

Attachment D
FMLA Military Caregiver Leave

This is an attachment to State HR Policy 60.000.15 Family and Medical Leave that specifically addresses FMLA Military Caregiver leave. The agency must follow the provisions of the main policy plus this attachment when administering FMLA Military Caregiver leave.

- (1) Under FMLA only, eligible employees receive protected leave to care for a spouse, parent, son, daughter, or next of kin who is a covered servicemember with a serious injury or illness incurred in the line of duty on active duty.
- (2) Definitions:
 - (a) Spouse: The husband or wife of the employee as defined by Oregon state law.
 - (b) Parent: The biological or adoptive mother or father of an employee or an individual who stood in loco parentis (in place of a parent) when the employee was a child.
 - (c) Son or Daughter: The biological, adopted, foster or stepchild, a legal ward, or a child of an employee standing in loco parentis. There is no age limit under the definition of a son or daughter for FMLA Military Caregiver leave.
 - (d) Next of Kin: The nearest blood relative of a covered servicemember (other than the employee's spouse, son, daughter or parent), in the following priority order:
 - (A) A blood relative designated in writing by the servicemember, as their nearest blood relative
 - (B) Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions
 - (C) Brothers and sisters
 - (D) Grandparents
 - (E) Aunts and uncles
 - (F) First cousins
 - (G) See 29 CFR 825.122(d) for further detail.
 - (e) Covered Servicemember: A current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which the servicemember is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list. "Covered Servicemember" also includes a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date on which the employee takes FMLA leave to care for the covered veteran. Outpatient status means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient in a unit established to provide command and control of members of the Armed Forces receiving medical care as outpatients.
 - (f) Active Duty: A federal deployment under a call or order to duty to a foreign country, including deployment under a provision of law referred to in Section 101(a)(13)(B) of Title 10, United States Code.

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- (g) Serious Injury or Illness: An injury or illness incurred by the servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank or rating. In the case of a veteran, "serious injury or illness" means a qualifying (as defined by the Secretary of Labor) 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 in the Armed Forces) and manifested itself before or after the member became a veteran.
- (3) The main policy outlines procedures for an employee to request FMLA Military Caregiver leave and the agency's requirements when responding to a request.
- (4) An agency has the option to require an employee to provide a certification of military status and a health care certification of a Covered Servicemember's serious injury or illness to verify the need for FMLA Military Caregiver leave. If requiring certification, the agency gives the employee the FMLA Military Health Care Certification PD 615B with the agency's response to the employee's request for leave. The FMLA Military Health Care Certification PD615B can be accessed electronically in the "Attachments" section on Page 1 of the main policy.
- (a) The FMLA Military Health Care Certification must be completed by a health care provider, which includes a United States Department of Defense (DOD) health care provider, a United States Department of Veterans Affairs (VA) health care provider, a DOD Tricare network authorized private health care provider, or a DOD non-network Tricare authorized private health care provider. Under certain circumstances, the agency will accept "Invitational Travel Orders" or "Invitational Travel Authorization" in lieu of a FMLA Military Health Care Certification.
- (b) An employee must provide a required FMLA Military Health Care Certification, within 15 days after the agency requests the certification. In some extenuating circumstances, the agency allows more than 15 days, when despite the employee's diligent efforts the employee is unable to provide the certification in 15 days.
- (c) If an employee refuses to or does not provide a required FMLA Military Health Care Certification the agency may deny the FMLA Military Caregiver leave. Denied FMLA Military Caregiver leave is not protected under FMLA.
- (d) If the FMLA Military Health Care Certification is incomplete or insufficient, the agency advises the employee in writing what additional information is needed to make the certification complete and sufficient. The agency allows the employee up to seven calendar days to obtain a complete and sufficient certification.
- (e) An agency does not request recertification of a Covered Servicemember illness or injury and does not request second and third medical opinions.
- (5) An agency also designates OFLA leave when the condition also qualifies as OFLA leave to provide care for a family member with a serious health condition, according to the provisions of OFLA.