

Policies and Procedures # HR 22



Subject: Family Medical Leave Act (FMLA)

Department: HR
Approved By: Riggs/Abney, Legal Counsel

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This policy/procedure supersedes all other policies/procedures of the same subject.

PURPOSE:

To describe the requirements of the FMLA

BACKGROUND:

Even though EMSA has fewer than fifty employees, it falls under the Public Agency requirements of the FMLA.

POLICY:

Employee Eligibility. To be eligible for Family Medical Leave Act (“FMLA”) leave, an employee must (1) have been employed by EMSA for at least a total of one year (which need not be 12 consecutive months); (2) have actually worked for at least 1,250 hours during the preceding 12-month period of employment with EMSA; (3) had not used all available FMLA leave in the defined “12-month period”; and (4) have a qualifying event.

Qualifying Event. A qualifying event under the FMLA allows eligible employees to take job-protected, unpaid leave (or concurrent paid leave if the employee has earned or accrued it) within a 12-month period for one or more of the following circumstances:

- (1) The birth and care of the employee’s newborn child (within 12 months of the birth);
- (2) The placement of a child with the employee for adoption or foster care (within 12 months of the placement);
- (3) To care for the spouse, daughter, son or parent of the employee, if such person has a serious health condition (this does not include in-laws);
- (4) The employee’s own serious health condition, including certain workers’ compensation leaves;
- (5) If the employee is the spouse, son, daughter, parent or next-of-kin of a covered service member, to care for the service member with a serious injury or illness incurred while on active duty in the Armed Forces (“caregiver leave”); or
- (6) Any qualifying exigency arising out of the fact that an employee’s spouse, son, daughter or parent in the National Guard or Reserves has been notified of an impending call or order to active duty status in support of a contingency operation.

To be eligible to take leave it will be necessary for you to make a written request for FMLA leave 30 days in advance of a foreseeable leave. Otherwise, FMLA leave on an emergency basis must be requested as soon as practical, but no later than 3 days after the first day of absence.

Definitions. Under the FMLA, a “**child**” does not have to be a biological child. Also, a “**parent**” does not need to be biological parent as long as the person stands or stood “*in loco parentis*” (in the place of the parent) to the employee when the employee was a “son” or “daughter,” but “**parent**” does not include a father-in-law or mother-in-law. FMLA leave may be taken to care for adopted children, foster children, legal wards, or a niece, nephew, or grandchild whom the employee is actively raising. A “**son**” or “**daughter**” includes a child 18 years or over who is “incapable of self-care because of a mental or physical disability.” For purposes of caregiver or other military-related leave, a “**son**” or “**daughter**” can be of any age.

For FMLA purposes, a “**spouse**” is defined in accordance with applicable state law and may include common-law spouses in States where common-law marriages are recognized. Unmarried domestic partners generally do not qualify as a spouse under the FMLA.

A “**serious health condition**” is an injury, impairment, condition or illness affecting one’s health to the extent that inpatient care or continued treatment by a healthcare provider is needed. “**Continued treatment**” by a healthcare provider means: (i) incapacity for more than 3 consecutive days plus 2 or more doctor’s visit or 1 visit plus treatment (such as prescribed medication or therapy); (ii) incapacity due to pregnancy or for prenatal care; (iii) incapacity due to a chronic condition involving periodic medical visits for treatment of recurring or episodic conditions (such as asthma, diabetes or epilepsy); (iv) permanent or long-term incapacity (such as Alzheimer’s, severe stroke or terminal stages of a disease); or (v) an absence to receive treatment of a condition that would result in incapacity if left untreated (such as chemotherapy for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

To determine the amount of FMLA leave to which an employee is entitled, the “**12-month period**” is measured backward from the date that the employee uses any FMLA leave (other than “caregiver” leave). Each time an employee uses FMLA leave, the remaining balance in his or her FMLA leave entitlement is equal to the portion of the 12-week leave entitlement that was not used in the immediately preceding 12-month period. In other words, it is a “rolling” 12-month period, and any FMLA leave that was taken by the employee during the 12 months immediately preceding the date on which the employee wants to begin taking additional FMLA leave will be counted to determine the amount of FMLA leave, if any, remaining. For purposes of military “**caregiver leave**” to care for a covered service member with a serious injury or illness, the single “**12-month period**” begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established for other types of FMLA leave. Although this alternative means of establishing the relevant 12-month period is triggered by the taking of “caregiver leave,” all non-caregiver FMLA leave taken during this 12-month period will be counted against the total 26 workweek caregiver entitlement as stated elsewhere in this policy.

A “**covered service member**” is a 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 on the temporary retired list, for a serious injury or illness.

A “**serious injury or illness**” for such service members is one that was incurred in the line of duty while on active duty and that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating.

“**Qualifying exigencies**” apply to members of the National Guard or Reserves and include: (i) Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or promoted by military service organizations, or the American Red Cross related to the active duty or call to active duty; (ii) 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, enrolling or transferring a child to a new school or day care facility; (iii) making or updating financial and legal arrangements to address a covered military member’s absence; (iv) attending counseling provided by someone other than a healthcare provider for oneself, a covered military member or the child of a covered military member, the need for which arises from the active duty or call to active duty status of a covered military member; (v) taking up to 5 days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave (R&R) during deployment; and (vi) attending to certain post-deployment activities, including arrival ceremonies, re-integration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of a covered military member’s active duty status, or addressing issues from the death of a covered military member.

Both Spouses Working For EMSA. When both spouses work for EMSA, the combined total leave in any 12-month period for both spouses will be limited to 12 weeks if the leave is taken for any qualifying event other than caregiver leave; likewise, both spouses are limited to a combined total of 26 workweeks for “caregiver leave” in a single 12-month period if the leave is to care for a covered service member with a serious injury or illness.

Amount of Leave. Eligible employees may take up to 12 weeks of leave during a rolling 12-month period for all FMLA approved leave other than caregiver leave. An employee who takes “caregiver leave” may not take more than 26 weeks of leave in the 12-month period that begins on the first day when the employee takes caregiver leave, and is limited to a **combined** total of 26 workweeks of leave for caregiver leave and any other FMLA-qualifying reason during this single 12-month period. Beginning caregiver leave and a new 12-month period for that purpose, will not affect the amount of FMLA non-caregiver leave entitlement that is established under a rolling 12-month period. **Only 12 of the 26 weeks total may be for an FMLA-qualifying reason other than to care for a covered service member.** For example, if an employee takes 12 weeks of FMLA leave for the birth of the employee’s child, the employee is limited to an additional 14 weeks for caregiver leave and has no remaining weeks for any non-caregiver FMLA leave. Caregiver leave is a one-time entitlement applied on a per-covered serviceman and per-injury basis - - i.e., no portion of caregiver leave taken to care for one particular covered service member or one particular injury or illness of that service member may be “carried over” and continued during a subsequent single 12-month period; however, additional caregiver leave may be taken to care for a different service member or a different injury or illness to the same service member. If an employee is eligible for and takes both caregiver leave and FMLA non-caregiver leave, there may be two separate but over-lapping “12-month periods” that are applicable; in such cases, it will be essential for the employee to accurately report and communicate with EMSA HR managers on a regular basis to keep an accurate accounting of available FMLA leave.

Notice, Reporting And Certification Requirements.

A. Employer Notice of Eligibility and Designation of FMLA Leave.

Employees requesting FMLA leave are entitled to receive written notice from EMSA telling them whether they are eligible for FMLA leave, and, if not eligible, the reasons why they are not eligible. When eligible for FMLA leave, employees are entitled to receive written notice of (1) their rights and responsibilities in connection with such leave; (2) EMSA's designation of leave as FMLA-qualifying or non-qualifying, and if not FMLA-qualifying, the reasons why; and (3) the amount of leave, if known, that will be counted against the employee's leave entitlement. EMSA may retroactively designate leave as FMLA leave with appropriate written notice to employees.

B. Employee Notice of and Application for FMLA Leave.

To trigger FMLA leave protections, employees must inform the HR Manager of the need for FMLA-qualifying leave and the anticipated timing and duration of the leave, if known. Employees may do this by either requesting FMLA leave specifically, or explaining the reasons for leave sufficiently to allow EMSA to determine that the leave is FMLA-qualifying. FMLA application and eligibility forms are available in the HR Department. Calling in "sick," without providing the reasons for the needed leave, will not be considered sufficient notice for FMLA leave under this policy. Employees must respond to EMSA's questions to determine if absences are potentially FMLA-qualifying. If employees fail to explain the reasons for FMLA leave, the leave may be denied. When employees seek leave due to FMLA-qualifying reasons for which EMSA has previously provided FMLA-protected leave, they must specifically reference the qualifying reason for the leave or the need for FMLA leave.

C. Employee Cooperation in the Scheduling of Planned Medical Treatment (Including Accepting Transfers to Alternative Positions) and Intermittent Leave or Reduced Leave Schedules.

When planning medical treatment, employees must consult with the EMSA HR Manager and make a reasonable effort to schedule treatment so as to not to unduly disrupt EMSA's operations, subject to the approval of an employee's healthcare provider. Employees must consult with EMSA HR Manager prior to the scheduling of treatment to work out a treatment schedule that best suits the needs of both EMSA and the employee, subject to the approval of employee's healthcare provider. If employees providing notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglect to fulfill this obligation, EMSA may require employees to attempt to make such arrangements, subject to the approval of their healthcare provider.

When employees take intermittent or reduced work schedule leave for foreseeable planned medical treatment for the employee or a family member, including during a period of recovery from a serious health condition or to care for a covered service member, EMSA may temporarily transfer employees, during the period that the intermittent or reduced leave schedules are required, to alternative positions with equivalent pay and benefits for which the employees are qualified and which better accommodate re-occurring periods of leave.

When employees seek intermittent leave or a reduced leave schedule for reasons unrelated to the planning of medical treatment, upon request, employees must advise the EMSA HR Manager of the reason why such leave is medically necessary. In such instances, EMSA and the employee shall attempt to work out a leave schedule that meets the employee's needs without disrupting EMSA's operations, subject to the approval of the employee's healthcare provider.

D. Medical Certification Supporting Need for FMLA Leave.

A certification issued by a healthcare provider is required to support an employee's request for FMLA leave due to a serious health condition. A form entitled "Certification of Health Care Provider" is available from the Human Resources Manager. Depending upon the circumstances and duration of FMLA leave, EMSA may require employees to provide recertification of medical conditions giving rise to the need for leave. Forms are available in HR for this purpose, and EMSA will notify employees if such recertification is required.

EMSA may require the employee to obtain the opinion of a second healthcare provider designated and paid for by EMSA. In the event of a conflict between the first and second opinions, EMSA may, again at its own expenses, obtain a third opinion from a healthcare provider approved jointly by EMSA and the employee. This third opinion will be final and binding.

Employees who take leave for their own serious health condition or to care for a covered family member will be required to report to EMSA on a regular basis. Continued doctor's certification may be required if the situation warrants, but not more frequently than every thirty (30) days unless EMSA has reason to believe the employee is able to return to work. Employees are expected to provide EMSA with notice as soon as possible if the dates of leave change or are extended.

When caregiver leave is taken to care for a covered service member with an injury or illness, EMSA may require an employee to obtain certification completed by an authorized healthcare provider of the covered service member. In addition, and in accordance with the FMLA regulations, EMSA may request that the certification submitted by an employee set forth additional information provided by the employee and/or covered service member confirming entitlement to such leave.

For leave due to qualifying exigencies arising out of the active duty or call to active duty status of a covered military member, EMSA may require an employee to provide: (1) a copy of the covered military member's active duty orders or other documentation issued by the military indicating the covered military member is on active duty or call to active duty status, and the dates of the covered military member's active duty service; and (2) a certification from the employee setting forth information concerning the nature of the qualifying exigency for which leave is requested. An employee shall provide a copy of new active duty orders or other documentation issued by the military for qualifying exigencies, if leave arises out of a different active duty or call to active duty status of the same or a different covered military member.

Key and Highly-Compensated Employees. FMLA provides a significant exemption for "key employees" and "highly compensated employees." EMSA is not required to offer such employees a reinstatement to a similar position following the end of their leave. The employee

will be notified by EMSA of his status as a key employee upon requesting leave if a chance exists that EMSA may deny reinstatement after the leave.

Concurrent Paid Leave. Employees taking FMLA leave are required to use earned paid sick/emergency leave and earned vacation concurrently with and as part of FMLA leave, except as follows: employees who are on Workers' Compensation Temporary Total Disability ("TTD") status will also have TTD leave run concurrently with FMLA leave, but such TTD employees will not be required to use paid sick/emergency leave or vacation as part of FMLA leave while they remain on TTD status. Under no circumstances will any employee be allowed to "tack on" paid leave to FMLA unpaid leave to gain more than 12 weeks' FMLA leave (or 26 weeks caregiver leave) during the 12-month period.

Medical Benefits. While an employee is on FMLA leave, EMSA will continue to pay EMSA's share of insurance premiums or other payments for coverage under an employee benefit plan which become due during the leave, but not the employee's share. Each employee is responsible to review periodically all provisions and requirements of any insurance or benefit plan in which the employee (or family member) participate.

Except as may be required by COBRA, EMSA's FMLA obligation to pay its share of premiums during leave (and to restore the employee to the same or equivalent employment) ceases if and when: (1) the employment relationship would have terminated if the employee had not taken FMLA leave; (2) an employee informs EMSA of his or her intent not to return from leave (and even before the starting of leave if EMSA is so informed); or (3) the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the 12-month period.

Vacation and Sick Leave Accrual. EMSA will continue to accrue vacation and sick leave for the unpaid portion of the employee's FMLA leave unless the employee does not return to work.

Return To Work And Reinstatement. Employees generally have rights to return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the end of their FMLA leave. If, however, the employee cannot or does not return to work prior to the expiration of the FMLA leave, there is no guarantee of reinstatement.

If the employee's FMLA leave has been caused by the employee's own serious medical condition, EMSA will require a written release from the medical provider verifying that the employee is able to return to work. Absent receipt of such written release, return to work will be delayed or denied. If an employee has been medically released to return to work and fails to report to work or call in with a satisfactory explanation, EMSA will treat this as a voluntary resignation.

The taking of another job while on FMLA leave or any other authorized leave of absence is grounds for immediate termination, to the extent permitted by law.