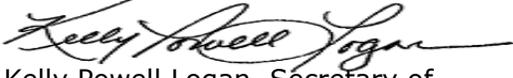


MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

Subject: Sick, Parental and Family Care Absence, Military Exigency Absence and Military Caregiver Absence Policy	Number: 530.30 Amended
Date: December 11, 2013	By Direction of:  Kelly Powell Logan, Secretary of Administration
Contact Agency: Office of Administration, Office for Human Resources Management, Bureau of Employee Benefits and Services, Telephone 717.787.9872	

This directive establishes policy, responsibilities, and procedures for the application of Sick, Parental and Family Care (SPF) Absence, Military Exigency Absence and Military Caregiver Absence under the *Family and Medical Leave Act of 1993* (FMLA). The policy is being updated to comply with the FMLA regulations published February 6, 2013. Marginal dots are excluded due to major changes.

- 1. PURPOSE.** To establish policy, responsibilities, procedures and clarify the application of SPF Absence, Military Exigency Absence and Military Caregiver Absence under the FMLA. Also, to establish policy for the continuation of benefits for employees on these types of absences.
- 2. SCOPE.** This directive applies to all agencies under the Governor's jurisdiction and, as appropriate, to those agencies not under the Governor's jurisdiction with employees represented by unions that have negotiated this policy.
- 3. OBJECTIVE.** To ensure SPF, Military Exigency and Military Caregiver Absences are administered consistently and in accordance with the FMLA and established absence policy requirements.

4. DEFINITIONS. The following definitions apply to this directive:

- a. Covered Active Duty.** In the case of a member of a regular component of the Armed Forces, duty during the deployment to a foreign country; in the case of a member of a reserve component of the Armed Forces or National Guard member, duty during deployment to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to Section 688 of Title 10 of the United States Code; Section 12301(a), 12302, 12304, 12305, or 12406 of Title 10; chapter 15 of Title 10; or any other provision of law during a war or national emergency declared by the President or Congress when in support of a contingency operation.
- b. Covered Servicemember.** 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 an out-patient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.
- c. Covered Veteran.** A person who was a member of the Armed Forces (including a member of the National Guard or Reserves) and who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes leave to care for the covered veteran. The period between October 28, 2009 and March 7, 2013 is excluded in the determination of the five-year period for covered veteran status.
- d. Eligibility.** The criteria of service and hours worked used as a qualification for use of SPF, Military Exigency and Military Caregiver Absence. Eligibility is measured by reviewing the 12 month period before the first absence. Refer to Section 5.f. of this directive for the criteria.
- e. Employee.** For the purpose of SPF Absence, an employee is a permanent employee. For the purpose of Military Exigency and Military Caregiver Absence, an employee is any permanent or non-permanent employee who meets eligibility requirements.
- f. Entitlement.** The amount of SPF, Extended Sick, Parental, and Family Care (ESPF), Military Exigency or Military Caregiver Absence available for use. Refer to Section 5.g. and m. of this directive for the amount.
- g. Event.** A specific reason or medical condition for which SPF, Military Exigency or Military Caregiver Absence is approved.
- h. Extended Sick, Parental, Family Care (ESPF) Absence.** An unpaid absence from work without benefits due to: a serious health condition of an employee; a serious health condition of a family member when the employee is attending to the medical needs of the family member; or for the birth, adoption or foster care placement of a child. This includes all unpaid sick, parental and family care absence without benefits.

i. Family Member.

(1) For the Purpose of SPF Absence. A family member is a spouse, parent, child, or other person qualifying as a dependent under Internal Revenue Service (IRS) eligibility criteria. A parent can be a biological, adoptive, step or foster parent or an individual who stood as a parent (in loco parentis) to the employee when the employee was a child. A child can be a biological child, adopted child, foster child, stepchild, legal ward, or a child in the care of a person who is standing as a parent (in loco parentis); a child must be under age 18, or if 18 years or older, must be incapable of self-care because of a mental or physical disability at the time the leave is to commence. **Note:** The definition of family member for management employees and employees covered by some collective bargaining agreements also includes the employee's domestic partner and the biological or adopted child of the domestic partner.

(2) For the Purpose of Military Exigency Absence. A family member is a spouse, parent or child. A parent can be a biological, adoptive, step or foster parent or an individual who stood as a parent (in loco parentis) to the employee when the employee was a child. A child can be a biological child, adopted child, foster child, stepchild, legal ward, or a child for whom the employee stood as a parent (in loco parentis) who is of any age.

(3) For the Purpose of Military Caregiver Absence. A family member is a spouse, parent, child or next of kin. A parent can be a biological, adoptive, step or foster parent or an individual who stood as a parent (in loco parentis) to the employee when the employee was a child. A child can be a biological child, adopted child, foster child, stepchild, legal ward, or a child for whom the employee stood as a parent (in loco parentis) who is of any age.

j. FMLA. The *Family and Medical Leave Act of 1993 (29 U.S.C. §2601, et seq.)* is the federal law that requires qualifying employers to provide at least 12 weeks of unpaid leave with benefits within a 12 month period to eligible employees due to: a serious health condition of an employee that makes the employee unable to perform the functions of the employee's job; a serious health condition of a family member when the employee is attending to the medical needs of the family member; for the birth of a son or daughter, and to care for the newborn child; for adoption or foster care placement of a child; or because of any qualifying exigency arising out of the fact that the employee's family member is a military member on covered active duty (Military Exigency Absence). The FMLA also requires employers to provide at least 26 weeks of unpaid leave to an employee within a single 12 month period for the serious injury or illness of a covered servicemember or covered veteran who is an employee's family member when the employee is needed to care for the covered servicemember or covered veteran (Military Caregiver Absence).

k. FMLA Leave. Absences that are granted pursuant to the requirements of the FMLA.

- i. Health Care Provider.** A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the state and performing within the scope of their practice as defined under state law; and nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law; and Christian Science practitioners listed within the First Church of Christ, Scientist in Boston, Massachusetts; any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; or a health care provider as defined above who practices in a country other than the United States (U.S.), who is licensed to practice in accordance with the laws and regulations of that country. For the purpose of Military Caregiver Absence, a health care provider is a U.S. Department of Defense (DOD) or U.S. Department of Veterans Affairs (VA) health care provider or a DOD TRICARE network or non-network authorized private health care provider.
- m. Incapable of Self-Care.** Requiring active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living.
- n. Incapacity.** The inability to work, attend school, or perform other regular daily activities due to a serious health condition, treatment therefor or recovery therefrom.
- o. Intermittent Absence.** Episodic absences taken in separate periods of time, due to a single qualifying reason, rather than for one continuous period of time.
- p. Medically Necessary.** For the purposes of intermittent or reduced time absence, a medical need for leave where the medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition and the certification of a serious injury or illness should address the medical necessity of intermittent absence or a reduced time absence.
- q. Military Caregiver Absence.** An absence from work due to a serious injury or illness of a covered servicemember or covered veteran who is a family member, when the employee is needed to care for the covered servicemember or covered veteran.
- r. Military Exigency Absence.** An absence from work arising from the fact that a family member of the employee is a military member on covered active duty. Military Exigency Absence may be used for the following:

 - (1) Short-Notice Deployment.** To address any issue arising from notification of an impending order seven calendar days or less prior to the date of deployment and used within seven days of notification of the impending call or order;

- (2) **Military Events and Related Activities.** For official ceremonies, programs or events sponsored by the military and related to the active duty; or for family support or assistance programs or briefings sponsored by the military, a military service organization or the Red Cross and related to the active duty;
 - (3) **Childcare and School Activities.** To arrange for alternative childcare when the call to duty necessitates a change in childcare; to provide childcare on an urgent, immediate need basis; to enroll or transfer to a new school or day care; or to attend meetings or conferences at a school or daycare when necessary due to circumstances arising from active duty or call to duty;
 - (4) **Financial and Legal Arrangements.** To make or update financial or legal arrangements to address the military member's absence while on active duty or call to active duty status; or to act as the military member's representative to obtain, arrange or appeal military service benefits while the military member is on active duty or call to active duty status and for 90 days after release from active duty;
 - (5) **Counseling.** To attend counseling for the employee, military member or child provided by someone other than a health care provider, provided the need for counseling arises from the active duty or call to active duty status. **Note:** For Military Exigency Absence used under this section, the definition of child is a biological child, adopted child, foster child, stepchild, legal ward, or a child in the care of a person who is standing as a parent (in loco parentis); a child must be under age 18, or if 18 years or older, must be incapable of self-care because of a mental or physical disability at the time the leave is to commence;
 - (6) **Rest and Recuperation.** To spend time with a military member who is on short-term rest and recuperation during the period of deployment. Up to five days may be used for each instance;
 - (7) **Post-Deployment Activities.** To attend arrival ceremonies, reintegration briefings and events and any other official ceremony or program sponsored by the military 90 days after release from active duty; or to address issues arising from the death of a military member while on active duty;
 - (8) **Parental Care.** To arrange for alternative care, provide care on an urgent, immediate need basis, to admit to or transfer to a care facility, or to attend meetings with staff at a care facility for a military member's parent who is incapable of self-care, when the care is necessitated by the military member's covered active duty; or
 - (9) **Additional Activities.** To address other events arising from active duty or call to active duty status when agreed upon between the employer and employee.
- s. **Military Member.** The employee's spouse, child or parent who is a member of a reserve component, a National Guard member or an active member of a regular component of the Armed Forces or reserve on covered active duty.

- t. **Next of Kin.** For the purpose of Military Caregiver Absence, the nearest blood relative of a servicemember who has a serious injury or illness in the order of: 1) blood relatives granted legal custody by court decree or law; 2) otherwise in the following order: a blood relative designated in writing by the servicemember as the nearest blood relative for the purpose of Military Caregiver Absence, brothers and sisters, grandparents, aunts and uncles, first cousins.
- u. **One Year of Service.** Used to determine eligibility for SPF, Military Exigency and Military Caregiver Absence under the FMLA. This includes all periods of employment.
- v. **Reduced-Time Absence.** A recurring schedule of absence that reduces the usual number of hours per workweek or per workday.
- w. **Rolling Year.** Used to determine entitlement to SPF and Military Exigency Absence. The 12 month period measured backward from the date of the absence.
- x. **Serious Health Condition.** An illness, injury, impairment, or physical or mental condition that involves any one of the following and makes the employee unable to perform the functions of the employee's job:
 - (1) Inpatient care (an overnight stay) in a hospital, hospice, or residential medical care facility including any period of incapacity or any subsequent treatment in connection with such inpatient care;
 - (2) Continuing treatment by a health care provider that includes a period of incapacity of more than three full consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that involves in-person treatment visits two or more times within 30 days of the first day of incapacity by a health care provider or by a nurse or physician assistant under direct supervision of a health care provider or by a provider of health care services (e.g. physical therapist) under orders of or on referral by a health care provider **or** an in-person treatment visit by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider, provided the first in-person treatment visit in this section takes place within seven days of the first day of incapacity;
 - (3) Any period of incapacity due to pregnancy or for prenatal care;
 - (4) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition which: requires periodic visits for treatment (at least twice per year) by a health care provider or by a nurse or physician assistant under direct supervision of a health care provider; continues over an extended period of time (including recurring episodes of a single underlying condition); and may cause episodic rather than continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.);

- (5) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, severe stroke, or terminal stages of disease). The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, the health care provider; or
- (6) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of or on referral by the health care provider either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention (e.g., chemotherapy or radiation for cancer, physical therapy for severe arthritis, dialysis for kidneys).

Note: Ordinarily, unless complications arise, the common cold, flu, ear ache, upset stomach, minor ulcer, or minor headache other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify.

y. Serious Injury or Illness. In the case of a current member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces (or existed before the beginning of active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating. In the case of a covered veteran, an injury or illness that was incurred in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran, and that is:

- (1) A continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
- (2) A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater and the rating is based on the condition precipitating the need for military caregiver leave; or
- (3) A physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service or would do so, absent of treatment; or
- (4) An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

- z. Sick, Parental and Family Care (SPF) Absence.** A paid or unpaid absence from work, with benefits, due to a serious health condition of an employee that makes the employee unable to perform the functions of the employee's job; a serious health condition of a family member when the employee is attending to the medical needs of the family member; for the birth of a son or daughter, and to care for the newborn child; for adoption or foster care placement of a child.
- aa. Single 12 Month Period.** Used to determine entitlement to Military Caregiver Absence. The 12 month period following the date of the employee's first absence for a covered servicemember's or covered veteran's serious injury or illness. The entitlement cannot be renewed after the single period ends.
- bb. Six Months.** The maximum entitlement amount within a rolling year for SPF Absence. This is 982.5 hours for employees with a standard work schedule of 37.5 hours per week or 1,048 hours for employees with a standard work schedule of 40 hours per week. The hours of entitlement shall be prorated for part-time employees.
- cc. SPF Coordinator.** A designated employee who is responsible for the administration of SPF absences for the employees within an assigned agency and has successfully completed mandatory training to administer SPF Absence provisions for agency employees.
- dd. Two Consecutive Weeks.** The workdays that fall within a 14 calendar day period.
- ee. 12 Weeks.** The hours of SPF Absence entitlement granted at the beginning of the rolling year for SPF Absences for which intermittent or reduced-time absence may be used. This also is the maximum entitlement amount within a rolling year for Military Exigency Absence. This is 450 hours for employees with a standard work schedule of 37.5 hours per week and 480 hours for employees with a standard work schedule of 40 hours per week. The hours of entitlement shall be prorated for part-time employees.
- ff. 26 Weeks.** The maximum entitlement amount within a single 12 month period for Military Caregiver Absence. This is 982.5 hours for employees with a standard work schedule of 37.5 hours per week or 1,048 hours for employees with a standard work schedule of 40 hours per week. The hours of entitlement shall be prorated for part-time employees.
- gg. 1250 Hours.** Used to determine an employee's eligibility for SPF, Military Exigency and Military Caregiver Absence. Includes regular and overtime hours worked and all military absence hours, but excludes holidays and other paid and unpaid absences. The 1250 Hours requirement is the same for all employees, regardless of regular hours worked (e.g., 80, 75, 45, 37.5, etc.). **Note:** For permanent part-time management employees and permanent part-time employees represented by some unions, the hours worked requirement to determine an employee's eligibility for SPF Absence is 900 hours.

5. POLICY.

- a. **FMLA.** The provisions of this directive shall be consistent with *The Family and Medical Leave Act of 1993 (29 U.S.C. § 2601, et seq.)* except when more generous benefits are granted by collective bargaining agreements and the Personnel Rules.
- b. **Posting Requirement.** Enclosure 1, Employee Rights and Responsibilities Under the Family and Medical Leave Act, a notice explaining the provisions of the FMLA, must be posted in paper format or electronically. Agencies must distribute copies to all work locations for conspicuous posting. Agencies may duplicate Enclosure 1 or obtain copies from local offices of the U.S. Department of Labor's Wage and Hour Division or via the website at <http://www.dol.gov/whd/regs/compliance/posters/fmla.htm>.
- c. **Written Policies.** Agencies which provide employee handbooks or other written or electronic guidance to employees must include information about the FMLA and the SPF, Military Exigency and Military Caregiver Absence policies of this directive in such communications.
- d. **FMLA Inquiries.** Enclosure 2, Notice to Employees Family and Medical Leave Act Sick, Parental, and Family Care (SPF), Military Exigency and Military Caregiver, which is a notice of rights, responsibilities, and obligations, must be given to any employee who inquires about FMLA or SPF, Military Exigency or Military Caregiver Absences and must also be provided each time employees are notified of their eligibility for FMLA.
- e. **Absence Requests.** All requests for SPF, Military Exigency or Military Caregiver Absence, including paid absences, shall be made at least two weeks in advance, if circumstances permit. When not foreseeable, requests shall be made as soon as practicable to ensure protection under the FMLA. This written request shall be made in writing using the Commonwealth of Pennsylvania Request for SPF Absence, Request for Military Exigency Absence or Request for Military Caregiver Absence Forms.
- f. **Eligibility.** Eligibility is determined based on two factors: One year of service and 1250 hours worked during the 12 month period preceding the date of the first absence for each event.
 - (1) Once eligibility is determined for an event, the employee remains eligible for that event for the next 12 months.
 - (2) Eligibility is re-measured for each new or different SPF and Military Exigency event as of the first absence following the 12 month eligibility period. Incapacity related to pregnancy, recovery from childbirth and child rearing connected to childbirth shall be considered one SPF event.
- g. **Entitlements.** Each absence type has a different entitlement; however, the SPF and Military Exigency Absence entitlements run concurrently and are not stackable.

- (1) **SPF Absence Entitlement.** Employees who meet eligibility are entitled to up to six months of SPF Absence within a rolling year. SPF and Military Exigency Absences within the rolling year count against the six month SPF Absence entitlement. Because the rolling year is measured backward from the date of each absence, an employee's entitlement can change by the day.
 - (a) The absence code for unpaid parental leave shall not be used while incapacitated due to childbirth. Paid or unpaid sick leave is available prior to birth, if necessary, or after the birth when a female employee is unable to work due to childbirth as certified by a health care provider.
 - (b) Female employees who are incapacitated before or after childbirth are required to provide the Employee Serious Health Condition Certification Form to the agency human resource office as described in Section 5.l. of this directive.

Note: When an employee has in excess of six months of paid sick, annual, personal, holiday and/or compensatory leave, the SPF entitlement is not limited to six months, and the employee is entitled to use all paid leave.

Note: For a birth, adoption, or foster care SPF event, the absence begins upon the employee's request; however, the absence may not be used prior to the date of birth, custody, or placement, except when required for adoption or foster care placement to proceed. The SPF event shall expire one year from the date of birth, date of assuming custody for adoption, or date of placement for foster care, regardless of whether or not the entire SPF entitlement has been used.
- (2) **Military Exigency Absence Entitlement.** Employees who meet eligibility are entitled to up to 12 weeks of Military Exigency Absence within a rolling year. SPF and Military Exigency Absences within the rolling year count against this 12 week entitlement. Because the rolling year is measured backward from the date of each absence, an employee's entitlement can change by the day.
- (3) The following absences run concurrently with and are deducted from the SPF and Military Exigency Absence collective entitlements.
 - (a) All unpaid SPF Absences. **Note:** Sick leave without pay for reasons that do not qualify as serious health conditions under the FMLA and are two weeks or greater are deducted from the SPF and Military Exigency Absence entitlements even though they are not SPF Absences;
 - (b) All paid SPF Absences used during the first 12 weeks of absence in a rolling year;

- (c) All full-time paid SPF Absences that are contiguous to and continue beyond the first 12 weeks of absence in a rolling year;
 - (d) All intermittent paid SPF Absences that are two consecutive weeks or more and are used after the first 12 weeks of absence in a rolling year;
 - (e) All absences for which donated leave or special extension leave is used; and
 - (f) All paid and unpaid Military Exigency Absences.
- (4) **Military Caregiver Absence Entitlement.** Employees who meet eligibility are entitled to up to 26 weeks of Military Caregiver Absence within a single 12 month period. Up to 26 weeks of Military Caregiver Absence is available for each covered servicemember and covered veteran and each serious injury or illness, but not more than 26 weeks may be used within any single 12 month period. Paid and unpaid Military Caregiver Absences count against this entitlement.

h. Use of Intermittent or Reduced-Time Absence.

- (1) SPF Absences that are medically necessary and Military Exigency Absences may be taken on an intermittent or reduced-time basis only during the initial 12 weeks of absence in a rolling year. For parental absence, approval is at the agency's discretion.
 - (2) Military Caregiver Absences that are medically necessary may be taken on an intermittent or reduced-time basis for up to 26 weeks within a single 12 month period.
 - (3) For intermittent or reduced-time absences for planned medical treatment, the employee must make a reasonable effort to develop a schedule, working cooperatively with the supervisor, which meets the employee's needs with consideration to the times that are least disruptive to normal operations, subject to the approval of the health care provider.
- i. **SPF Absences after 12 Weeks.** After the first 12 weeks of absence in a rolling year, employees may request to use available paid leave, which may be approved subject to any provisions applicable to the use of those leave types. If eligibility is established and entitlement is available, requests for SPF Absences after the first 12 Weeks of absence in a rolling year shall be approved only for the below reasons:
- (1) The period of absence is full-time and is expected and medically certified to be at least two consecutive weeks;
 - (2) The employee has a catastrophic illness or injury that poses a direct threat to life or to the vital function of major bodily systems or organs. Approval to use unpaid SPF absence for this purpose may be granted by the Office of Administration (OA), Office for Human Resources Management, Bureau of Employee Benefits and Services; or

- (3) The employee requests to use SPF Absence on a reduced-time basis for parental reasons. Approval to use SPF Absence for a specific timeframe may be granted at the discretion of the employing agency.

j. Use of Paid Leave for Absences.

- (1) **SPF Absence.** Upon commencement of each SPF Absence, all applicable accrued sick leave (including sick family and additional sick family leave) must be used before any other paid or unpaid leave. Only sick leave is required to be used and it may only be used under circumstances for which sick leave is ordinarily used. Management employees and employees represented by some unions may choose to retain up to ten days of accrued sick leave. The choice to retain or not retain sick leave cannot be made retroactively. Retained days will be determined based on accrued sick leave available at the commencement of the absence. After all applicable, required sick leave is used, employees may choose to use accrued annual, personal, holiday or compensatory leave. Employees also may choose to use anticipated annual, personal or sick leave in accordance with anticipation rules. All forms of paid leave, beginning with sick leave, will run concurrently with the commencement of and be deducted from the SPF and Military Exigency Absence entitlements. Paid sick leave used for reasons other than serious health conditions will not be deducted from the SPF and Military Exigency Absence entitlements and will not be designated as FMLA Leave. **Note:** Refer to the collective bargaining agreement for employees who earn combined leave.

- (2) **Military Exigency Absence.** For a qualifying Military Exigency Absence, all accrued annual/combined, personal, holiday and compensatory leave must be used before using unpaid leave. All forms of paid leave will run concurrently with the commencement of and be deducted from the SPF and Military Exigency Absence entitlements.

- (3) **Military Caregiver Absence.** Upon commencement of each Military Caregiver Absence, all applicable accrued sick family and additional sick family leave must be used before any other paid or unpaid leave. After all applicable accrued sick family and additional sick family leave is used, employees must use all accrued annual/combined, personal, holiday and compensatory leave. Employees also may choose to use anticipated annual, personal or sick family leave in accordance with anticipation rules. All forms of paid leave, beginning with sick family leave, will run concurrently with the commencement of and be deducted from the Military Caregiver Absence entitlement. **Note:** Refer to the collective bargaining agreement for employees who earn combined leave.

- k. Absence Approval and FMLA Leave Designation.** Absences which meet the criteria set forth in Section 5.g., h., i., and j. of this directive shall be approved and designated as FMLA leave. The leave shall be designated as FMLA leave in writing within five business days of receiving documentation sufficient to establish that the absence qualifies as FMLA leave.

I. Required Documentation.

- (1) **SPF Absence.** Certification must be provided for all SPF events. When the reason for the absence may be the result of a serious health condition, a request for the completion of the Serious Health Condition Certification Form will be sent to the employee. Failure to provide timely and complete documentation may result in the delay or denial of SPF Absence.
 - (a) Medical documentation from a health care provider on the Serious Health Condition Certification Form must be provided by the employee within 15 calendar days of the employee's receipt of a written request for medical documentation.
 - 1 Recertification of the need for SPF Absences may be requested as often as every 30 calendar days in connection with intermittent absence, upon expiration of the initial certification from the health care provider and/or upon changed circumstances.
 - 2 A second and third medical opinion may be ordered in response to the initial certification at the commonwealth's expense.
 - (b) For parental absences, proof of the child's birth, adoption or foster care placement must be provided within 15 days of the event.
- (2) **Military Exigency Absence.** The first time an employee requests an absence for a qualifying Military Exigency, a copy of the family member's orders or other military documentation must be provided. In addition, for **each** absence, a written request that includes the justification for the absence and the specific activity that will be performed during the absence is required on the commonwealth Military Exigency Certification Form. A copy of the Rest and Recuperation leave orders, or other documentation issued by the military with the dates of the military member's leave, is required when Military Exigency Absence is requested to spend time with a family member who is on short-term rest and recuperation during a period of deployment. Additional documentation to substantiate that the employee performed that activity during the absence also may be requested.
- (3) **Military Caregiver Absence.** Documentation is required from the covered servicemember's health care provider or military health care provider on the Serious Injury or Illness of a Current Servicemember Certification or Serious Injury or Illness of a Veteran Certification Form. A second and third medical opinion may be ordered in response to certification completed by health care providers not affiliated with DOD, VA or TRICARE.

- (a) An Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to the employee is acceptable as documentation for the period covered by the ITO/ITA, even if the employee is not named on the ITO/ITA; however, certification on the commonwealth's form may later be required. Confirmation of the employee's relationship to the covered servicemember may be required.
 - (b) Documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers is sufficient, even if the employee is not the named caregiver on the document. The employee may be required to provide confirmation of the relationship to the enrolled servicemember or documentation of the veteran's discharge date and status.
- m. **ESPF Absence Entitlement.** Employees are entitled to up to six months of ESPF Absence for all SPF events. Requests for ESPF Absence will be approved provided: the request is made in writing; proof of the need for continuing absence is provided on the Serious Health Condition Certification Form; and the absence is contiguous to the expiration of SPF Absence. In addition, when the one year of service eligibility requirement has not been met, or when employees have been employed less than one year since the most recent hire date, ESPF Absence shall be available for a period of at least two consecutive weeks; however, under these circumstances only one ESPF Absence within a rolling year may be approved.
- n. **Benefits Continuation.** The following benefits continue during SPF, Military Exigency and Military Caregiver Absence.
 - (1) Annual and sick leave will continue to accrue based on regular hours paid. Holidays will be earned provided the employee is in an active pay status the half day before and half day after the holiday. Personal leave will be earned provided 20 days (150 hours for employees with a standard work schedule of 37.5 hours per week or 160 hours for employees with a standard work schedule of 80 hours per week) are paid within the personal leave earning period.
 - (2) Group life insurance coverage will continue to be commonwealth paid.
 - (3) Health benefits through the PEBTF will continue as long as the employee continues to pay any applicable employee contributions and buy-ups during the absence.
 - (a) Employees using unpaid SPF, Military Exigency and Military Caregiver Absence who are enrolled in the PEBTF will receive notice regarding the employee contributions and buy-up amount and due date. Any delinquency in payment to the PEBTF will result in termination of the employee's health benefits.

- (b) Employees must contact the Human Resources Service Center (or agency Human Resource Office if the agency where employees work is not serviced by the center) to add any new dependents to medical/hospital and supplemental benefits contracts within 60 days of birth or of assuming custody of a child.
- o. **Work-Related Injuries.** This policy does not apply to work-related injuries.
 - (1) Although the commonwealth's work-related injury policy requires the designation of appropriate absences as FMLA leave, absences for work-related injuries will not reduce the entitlement to SPF, Military Exigency or Military Caregiver Absence as described in this policy.
 - (2) Denied work-related injury claims are not covered by the work-related injury absence policy, and therefore are covered by the SPF Absence policy until or unless the claims are approved. If an employee is not eligible for or entitled to SPF Absence and has no accrued paid leave available to use, up to six months of ESPF Absence shall be granted for denied claims while under appeal. During the ESPF Absence, the employee's position will not be filled.
- p. **Impact on Leave Donation and Special Extensions of Sick Leave.** Policies for leave donation and special extensions of sick leave will not be altered when an employee uses SPF, Military Exigency or Military Caregiver Absence; however, these benefits will run concurrently with and reduce SPF, Military Exigency and Military Caregiver entitlements.
- q. **Impact on Regular/Approved Leave without Pay.** The policies regarding regular/approved leave without pay are not impacted by this directive, and leave used as regular/approved leave without pay will not reduce the entitlement to SPF, Military Exigency or Military Caregiver Absence.
- r. **Options When an Absent Employee is Not Eligible for or Entitled to SPF, ESPF, Military Exigency or Military Caregiver Absence.** When an absent employee is not eligible for or entitled to SPF, ESPF, Military Exigency or Military Caregiver Absence, the employee will be subject to disciplinary action, up to and including termination from employment, unless the employee chooses to: use available paid leave subject to ordinary provisions for the use of those leave types; request to use regular/approved leave without pay subject to ordinary provisions for the use of this leave; return to work; apply for regular or disability retirement; or resign the position.
- s. **Return to Work Rights.** An employee may return to work from SPF Absence upon release by the health care provider. If the Employee Serious Health Condition Certification Form does not cover the period of absence, an updated Employee Serious Health Condition Certification Form or other type of release to return to work from the health care provider will be required.
 - (1) Employees have the right to return to the same or equivalent position held before commencing SPF, Military Exigency and Military Caregiver Absence.

- (2) After commencing ESPF Absence, employees have limited return rights.
 - (a) Management and non-represented employees have the right to return to a position that the agency intends to fill in the same or equivalent classification within the agency. If a position in the same or equivalent classification is not available, any position in the same classification, in a lower classification in the same classification series, or a vacant management or non-represented position previously held by the employee, which the agency intends to fill, shall be offered during the remainder of the six month period of ESPF. If a position in the same classification is offered and refused, the right to return terminates. If the employee accepts either a position in a lower classification or a position previously held by the employee, the employee will be offered any vacancy which the agency intends to fill in the same or equivalent position which subsequently opens during the remainder of the six month period of ESPF.
 - (b) For represented employees refer to the appropriate collective bargaining agreement for specific return rights.
- t. **Records Maintenance.** Agencies are responsible for maintaining the following records for a period of three years:
 - (1) **Copies of Employee Requests for Use of SPF, ESPF, Military Exigency and Military Caregiver Absence.** This may include letters and forms completed by employees requesting absences; the documentation must be kept in a case file separate from other files.
 - (2) **Pertinent Medical Documentation.** This information may not be filed in the Official Personnel Folder; it must be maintained in a separate confidential medical file.
 - (3) **Records Showing Absence Usage.** These records are available in SAP and are maintained beyond the required three years. Agencies that do not use SAP must use another method to maintain absence records for three years.
 - (4) **Records of any Disputes Regarding a FMLA Related Request that was Denied.** Agencies must maintain any records of disputes regarding a FMLA related request that was denied with the SPF case files. In the event that a dispute occurs, agencies must provide information about the dispute to OA, Office for Human Resources Management, Bureau of Employee Benefits and Services.
 - (5) **Copies of Designation Notice and Disapproval Notice Forms and Non-Routine Letters Regarding the Absence.** These records should be filed in the employee's Official Personnel Folder (OPF).

- u. **Department of Labor Audits.** The Department of Labor may review/audit FMLA records at any time. If a review/audit is requested by the Department of Labor at an agency or field location, immediate notification of the review/audit must be made to OA, Office for Human Resources Management, Bureau of Employee Benefits and Services for centralized coordination.

6. RESPONSIBILITIES.

a. The Employee shall:

- (1) Notify the supervisor or SPF Coordinator of a need to use SPF, Military Exigency or Military Caregiver Absence.
- (2) Provide required documentation to the SPF Coordinator within the required timeframes.
- (3) Follow the organization's call off policy.
- (4) When returning to work from SPF Absence, if the Employee Serious Health Condition Certification Form does not cover the period of absence, provide an updated Employee Serious Health Condition Certification Form or other type of release from the health care provider prior to returning to work.

b. The Supervisor shall:

- (1) Monitor employee absences.
- (2) Refer employees who may have a serious health condition or the need for SPF, Military Exigency or Military Caregiver Absence to the SPF Coordinator.
- (3) Once the need for SPF, Military Exigency or Military Caregiver Absence is established, ask the employee if any absences or call-offs are due to the serious health condition of the employee or family member, the serious injury or illness of the covered servicemember or covered veteran or a Military Exigency.
- (4) Ensure that: the employee is using correct absence codes; applicable accrued paid leave is used when required by policy at the commencement of the SPF, Military Exigency or Military Caregiver Absence; and that when an employee has multiple events, the appropriate event is identified.
- (5) Notify the SPF Coordinator when an employee returns to work from SPF, Military Exigency or Military Caregiver Absence. If the absence was for an employee's own serious health condition, and the Employee Serious Health Condition Certification Form does not cover the period of absence, the supervisor must require the employee to provide a release from the health care provider prior to allowing the employee to return to work.

c. The SPF Coordinator shall:

- (1)** Ensure that any FMLA notices and Enclosure 1, Employee Rights and Responsibilities Under the Family and Medical Leave Act, are posted on all official bulletin boards.
- (2)** Ensure that all materials about FMLA, SPF, Military Exigency and Military Caregiver Absences that are posted on a website and available in written form are up to date.
- (3)** Provide consultative services to employees and supervisors about FMLA, SPF, Military Exigency and Military Caregiver Absences and provide Enclosure 2, Notice to Employees Family and Medical Leave Act Sick, Parental, and Family Care (SPF), Military Exigency and Military Caregiver, when appropriate.
- (4)** Determine eligibility and entitlement for new events and send the Notice of Eligibility, Notice to Employees, Request for SPF Absence, and the Serious Health Condition Certification Forms within five business days of learning of the absence.
- (5)** Monitor the due date of information requests sent to employees and follow up if certification is not received within the time frame.
- (6)** Consult with supervisors to obtain the current status of the employee while awaiting receipt of the certification.
- (7)** Review supporting documentation and approve or reject the request for SPF, Military Exigency or Military Caregiver Absence in writing.
- (8)** Send the Designation Notice or Disapproval Notice within five business days of receiving sufficient information to make the determination of approval/denial.
- (9)** Perform the following SAP functions: create a FMLA event; ensure that the employee is using correct absence codes; ensure that applicable accrued paid leave is used when required by policy at the commencement of the SPF, Military Exigency or Military Caregiver Absence; approve or disapprove leave requests; link absences to the SPF, ESPF, Military Exigency or Military Caregiver event; and enter PA-40 actions in SAP as appropriate to affect benefits.
- (10)** Monitor absences, eligibility and entitlements, and obtain updated supporting documentation as needed in connection with absences and approved events.
- (11)** If the Employee Serious Health Condition Certification Form does not cover the period of absence for an employee's serious health condition, request the employee to provide an updated Employee Serious Health Condition Certification Form or other type of release from the health care provider prior to allowing the employee to return to work.

- (12) Ensure that the following SAP procedures are completed: leave request is end-dated; absences are linked; and if appropriate, the return transaction is entered when an employee returns to work.
- (13) Notify employees of available options when entitlements are about to expire.
- (14) Enter ESPF transactions as required.

d. Office of Administration, Office for Human Resources Management, Bureau of Employee Benefits and Services shall:

- (1) Review requests for unpaid SPF Absence after the first 12 weeks of absence in a rolling year when due to an employee's catastrophic illness or injury and requests for SPF Absence related to the serious health condition of children age 18 or older.
- (2) Run routine reports to monitor SPF, Military Exigency and Military Caregiver Absence usage and potential paid leave that should be designated as SPF, Military Exigency or Military Caregiver Absence.
- (3) Provide consultative services and serve as a gatekeeper for legal advice and requests for second/third opinions.

7. PROCEDURES:

- a. SPF Coordinators ensure FMLA notices and Enclosure 1, Employee Rights and Responsibilities Under the Family and Medical Leave Act, are posted as required and that all written or website materials that include FMLA, SPF, Military Exigency and Military Caregiver Absence are current.
- b. Employees, supervisors or human resource office representatives inform the SPF Coordinator whenever an employee's absence could qualify as SPF, ESPF, Military Exigency or Military Caregiver Absence.
- c. SPF Coordinators determine the employee's eligibility and entitlement; provide consultative services to employees and supervisors; within five days of notification of the need for absence, send the Notice of Eligibility, Notice to Employees, Request for SPF Absence and the Serious Health Condition Certification Forms, as appropriate for the type of absence.
- d. Employees complete the request form and ensure submission of the required certification within the time frame documented in the Notice of Eligibility Form.
- e. SPF Coordinators review the certification and send notification of designation or disapproval within five days of receiving sufficient certification. Insufficient certification is returned to employees for completion or clarification.
- f. OA, Office for Human Resources Management, Bureau of Employee Benefits and Services reviews requests for SPF Absence related to the serious health condition of children age 18 or older and requests for unpaid intermittent or reduced-time SPF Absence beyond the first 12 weeks in the rolling year.

- g.** SPF Coordinators ensure absences are entered in accordance with required policy, create events and link absences in the SAP FMLA Workbench; enter PA40 actions to start and return employees from long-term unpaid absences; enter data in the SPF tracking system and pull reports of unlinked absences, five or more consecutive day sick leave absences and tasks due.
- h.** Supervisors, once an employee's need for SPF, ESPF, Military Exigency or Military Caregiver Absence is known, ask employees if call-offs are due to that event.
- i.** Employees enter the appropriate SPF, Military Exigency or Military Caregiver Absence code on individual absence requests and include remarks as instructed on the Designation Notice.
- j.** Supervisors monitor employee absences and ensure all absences are entered with correct absence codes.
- k.** SPF Coordinators monitor absences, eligibility, entitlement and due dates for request forms and certifications and follow up in writing as appropriate.
- l.** Supervisors ensure employees provide a release to return to work, when appropriate, and notify the SPF Coordinator when employees return to work.
- m.** SPF Coordinators notify employees of available options when entitlements are about to expire.
- n.** OA, Office of Human Resources Management, Bureau of Employee Benefits and Services provides consultative services to SPF Coordinators and human resource offices and serves as a gatekeeper for legal advice and second/third medical opinions.

This directive replaces, in its entirety, *Management Directive 530.30*, dated December 14, 2007.

Enclosure 1 - Employee Rights and Responsibilities Under the Family and Medical Leave Act

Enclosure 2 - Notice to Employees Family and Medical Leave Act Sick, Parental, and Family Care (SPF), Military Exigency and Military Caregiver

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (1) 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 injury or illness*; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.*

***The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months*, and if at least 50 employees are employed by the employer within 75 miles.

***Special hours of service eligibility requirements apply to airline flight crew employees.**

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and

a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Wage and Hour Division



WHD Publication 1420 - Revised February 2013

Notice to Employees Family and Medical Leave Act

Sick, Parental, and Family Care (SPF), Military Exigency and Military Caregiver

FMLA Information

The absence provisions described below are consistent with the Family and Medical Leave Act of 1993 (FMLA) except where more generous benefits are granted by the commonwealth. The FMLA requires qualifying employers to provide at least 12 weeks of leave (with or without pay) with benefits within a 12 month period for the reasons described in ***Sick, Parental and Family Care (SPF) Absence*** and ***Military Exigency Absence*** below, and 26 weeks (with or without pay) with benefits within a single 12 month period for ***Military Caregiver Absence*** below, as long as the employee was employed at least one year and worked at least 1,250 hours during the previous 12 month period. SPF Absence, Military Exigency Absence and Military Caregiver Absence are designated as FMLA leave in accordance with the provisions of the FMLA. All employees are covered by FMLA; only permanent employees are eligible for SPF Absences.

Absence Types

Sick, Parental and Family Care (SPF)

SPF Absence is a paid or unpaid absence from work with benefits due to the serious health condition of an employee, the serious health condition of a qualifying family member when the employee is attending to the medical needs of the family member, or for the birth, adoption or foster care placement of a child.

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Family member for this purpose is a spouse, parent, child, or other person qualifying as a dependent under IRS eligibility criteria. A parent can be a biological, adoptive, step or foster parent or an individual who stood as a parent (in loco parentis) to the employee when the employee was a child. A child can be a biological child, adopted child, foster child, stepchild, legal ward, or a child in the care of a person who is standing as a parent (in loco parentis); a child must be under age 18, or if 18 years or older, must be incapable of self-care because of a mental or physical disability. Note: The definition of family member for management employees and employees covered by some union agreements also includes the employee's domestic partner and the biological or adopted child of the domestic partner.

Military Exigency Absence

Military Exigency Absence is a paid or unpaid absence from work with benefits arising from the fact that a spouse, parent or child of any age is either a member of a reserve component or a national guard member on covered active duty during deployment to a foreign country under a Federal call, or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10 of the United States code which is during a war or national emergency declared by the president or Congress; or an active member of a regular component of the Armed Forces on duty during deployment to a foreign country. Military Exigency Absence may be used:

- a. To address any issue arising from notification of an impending order seven calendar days or less prior to the date of deployment and used within seven days of notification of the impending call or order;
- b. For official ceremonies, programs or events sponsored by the military and related to the active duty; or for family support or assistance programs or briefings sponsored by the military, a military service organization or the Red Cross and related to the active duty;
- c. To arrange for alternative childcare when the call to duty necessitates a change in childcare; to provide childcare on an urgent, immediate need basis; to enroll or transfer to a new school or day care; or to attend meetings or conferences at a school or daycare when necessary due to circumstances arising from active duty or call to duty;

- d. To make or update financial or legal arrangements to address the covered military member's absence while on active duty or call to active duty status; or to act as the covered military member's representative to obtain, arrange or appeal military service benefits while the covered military member is on active duty or call to active duty status and for 90 days after release from active duty;
- e. To attend counseling for the employee, covered military member or child provided by someone other than a health care provider provided the need for counseling arises from the active duty or call to active duty status. Note: For Military Exigency Absence used under this section, the definition of child is a biological child, adopted child, foster child, stepchild, legal ward, or a child in the care of a person who is standing as a parent (in loco parentis); a child must be under age 18, or if 18 years or older must be incapable of self-care because of a mental or physical disability at the time the leave is to commence;
- f. To spend time with a covered military member who is on short-term rest and recuperation during the period of deployment. Up to 15 days may be used for each instance;
- g. To attend arrival ceremonies, reintegration briefings and events and any other official ceremony or program sponsored by the military 90 days after release from active duty; or to address issues arising from the death of a covered military member while on active duty;
- h. To arrange for alternative care, provide care on an urgent, immediate need basis, to admit to or transfer to a care facility, or to attend meetings with staff at a care facility for a military member's parent who is incapable of self-care, when the care is necessitated by the military member's covered active duty; or
- i. To address other events arising from active duty or call to active duty status when agreed upon between the employer and employee.

Military Caregiver Absence

Military Caregiver Absence is a paid or unpaid absence from work with benefits due to the serious injury or illness of a servicemember who is a family member when the employee is attending to the medical needs of the servicemember.

A serious injury or illness is an injury or illness incurred in the line of duty or an injury or illness that existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces that may either render a servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating; or result in a veteran's medical treatment, recuperation or therapy. Servicemember for this purpose is an individual who is 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 an out-patient status, or is otherwise on the temporary disability retired list, as a result of a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) and was discharged or released under conditions other than dishonorable at any time during the period of five years prior to the first date the employee takes leave to care for the veteran.

Family member for this purpose is a spouse, parent, child of any age and next of kin. Next of kin for this purpose is the nearest blood relative of a servicemember who has a serious injury or illness in the order of blood relatives granted legal custody by court decree or law or otherwise in the following order: blood relative designated in writing by the servicemember as the nearest blood relative for this purpose, brothers and sisters, grandparents, aunts and uncles, first cousins.

Absence Requests

All requests for SPF Absences, Military Exigency Absences and Military Caregiver Absences, including paid absences, as described below, shall be made at least two weeks in advance, if circumstances permit. When not foreseeable, requests shall be made as soon as practicable to ensure protection under the FMLA. This request shall be made in writing on the commonwealth's *Request for SPF Absence*, *Request for Military Exigency*, or *Request for Military Caregiver Absence* form. Only permanent employees may request SPF Absences.

Eligibility

Not all employees are eligible to use SPF, Military Exigency and Military Caregiver Absence. Eligibility is determined based on two factors: One year of employment and 1,250¹ hours worked during the 12 month period preceding the date of the first absence of each event. An event is a specific reason or medical condition for which an SPF, Military Exigency and Military Caregiver Absence is approved. Regular hours and overtime hours worked and all military absence hours count toward the 1,250 hour requirement; holidays and other paid and unpaid absences do not count.

Once eligibility is determined for the SPF, Military Exigency or Military Caregiver event, the employee remains eligible for that event for the next 12 months as long as SPF, Military Exigency or Military Caregiver Absence entitlement is available and the absence is certified, medically or otherwise, as required. At the end of the 12 month period, eligibility will be re-measured only for SPF and Military Exigency Absences. Eligibility is also re-measured for each new or different event.

Absence Entitlement

SPF Absence

Employees who meet eligibility are entitled to up to six months² of SPF Absence within a rolling year for all SPF events. If an employee has in excess of six months of paid leave, the entitlement is not limited to six months. Because a rolling year is the 12 month period measured backward from the date of each absence, an employee's entitlement can change by the day. Paid and unpaid SPF and Military Exigency Absences within the rolling year count against the six month SPF Absence entitlement.

For a birth, adoption, or foster care SPF event, the absence begins upon the employee's request; however, it may not be used prior to the date of birth, custody, or placement, except when required for adoption or foster care placement to proceed. The SPF event shall expire one year from the date of birth, adoption, or placement for foster care, regardless of whether or not the entire SPF Absence entitlement has been used.

The absence code for unpaid parental leave shall not be used while incapacitated from childbirth. Paid or unpaid sick leave is available prior to birth, if necessary, or after the birth when a female employee is unable to work due to childbirth as certified by a physician. Female employees who are incapacitated before or after childbirth are required to provide the commonwealth *Serious Health Condition Certification* form to the agency Human Resource Office as described in ***Required Documentation*** below.

Military Exigency Absence

Employees who meet eligibility are entitled to up to 12 weeks³ of Military Exigency Absence within a rolling year. Because a rolling year is the 12 month period measured backward from the date of each absence, an employee's entitlement can change by the day. Paid and unpaid SPF and Military Exigency Absences within the rolling year count against the 12 week Military Exigency Absence entitlement.

Military Caregiver Absence

Employees who meet eligibility are entitled to up to 26 weeks of Military Caregiver Absence within a single 12 month period. A single 12 month period is the 12 month period following the date of the employee's first absence for a servicemember's serious injury or illness. Up to 26 weeks of Military Caregiver Absence is available for each servicemember and each serious injury or illness, but not more than 26 weeks may be used within any single 12 month period. Paid and unpaid Military Caregiver Absences count against this entitlement.

Use of Paid Leave

SPF Absence

Upon commencement of each SPF Absence, all applicable accrued sick leave (including sick family and additional sick family leave) must be used before any other paid or unpaid absence. Sick leave is only required to be used and may only be used for reasons in which sick leave is ordinarily used. After all applicable, accrued sick leave is used, employees may choose to use accrued annual, personal, holiday and compensatory leave. Employees also may choose to use anticipated annual, personal and/or sick leave in accordance with anticipation rules. All forms of paid leave used, beginning with sick leave, will run concurrently with the commencement of and be deducted from the SPF and Military Exigency Absence entitlements. Note: Effective during the first pay period in leave calendar year 2012, management

¹ For permanent part-time management employees and permanent part-time employees represented by some unions, the hours worked requirement to determine an employee's eligibility for SPF Absence is 900 hours.

² Any time six months or 26 weeks is referred to it means 982.5 hours for employees with a standard work schedule of 37.5 hours per week; 1,048 hours for employees with a standard work schedule of 40 hours per week; or a prorated amount for part-time employees.

³ Any time 12 weeks is referred to it means 450 hours for employees with a standard work schedule of 37.5 hours per week; 480 hours for employees with a standard work schedule of 40 hours per week; or a prorated amount for part-time employees.

employees and employees represented by some union agreements may choose to save up to ten days of accrued sick leave. The choice to retain or not retain sick leave cannot be made retroactively, and saved days will be measured based on accrued sick leave available at the commencement of the absence.

Military Exigency Absence

Upon commencement of each Military Exigency Absence, all accrued annual, personal, holiday and compensatory leave must be used before using leave without pay. All forms of paid leave will run concurrently with the commencement of and be deducted from the SPF and Military Exigency Absence entitlements.

Military Caregiver Absence

Upon commencement of each Military Caregiver Absence, all applicable accrued sick family and additional sick family leave must be used before any other paid or unpaid leave. After all applicable accrued sick family and additional sick family leave is used, employees must use all accrued annual, personal, holiday and compensatory leave. Employees also may choose to use anticipated annual, personal or sick family leave in accordance with anticipation rules. All forms of paid leave, beginning with sick family leave, will run concurrently with the commencement of and be deducted from the Military Caregiver Absence entitlement.

Use of Intermittent or Reduced-time Absence

SPF Absences that are medically necessary and Military Exigency Absences may be taken on an intermittent or reduced-time basis only during the initial 12 weeks of absence in a rolling year. For parental absence, approval is at the agency's discretion. Military Caregiver Absences that are medically necessary may be taken on an intermittent or reduced-time basis for up to 26 weeks within a single 12 month period.

For all intermittent or reduced-time absences for planned medical treatment, the employee shall attempt to develop a schedule, working cooperatively with the supervisor, which meets the employee's needs with consideration to the times that are least disruptive to normal operations, subject to the approval of the health care provider. Employees are expected to continue to follow applicable procedures for requesting absences, including the call-off notification procedures.

Absences After 12 Weeks

If eligibility is established and entitlement is available, requests for SPF Absences after the first 12 weeks of absence in a rolling year shall be approved only when: the period of absence is full-time and is expected and medically certified to be at least two consecutive weeks; or the employee has a catastrophic illness or injury that poses a direct threat to life or to the vital function of major bodily systems or organs as determined and approved by the Governor's Office of Administration, of which all decisions will be final and may not be grieved; or the employee requests to work on a reduced-time basis for parental reasons and approval for a specific timeframe is granted at the agency's discretion. In addition, paid leave that was not used at the commencement of the absence may be used subject to the ordinary provisions for the use of those leave types.

Requests for Military Caregiver Absence shall be approved on a full-time, intermittent or reduced-time basis when needed to attend to the medical needs of a servicemember with a serious injury or illness during the single 12 month period.

For Military Exigency Absence, leave is not available after 12 weeks.

Required Medical/Proof Documentation

SPF Absence

Documentation from a health care provider must be provided for all SPF events. Failure to provide timely and complete documentation may result in the delay or denial of SPF Absence. For parental leave, proof of the child's birth, adoption or foster care placement must be provided within 15 days of the event. Note: To enroll a dependent in health coverage, contact the HR Service Center at 1.866.377.2672 or your local Human Resource Office if your agency is not served by the HR Service Center.

For all other SPF reasons, medical documentation on the commonwealth's *Serious Health Condition Certification* form must be provided within 15 calendar days of receiving a written request for medical documentation. The request for leave could ultimately be denied if complete information is not provided or the medical information provided does not certify a serious health condition. Medical recertification of the need for SPF Absence may be requested as often as every 30 calendar days in connection with intermittent absence, upon expiration of the initial certification and/or upon changed circumstances. A second and third medical opinion may be ordered at the commonwealth's expense.

Military Exigency Absence

For qualifying exigency absences, a copy of the family member's orders or other military documentation is required at the time of the first request. In addition, for **each** absence, a written request that includes the justification for the absence and the specific activity that will be performed during the absence is required on the commonwealth's *Military Exigency Certification* form. A copy of the Rest and Recuperation leave orders, or other documentation issued by the military with the dates of the military member's leave, is required when requested to spend time with a Family Member who is on short-term rest and recuperation during a period of deployment. Additional documentation to substantiate that the employee performed that activity during the absence also may be requested.

Military Caregiver Absence

An Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) is acceptable as documentation for the period covered by the ITO/ITA; however, certification on the commonwealth's form may later be required. Documentation of enrollment in the Dept. of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers is sufficient. Otherwise, documentation is required from the servicemember's health care provider or military health care provider on the commonwealth's *Serious Injury or Illness of a Current Servicemember Certification* or *Serious Injury or Illness of a Veteran Certification* form. Confirmation of the employee's relationship to the servicemember may be required.

Extended Sick, Parental and Family Care (ESPF) Absence Entitlement

Employees are entitled to up to six months of ESPF Absence without benefits when a request for absence is made in writing, proof of the need for continuing absence is provided on the commonwealth's *Serious Condition Certification* form and the absence is contiguous to the expiration of SPF Absence. In addition, when the one year of service eligibility requirement has not been met, or when employees have been employed less than one year since the most recent hire date, and the ESPF Absence is for at least two consecutive weeks, ESPF Absence will also be provided. Note: Only one occasion within a rolling year will be approved.

Options When Ineligible or Entitled to SPF, ESPF, Military Exigency or Military Caregiver Absence

When not eligible or entitled to SPF, ESPF, Military Exigency or Military Caregiver Absence, the employee will be subject to disciplinary action up to and including involuntarily termination from employment unless one of the following options is chosen: use available paid leave that was not used at the commencement of the absence subject to ordinary provisions for the use of those leave types, request to use regular/approved leave without pay subject to ordinary provisions for the use of this leave, return to work, resign the position, or apply for regular or disability retirement. **IMPORTANT:** An employee who wishes to apply for a regular or disability retirement must do so prior to resigning or being separated from employment.

Return to Work

Employees should notify their supervisor at least 24 hours in advance of their expected return to work. If the *Employee Serious Health Condition Certification* form does not cover the period of absence, an updated *Employee Serious Health Condition Certification* form or other type of release from the health care provider to return to work will be required. If the health care provider releases the employee to return to work with limitations, the job duty restrictions must be documented by the health care provider and approval to work with restrictions must be granted in writing before returning to work.

Return to Work Rights

Upon return from an SPF, Military Exigency or Military Caregiver Absence, employees have the right to return to the same or equivalent position held before commencing the absence. After commencing ESPF Absence, employees have limited return rights. Rights usually are to, during the remainder of the six month period, a vacant position in the same or equivalent classification to which there are no seniority claims and which the agency intends to fill. Rights can vary by union. Refusal to return to a position that is offered will terminate these return rights.

Benefits While on SPF, Military Exigency or Military Caregiver Absence

Benefits continue during SPF, Military Exigency and Military Caregiver Absence as described below.

Annual, sick, and personal leave continue to accrue based on regular hours paid. Holidays will be earned provided the employee is in a paid status the half day before and half day after the holiday. Personal leave will be earned provided 20 days (150 hours for employees with a standard work schedule of 37.50 hours per week or 160 hours for employees with a standard work schedule of 80.00 hours per week) are paid within the earning period

Group life insurance coverage will continue to be state paid.

Health benefits through the PEBTF will continue as long as the employee continues to pay the applicable employee contributions and buy-ups during the paid/unpaid SPF Absence. Employees enrolled in the PEBTF using unpaid SPF, Military Exigency or Military Caregiver Absence will receive notice regarding the payment amount and due date. Any delinquency in payment to the PEBTF will result in termination of the employee's health benefits. Employees must contact the HR Service Center at 1.866.377.2672 (or your local Human Resource Office if your agency is not served by the HR Service Center) to add any new dependents to medical/hospital and supplemental benefits contracts within 60 days of birth or assuming custody of a child.

Americans With Disabilities Act (ADA)

Both the American's With Disabilities Act (ADA) and the FMLA include provisions that provide employees with leave under certain circumstances. Under the ADA an individual with a medical condition that qualifies as a disability may be entitled to leave without pay as a reasonable accommodation. Employees who wish to explore the possibility of leave as an accommodation to a disability should contact their agency's Disability Services Coordinator. The approval of SPF Absence does not indicate, and should not be interpreted to indicate that you are regarded by the commonwealth as having a disability as defined by the ADA.

Questions

Questions concerning SPF Absence or the benefit entitlements may be referred to your SPF Coordinator, [NAME], [TITLE], [NAME OF EMPLOYER], [ADDRESS], [PHONE], [FAX].