

# Personnel Policy Bulletin

City of Lincoln

Number: 2012-2

Date: July, 2012

Reference:	Title:
Family and Medical Leave Act of 1993 (FMLA), as amended, and 29 C.F.R. Part 825	<b>MILITARY FAMILY LEAVE UNDER THE FAMILY AND MEDICAL LEAVE ACT</b>

1. Purpose. The purpose of this policy is to define City of Lincoln's procedure with regard to Military Family Leave in accordance with the provisions of the Family and Medical Leave Act (FMLA) of 1993 and the federal regulations pertaining thereto.
2. Eligibility. Employees who have been employed for at least one year, and for at least 1,250 hours during the preceding 12-month period, may be eligible for either 12 weeks of call to duty leave per twelve month period, or 26 weeks of leave to care for injured service members during a single 12-month period.
3. Leave Period. The period for taking Military Family Leave shall be measured forward from the first date an employee takes leave and shall expire twelve months thereafter.
4. Reasons for Leave.
  - A. Call to Duty Leave - An eligible employee is entitled to a total of 12 weeks because of any "qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call or order to active duty, in the Armed Forces in support of a contingency operation.
    1. "Qualifying exigency" includes the following categories:
      - a. Short-notice deployment (leave taken for this purpose can be used for a period of 7 calendar days beginning on the date a covered military member is notified of an impending call or order to active duty);
      - b. Military events and related activities (including family support or assistance programs and informal briefings);
      - c. Childcare and school activities (e.g., to arrange for alternative childcare, provide childcare on an urgent, immediate-need basis or to attend meetings at a school or daycare facility);
      - d. Financial or legal arrangements (e.g., to prepare and execute powers of attorney, enroll for military health care or to prepare a will or living trust);
      - e. Counseling (non-medical, for oneself, the military member, or a child);
      - f. Rest and recuperation (e.g., to spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment; eligible

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employees may take up to 5 days of leave for each instance of rest and recuperation); and

- g. Post-deployment activities (e.g., to attend ceremonies and briefings for a period of 90 days or to address issues arising from the military member's death).
2. This period of leave is available during any 12-month period.
  3. This period of leave also includes leave for other circumstances covered by the already existing 12 weeks of FMLA leave, as provided in Personnel Policy Bulletin 2009-1. For example, if an employee takes two weeks of call to duty leave, he or she would only have 10 weeks of FMLA leave remaining for all other purposes during that 12-month period.
- B. Care for Injured Service Member Leave - An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to a combined total of 26 weeks of leave during a single 12-month period to care for the service member.
1. This period of leave shall only be available once during a single 12-month period. If an eligible employee does not utilize all of his or her 26 workweeks of leave entitlement to care for a covered service member during this "single 12-month period," the remaining part of his or her 26 workweeks of leave entitlement to care for the covered service member is forfeited.
  2. The leave entitlement in this section is to be applied on a per-covered service member, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered service members or to care for the same service member with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any "single 12-month period."
  3. This period of leave also includes leave for other circumstances covered by the already existing 12 weeks of FMLA leave, as provided

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in Personnel Policy Bulletin 2009-1. For example, an employee might qualify for 12 weeks of non-military related FMLA leave for his or her own serious health condition, and an additional 14 weeks of FMLA leave to care for a covered service member. However, in no circumstances will an employee have leave protection for more than a combined total of 26 weeks during a 12-month period. Additionally, in no circumstances will an employee take more than 12 weeks of non-military related FMLA leave, even if the employee takes fewer than 14 weeks of FMLA leave to care for an covered service member.

5. Active Duty Defined. Active duty means duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation. Covered military members on active duty include members of the reserve components (Army National Guard, Army Reserve, Marine Corps Reserve, Air National Guard, Air Forces Reserve, and Coast Guard Reserve), or a retired member of the Regular Armed Forces. A call to active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty, not a State call to duty. Active duty excludes reservists who are injured in the course of performing their regular reserve duties, such as monthly weekend service or during their two weeks of annual training. (See, 29 C.F.R. 825.126(b)(2)).
6. Contingency Operation Defined. A military operation qualifies as a contingency operation if it (i) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military action, operations, or hostilities against an enemy of the United States or against an opposing military force; or (ii) results in the call or order to, or retention on, active duty of members of the uniformed services under Section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, Chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. (See, 29 C.F.R. 825.126(b)(3)).
7. Covered Service Member. Covered service member means 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 otherwise on the temporary disability retired list, for a serious injury or illness. Eligible employees may not take leave under Paragraph 4(B) to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list. (See, 29 C.F.R. 825.127(a)).

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8. Outpatient Status. Outpatient status, with respect to a covered service member, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. (See, 29 C.F.R. 825.127(a)(2)).
9. Parent of a Covered Service Member. A “parent of an injured service member” means 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. This term does not include parents “in law.” (See, 29 C.F.R. 825.127(b)(2)).
10. Next of Kin. Next of kin of a covered service member 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 or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When this designation is made, that relative is deemed the only next of kin eligible to take military caregiver leave. (See, 29 C.F.R. 825.127(b)(3)).
11. Serious Injury or Illness. Serious injury or illness, in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in line of duty on active duty that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating. (See, 29 C.F.R. 825.127(a)(1)).
12. Son or Daughter. A “son or daughter on active duty or call to active duty status” and a “son or daughter of a covered service member” means the employee’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age. (See, 29 C.F.R. 825.126(b)(1), 825.127(b)(1)).
13. General Information and Affect on City Paid Leaves.

Military Family Leave under the FMLA will be counted concurrently with other applicable paid leaves (family sick leave, personal holidays, and/or vacation). Therefore, the 12 or 26 weeks of leave will be paid to the extent the employee has

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other paid leaves available. After all applicable paid leaves are exhausted, any remaining Military Family Leave under the FMLA leave will be unpaid.

In those cases where a husband and wife are both employed by the City and both are eligible for Military Family Leave under the FMLA, they are limited to a combined total of 26 work weeks of leave during a single 12-month period if the leave is taken to care for an injured service member, as described in Paragraph 4(B) of this Bulletin. If one spouse is ineligible for Military FMLA leave, the other spouse would be entitled to a full 26 workweeks of leave to care for an injured service member.

14. Intermittent/Reduced Schedule Leave. Military Family Leave under the FMLA may be taken on an intermittent basis or on a reduced leave schedule when medically necessary to care for an injured service member. Employees needing intermittent/reduced schedule leave for planned medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations. If an employee requests intermittent leave or leave on a reduced leave schedule, that is foreseeable based on planned medical treatment, the City may require such employee to transfer temporarily to an available alternate position that has equivalent pay and benefits, and better accommodates periods of leave than the regular employment position of the employee.

Intermittent or reduced schedule leave may also be taken for a qualifying exigency (call to duty leave) only if the employee has given proper notice for the necessity of such leave, as provided in Paragraph 16 of this Bulletin, and has provided a certification pursuant to Paragraph 17 of this Bulletin.

15. Application for Leave. In all cases, an employee requesting leave must complete the attached "Application for Military Family Leave" and return it to the employee's department head for transmittal to the Personnel Director in the City/County Personnel Department. The completed application must state the reason for the leave and the starting and ending dates of the leave. The response to the request for Military Family Leave shall be provided to the employee within five business days after the employee gives notice of the need for leave.
16. Notice of Leave. An employee intending to take call to duty leave, as described in Paragraph 4(A) of this Bulletin, must submit an application for leave at least 30 days before the leave is to begin if the necessity for the leave is foreseeable. If the leave is to begin within 30 days, an employee must give notice to his or her department head

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and to the City/County Personnel Department as soon as the necessity for the leave arises.

An employee intending to take leave to care for an injured service member, as described in Paragraph 4(B) of this Bulletin, must submit an application for leave at least 30 days before the leave is to begin. If the leave is to begin within 30 days, an employee must give notice to his or her department head and to the City/County Personnel Department as soon as the necessity for the leave arises.

17. Certification for Leave Taken Because of a Qualifying Exigency. An employee requesting call to duty leave, for a qualifying exigency, as described in Paragraph 4(A) of this Bulletin, must provide a copy of the service member relative's active duty orders or other documentation issued by the military, showing the service member's active duty or call to active duty status in support of a contingency operation, and expected dates of active duty service. The employee must also provide certification for each qualifying exigency leave requested during the period of the relative's active duty service. The certification shall include a statement or description, signed by the employee, of the appropriate facts regarding the qualifying exigency for which Military FMLA leave is requested. The certification shall also include the approximate dates and purpose of the absence, and if for reduced or intermittent leave, an estimate of the frequency and duration of the qualifying exigency.

The employee shall have 15 calendar days to provide the certification described in this section. Failure to provide the requested certification within 15 calendar days of the request for leave may result in denial of Military Family Leave.

18. Certification for Leave Taken to Care for an Injured Service Member. An employee requesting leave to care for an injured service member, as described in Paragraph 4(B) of this Bulletin, must have the health care provider of the employee's spouse, son, daughter, parent, or next of kin complete a "Medical Certification Statement for Military Caregiver Leave" form. For purposes of this section, any one of the following health care providers may complete such certification: (i) a United States Department of Defense ("DOD") health care provider; (ii) a United States Department of Veterans Affairs ("VA") health care provider; (iii) a DOD TRICARE network authorized private health care provider; or (iv) a DOD non-network TRICARE authorized private health care provider. Copies of the "Medical Certification Statement for Military Caregiver Leave" forms may be obtained through the Personnel Department.

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The employee shall have 15 calendar days to provide the completed Medical Certification Form. Failure to provide the Medical Certification Form within 15 calendar days of the request for leave may result in denial of Military Family Leave. The City may require employees to provide subsequent recertifications of the employee's continued need for leave, but not more often than every 30 days.

19. Benefits Coverage During Leave. During a period of Military Family Leave under the FMLA, an employee will be retained on the City's health and dental care plans under the same conditions that applied before leave was commenced. To continue health and dental coverage, the employee must continue to make any contributions that he or she made to the plan before taking leave. Failure of the employee to pay his or her share of the health or dental care monthly cost may result in loss of coverage.

If the employee fails to return to work after expiration of leave, the employee will be required to reimburse City of Lincoln for payment of health/dental care monthly costs incurred during the period of Military Family Leave under the FMLA, unless the employee has taken leave to care for an injured service member and fails to return because the injured service member has a continuing or recurring serious injury or illness. (See, 29 C.F.R. 825.213(a)).

An employee is not entitled to any seniority or employee benefits that would have accrued if not for the taking of the leave. An employee who takes FMLA leave will not lose seniority or employment benefits that accrued before the date leave began. (See, 29 C.F.R. 825.215(d)(2)). However, an employee's seniority will be lost relative to other employees as their seniority accrues.

20. Restoration to Employment. Unless the employee is a "key employee", as defined by the Act, at the end of any Military FMLA leave, an employee will be restored to his or her old position or to a position with equivalent pay, benefits, and other terms and conditions of employment. City of Lincoln cannot guarantee that an employee will be returned to his or her original job. A determination as to whether a position is an "equivalent position" will be made by City of Lincoln. (See, 29 C.F.R. 825.214 and 825.215). A "key employee" is a salaried FMLA-eligible employee who is among the highest paid ten percent of all the employees employed by City of Lincoln. (See, 29 C.F.R. 825.217).

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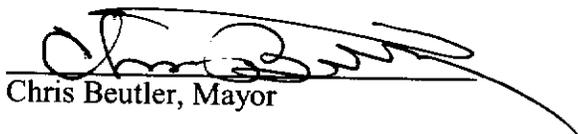
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21. Failure to Return from Leave. The failure of an employee to return to work upon the expiration of Military FMLA leave will be considered a resignation unless an extension is granted. An employee who has requested less than 12 weeks of qualifying exigency leave may request an extension of leave by submitting a written request to the employee's department head setting forth the reasons for the extension, along with a certification detailing the reason for additional qualifying exigency leave. An employee who has requested less than 26 weeks of military caregiver leave may request an extension of leave by submitting a written request to the employee's department head setting forth the reason for the extension, along with a "Medical Certification Statement for Military Caregiver Leave" form. These written requests should be made as soon as the employee realizes that he or she will not be able to return at the expiration of the leave. In no circumstances, will an extension beyond the 12-week period for qualifying exigency leave, or 26-week period for military caregiver leave, authorized pursuant to the FMLA be granted.
22. Unlawful Acts. It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding related to the FMLA.

  
Doug McDaniel, Personnel Director

7-25-2012  
Date

  
Chris Beutler, Mayor

8-3-2012  
Date

**CITY OF LINCOLN  
APPLICATION FOR MILITARY FAMILY LEAVE**

Name of Employee: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Department: \_\_\_\_\_

Home Address: Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Start Date of Anticipated Leave: \_\_\_\_\_

Expected Date of Return to Work: \_\_\_\_\_

Reason for Leave (Mark One):

\_\_\_\_\_ For a qualifying exigency arising out of the fact that my \_\_\_\_\_ spouse, \_\_\_\_\_ child, or \_\_\_\_\_, parent is on active duty, or has been notified of an impending call or order to active duty

\_\_\_\_\_ To care for my \_\_\_\_\_ spouse, \_\_\_\_\_ child, \_\_\_\_\_, parent, or \_\_\_\_\_ next of kin, who is a covered service member and has sustained a serious injury or illness in the line of duty while on active duty in the Armed Forces; or

**Note:** A leave request for qualifying exigency leave must be accompanied by a copy of the service member relative's active duty orders or other documentation issued by the military, showing the service member's active duty or call to active duty status in support of a contingency operation, and expected dates of active duty service.

A leave request to care for an employee's spouse, child, parent, or next of kin, who is a covered service member and has sustained a serious injury or illness in the line of duty, must be accompanied by a verifying medical certification issued by the health care provider of the employee's spouse, child, parent, or next of kin.

I hereby authorize City of Lincoln to contact the Department of Defense to verify my military member's active duty or call to active duty status, and to contact my covered service member's health care provider to seek authentication or verification of the medical certification.

I understand that to maintain my health insurance benefits during this leave I must continue to pay my share of my health insurance as it comes due.

I understand that failure to return to work at the end of my leave period may be treated as a resignation unless an extension has been agreed upon and approved in writing by City of Lincoln.

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Approved By:

\_\_\_\_\_  
Department Head or Designee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Personnel Director

\_\_\_\_\_  
Date







**MILITARY FAMILY LEAVE  
CERTIFICATION FOR SERIOUS INJURY  
OR ILLNESS OF COVERED SERVICEMEMBER**

**HEALTH CARE PROVIDER:** For completion by a UNITED STATES DEPARTMENT OF DEFENSE (“DOD”) HEALTH CARE PROVIDER who is either: (1) a United States Department of Veterans Affairs (“VA”) health care provider; (2) a DOD TRICARE network authorized private health care provider; or (3) a DOD non-network TRICARE authorized private health care provider. The employee listed has requested leave under the FMLA to care for a family member who is a member of the Regular Armed Forces, the National Guard, or the 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. For purposes of FMLA leave, a serious injury or illness is one that was incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

A complete and sufficient certification confirming that the covered servicemember’s injury or illness was incurred in the line of duty on active duty and that the covered servicemember is undergoing treatment for such injury or illness by a health care provider listed above. Answer, fully and completely, all applicable parts. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as “lifetime,” “unknown,” or “indeterminate” may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave.

1. Name of Employee Requesting Leave to Care for Covered Servicemember:

\_\_\_\_\_

First Last

2. Name of Covered Servicemember (for whom employee is requesting leave to care):

\_\_\_\_\_

First Middle Last

3. Relationship of Employee to Covered Servicemember Requesting Leave to Care:

\_\_\_\_\_ Spouse    \_\_\_\_\_ Parent    \_\_\_\_\_ Son    \_\_\_\_\_ Daughter    \_\_\_\_\_ Next of Kin

4. Is the Covered Servicemember a Current Member of the Regular Armed Forces, the National Guard, or Reserves?    \_\_\_\_\_ YES    \_\_\_\_\_ NO

If yes, please provide the covered servicemember’s military branch, rank and unit currently assigned to:

\_\_\_\_\_

5. Is the Covered Servicemember on the Temporary Disability Retired List (TDRL)?    \_\_\_\_\_ YES  
\_\_\_\_\_ NO

6. Describe the Care to Be Provided to the Covered Servicemember and an Estimate of the Leave Needed to Provide the Care:

\_\_\_\_\_  
\_\_\_\_\_

7. Covered Servicemember’s medical condition is classified as (Check One of the Four Appropriate Alternatives):

\_\_\_\_\_ **(VSI) Very Seriously Ill/Injured** – Illness/Injury is of such a severity that life is imminently endangered. Family members are requested at bedside immediately. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

\_\_\_\_\_ **(SI) Seriously Ill/Injured** – Illness/injury is of such severity that there is cause for immediate concern, but there is no imminent danger to life. Family members are

requested at bedside. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

\_\_\_\_\_ **OTHER Ill/Injured** – a serious injury or illness that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating.

\_\_\_\_\_ **NONE OF THE ABOVE** (Note to Employee: if this box is checked, you may still be eligible to take leave to care for a covered family member with a “serious health condition” under § 825.113 of the FMLA. If such leave is requested, you will be required to complete an employer-provided form seeking more information.)

8. Was the condition for which the Covered Servicemember is being treated incurred in line of duty on active duty in the armed forces? \_\_\_\_\_ YES \_\_\_\_\_ NO

9. Approximate date condition commenced: \_\_\_\_\_

10. Probable duration of condition and/or need for care: \_\_\_\_\_

11. Is the covered servicemember undergoing medical treatment, recuperation, or therapy?  
\_\_\_\_\_ YES \_\_\_\_\_ NO If yes, please describe medical treatment, recuperation or therapy:

\_\_\_\_\_

12. Will the covered servicemember need care for a single continuous period of time, including any time for treatment and recovery? \_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, estimate the Start Date: \_\_\_\_\_ and End Date: \_\_\_\_\_ for this period of time.

13. Will the covered servicemember require periodic follow-up treatment appointments? \_\_\_\_\_ YES  
\_\_\_\_\_ NO

If yes, estimate the treatment schedule: \_\_\_\_\_

14. Is there a medical necessity for the covered servicemember to have periodic care for other than scheduled follow-up treatment appointments (e.g. episodic flare-ups of medical condition)?  
\_\_\_\_\_ YES \_\_\_\_\_ NO If yes, please estimate the frequency and duration of the periodic care:

\_\_\_\_\_ hour(s) per day; \_\_\_\_\_ days per week from \_\_\_\_\_  
through \_\_\_\_\_

**HEALTH CARE PROVIDER INFORMATION:**

I am \_\_\_\_\_ a DOD health care provider

\_\_\_\_\_ a VA health care provider

\_\_\_\_\_ a DOD TRICARE network authorized private health care provider; or

\_\_\_\_\_ a DOD non-network TRICARE authorized private health care provider

\_\_\_\_\_  
Printed Name of Health Care Provider

\_\_\_\_\_  
Type of Practice/Medical Specialty

\_\_\_\_\_  
Signature of Health Care Provider

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

