:</b>	Applies to all employees of the EWSHS with covered family members in the Armed Forces.
<b>History:</b>	This policy updates and renumbers previous BP #109 dated January 6, 2016. BP #109 replaced HR # 119.

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### **Article I PURPOSE**

1.1 The FMLA is a federal law passed in 1993 to grant family and temporary medical leave to eligible employees under certain circumstances. In 2008 and again in 2009, the National Defense Authorization Act(s) (NDAA) amended the FMLA to allow eligible employees to take up to 12 workweeks of leave in a 12-month period for any “qualifying exigency” due to the covered active duty or call to covered active duty of a spouse, son, daughter or parent. The amendments also amended the FMLA to allow eligible employees to take up to 26 workweeks of leave in a single 12-month period to care for a covered service member with a serious injury or illness. These two types of FMLA leave are known as the military family leave entitlements. **This policy should be read together with the FMLA policy as the 12 workweek entitlements do not apply separately.** It offers valuable protection for eligible employees to maintain employment and benefits while dealing with family or medical situations related to covered family members in the armed forces that takes them from the work place for an extended period of time either in a single block or intermittently.

### **Article II DEFINITIONS**

#### **2.1 Serious Injury or Illness**

2.1.1 In the case of a member of the Armed Forces, including the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty, and that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating, and

2.1.2 In the case of a covered veteran an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces or that existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in Armed Forces, and manifested itself before or after the member became a veteran, and is:

2.1.2.1 A continuation of a serious injury or illness incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the

servicemember unable to perform the duties of the servicemember's office, grade, rank or, rating; or

2.1.2.2 A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

2.1.2.3 A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability (s) related to military service, or would do so absent treatment; or

2.1.2.4 An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

### **Article III ELIGIBILITY**

3.1 **Eligibility Requirements:** To be eligible, an employee must have worked for the state for at least 12 months (not necessarily consecutively) and worked at least 1,250 non-overtime hours in the 12 months immediately preceding the first day of leave. Paid leave will not be counted as hours worked toward the 1,250 hour requirement. The employee must have worked at a work site which employs at least 50 employees within a 75 mile radius.

3.2 **Provisions:** Military Caregiver Leave - The EWSHS will grant an eligible employee who is a spouse, son, daughter, parent or next of kin, (defined below), of a covered service member, (defined below), with a serious injury or illness, (defined above), up to a total of 26 workweeks of leave during a single 12-month period to care for the service member. 3.3 **Covered Service Member**

3.3.1 A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness., or

3.3.2 A covered veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness.

"Covered veteran" means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

3.3 **Next of Kin:** The nearest blood relative other than the covered servicemember's spouse, parent, son or daughter, in the following order of priority:

- Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions;
- Brothers and sisters;
- Grandparents;
- Aunts and uncles; and
- First cousins.

If the covered servicemember designates in writing another blood relative as their nearest blood relative for purposes of military caregiver leave under FMLA, that designation takes precedent over

the above list. That person would be the only next of kin. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously.

The "single 12-month period" for leave to care for a covered service member with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA qualifying reason during the "single 12-month period." (Only 12 of the 26 weeks may be for a FMLA qualifying reason other than to care for a covered service member.)

**3.4 Qualifying Exigency Leave:** The EWSHS will grant an eligible employee up to a total of 12 workweeks of leave during a 12-month period for FMLA leave for qualifying exigencies arising out of the fact that the employee's spouse, child of any age, or parent is on covered active duty or has been notified of an impending call or order to covered active duty. Covered active duty is defined as:

- 3.4.1 In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country. The active duty orders of a member of the Regular components of the Armed Forces will generally specify if the member is deployed to a foreign country.
- 3.4.2 In the case of a member of a Reserve components of the Armed Forces, duty during the 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 as defined in 10 U.S.C. § 101(a)(13)(B).

**3.5 Qualifying Exigencies Include:**

- 3.5.1 **Short-notice deployment** – To address any issue arising from the fact that the military member is notified of an impending call or order to covered active duty seven or less calendar days prior to the date of deployment. Leave taken for this purpose can be used for a period of seven calendar days beginning on the date the military member is notified of an impending call or order to covered active duty.
- 3.5.2 **Military events and related activities** – To attend official ceremonies, programs or events sponsored by the military, 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.
- 3.5.3 **Childcare and school activities** – 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 day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member.
- 3.5.4 **Financial and legal arrangements** – To make or update financial and legal arrangements to address a covered military member's absence or to act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status.

- 3.5.5 **Counseling** – 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 need for which arises from the active duty or call to active duty status of the covered military member.
- 3.5.6 **Rest and Recuperation** – To spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment. Leave taken for this purpose can be used for a period of 15 calendar days beginning on the date the military member commences each instance of Rest and Recuperation leave.
- 3.5.7 **Post-deployment activities** – 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 90 days following the end of the covered military member’s active duty status or addressing issues arising from the death of a covered military member.
- 3.5.8 **Parental Care** – To arrange for the care of the parent of the military member who is incapable of self-care necessitated by or arising from the covered active duty or call to covered active duty status of the military member.
- 3.5.9 **Additional Activities** – Anything the Employer and Employee agree upon relating to the exigency.

**NOTE:** FMLA Military Family Leave is not an additional leave category. It is simply the designation indicating leave for one of the purposes stated above to ensure leave entitlement and continuation of benefits during instances of leave without pay. During absences designated as FMLA Military Family leave, an employee may choose to use accrued paid leave to cover all or part of their FMLA absence. Accrued paid leave includes sick leave, vacation leave, temporary salary reduction leave, and personal holiday accrued as indicated on leave records. If applicable, shared leave or leave without pay may also be used. Substitution of sick leave is allowed only for those purposes that sick leave use is normally allowed pursuant to state laws or EWSHS policies regarding sick leave use.

The use of any leave, paid or unpaid, for a FMLA qualifying event will run concurrently with, and not in addition to, the use of FMLA for that event. Absences covered by worker’s compensation will also run concurrently with FMLA, assuming they are qualifying conditions.

## **Article IV ADMINISTRATION**

### **4.1 Counting Absences Toward The Use Of FMLA**

- 4.1.1 **Military Caregiver Leave** - Employee absences that qualify as FMLA absences under Military Caregiver leave will be counted toward the FMLA 26-work week allowance beginning with the first day of the employee’s use of leave (or leave without pay) for reasons that meet the FMLA military caregiver leave criteria. The Department of Enterprise Services (DES) Human Resource (HR) Consultant will verify reasons for absence to ensure they meet the criteria to be designated as FMLA Military Caregiver leave. The first day of the approved designated absence will also count as the first day of the 12-month rolling period.

The 12 month period is measured forward from the date the requesting employee begins leave under the FMLA. The employee’s next 12 month period would begin the first time leave under the FMLA is taken after completion of the previous 12 month period

- 4.1.2 **Qualifying Exigency Leave** - Employee absences that qualify as FMLA absences under Qualifying Exigency leave will be counted toward the FMLA 12-work week allowance beginning with the first day of the employee's use of leave (or leave without pay) for reasons that meet the FMLA qualifying exigency leave criteria. The DES HR Consultant will verify reasons for absence to ensure they meet the criteria to be designated as FMLA qualifying exigency leave. The first day of the approved designated absence will also count as the first day of the 12-month rolling period.

Under some circumstances, employees may take leave designated as FMLA intermittently, which means taking leave in blocks of time or by reducing their normal weekly or daily work schedule.

FMLA leave amounts may be counted in hourly increments and the actual hours available will depend on the FTE of the employee, e.g., a full time FTE will have 480 hours or 12 work weeks available in the 12 month period and a  $\frac{3}{4}$  FTE will have 360 hours available.

- 4.2 **Intermittent FMLA:** Leave designated as FMLA may be taken intermittently if medically necessary. Medical documentation of the need for the leave on an intermittent basis or for leave on a reduced schedule may be required. If the need for intermittent leave is foreseeable based on planned medical treatment of the covered service member, the employee is responsible for scheduling treatment in a manner that does not unduly disrupt the employer's operations subject to the approval of the health care provider. Intermittent leave may also be taken for military exigency leave.

It may be necessary to transfer an employee temporarily to an alternative job with equivalent pay and benefits that better accommodates intermittent leave for the planned medical treatment.

- 4.3 **Notification:** When the employee's absence is designated by the DES HR Consultant as FMLA military family leave qualifying, the employee will be notified of the decision in writing by the DES HR Consultant. This notification will also outline the employee's responsibilities in relation to their leave.

Whenever possible, the employee shall provide at least 30 days written notice to the agency and the DES HR Consultant of the need to take FMLA military family leave. When this is not possible, the employee should communicate in writing the need to take leave as soon as it is known. This should include anticipated beginning and ending dates of the requested leave, the reason for the leave, the service member's name, and the employee's relationship to the service member.

- 4.4 **Required Certification:** The DES HR Consultant may require that an employee's request for military family leave be supported by an appropriate certification. Medical certification may be requested for service member caregiver leave as allowed by law.

The EWSHS requires:

- 4.4.1 Leave for a qualifying exigency is supported by a copy of the covered military member's active duty orders and information providing the facts related to the qualifying exigency.
- 4.4.2 Leave to care for a covered service member with a serious injury or illness requires certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family.

- 4.5 **Impact On Benefits:** The EWSHS will provide health insurance and other benefits to employees on leave as required by law. If leave without pay is taken for eligible or approved FMLA

leave, the employee will not be required to take eight hours of leave per month to retain medical or dental benefits.

The employee's payroll deducted self-paid health insurance premiums, optional life or long term disability insurance may be continued on a self-pay basis during FMLA leave. Arrangements should be made as to how these self-payments will be made. These arrangements should be discussed prior to the start of the leave; however, the payments are not required to be made in advance. . If the employee on unpaid leave does not pay their share of the premiums, the **EWSHS** may elect to continue the employee's benefits and collect the amounts due from the employee upon their return to work.

If an eligible employee chooses not to return to work at the conclusion of their unpaid FMLA leave for reasons other than a serious health condition of the employee or the employee's family member, the continued serious injury or illness of a covered service member, or a circumstance beyond the employee's control, the **EWSHS** may require the employee to reimburse the **EWSHS** for the amount of health care benefit premiums paid for the employee during the unpaid FMLA leave period.

**4.6 Returning To Work:** The employee should provide notice to the DES HR Consultant indicating when the employee plans to return to work.

The employee returning from military family leave will be reinstated to the same job or to an equivalent job with equivalent status and pay in the same geographic area. If the same position or one of equivalent status and pay is not available due to layoff or other operational reasons, the employee will be treated in the same manner as though the employee were not absent at the time of the layoff.

**4.7 Other Impacts:** An employee's anniversary and seniority dates will be adjusted for any period of leave without pay which exceeds 15 consecutive calendar days. The adjustment made will be equal to the amount of time that the employee has taken leave without pay.

If an employee uses leave without pay for an entire work shift while serving a probationary period or trial service period, the probationary period or trial service period will be extended by one work day for each work shift of leave without pay.

An employee's periodic increment date will be adjusted for any period of leave without pay which exceeds 15 consecutive calendar days. The adjustment made will be equal to the amount of time that the employee has taken leave without pay.

**4.8 Primary roles and responsibilities for FMLA Military Family Leave within the EWSHS.**

Role	Responsibilities
<b>Employee</b>	<ul style="list-style-type: none"> <li>• If possible, notify your supervisor of the need to take FMLA, 30 days prior to the anticipated absence.</li> <li>• Provide certification as requested/required.</li> <li>• Provide status reports to the DES HR Consultant when out on FMLA.</li> <li>• Notify the DES HR Consultant of your intention to return to work.</li> <li>• If applicable, continue employee-paid insurance premiums during FMLA absence.</li> <li>• Submit leave requests associated with the absence as outlined in the Leave Policy.</li> </ul>
<b>Supervisor/ Manager</b>	<ul style="list-style-type: none"> <li>• Communicate with the DES HR Consultant when an employee requests FMLA or when an employee requests leave you feel may qualify for FMLA.</li> </ul>

	<ul style="list-style-type: none"> <li>• Ensure that the employee’s position is protected during an FMLA absence.</li> </ul>
<b>DES HR Consultant</b>	<ul style="list-style-type: none"> <li>• Determine if employee meets FMLA Military Family Leave eligibility requirements.</li> <li>• Designate the leave as FMLA. Notify the employee regarding eligibility. Send FMLA pre-approval or denial letter.</li> <li>• Request certification from the employee.</li> <li>• Determine if absence meets FMLA Military Family Leave qualification requirements. Send FMLA approval or denial letter.</li> <li>• Notify the employee when the FMLA Military Family Leave allowance is near conclusion.</li> <li>• Update the supervisor on employee status.</li> <li>• Notify the supervisor of employee’s intention to return to work and the date.</li> <li>• Communicate with the agency payroll office.</li> </ul>

**4.9 Interaction with Laws and Regulations:** This policy will be construed in accordance with the FMLA and its accompanying regulations as currently written or as hereafter amended. To the extent items or aspects of the FMLA or its accompanying regulations are not covered in this policy or are, or become, inconsistent with this policy, those gaps or inconsistencies will be construed in accordance with the FMLA and its regulations.

**WAC’s and references that apply to this policy**

357-31-135 (sick leave procedure)	357-31-200 (reasons vacation req. approval)
357-31-285 (family care emergency)	357-31-290 (what qualifies for family care)
357-31-300 (entitlement for family care leave)	357-31-305 (approval process for family care)
357-31-325 (leave with pay entitlements)	357-31-335 (employer limit to LWOP status)
357-31-373 (call to active duty)	357-31-400 (shared leave limits)
357-31-390 (criteria to be eligible for shared leave)	357-31-495 (parental leave/FMLA)
357-31-405 (med certification for shared leave)	357-31-535 (criteria for FMLA allowance)
29 U.S.C. § 2601 et. Seq. (United States Code, title 29, chapter 28, Family & Medical Leave Act of 1993)	29 C.F.R. Part 825 (Code of Federal Regulations, Part 825, Family & Medical Leave Act of 1993)