

## **MILITARY FAMILY LEAVE**

### **Types of Leave and Eligibility**

If an employee, who is otherwise eligible to take leave under the Family Medical Leave Act (FMLA), may be eligible for military family leave under recent amendments to the FMLA. Two types of military FMLA leave are available.

### **Qualified Exigency Leave**

Puget Sound Educational Service District (PSESD) will grant leave for up to 12 weeks per year because of “any qualifying exigency” arising out of the fact that a PSESD employee’s spouse, son, daughter, or parent is a member of any branch of the Armed Forces deployed to a foreign country or has been notified of an impending call to active duty in a foreign country. By the terms of the statute, this provision requires the Secretary of Labor to issue regulations defining “any qualifying exigency.”

### **Qualifying Exigency**

- a. Short notice deployment
- b. Military events and related activities
- c. Childcare and school activities
- d. Financial and legal arrangements
- e. Counseling
- f. Rest and recuperation
- g. Post-deployment activities

Other events may qualify in PSESD’s sole discretion.

### **Military Caregiver Leave**

PSESD will grant military caregiver leave for up to 26 work-weeks of unpaid leave in a single 12-month period to an eligible employee to care for a spouse, son, daughter, parent, or next of kin who is a covered service-member recovering from a serious illness or injury incurred in the line of duty on active duty in the Armed Forces.

### **Definitions:**

“Next of kin” is defined as “the nearest blood relative” of the service-member.

“Serious illness or injury” is defined as one that may render the service-member medically unfit to perform the duties of the member’s military position, including preexisting injuries or illnesses aggravated in the line of duty.

"Covered service-member" is defined as a current 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 illness; or veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces (including National Guard and Reserves) during the five (5) year period preceding the date of the treatment, therapy, or recuperation

Under these definitions, the employee is entitled to this military caregiver leave intermittently or continuously, but only during “a single 12-month period.”

If this service member caregiver leave is taken, any leave the employee has used from his/her 12-week allotment for other FMLA leaves will be deducted from the 26-week period.

### **Eligibility for Leave**

In addition, whether or not the employee is otherwise eligible for FMLA leave, if the individual is an employee working an average of twenty (20) or more hours per week, he/she will be eligible for active duty leave under the Washington Military Family Leave Act. PSESD will grant leave up to a total of fifteen (15) days per deployment if the employee’s spouse or domestic partner is a member of the Armed Forces, including the National Guard or Reserves, who has been notified of an impending call or order to active duty or has been deployed.

The leave may be taken after the employee’s spouse or domestic partner has been notified of the impending call or order and before deployment, or when the spouse or domestic partner is on leave from deployment. Spousal leave taken under this provision will also be designated FMLA leave and will be counted toward your total 12 weeks of FMLA leave allowed during any 12-month period.

### **Application and Notice**

If the employee desires active duty leave for a spouse or domestic partner's deployment under the Washington Military Family Leave Act, he/she must provide notice of intention to take the leave within five (5) business days of receiving official notice of an impending call or order to active duty or of a leave from deployment. The employee does not need to provide any further explanation of his/her reasons for needing the leave, unless the employee wants to request a leave longer than fifteen (15) days, in which case they must comply with the FMLA application and verification procedures listed below.

If the employee desires a leave pursuant to either of the military leave provisions of the FMLA, the employee must follow similar procedures for application and notice of leave as are used for other FMLA leaves.

When the application for leave is for “qualifying exigency leave,” the employee must submit an application advising why the leave is needed and should provide notice as soon as reasonable and practicable.

If an application for leave is for military caregiver leave and the leave is foreseeable, such as for a planned medical treatment, the employee must submit the application for leave not less than 30 days before the date the leave is to begin. The employee should attempt to schedule leave so as

not to disrupt business operations. When the need for leave is not foreseeable, the employee must submit the application as far in advance of the date the leave is to begin as is practicable.

A leave pursuant to the military family leave provisions may be taken on an intermittent (rather than on an uninterrupted) basis or on a reduced schedule if medically necessary because of the health condition of the service-member who is the employee's spouse, domestic partner, child, parent or next of kin.

### **Verification or Certification**

When the application for leave is because of a qualifying exigency due to the service-member's active duty, the application should state the nature of the relationship of the employee to the service-member and should attach to the application for leave verifications of the service-member's call-up or active duty and the reason for the request. If not immediately available, the employee should provide the verifications as soon as practicable. If unable to provide verification, PSESD may deny FMLA designation for the leave. However, PSESD retains the right, in its sole discretion, to designate any leave as FMLA leave retroactively.

When the application for leave is for military caregiver leave, the application should state the nature of the relationship of the employee to the service-member and must include as an attachment a written certification from the health care provider, including but not limited to the Department of Defense, for the injured service-member. If not immediately available, PSESD may, in its sole discretion, permit the individual, as an eligible employee, to commence an FMLA leave; however, the required certification must be provided within 15 calendar days after the request or PSESD may deny FMLA designation to the leave. However, Puget Sound ESD retains the right, in its sole discretion, to designate any leave as FMLA leave retroactively.

As with current certifications for other medical leave under the FMLA, the written certification should state: (1) the date on which the serious injury or illness was incurred; (2) the probable duration of the injury or illness; (3) the appropriate medical facts regarding the injury or illness and its duration; and, additionally, (4) that the covered service-member is medically unfit to perform the duties of the member's office, grade, rank, or rating.

Adopted: September 2008

Revised: January 2009

Revised: June 2010

Revised: November 2013

Revised: February 2014

Relevant PSESD Board Governance Policies: EL 4, Treatment of Staff

Cross References: Operating Policy No. 5400 Personnel Leaves

Legal References: Family and Medical Leave Act of 1993 (Federal Act)

Title I of the FMLA, as amended by the National Defense Authorization Act for FY2010

Title 49, RCW, as amended by S.B. 6447, 60th Leg., Reg. Sess.  
(Wash.2008)