



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
WASHINGTON, DC 20380-0001

MCO 12630.3  
ARCB  
14 Oct 93

MARINE CORPS ORDER 12630.3

From: Commandant of the Marine Corps  
To: Distribution List

Subj: FAMILY AND MEDICAL LEAVE

Ref: (a) Public Law 103-3

1. Purpose. To provide policy and procedures on implementing the Family and Medical Leave Act (FMLA) for civilian employee of Headquarters Marine Corps; Headquarters Battalion, Henderson Hall; Marine Barracks, 8th and I Streets, Washington, DC; and the Marine Corps Institute.

2. Background

a. The FMLA is intended to allow employees to balance their work and family life by taking reasonable amounts of leave for a medical reason, for the birth or adoption/foster care of a child, and for the care of a child, spouse, or parent who has a serious health condition. FMLA leave is in addition to other paid time off available to an employee.

b. The reference was enacted on 5 February 1993 and became effective 5 August 1993. An employee on leave for one of the purposes defined in the Act when the Act became effective is entitled to 12 administrative workweeks of family and medical leave beginning on or after 5 August 1993.

3. Information

a. Employees eligible for unpaid family and medical leave are employees covered under a competitive or excepted service appointment and non-appropriated fund employees.

b. Employees serving under an intermittent appointment or temporary appointment with a time limitation of 1 year or less are not eligible for the FMLA.

c. Eligible employees must have completed at least 12 months of civilian service with the Federal Government (not required to be 12 consecutive or recent months). Service that is not creditable for meeting the 12-month service requirement includes service under a temporary appointment or as an intermittent employee, service as an employee of the government of the District of Columbia, and military service (other than military

duty performed while in a civilian position). Up to 6 months of

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leave without pay is creditable for meeting the 12 month service requirement.

4. Policy

a. Leave Entitlement

(1) An employee is entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

(a) The birth of a son or daughter of the employee and the care of such son or daughter;

(b) The placement of a son or daughter with the employee for adoption or foster care;

(c) The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or

(d) A serious health condition of the employee that makes the employee unable to perform the essential functions of the position.

(2) No leave taken prior to 5 August 1993 may be counted against this entitlement. If an employee was on leave on 5 August 1993, as a result of a birth or placement for adoption or foster care that occurred prior to 5 August 1993, the 12-month period would begin on the date of the birth or placement, and the entitlement to 12 workweeks of leave would begin on or after 5 August 1993.

(3) An employee must invoke his or her own entitlement to leave under the FMLA, a supervisor may not require an employee to invoke entitlement. An employee who meets the criteria for leave and has complied with the requirements and obligations under the FMLA may not be denied family and medical leave. The supervisor must confirm that an employee is invoking his or her entitlement to FMLA leave before any hours of leave can be subtracted from the employee's entitlement to 12 administrative workweeks of leave.

(4) An employee may elect to substitute paid time off; e.g., annual leave, sick leave, compensatory time off, or credit hours under a flexible work schedule for leave without pay under the FMLA. An employee's right to substitute paid time off may not be denied under the FMLA. A supervisor may not require an employee to substitute paid time off for leave without pay under

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the FMLA. In addition, an employee may not retroactively substitute paid time off for leave without pay under the FMLA.

b. Serious Health Condition

(1) The FMLA defines a "serious health condition" as "an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility; or continuing treatment by a health care provider."

(2) The regulations require that to be considered a "serious health condition," the condition must require a absence from work, school, or other regular daily activities for more the 3 calendar days. In addition, a "serious health condition" must require continuing treatment by, or under the supervision of, a health care provider. An employee may be entitled to leave in some cases because of doctor visits or therapy; i.e., the absence requiring leave need not be due to a condition that is incapacitating at that point in time. A "serious health condition" includes treatment for a serious chronic health condition that, if left untreated, would likely result in an absence from work, school, or regular daily activities for more than 3 calendar days.

(3) For any condition other than one that requires inpatient care, the regulations provide that the employee or employee's spouse, son, daughter, or parent must be receiving continuing treatment by a health care provider. Continuing treatment means that the patient must be treated (1) two or more times by the health care provider or by another health care provider under the order of, or on referral by, the primary health care provider, or (2) on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider; e.g., a cours of medication or therapy to resolve the health condition. This includes medical conditions where the patient is under the continuing supervision of the health care provider by may not be receiving active treatment, such as individuals suffering from Alzheimer's disease, late-stage cancer, or who have suffered a severe stroke. In addition, leave may be taken to care for a spouse or parent of any age who is unable to care for basic hygienic or nutritional needs of safety; e.g., a spouse or parent whose daily living activities are impaired by Alzheimer's disease, stroke, clinical depression, recovery from major surgery, the final stages of a terminal illness, or other similar conditions.

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(4) Treatment of substance abuse may also be included, such as when a stay in an inpatient treatment facility is required. Absence because of an employee's use of the substance, without treatment, does not qualify for leave under the FMLA. The inclusion of substance abuse as a "serious health condition" does not prevent the agency from taking disciplinary action against an employee who is unable to perform the essential functions of the employee's position, provided the agency complies with the Rehabilitation Act of 1973 and the agency does not take action against the employee because the employee has exercised the right to take leave under the FMLA for treatment of that condition.

(5) Conditions or medical procedures that would not normally be covered by the FMLA include minor illnesses that last only a few days and surgical procedures that typically do not involve hospitalization and require only a brief recovery period. Complications arising out of such procedures that develop into serious health conditions are covered. Voluntary or cosmetic treatments that are not medically necessary would not be covered, unless overnight inpatient hospital care is required. Restorative dental surgery after an accident or removal of cancerous growths would be included if the other conditions of the regulations are met; i.e., the conditions requires an absence of more than 3 days. Treatments for allergies and stress may be included if the conditions of the regulations are met. Routine physical examinations are excluded.

c. Health Care Provider. The term "health care provider" includes a licensed Doctor of Medicine or Doctor of Osteopathy, a physician serving on active duty in the uniformed services; a health care practitioner certified by a national organization and licensed by a State to provide the services in question; and a Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts.

d. Intermittent Leave or Leave on a Reduced Leave Schedule. An employee must obtain supervisory approval to take leave on an intermittent basis or under a reduced leave schedule for the birth of a child or for placement for adoption or foster care. Employees may choose to take leave on an intermittent basis or under a reduced leave schedule when medically necessary to care for their spouse, son, daughter, or parent with a serious health condition or for the employee's own serious health condition. An employee's intermittent leave or reduced leave schedule necessary to care for a spouse, son, daughter, or parent includes not only a situation where the individual's health condition itself is intermittent, but also where an employee is only needed intermittently because care is also provided by a third party.

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The employee must consult with their supervisor and make a reasonable effort to schedule treatment so as not to excessively disrupt the operations of the workplace, subject to the approval of the health care provider. In addition, the employee may be temporarily placed in an available alternative position for which the employee is qualified, which has equivalent pay and benefits, and which can better accommodate recurring periods of leave.

e. Notice of Leave

(1) When the need for leave is foreseeable, the employee must provide notice to their supervisor not less than 30 days before the date leave is to commence. If a birth, placement for adoption or foster care, or medical treatment will occur within less than 30 days, the employee must provide such notice as is practicable. It is the employee's responsibility to provide as much notice as possible so that the supervisor has ample time to plan the work during the employee's absence.

(2) An employee's notice of intent to take leave may be provided in person, in writing or by telephone, FAX, E-mail, or other electronic means. Of course, in emergency situations, notice from an employee's spouse, domestic partner, family member, or other responsible party would suffice until the employee is able to contact the supervisor to provide additional information.

(3) Employees may use the SF-71, Application for Leave, to submit notice of their intent to take leave under the FMLA. If the SF-71 is used, add in the remarks "FMLA leave" for either family leave (for a birth, adoption or foster care, or the care of a spouse, son daughter, or parent with a serious health condition), or medical leave (for the employee's serious health condition).

f. Medical Certification

(1) An employee may be required to provide, in a timely manner, medical certification from a health care provider for leave to care for a spouse, son, daughter, or parent of the employee or for the employee's own serious health condition. The medical certification supporting the need for leave to care for an employee's spouse, son, daughter, or parent must include a statement that the employee is "needed to care for" the individual. This provision is to be broadly construed to accommodate leave, to provide psychological comfort, as well as physical care, to a seriously ill spouse, child, or parent or to arrange "third party care" for such family member (e.g., care by a visiting nurse or in a nursing home, placement in a special

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school, etc.). The medical certification must include a statement that the patient requires assistance for basic medical, hygiene, nutritional, safety, or transportation needs or that the employee's presence would be beneficial or desirable for the care of the individual. The employee is required to indicate on the form the care they will provide and an estimate of the time period during which care will be provided.

(2) The medical certification supporting the need for leave for the employee's serious health condition must include a statement that the employee is unable to perform the essential functions of his or her position.

(3) If the validity of the original medical certification is in question, a supervisor may require an employee to obtain a medical certification from a second health care provider. If the second opinion differs from the original certification, the supervisor may require certification from a third health care provider. The second and third opinions are not at the employee's expense. The employee will select the health care provider to provide the original medical certification, the agency selects the second health care provider, and the agency and the employee must agree jointly on the health care provider that will provide the third opinion. The third opinion is final and binding on the employee and the agency.

(4) If the employee is unable to provide the medical certification before leave is to begin, the leave must be granted on a provisional basis pending final written medical certification. If the employee is unable to provide the required certification, the supervisor may charge the employee as absent without leave (AWOL) or allow the employee to request that the provisional leave be charged as leave without pay or to an appropriate paid leave account. In addition, disciplinary action can be taken against an employee who knowingly provides false certification of the need for leave or who enters an AWOL status.

(5) For an employee to remain entitled to leave under the FMLA, the employee or the employee's spouse, son, daughter, or parent, as appropriate, must comply with any requirement from an agency to submit to examination by a health care provider to obtain a second or third medical certification. If the individual refuses to submit to such examination and/or the employee fails to provide a completed medical certification, the employee may be denied leave under the FMLA. A supervisor may require from an employee that is on leave to obtain medical recertification, not more often than every 30 calendar days, of the continuing need for leave. It is reasonable to require recertification less frequently when the health care provider has

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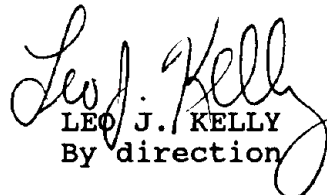
certified that a course of treatment will last a specified period of time.

g. Protection of Employment and Benefits. An employee who takes leave is entitled to be restored to the same or equivalent position, with equivalent benefits, pay, status, and other terms and conditions of employment. This leave shall not result in the loss of any employment benefit accrued before leave began.

h. Health Insurance. Under the Federal Employee Health Benefits (FEHB) law, coverage continues for up to 365 days in a nonpay status. Employees may pay their share of the premiums on a current basis or incur a debt and pay their share upon return to a pay and duty status.

5. Action. Heads of staff agencies and heads of serviced activities are requested to ensure that all civilian personnel and their supervisors are aware of and comply with the Order. Supervisors are required to ensure that a Standard Form 52, Request for Personnel Action (SF-52), is submitted for leave in excess of 30 consecutive days. The SF-52 should indicate that it is FMLA leave; the beginning and ending dates of the period of leave without pay; and whether it is family leave (for birth, adoption, or foster care, or the care of a spouse, son, daughter, or parent with a serious health condition), or medical leave (for the employee's serious health condition).

6. Reserve Applicability. This Order is not applicable to the Marine Corps Reserve.

  
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By direction

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