



Qualified Exigency Leave

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

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Reference Number: MTAS-875

The National Defense Authorization Act for FY 2010 established new benefits for service members and their families. FMLA now allows eligible employees to take time off for family emergencies resulting from a covered spouse, parent, or child being called to active military duty in the Armed Forces, including members of the National Guard or Reserve (called “qualifying exigency leave”) and for emergencies resulting from the need to care for family members who become seriously ill or injured in the line of duty during active military service.

Qualifying exigency leave allows eligible employees of covered employers to take up to 12 weeks of FMLA leave arising from the fact that their spouse, child, or parent is on active duty or called to active duty in the armed forces in support of a “contingency operation.” The qualifying exigency leave applies to families of members of any regular component of the armed services. An eligible employee whose spouse, parent or child is a member of the Armed Forces may take FMLA leave for a qualifying exigency related to the fact that they are deployed with the Armed Forces to a foreign county.

The regulation 29 C.F.R. § 825.126(b) contains a specific list of reasons for qualifying exigency leave. They include:

- Short-notice deployment, meaning a call or order that is given seven or fewer calendar days before deployment. The employee can take up to seven days beginning on the date of notification.
- Military events and related activities, such as official military-sponsored ceremonies and family support and assistance programs sponsored by the military and related to the family member’s call to duty.
- Urgent (as opposed to recurring and routine) child-care and school activities such as arranging for child care.
- Financial and legal tasks, such as making or updating legal arrangements to deal with a family member’s active duty.
- Counseling for the employee or his or her minor child that is not already covered by the FMLA.
- Spending time with the covered service member on rest and recuperation breaks during deployment for up to five days per break.
- Post-deployment activities such as arrival ceremonies and reintegration briefings, or to address issues from the service member’s death while on active duty.
- Other purposes arising out of the call to duty, as agreed upon by the employee and employer.

Employees seeking qualifying exigency leave must give reasonable and practical notice if the exigency is foreseeable. The notice must (1) inform the employer that a covered family member is on active duty or call-to-active duty status, (2) give a listed reason for leave, and (3) give the anticipated length of absence. 29 C.F.R. § 825.302(c).

Regulation 29 C.F.R. § 825.309(d) provides that the employer may require certification for qualifying exigency leave by requiring the employee to provide a copy of the service member’s active duty orders; for example a DOL form WH-384 may be used for qualifying exigency certification. The regulations also allow employers to verify with a third party that an employee met with the third party (e.g., a teacher) during qualifying exigency leave.

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