

LOYOLA LAW SCHOOL
HUMAN RESOURCES POLICIES AND PROCEDURES

DIVISION: Law School/Human Resources	
SUBJECT: Military Family Leave (FMLA)	Page 1 of 7
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STATEMENT OF POLICY

The Law School grants unpaid leaves of absence to eligible staff members with family members in the Armed Forces, National Guard or Reserves or family members who are veterans.

I. DEFINITIONS

A. General terms

For purposes of this policy only, the following terms are defined below:

“Eligible staff member” means a staff member who:

- (1) Has been employed by the Law School for at least 12 months, and
- (2) Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, and
- (3) Works at a location with 50 employees at the location or within 75 miles of the location.

“Son or daughter” means: A biological, adopted or foster child, a step-child, a legal ward, or a child for whom the staff member stood *in loco parentis*, and who is of any age.

“Parent” means: A biological, adoptive or foster parent, a step-parent, a legal guardian or a person who stood *in loco parentis* to the staff member when the staff member was a minor.

“Spouse” means: Partners to a legal marriage and registered domestic partners.

“Next of kin” means: the nearest blood relative, other than the covered service member’s spouse, parent, son or daughter, in the following order of priority:

- Blood relatives who have been granted legal custody of the service member by court decree of statutory provisions
- Brothers and sisters
- Grandparents
- Aunts and Uncles, and
- First cousins.

“Military family leave” means: unpaid, “qualifying exigency leave,” and, “military caregiver leave,” as defined by the FMLA and below.

“Qualifying exigency leave” means: unpaid leave taken during a 12-month period to attend to a qualifying exigency arising out of the fact that the staff member’s spouse, son, daughter or parent is on covered active duty (as defined by federal law) or has been notified of an impending call or order to covered active duty. To be eligible for this leave, the staff member’s spouse, son, daughter or parent must be a member of the National Guard or Reserve, or a retired member of the Regular Armed Forces or Reserve or a member of the Regular Armed Forces.

“Qualifying exigency” means one or more of the following, as defined by law: (1) short-notice deployment¹, (2) military events and related activities, (3) childcare or school activities, (4) financial and legal arrangements, (5) counseling, (6) rest and recuperation², (7) post-deployment activities, or (8) parental care, or (9) additional activities, provided that the employer and the employee agree that such activities qualify as an exigency.

“Military caregiver leave” includes: unpaid leave taken during a 12-month period to care for a staff member’s spouse, son or daughter, parent or next-of-kin who is a current member of the Armed Forces, including a member of the National Guard or Reserves, and who has a serious injury or illness incurred in the line of duty on active duty that may render the service-member medically unfit to perform the duties of his/her office, grade, rank or rating for which the service-member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Military caregiver leave also includes unpaid leave taken during a 12-month period to care for staff member’s spouse, son or daughter, parent or next-of-kin who is a veteran (as defined by federal law) who is undergoing medical treatment, recuperation, or therapy for a qualifying injury or illness and who was a member of the Armed Forces (including National Guard or Reserves) at any time during the 5 years preceding the date on which the veteran undergoes the medical treatment, recuperation, or therapy. For the purposes of military caregiver leave for a veteran, the injury or illness must have been incurred in the line of duty on active duty (or existed before the beginning of the veteran’s active duty and was aggravated by service in the line of duty on active duty) and that manifested itself before or after the individual seeking treatment became a veteran.

¹ Pursuant to federal regulations, qualifying exigency leave for short notice deployment refers to any issue that arises from the fact that a covered military member is notified of an impending call or order to 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 a covered military member is notified of an impending call or order to active duty in support of a contingency operation.

² Pursuant to federal regulations, qualifying exigency leave for rest and recuperation refers to time spent with a covered military member who is on short-term, temporary, rest and recuperation leave during a period of deployment. Eligible employees may take up to fifteen (15) days of leave for each instance of rest and recuperation.

B. Family Medical Leave Act (“FMLA”)

The FMLA provides that a staff member who has completed 12 months employment with the Law School and has worked at least 1,250 hours during the previous 12-month period may take, during a 12-month period:

1. Up to 12 weeks unpaid qualifying exigency leave, as defined by law; or
2. Up to 26 weeks unpaid military caregiver leave, as defined by law.

II. POLICIES/PROCEDURES

This policy is intended to comply with the relevant provisions of the FMLA and all related federal regulations. Should later revisions to these laws and regulations conflict with provisions contained in this policy, the minimum requirements of relevant federal law and/or regulations shall govern resolution of the issue. For further information regarding the scope of military family leave, staff members should contact Human Resources.

A. Reasons for Military Family Leave

The Law School complies with all provisions of the FMLA governing military family leaves. A request for a leave will be considered if an eligible staff member seeks the leave for: (1) a qualifying exigency leave or (2) military caregiver leave.

B. Restrictions of the Right to Military Family Leave*Compensation During Military Family Leave*

There is no legal requirement that the Law School provide compensation during an FMLA leave taken for a “qualifying exigency leave” or for a “military caregiver leave.” Military family leave is unpaid.

Maximum Length of Qualifying Exigency Leave

Qualifying exigency leave granted under this policy or any other policy for a purpose specified above will be credited against the 12-week limit contained in this policy if and to the extent permitted by law. Staff members taking qualifying exigency leave will not be entitled to more than 12-weeks leave taken in a single 12-month period.

For purposes of qualifying exigency leave, as well as leaves taken pursuant to the Law School’s Family Medical Leave policy, the single 12-month period will be determined in “rolling” 12-month periods, measured backward from the date the leave commences/would commence. Both qualified exigency leave and leave taken under the Law School’s Family/Medical Leave policy will be credited against the 12-week limit contained in this policy when calculating the amount of leave taken during any “rolling” 12-month period. Staff members are encouraged to direct any questions regarding the limitations and conditions that apply under this policy to Human Resources.

Maximum Length of Military Caregiver Leave

Military caregiver leave granted under this policy will be credited against the 26-week limit contained in this policy to the extent permitted by law. Staff members taking military caregiver leave will not be entitled to more than 26-weeks FMLA leave in any single 12-month period. For purposes of military caregiver leave, the single 12-month period will be measured forward from the date the military caregiver leave commenced/would commence. During the 12-month period when military caregiver leave is first used, the staff member will be limited to a combined total of 26 weeks of FMLA leave, for any reason.

If the staff member and his/her spouse (including registered domestic partner) are both employed by the Law School, they may take a maximum combined total of 26 weeks of military caregiver leave in a 12-month period. Staff members are encouraged to direct any questions regarding the limitations and conditions that apply under this policy to Human Resources.

Continuous, Intermittent and Reduced Work Schedules

Both qualifying exigency leaves and military caregiver leaves can be taken on a continuous basis or by way of an intermittent leave or reduced work schedule to the extent permitted by law. The shortest increment of intermittent leave/reduced work schedule will be one hour. Intermittent leave/reduced work schedules taken during military caregiver leaves are granted subject to medical certification. Exempt staff members who take statutory qualifying exigency leave or military caregiver leave on an intermittent or reduced work schedule basis will not be paid for the hours that they do not work.

C. Accrual of Vacation and Sick Pay During a Military Family Leave

Staff members on military family leave accrue vacation and sick pay during the first 12 weeks of the approved leave of absence.

D. Pay for Holiday and Leave Days During a Military Family Leave

A staff member on an approved military family leave is entitled to pay for holidays and leave days which fall during the first 12 weeks of the approved leave of absence.

E. Service Date

Time off from work during an approved military family leave will not constitute a break in service.

F. Use of Sick Pay and/or Vacation During a Military Family Leave*For All Military Family Leaves, Regardless of Reason for Leave*

The use of sick or vacation pay during a military family leave does not extend the total duration of the leave to which a staff member is entitled.

Sick pay applied during a military family leave is integrated with Paid Family Leave (“PFL”)³ benefits. Vacation pay applied during a military family leave is integrated with PFL benefits. At no time while substituting vacation and/or sick pay will a staff member receive a greater total payment than the staff member's regular pay. Once authorized accruals have been exhausted, the military family leave will be unpaid.

For Qualifying Exigency Leave

Staff members may use and exhaust accrued vacation pay during a qualifying exigency leave. Staff members may use and exhaust sick pay for leave taken for any approved qualifying exigency that would otherwise be eligible for sick pay.

Staff members eligible to use accrued sick pay who also elect to use vacation pay will have sick pay deducted first until it is exhausted or up to the allowable limit, and then will be compensated using vacation, if the staff member elects to use it, for any qualifying exigency leave.

For Military Caregiver Leave

Staff members taking military caregiver may use and exhaust accrued sick or vacation pay for any unpaid military caregiver leave.

Staff members electing to use accrued sick and vacation pay will have sick pay deducted first until it is exhausted or up to the allowable limit, and then will be compensated using vacation, if the staff member elects to use it, for any military caregiver leave.

G. Continuation of Health and Welfare Benefits During Statutory Military Family Leave

To the extent that the Law School is paying all or a portion of the staff member's group health and welfare benefits prior to the commencement of a military family leave, the Law School will continue to pay for participation in its group health and welfare benefits to the same extent and under the same terms and conditions as would apply had the staff member not taken leave for up to the maximum of twelve (12) weeks qualifying exigency leave or the maximum of 26-weeks military caregiver leave to which they are entitled in a twelve (12) month period.

H. Notice Requirements

The law establishes a number of limitations regarding a staff member's rights to military family leave. In order to qualify for military family leave, staff members must satisfy express notification rules. Specifically, a staff member should notify his/her immediate supervisor of his/her request for military family leave as soon as the staff member is aware of the need for such leave. For foreseeable events, if possible, the staff member must provide thirty (30) calendar days advance notice to his/her immediate supervisor of the need for military family leave. For events that are unforeseeable thirty

³ PFL is a benefit administered and paid by the State of California. The staff member makes contributions into this fund. PFL provides a weekly benefit for individuals who need time away from the Law School to care for a seriously ill/injured child, parent, spouse (including registered domestic partner), grandparent, grandchild, sibling or parent-in-law, as certified by a medical provider, or to bond with a new child. Generally, PFL commences after an individual's care is required for seven (7) consecutive calendar days (“seven-day PFL waiting period”) and provides for up to six (6) weeks of benefit within a 12-month period.

(30) days in advance, the staff member must notify his/her immediate supervisor as soon as is possible.

If the staff member fails to provide the requisite thirty (30) day advance notice for foreseeable events without any reasonable excuse for the delay, the Law School reserves the right to delay the taking of the leave. All requests for military family leave should include the anticipated date(s) and duration of the leave. Any requests for extensions of a military family leave must be received at least five (5) working days before the date on which the staff member was originally scheduled to return to work and must include the revised anticipated date(s) and duration of the military family leave.

I. Certification of Leave

Staff members seeking military family leave must provide certification of the need for the leave. For foreseeable leaves, the staff member must provide the required certification before the leave begins. When this is not possible, the staff member must provide the required certification within fifteen (15) calendar days after the Law School's request for certification, unless it is not possible under the circumstances to do so.

Failure to provide the required certification for a military family leave may result in the denial of foreseeable leaves until such certification is provided. In the case of unforeseeable leaves, failure to provide the required certification within fifteen (15) days of being requested to do so may result in a denial of the staff member's continued military family leave.

J. Right to Transfer/Reassign

If a leave is taken intermittently or on a reduced schedule, the Law School reserves the right to transfer the staff member temporarily to an alternative position with equivalent pay and benefits which better accommodates the staff member's leave schedule.

K. Rights Upon Return to Work

Unless otherwise provided by law, staff members who satisfy all the conditions of the Law School's policies and return to work immediately following expiration of an approved military family leave are entitled to reinstatement to their former position or an equivalent position. Failure to return from a military family leave at its conclusion may be considered job abandonment.

Table 1: Comparison of Compensation and Continuation of Benefits by Type of Leave

<u>Maximum Statutory Military Family Leave Entitlement, Compensation and Continuation of Benefits</u>			
Type of Leave	Maximum Statutory Leave Entitlement	Compensation	Continuation of Benefits
Military Exigency Leave	<p>Up to 12-weeks in a 12-month period</p> <p>Subject to certification of condition</p>	<p>May use and exhaust vacation.</p> <p>May use and exhaust sick pay for leave taken for any approved qualifying exigency that would otherwise be eligible for sick pay.</p> <p>Vacation/sick pay is integrated with PFL at the staff member's request.</p>	<p>The Law School will continue to pay for participation in its group health plans to the same extent and under the same terms and conditions as would apply had the staff member not taken leave for up to a maximum of twelve (12) weeks in a twelve (12) month period.</p>
Military Caregiver Leave to Care for a Staff Member's Parent, Child or Spouse (including registered domestic partner) or Next of Kin	<p>Up to 26-weeks in a 12-month period measured <i>forward</i> from the date the military caregiver leave commences</p> <p>Subject to certification of condition</p>	<p>May use and exhaust sick/vacation pay.</p> <p>Sick pay, if any, will be deducted first, then vacation. Sick and/or vacation pay is integrated with PFL.</p>	<p>The Law School will continue to pay for participation in its group health plans to the same extent and under the same terms and conditions as would apply had the staff member not taken leave for up to a maximum of twenty-six (26) weeks in a twelve (12) month period.</p>