

**WILLIAMSON COUNTY
FAMILY AND MEDICAL LEAVE ACT POLICY**

(Approved by Commissioner's Court on January 16, 2009)

In accordance with the Family and Medical Leave Act of 1993 and as revised January 16, 2009, Williamson County has established the following policy.

PURPOSE OF THE ACT

The Family and Medical Leave Act (FMLA) was established to balance the needs of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity.

The new law entitles an eligible employee to job-protected, unpaid leave for 1) birth or adoption of a child of the employee, or the placement of a child with the employee for foster care; or 2) when the employee's spouse, child, or parent has a serious health condition and requires care from the employee. The law also gives employees job-protected, unpaid leave for their own serious health conditions.

EFFECTIVE DATE

August 5, 1993, Revised January 16, 2009

ELIGIBLE EMPLOYEES

There are two basic requirements to be an eligible employee for FMLA purposes:

- 1. The employee must have been employed by Williamson County for at least 12 months (not consecutively). If an employee has a 7-year break in service, service that is more than 7 years old generally does not need to be counted.**
 - a. Williamson County will base FMLA leave on a "rolling" 12-month period, measured backward from the date that a County employee first uses FMLA, but not before August 5, 1993.**
- 2. The employee must have worked for Williamson County at least 1250 hours during the previous 12 months.**

LEAVE REQUIREMENTS

Williamson County is required to grant up to 12 weeks of unpaid leave in any 12-month period for one or more of the following reasons:

Medical Leave

- 1. The birth of a child and the care of the child after such birth or the placement of a child for adoption or foster care.**
 - a) Leave for birth or placement must be within 12 months of birth or placement.**

- b) Leave for the birth or placement of a child must be taken all at once.
 - c) Leave may begin before the birth, adoption or placement of the child.
 - d) If both spouses are employed by Williamson County, the 12 weeks are combined and may be split between the two employees. They are not each entitled to a 12 week leave.
 - e) If a spouse (as defined in 2.b below) provides pre-natal care, attends appointments and provides care after birth if spouse has a serious health condition.
2. A serious health condition of a spouse, child, or parent of the employee that involves treatment certified as medically necessary by the Health Care Provider (HCP)
- a) An in-law is not considered a parent and is not included as an eligible person.
 - b) A spouse is defined as a husband or wife; a domestic partner is not covered by this act. (Common-law marriages will need to meet state regulations).
 - c) A child must be under the age of 18, or age 18 or older and incapable of self-care because of a mental or physical disability as referenced below:

An individual is “incapable of self-care” if the individual requires active assistance or supervision to provide daily self-care in any of three of the following:

Grooming	Hygiene
Bathing	Dressing
Eating	Cooking
Cleaning	Shopping
Taking Public Transportation	Paying Bills
Maintaining a Residence	Using the Post Office
Using a Telephone and Directories	
 - d) Intermittent leave may be taken for care of a spouse, child or parent of the employee for a serious health condition.
3. A serious health condition of an employee where an employee is unable to perform their job duties:
- a. For a definite period of time; or,

b. on an intermittent basis.

A “serious health condition” is defined as a physical or mental condition that involves:

- 1. Inpatient care (overnight stay) in a hospital, hospice, or residential medical facility.**
- 2. Continuing treatment as defined below:**
 - a) If a “medical necessity” exists. Medical need for leave versus voluntary treatments and procedures. If leave is intermittent or reduced schedule, employee’s health care provider must state that such leave is medically necessary and explain why.**
 - b) If a “period of incapacity” exists.**
 - 1. duration of incapacity lasting more than 3 full consecutive calendar days;**
 - 2. is an in-person treatment at least once within 7 days of first day of incapacity; and**
 - 3. either is a regimen of continuing treatment initiated by HCP during first treatment or is an second in-person visit for treatment (necessity of which determined by HCP) within 30 days of first day of incapacity.**

USE OF PAID LEAVE

Williamson County will require that an employee use all their available accrued paid leave in the following sequence; sick, vacation, essential pay, compensatory and holiday earned time at the beginning of their designated FMLA leave period. After all available paid leave has been taken; the employee will be placed on unpaid leave for the remainder of their FMLA leave period.

INITIAL NOTIFICATION REQUIREMENTS

The employee must provide the employer at least 30 days’ notice before FMLA leave may begin as a foreseeable event.

In case of an emergency, notice is required as soon as practicable, generally within 1-2 business days.

When requesting leave for the first time for a particular FMLA-qualifying reason, sufficient information must be provided, dependent on the situation (qualifying reason, explanation for need of leave, provide anticipated timing and duration of leave if foreseeable) to allow the county to reasonably determine whether FMLA will apply. Calling in “sick” will not be sufficient.

When subsequently requesting leave for the same FMLA qualifying reason for which leave has previously been provided the employee need only reference the qualifying reason or state “FMLA” leave.

When sufficient notice is provided that time off may be for an FMLA event;

- 1) the supervisor or department head is required to ask the employee for any additional necessary information;**
- 2) the employee must respond to same;**
- 3) the employee must consult with the supervisor or department head in advance to make a “reasonable effort” to schedule planned treatment so as not to unduly disrupt work operations;**
- 4) the employee must advise the supervisor or department head as soon as practicable when dates of leave change or become known.**

If FMLA will be on an intermittent or reduced schedule, Williamson County reserves the right to transfer an employee to an alternate position, at the same rate of pay, which will more easily accommodate the intermittent/reduced leave schedule.

Williamson County may require an employee to periodically report on their intent to return to work.

This leave is not intended to cover any short term conditions, such as minor illnesses that last only a few days or surgical procedures that typically do not involve hospitalization and require only a brief recovery period. If complications arise out of such procedures and they develop into a serious health condition, the employee is required to notify Williamson County of their intent to go on FMLA leave.

Williamson County will notify an employee when leave is being counted against the FMLA leave entitlement.

CERTIFICATION AND RECERTIFICATION REQUIREMENTS

Williamson County requires certification issued by a health care provider to support the employee’s request for leave due to serious health conditions. After being informed in writing, the employee must provide this certification or recertification within 15 calendar days from the post-marked date of the request. If certification or recertification is not returned at all within 15 days and employee has not provided information about their diligent, good faith efforts to provide certification, leave can be denied. Employee will be provided with a form to complete for certification purposes.

If certification or recertification is not returned at all within any required 7-day cure period (and employee has not provided information about their diligent, good faith efforts), or is timely returned but does not cure the deficiencies, leave can be denied.

Williamson County has no obligation to notify an employee that a certification or recertification has not been received in the 15-day or 7-day periods.

Williamson County also reserves the right to request certification for the return to work and the certification that an employee who is unable to return to work after the expiration of the leave is absent due to a serious health condition.

Should Williamson County have a need to authenticate, verify and/or clarify ~~reason to doubt~~ the validity of an eligible employee's certification, the County may require the employee to obtain the opinion of a second health care provider designated or approved by the County. The County will pay for the second opinion. In the event of a conflict between the first and second opinions, the County may, at its expense, obtain a third opinion from a health care provider approved jointly by the County and the employee. The third opinion will be final and binding.

"Authentication" means providing the HCP with a copy of the certification or recertification and requesting verification that the information contained on the form was completed and/or authorized by the HCP.

"Clarification" means contacting the HCP to understand the handwriting on the form or to understand the meaning of a response, but does not include asking for information beyond that required by the form.

A "significant change" includes a pattern of absences before/after scheduled days off, or longer duration of absences than specified on certification for most recent two or more episodes of incapacity and if the County receives information casting doubt upon employee's stated reason for absence ("doubt" could include reliable information that employee's off-duty activities are inconsistent with need for FMLA leave).

Williamson County may also provide the employee's doctor with a record of employee's absence pattern and ask doctor if the condition and need for leave are consistent with such a pattern.

The County may require that the eligible employee obtain subsequent recertification every 6 months.

INTERMITTENT LEAVE

When intermittent leave or a leave on a reduced schedule is requested, Williamson County may also request:

- 1. For a planned medical treatment, certification that includes the dates on which treatment will be required and the duration of the treatment.**
- 2. For an employee's own serious health condition, certification must also include a statement of the medical necessity for such leave and its expected duration.**
- 3. For care of an eligible family member, certification must also include a statement that such leave is necessary for the care of the family member who has a serious health condition, or that the employee will**

assist in that member's recovery, or be with the family member for psychological support, and the expected duration and schedule of leave.

HEALTH INSURANCE CONTINUATION

Williamson County will continue group health plan coverage during FMLA leave periods, including medical, dental, life insurance and long-term disability policies.

- 1. Vacation and sick leave accrual will continue only as long as the employee is on paid leave; once the employee has expended all paid leave, accrual will cease until the employee returns to work.**

An employee on paid leave will continue to have their medical premiums deducted from their paycheck. An employee on unpaid leave will be responsible for payment of their insurance premiums. The employee may choose one of the following payment options:

- 1. Make premium payments directly to the Benefits Section of the Human Resources Department after the employee has stopped making premiums through payroll deductions; or,**
- 2. Have the outstanding premiums automatically deducted through payroll deduction (per the Human Resources Department's repayment table) upon the employee's return to work immediately following FMLA leave.**

The employee will be responsible for requesting the amount due by contacting the FMLA Administrator in the Human Resources Department prior to beginning their FMLA leave period.

An employee on unpaid leave will be allowed to choose not to retain their health care coverage during FMLA leave. The employee will be reinstated as to such coverage on the same terms as prior to the leave, without any new qualifying period.

Williamson County may discontinue an employee's health care coverage if the employee's required premium is more than 30 days late.

RIGHT OF RECOVERY

Williamson County may recover its share of the health care premiums paid for the employee's insurance during any unpaid FMLA leave pay periods, if the employee fails to return to work for a reason other than 1) the continuation, recurrence, or onset of a serious health condition that would entitle the employee to FMLA leave, or 2) other circumstances that are beyond the control of the employee.

WORKERS' COMPENSATION

An employee who suffers a compensable on-the-job injury and begins losing time may be placed on FMLA leave to run concurrently with the employee's inability to perform

their job functions as certified by a workers' compensation health care provider. Some county departments offer modified or light duty dependent on light duty requirements.

RETURN TO WORK (REGULAR POSITION)

An employee on FML due to their own serious health condition, may return to work only if the County receives a complete and sufficient written assessment by the employee's health care professional certifying that the employee is fit to perform the essential duties of the employee's position.

The written assessment must be submitted at the time the employee returns to work or within 15-days after the employee would have returned to work unless it is not practicable to do so despite employee's diligent, good faith efforts.

If the leave is continuous, the County may delay reinstatement.

If the leave is intermittent or reduced schedule, the County may not delay reinstatement.

If the written assessment is not returned at all within the 15-days and the employee has not provided information about their diligent and good faith efforts and if the employee doesn't provide a new medical certification, leave can be denied and the employee terminated.

If the written assessment is not returned at all within a required 7-day cure period and the employee has not provided information about their diligent and good faith efforts and doesn't provide a new medical certification, or the written assessment is timely returned but does not cure the deficiencies, the leave can be denied and the employee terminated.

JOB REINSTATEMENT

A Williamson County employee returning from FMLA leave must be reinstated to the same or "equivalent position."

- 1. The job or position will provide the same pay and benefits.**
- 2. The employee is entitled to return to the same or equivalent shift and schedule and the employee will have the same opportunity for advancement as before the leave.**
- 3. Benefits accrued at the time of the leave will be available to the employee upon return from the leave (except paid leave used during the FMLA leave).**
- 4. The employee is entitled to unconditional pay increases that occurred during the time of their leave (i.e. any countywide salary increases).**

Reinstatement to a county department or office that has implemented employee re-organization changes may be an exception to an "equivalent position".

Other exceptions to job reinstatement granted by FMLA:

Williamson County will attempt to reinstate all employees; however, the County (as allowed by the Federal FMLA law) does not have to reinstate any exempt, salaried employee who is among the highest paid 10% of county employees. Job restoration will be denied to the exempt employee if the employee's restoration will cause "substantial and grievous economic injury" to the county. Any exempt employee affected will be notified, in writing, of the intent to deny restoration to their position. The employee will be given notice of the non-restoration status prior to the beginning of a leave or, if notice is given after the leave has begun, the employee will be given the option of returning immediately to work.

RECORD KEEPING REQUIREMENTS

Williamson County will maintain and preserve records pertaining to the FMLA through the Human Resources Department. The Williamson County FMLA Administrator will be notified of all employees who meet the criteria for going on FMLA leave and will coordinate all certification documents. These records will be maintained in accordance with the FMLA and will be upheld in the strictest confidentiality.

As mandated by the FMLA, all medical records, including doctor certifications and fitness for duty certifications; any correspondence relating to FMLA leave designations; and, all copies of employee's timesheets depicting FMLA usage will be kept separate from personnel records in each county department or office.

MILITARY EXIGENCY LEAVE

PURPOSE OF EXIGENCY LEAVE

To allow an employee who has a spouse, son or daughter, or parent in the National Guard or Reserves to take FMLA leave due to a qualifying exigency resulting from the covered family member's active military duty (or call to active duty status) in support of a contingency operation.

Definition of "Eligible Active Duty or Call to Active Duty Status"

The military member must be a member of the National Guard or Reserves; employees may not take leave if the family member is in the Regular Armed Forces except certain retired members of the Regular Armed Services.

Must be a "Federal" (not State) call to active duty.

Definition of "Covered Military Member"

A member of the military who:

1. Is "on active duty or call to active duty status;" and
2. Is an employee's spouse, son, daughter, or parent.

Definition of "Son or Daughter on Active Duty or Call to Active Duty Status"

A member of the military who:

- 1. Is “on active duty or call to active duty status;”**
- 2. Is an employee’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis; and**
- 3. Is of any age.**

Definition of “Parent”

An employee’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter (as the term “son or daughter” is defined in the regulations), but does not include “parents in-law”.

By implication under the regulations, the term “son or daughter” means when the employee was under age 18 or was age 18 or older and incapable of self-care because of a mental or physical disability at the time FMLA begins.

Definition of “Qualifying Exigency”

Includes any one or more of the following non-medical, non-routine activities and no others:

- 1. Short-notice deployment activities;**
- 2. Military events and related activities;**
- 3. Childcare and school activities;**
- 4. Financial and legal arrangements;**
- 5. Counseling activities;**
- 6. Rest and recuperation activities;**
- 7. Post-deployment activities; and/or**
- 8. Additional activities.**

EMPLOYEE NOTICE REQUIREMENTS

Timing

An employee must give notice of the need for exigency leave as soon as practicable, depending on the facts and circumstances, regardless of how far in advance such leave is foreseeable.

Method

Same as regular FMLA leave.

Content

Same as regular FMLA leave.

Certification (Employer Requirements)

An employer may require certain types of certification to support a request for exigency leave, and if required, employer:

1. Must request certification:
 - a. within 5 business days after foreseeable leave is requested;
 - b. within 5 business days after unforeseeable leave commences; or
 - c. at a later date if employer has reason to question the appropriateness or duration of the leave;
2. Must request it in writing;
3. Must request it whenever a rights & responsibilities notice is required (and with the rights & responsibilities notice);
4. Must include:
 - a. the actual certification form or otherwise what information is required;
 - b. time period for returning (which must be at least 15 days); and
 - c. consequences for not returning on time.

TYPES AND FREQUENCY OF CERTIFICATIONS

Certification of Active Duty:

For first request for exigency leave related to a particular military member and a particular active duty/call to active duty status, employer may require proof of the military member's active duty (but may not request the same information again for the same active duty/call to active duty for the same military member).

For subsequent requests for leave arising out of different active duty/call to active duty status or for different military member, employer may require proof of such military status.

Certification of Qualifying Exigency:

For first request for leave due to a particular qualifying exigency related to a particular military member, employer may require proof of the exigency (i.e., a separate certification may be required for each specific exigency; for example, within the category of childcare/school activities, one certification can be required for enrolling a child in school and another for arranging alternative childcare, but only one could be required for a series of related parent-teacher conferences).

For subsequent requests for leave arising out of a different qualifying exigency or different active duty/call to active duty status of the same military member, or for a different military member, employer may require proof of the exigency.

CONTENT OF CERTIFICATIONS

Certification of Active Duty:

Employer may require employee to provide:

- 1. a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on active duty or call to active duty status in support of a contingency operation;**
- 2. proof of dates of military member's active duty service;**
- 3. proof of covered family relationship.**

Certification of Qualifying Exigency:

Employer may require employee to provide a signed statement or description of facts for each particular exigency (but not an affidavit), which must be sufficient to show that the reason for leave is a qualifying exigency.

Due Date of Certification

Certification must be returned within 15 days after employer requests it, regardless of whether leave is foreseeable/unforeseeable, unless not practicable to do so despite employee's diligent, good faith efforts.

Duration of Certification

Presumably:

- 1. A certification of active duty is in effect for the dates of the military member's active duty status for the particular contingency operation.**
- 2. A certification of a particular exigency related to a particular military member's active duty service is in effect for the duration of that particular exigency.**

Opportunity to Cure

If certification is returned but is incomplete or insufficient, employer must provide written notice of what specific information is still needed and give employee 7 calendar days to cure the deficiencies (unless 7 days is not practicable under the particular circumstances despite the employee's diligent, good faith efforts).

Consequences for Failure to Return or Cure

- 1. If certification is not returned at all within 15 days and employee has not provided info about his/her diligent, good faith efforts, leave can be denied.**
- 2. If certification is not returned at all within any required 7-day cure period (and employee has not provided info about his/her diligent, good faith efforts), or is timely returned but does not cure the deficiencies, leave can be denied.**

Employer has no obligation to notify employee that a certification has not been received during the 15-day or 7-day periods.

MILITARY CAREGIVER LEAVE

PURPOSE OF CAREGIVER LEAVE

To allow an employee who is the spouse, son or daughter, parent, or next of kin of a service member in the Regular Armed Forces, National Guard or Reserves (who has incurred a serious injury or illness in the line of duty while on active duty) to take FMLA leave to care for the service member.

AMOUNT, TIMING AND OTHER TERMS

The maximum amount of leave is 26 weeks in a single 12-month period on a per-covered service member, per-injury/illness basis (aggravation or complication of an earlier injury/illness is still the same injury/illness), measured forward from the date an employee first takes caregiver leave (any unused amount is forfeited).

During that single 12-month period, caregiver leave is combined with regular FMLA leave and the total cannot exceed 26 weeks.

If leave qualifies as both military caregiver leave and FMLA medical leave to care for a family member with a serious health condition, it must be counted as caregiver leave (it may not be counted as both caregiver leave and FMLA medical leave).

An employer can retroactively change the designation from one type to the other if otherwise permitted for retroactive designations in general, but is not required to do so.

Definition of “Covered Service Member”

A current member (including a former member on the temporary disability retired list, but excluding a member on the permanent disability retired list and other retired/discharged members) of the Regular Armed Forces, National Guard, or Reserves:

1. Who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list (TDRL), all of which can be determined by the service member’s authorized health care provider;
2. For a serious injury or illness incurred in the line of duty on active duty, which can be determined by the service member’s authorized health care provider.

Definition of “Serious Injury or Illness”

An injury or illness incurred by a covered service member:

1. in the line of duty on active duty; and
2. that may render the service member medically unfit to perform the duties of the service member’s office, grade, rank, or rating

Note: The above determination is to be made by the service member’s authorized health care provider, but if said health care provider cannot make such a determination, he/she may rely on information from an authorized DOD representative. Every injured/ill service member has an assigned DOD representative (such as a Federal Recovery Coordinator or Recovery Care Coordinator in the case of injuries classified

by DOD as catastrophic or severe) who serves as a point of contact for the service member's authorized health care provider.

Definition of "Outpatient Status"

The status of a covered service member who is assigned to:

1. A military medical treatment facility as an outpatient; or
2. A unit established for the purpose of providing command and control of members of the military receiving medical care as outpatients.

Definition of "Health Care Provider"

Same definition as regular FMLA leave, with the additional requirement that the health care provider for the purpose of providing any certification required by the employer must be:

1. A DOD health care provider;
2. A Veterans Affairs (VA) health care provider;
3. A DOD TRICARE network authorized private HCP; Or
4. A DOD non-network TRICARE authorized private HCP

Note: TRICARE is the DOD's military health system and includes network and non-network health care providers. Military members usually receive medical care from a DOD, TRICARE or VA health care provider, but members of the National Guard and Reserves or on TDRL could receive care from a non-network TRICARE provider.

Definition of "Needed to Care For"

The definition is the same as that for regular FMLA leave.

Definition of "Medical Necessity"

The definition is the same as for regular FMLA leave, that is, "medical necessity" means medical need for leave versus voluntary treatments and procedures; if leave is intermittent or reduced schedule, doctor must certify that such leave is medically necessary and explain why.

Definition of "Son or Daughter of Covered Service Member"

A covered service member's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member stood in loco parentis, and who is of any age, meets the definition.

Definition of "Parent of a Covered Service Member"

A covered service member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered service member, but does not include "parents in-law."

Definition of "Next of Kin of a Covered Service Member"

The nearest blood relative of a covered service member (other than his/her spouse, parent, son, daughter), in the following priority order:

1. A blood relative designated in writing by the service member as his/her nearest blood relative for purposes of caregiver leave;
2. Blood relatives who have been granted legal custody of the service member by court decree or statutory provisions;
3. Brothers and sisters;
4. Grandparents;
5. Aunts and uncles; and
6. First cousins.

Note: If there are multiple family members within same level of relationship, all are “next of kin” and each can take caregiver leave; if there is a designated next of kin, he/she is the only next of kin.

EMPLOYEE NOTICE REQUIREMENTS

Timing

If foreseeable, same as regular FMLA leave, that is, at least 30 days’ advance notice or as soon as practicable, normally the same business day or next business day if off work when learns of need for leave; if less than 30 days given, employer may require explanation of why 30 days’ advance notice was not practicable; if timely notice not given, the period of delay counts as non-FMLA absence.

If unforeseeable, same as regular FMLA leave, that is, as soon as practicable or, if the employer has a usual and customary leave or absence notification policy, within such reasonable time frame as is established in the employer’s policy; if timely notice not given, the period of delay counts as non-FMLA absence.

Method

Same as for regular FMLA leave.

Content

Same as for regular FMLA leave.

Certification (Employer Requirements)

An employer may require certain types of certification to support a request for caregiver leave, and if required, employer:

1. must request certification:
 - a. within 5 business days after foreseeable leave is requested;
 - b. within 5 business days after unforeseeable leave commences; or
 - c. at a later date if employer has reason to question the appropriateness or duration of the leave;
2. must request it in writing;

3. must request it whenever a rights & responsibilities notice is required (and with the rights & responsibilities notice);
4. must include:
 - a. the actual certification form or otherwise what information is required;
 - b. time period for returning (which must be at least 15 days); and
 - c. consequences for not returning on time.

TYPES AND FREQUENCY OF CERTIFICATIONS

Certification of Military Status:

For first request for caregiver leave related to a particular serious injury/illness of a particular service member, employer may require proof of the service member's military status (but may not request the same information again for the same serious injury/illness of the same service member);

For subsequent requests for leave arising out of different serious injury/illness of the same service member or a serious injury/illness of a different service member, employer may require proof of such military status.

Certification of Serious Injury/Illness:

For first request for leave due to a particular serious injury/illness of a particular service member, employer may require proof of the serious injury/illness (aggravation of or complications arising out of a particular serious injury/illness are considered to be the same serious injury/illness);

For subsequent requests for leave arising out of a different serious injury/illness of the same service member or a serious injury/illness of a different service member, employer may require proof of the serious injury/illness.

CONTENT OF CERTIFICATIONS

Certification of Military Status:

Employer may require employee to provide a written statement with:

1. Name of the service member;
2. Relationship of employee to service member (and employer may request proof of it);
3. Whether the service member is a current member of the Regular Armed Forces, National Guard, or Reserves, and if so, service member's military branch, rank, and current unit assignment;
4. Whether the service member is assigned to a military medical facility as an outpatient or to a unit established for the purpose of providing command and control of members of the armed forces receiving medical care as outpatients (such as a medical hold or warrior transition unit), and if so, name of the medical facility or unit;
5. Whether the service member is on the temporary disability retired list;

6. Description of the care to be provided to the service member; and
7. Estimate of leave needed.

Certification of Serious Injury or Illness:

Employer may require medical certification of a serious injury or illness, which may include:

1. Contact info for health care provider (name, address, phone, fax, e-mail);
2. Whether the HCP is a DOD HCP, VA HCP, DOD TRICARE network authorized private HCP, or DOD non-network TRICARE authorized private HCP;
3. Whether the serious injury/illness was incurred in line of duty on active duty;
4. Approximate date on which it commenced and its probable duration;
5. Statement or description of appropriate medical facts sufficient to support need for leave, to verify service member is medically unfit to perform the duties of his/her military job (office, grade, rank, or rating), and whether receiving medical treatment, recuperation or therapy;
6. Information sufficient to establish that service member is in need of care;
7. Beginning and ending dates for period care is needed including treatment and recovery (if continuous leave), medical necessity of periodic care and estimate of treatment schedule and appointments (if intermittent or reduced schedule leave for planned medical treatment), medical necessity of periodic care and estimate of frequency and duration of periodic care (if intermittent or reduced schedule leave other than for planned medical treatment).

Special Automatic Certification

DOD may issue a special invitation to any member(s) of a service member's family when a DOD HCP has determined that the injury/illness is serious enough to warrant the immediate presence of a family member at service member's bedside.

If DOD issues an invitational travel order (ITO) or invitational travel authorization (ITA) for "medical purposes" to any member(s) of the service member's family (even if the employee's own name is not on it), the ITO or ITA constitutes automatic certification of military status and serious injury/illness (although employer may require proof of a covered family relationship between the employee and service member).

Duration of Certifications

ITO/ITA Certification: An ITO or ITA is in effect for the duration specified on it; once it expires, the employer may require certification of military status and serious injury/illness pursuant to the normal rules already discussed.

Normal Certification: Medical certification is in effect for duration of the condition and period leave is needed as specified on the certification, up to a maximum period of

12-months beginning on the date employee first takes caregiver leave for a particular serious injury/illness of a particular service member (once the single 12-month period expires, any unused caregiver leave entitlement is forfeited, but employee may qualify for regular FMLA leave to care for a family member with a “serious health condition,” and if so, can be required to submit a regular medical certification for it).

Due Date of Certification

Certification must be returned within 15 days after employer requests it, regardless of whether leave is foreseeable/unforeseeable, unless not practicable to do so despite employee’s diligent, good faith efforts.

A complete and sufficient certification or recertification is required:

1. “Incomplete” means one or more of the applicable entries has not been complete.
2. “Insufficient” means the info provided is vague, ambiguous, or nonresponsive (it may be insufficient if any answer to a question is “lifetime,” “unknown,” or “indeterminate”).

Opportunity to Cure

If certification is returned but is incomplete or insufficient, employer must provide written notice of what specific information is still needed and give employee 7 calendar days to cure the deficiencies (unless 7 days is not practicable under the particular circumstances despite the employee’s diligent, good faith efforts).

Consequences for Failure to Return or Cure

1. If certification is not returned at all within 15 days and employee has not provided info about his/her diligent, good faith efforts leave can be denied.
2. If certification is not returned at all within any required 7-day cure period (and employee has not provided info about his/her diligent, good faith efforts), or is timely returned but does not cure the deficiencies, leave can be denied.

Employer has no obligation to notify employee that a certification has not been received during the 15-day and 7-day periods.

Authentication and Clarification

1. If certification (or ITO/ITA) is complete/sufficient, employer’s HR professional, leave administrator, a management official, or HCP (but not the employee’s immediate supervisor) may contact the service member’s HCP (or DOD representative) directly to authenticate and/or clarify the certification (or ITO/ITA)
2. “Authentication means providing HCP (or DOD rep) with a copy of the certification (or ITO/ITA) requesting verification that the info contained on the

form was completed and/or authorized by the HCP (or DOD rep); no service member HIPAA consent required.

- 3. “Clarification” means contacting the HCP (or DOD rep) to understand the handwriting on the form or to understand the meaning of a response, but does not include asking for information beyond that permitted by the regulations; HIPAA consent from the service member may be required by service member’s HCP.**
- 4. Employee is responsible for ensuring that the service member provides HCP with any required HIPAA consent for employer to communicate with HCP, but if employee or service member fails or refuses to do so, leave can be denied (employer may not require a HIPAA consent at any time, such as at time leave is requested).**

Second and Third Opinions

Second and third opinion certifications of a serious injury/illness are not permitted.

Recertifications

Recertifications of a serious injury/illness are not permitted.