

FMLA for Qualifying Exigency Leave: FAQ

<p>What is “qualifying exigency leave”?</p>	<p>“Qualifying exigency leave” may be taken for any qualifying exigency arising out of the fact that a covered military member is on active duty or call to active duty status. This will permit eligible employees who are family members of a covered military member to take FMLA leave to address the most common issues that arise when a covered military member is deployed, such as attending military-sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare. For a complete list of qualifying exigencies, see https://www.dol.gov/whd/regs/compliance/whdfs28mc.pdf</p>
<p>Who is a “covered military member”?</p>	<p>A covered military member is the employee’s spouse, son, daughter, or parent who is on active duty or call to active duty status.</p>
<p>What is “active duty or call to active duty status”?</p>	<p>Active duty or call to active duty status refers to a member of the National Guard or Reserves who is under a call or order to active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.</p>
<p>Are families of servicemembers in the Regular Armed Forces eligible for qualifying exigency leave?</p>	<p>No. The statute passed by Congress providing this new military family leave entitlement only extends the right to take FMLA leave because of a qualifying exigency to family members of National Guard and Reserves, and certain retired military.</p>
<p>Can I take qualifying exigency leave if my son or daughter is 18 years old or older?</p>	<p>Yes. The new FMLA regulations contain special definitions for son and daughter for both of the military family leave provisions. For this type of leave, a “son or daughter on active duty or call to active duty status” is defined as the employee’s biological, adopted, or foster child, stepchild, legal ward, or 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.</p>
<p>Can I take qualifying exigency leave if the covered military member is my stepson or stepdaughter? Alternatively, can I take qualifying exigency leave if the covered military member is my stepparent?</p>	<p>Yes. Under the FMLA for qualifying exigency leave, a “son or daughter on active duty or call to active duty status” 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. Additionally, under the FMLA for qualifying exigency leave, a “parent” means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This term does not include parents “in law.”</p>
<p>How will I know whether a covered military member has been called to or is on active duty in support of a “contingency operation?”</p>	<p>A covered military member’s active duty orders will generally specify whether he or she is serving in support of a contingency operation. You also may confirm whether a particular servicemember is serving in support of a contingency operation by contacting the appropriate military branch.</p>

What is a “qualifying exigency”?	Please visit the DOL fact sheet regarding qualifying exigencies at https://www.dol.gov/whd/regs/compliance/whdfs28mc.pdf for further information.
Can I take qualifying exigency leave to pick up a child from school or attend a school event?	Yes, in certain limited circumstances. An eligible employee caring for a covered military member’s child may use qualifying exigency leave to provide childcare on an urgent, immediate need basis, but not on a routine, everyday basis, where the need to provide the care arises from the active duty or call to active duty status of the covered military member. Qualifying exigency leave may also be used to attend certain meetings with school staff, if those meetings are necessary due to the active duty or call to active duty status of the covered military member. Qualifying exigency leave may not be used, however, for attending routine school events, such as birthday parties or plays.
For what additional events may employers and employees agree to use qualifying exigency leave?	Employers and employees may agree to cover any additional events arising from the covered military member’s active duty or call to active duty status as qualifying exigency leave. Such events may include leave to spend time with a covered military member either prior to or post deployment, or to attend to household emergencies that would normally have been handled by the covered military member. Employers and employees must agree to both the timing and duration of any such qualifying exigency leave and the leave may be counted against the employee’s 12 week FMLA leave entitlement.
What type of notice must an employee provide to his/her employer when taking FMLA leave because of a qualifying exigency?	An employee must provide notice of the need for qualifying exigency leave as soon as practicable. When the need for leave is unforeseeable, an employee must comply with an employer’s normal call-in procedures absent unusual circumstances. An employee does not need to specifically assert his or her rights under FMLA, or even mention FMLA, when providing notice. The employee must provide “sufficient information” to make the employer aware of the need for FMLA leave and the anticipated timing and duration of the leave.
What are the certification requirements for taking qualifying exigency leave?	The first time that an employee requests qualifying exigency leave, he/she will need to provide a copy of the covered military member’s active duty orders or other documentation issued by the military that indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member’s active duty service. In addition, each time that an employee requests leave for one of the qualifying exigencies, he/she will be required to complete a Certification of Qualifying Exigency for Military Family Leave form.
How much FMLA leave may I take for qualifying exigencies?	An employee may take up to 12 workweeks of FMLA leave for qualifying exigencies during the twelve-month FMLA period. Qualifying exigency leave may also be taken on an intermittent or reduced leave schedule basis.
Is the 12 weeks of qualifying exigency leave a one-time entitlement?	No. If a covered military member’s active duty or call to active duty status spans more than one FMLA leave year, an eligible employee would be eligible to take qualifying exigency leave in each FMLA leave year. Moreover, an eligible employee could take qualifying exigency leave in a subsequent FMLA leave year for a different covered military member. Finally, if the same covered military member returns from deployment and is subsequently redeployed, the eligible employee would again be entitled to qualifying exigency leave.

How much leave can I take if I need leave for both a serious health condition and a qualifying exigency?	Qualifying exigency leave, like leave for a serious health condition, is a FMLA-qualifying reason for which an eligible employee may use his or her entitlement for up to 12 workweeks of FMLA leave each year. An eligible employee may take all 12 weeks of his or her FMLA leave entitlement as qualifying exigency leave or the employee may take a combination of 12 weeks of leave for both qualifying exigency leave and leave for a serious health condition.
Which types of paid leaves can be used to continue in pay status while on qualifying exigency leave?	In order to continue in pay status while on FMLA leave for a qualifying exigency, employees may use the following: <ul style="list-style-type: none">• Vacation Leave• Sick Leave• Holiday (when applicable)
May the employer designate a leave as qualifying exigency leave?	Yes, if the employer has reason to believe that an absence may be due to this FMLA-qualifying reason, the employer may designate the leave as FMLA leave. Before doing so, the unit should consult with the campus HR office to ensure proper designation and compliance with the law.