




DEPARTMENT OF PERSONNEL
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MEMO PERD #21/10
April 5, 2010

TO: Agency Personnel Liaisons
Agency Personnel Representatives

FROM: Teresa Thienhaus, Director
Department of Personnel 

SUBJECT: Revisions to FMLA Overview and FMLA forms

The Department of Personnel has completed a revision to our *Overview of the Family and Medical Leave Act* publication and several of the State of Nevada FMLA forms. These documents can be found on our website at <http://dop.nv.gov/FMLAOverview.pdf> and <http://dop.nv.gov/forms.html>.

The revised FMLA Overview has several new features that should prove useful. The Table of Contents has been hyperlinked to the relevant pages to make it easier to move through the Overview. Also, Appendices have been added that include a procedural flowchart, documentation checklist, correspondence samples and more.

The FMLA forms that have been revised are:

- FMLA Leave of Absence Form (NPD-60)
- Notice of Eligibility and Rights & Responsibilities (NPD-62)
- Certification of Qualifying Exigency for Military Family Leave (WH-384)
- Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (WH-385)

When you issue the above forms to employees, please verify that you are using the forms revised as of February 2010.

One of the factors requiring a change to the FMLA Overview and forms was passage of the National Defense Authorization Act for Fiscal Year 2010 (NDAA 2010) which was signed into law by President Obama in October 2009. In part, this bill amended the provisions of the Family and Medical Leave Act (FMLA). Specifically, it expanded the military leave entitlements that went into effect on January 16, 2009. The following paragraphs are a brief explanation of the changes.

QUALIFYING EXIGENCY ENTITLEMENT

References to “active duty” have been changed to “covered active duty”.

Covered active duty is defined as:

- ***Duty during deployment to a foreign country by a member of a regular component of the Armed Forces***; or
- Duty during ***deployment to a foreign country*** under a call or order to active duty (under a provision of law referred to in Section 101(a)(13)B) of Title 10, United States Code) by a National Guard or Reserve member.

This new definition extends FMLA exigency leave benefits to employees who have a spouse, parent or child who is an active duty member of a regular component of the Armed Forces. Also, it changes the type of eligible duty from “in support of a contingency operation” to during “deployment to a foreign country”. Prior to this law, only family members of National Guard and Reservists were eligible for exigency leave.

CARE FOR A COVERED SERVICEMEMBER ENTITLEMENT

The definition of a covered servicemember has been changed to:

- 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; or
- ***A veteran who is undergoing medical treatment, recuperation, or therapy for a qualifying injury or illness who was a member of the Armed Forces (including a member of the National Guard or Reserves), at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.***

The definition of a serious injury or illness has been changed to:

- In the case of a member of the Armed Forces (including National Guard or Reserves), an injury or illness that was incurred by the member in line of duty on active duty (***or existed before the beginning of the active duty and was aggravated by service 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; and
- ***In the case of a Armed Forces (including National Guard or Reserves) veteran, a qualifying injury or illness that was incurred by the member in line of duty on active duty (or existed before the beginning of the active duty and was aggravated by service in line of duty on active duty) and that manifested before or after the member became a veteran, at any time during the period of 5 years preceding the date on which the veteran undergoes medical treatment, recuperation or therapy.***

This change extends the 26 workweeks of FMLA caregiver leave, to employees who have a spouse, parent, child or next of kin who is a veteran, for up to 5 years after a veteran leaves service if the veteran develops a service-related injury or illness that was incurred or aggravated in the line of duty on active duty. This also further extends FMLA caregiver leave benefits to qualifying employees to care for members of the Armed Forces (including members of the National Guard or Reserves) who are undergoing medical treatment, recuperation or therapy for a serious injury or

illness that existed before the beginning of active duty and were aggravated by active duty.

Please note that the current understanding is that these changes were effective on enactment, October 28, 2009.

It is recommended that any personnel/human resources, management, supervisory or payroll staff that are involved with FMLA administration in your agency be made aware of the changes to the FMLA, the updated forms and the revised Overview. Please see the attached pages for suggested meeting talking points and sample internal communication.

If you have additional questions, you may contact Carrie Hughes at cphughes@dop.nv.gov or (775) 684-0111.

TT:cph

SUGGESTED MEETING TALKING POINTS

I. Revised FMLA forms

- a. FMLA Leave of Absence Form (NPD-60)
- b. Notice of Eligibility and Rights & Responsibilities (NPD-62)
- c. Certification of Qualifying Exigency for Military Family Leave (WH-384)
- d. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (WH-385)
- e. Where to get the new versions
 - i. <http://dop.nv.gov/forms.html>
- f. Due to recent changes to the FMLA
 - i. Military leave provisions
 1. Qualifying exigencies
 - a. (Can relate explanation of change from PERD, if applicable)
 2. Care for a covered servicemember
 - a. (Can relate explanation of change from PERD, if applicable)

II. Revised FMLA Overview

- a. Where to find the new version
 - i. <http://dop.nv.gov/FMLAOverview.pdf>

III. Who needs to know this and why?

- a. Supervisors and staff administering the FMLA need to recognize that requests for leave due to employees' family members who are in the military are potentially FMLA qualifying
 - i. Follow agency procedure
 1. (Outline your agency's procedure)

IV. Additional Resources

- a. Agency FMLA policy (if applicable)
- b. Who do you call with questions?

INTERNAL COMMUNICATION (SAMPLE)

MEMORANDUM

TO:

FROM:

DATE:

SUBJECT: Revisions to FMLA forms & Overview

Due to changes in the Family and Medical Leave Act (FMLA), the Department of Personnel's Overview of the Family and Medical Leave Act (<http://dop.nv.gov/FMLAOverview.pdf>) and several State of Nevada FMLA forms (<http://dop.nv.gov/forms.html>) on the Department of Personnel's website have been revised.

The FMLA forms that have been revised are:

- FMLA Leave of Absence Form (NPD-60)
- Notice of Eligibility and Rights & Responsibilities (NPD-62)
- Certification of Qualifying Exigency for Military Family Leave (WH-384)
- Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (WH-385)

You will need to verify that the revision date on the above forms is February 2010, when issuing these forms to employees.

Both supervisors and staff administering the FMLA need to recognize that requests for leave due to employees' family members who are in the military are potentially FMLA qualifying under the military entitlements of the FMLA.

The most recent changes to the military leave entitlements of the FMLA are:

- Change to Qualifying Exigency Entitlement-Extended FMLA exigency leave benefits to employees who have a spouse, parent or child who is an active duty member of a regular component of the Armed Forces and a change in the type of eligible duty from "in support of a contingency operation" to during "deployment to a foreign country".
- Change to Care for a Covered Servicemember Entitlement-Extension of the 26 workweeks of FMLA caregiver leave, to employees who have a spouse, parent, child or next of kin who is a veteran, for up to 5 years after a veteran leaves service if the veteran develops a service-related injury or illness that was incurred or aggravated in the line of duty on active duty. Also further extending FMLA caregiver leave benefits to qualifying employees to care for members of the Armed Forces (including members of the National Guard or Reserves) who are undergoing medical treatment, recuperation or therapy for a serious injury or illness that existed before the beginning of active duty and were aggravated by active duty.

If you have any questions, you may contact <Name> at <Telephone number/email address>.