

Contract Administration Unit

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Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act (FMLA) is a federal law that Congress enacted in 1993 requiring many employers, including the Postal Service, to grant eligible employees time off work without penalty under certain conditions. Article 10 of the National Agreement incorporates this law into the leave program for city letter carriers. The FMLA guarantees eligible letter carriers up to 12 weeks of leave each postal leave year for:

- A new child in the family—by birth, by adoption or by placement in foster care;
- Caring for a family member with a serious health condition;
- The employee’s own serious health condition that prevents him or her from performing the job; or
- Qualifying exigencies arising out of the fact that the employee’s family member is on or has been notified of “covered active duty” in the armed forces.

The FMLA also guarantees eligible letter carriers up to 26 weeks of leave in a single 12-month period to care for a “covered” service member with a “serious injury or illness,” if that service member is their spouse, son, daughter, parent or next of kin.

The FMLA guarantees time off, whether paid or unpaid. The type of leave taken depends on the reasons for the leave and the usual postal leave regulations. Eligibility criteria, medical certification guidelines and other detailed rules govern letter carrier rights to FMLA leave. The rules are found in the federal law and in the Code of Federal Regulations (Chapter 29, C.F.R., Part 825). The national parties jointly created a summary overview of the Family and Medical Leave Act of 1993 dated Nov. 24, 2015 (M-01866). This document provides a mutual understanding of the national parties on issues related to the FMLA and can be found in NALC’s Materials Reference System (MRS) at nalc.org/mrs.

According to the act, employers are prohibited from interfering with, restraining or denying the exercise of any rights provided by FMLA. The employer cannot retaliate against an employee for exercising or attempting to exercise FMLA rights. Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions. Similarly, FMLA-covered absences may not be used in any disciplinary actions. Employees cannot waive, nor may employers induce employees to waive, their prospective rights under FMLA.

FMLA is not a separate category of leave and does not provide letter carriers with any additional paid

leave. Sick and annual leave accrual amounts remain the same as what carriers are entitled to under the National Agreement. Employees may use sick leave, annual leave, or leave without pay (LWOP) for FMLA-protected absences in accordance with current leave policies. Though city carrier assistants (CCAs) earn only up to 13 days of annual leave per year, CCAs are covered under FMLA and are eligible to use both annual leave and LWOP for FMLA-protected absences.

All employees, including CCAs, are eligible for FMLA-protected leave if they meet two requirements: 1) the employee must have worked for the Postal Service for at least 12 months, and 2) must have accrued at least 1,250 work hours during the 12-month period immediately preceding the leave. CCA breaks in service do not cancel out accrued time of service for FMLA purposes since the 12 months do not have to be consecutive. The months of service may be accrued at any time during the seven-year period immediately preceding the leave. Only actual hours worked, not time spent on paid leave, are used to determine whether an employee has met the 1,250-work hour requirement.

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Every eligible postal employee is entitled to take up to 12 workweeks of FMLA leave in a 12-month period for any of the reasons listed below:

- A serious health condition that makes the employee unable to perform the essential functions of his or her job.
- To care for the employee’s spouse, child or parent who has a serious health condition. Such care may involve instances where the family member is unable to care for his or her own medical, safety or other needs because of a serious health condition, or needs help in being transported to the health care provider. Such care also might involve providing psychological

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FMLA (continued)

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comfort and reassurance to the family member with a serious health condition.

- The birth of a child and to bond with the newborn child within one year of birth. Both mothers and fathers have the same right to take FMLA leave for the birth of a child. Birth and bonding leave must be taken as a continuous block of leave unless the Postal Service agrees to allow intermittent leave. However, if a child has a serious health condition, a parent is entitled to use FMLA leave intermittently or to work a reduced schedule to care for the child even without an agreement in place with the employer.

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- The placement with the employee of a child under adoption or foster care and to bond with the newly placed child within one year of placement. FMLA leave may be taken before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be entitled to FMLA leave to attend counseling sessions, appear in court, consult with his or her attorney, or travel to another country to complete an adoption. FMLA leave to bond with a child after placement must be taken as a continuous block of leave unless the Postal Service agrees to allow intermittent leave.

- Any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter or parent is a covered military member on “covered active duty.” Qualifying exigencies are situations arising from the military deployment of an employee’s spouse, son, daughter or parent to a foreign country. Qualifying exigencies for which an employee may take FMLA leave include making alternative child care arrangements for a child of the military member when the deployment of the military member necessitates a change in the existing child care arrangement; attending certain military ceremonies and briefings; taking leave to spend time with a military member on rest and recuperation leave during deployment; making financial or legal arrangements to address a covered military member’s absence; or engaging in certain activities related to care of the parent of the military member while the military member is on covered active duty.

An eligible employee also may take up to 26 workweeks of FMLA military caregiver leave in a single 12-month period to care for a covered service member (current member or veteran of the National Guard, reserves or regular armed forces) with a serious injury or illness incurred or aggravated in the line of duty, if the employee is the spouse, son, daughter, parent or next of kin of the covered service member.

Under the law, FMLA has specific definitions for family members. A parent is defined as a biological, adoptive, step or foster parent, or an *in loco parentis*. An *in loco parentis* is a person who acts as a parent toward a son or daughter, or a person who had such responsibility for the employee when the employee was a child. A spouse is defined as the other person with whom an individual entered into a marriage as defined by the applicable state laws where the marriage occurred. This includes common law marriages. For the purposes of applying the FMLA, all legally married couples who are otherwise eligible for FMLA-protected leave can now take such leave for a qualifying FMLA reason, regardless of where they live or work. A son or daughter is defined as biological, adopted, foster, *in loco parentis* (defined above under definition of parent), legal ward or stepchild under the age of 18; or a child 18 or over who has a disability as defined under the Rehabilitation Act and where the disability makes the person incapable of self-care.

The FMLA also has created several separate definitions of family members for both categories of military family leave. Son or daughter, for the purposes

of qualifying exigency leave, means the employee's biological child, adopted child, foster child, stepchild, legal ward, or a child for whom the employee stood *in loco parentis*, who is on covered active duty or call to covered active-duty status, regardless of age. For purposes of military caregiver leave, a son or daughter of a covered service member is the service member's biological, adopted or foster child, stepchild, legal ward, or a child for whom the service member stood *in loco parentis*, and who is of any age. Additionally for military caregiver leave, a parent of a covered service member is a covered service member's biological, adoptive, step or foster parent, or any other individual who stood *in loco parentis* to the covered service member. Next of kin of a covered service member, for purposes of military caregiver leave, is the nearest blood relative, other than the covered service member's spouse, parent, son or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under FMLA.

When the need for FMLA leave is foreseeable (e.g., pregnancy) employees should notify management of the need for leave and provide appropriate supporting documentation (PS Form 3971, Request for or Notification of Absence) at least 30 days before the absence is to begin. If 30 days' notice is not practicable, employees should notify management as soon as possible (i.e., the same day the employee learns of the need for leave or the next business day). When the need for leave is not foreseeable, an employee must comply with the employer's usual and customary notice and procedural requirements for requesting leave.

Employees must provide certification for FMLA-covered absences to the Postal Service within 15 days of the date of the absence (unless not practicable under the circumstances despite the employee's diligent good-faith efforts) and correct insufficient certification within seven days (unless not practicable under the circumstances despite the employee's diligent good faith efforts). The certification may be in any format, including the NALC FMLA forms, if it provides the information required for certification by the implementing regulations of the FMLA. These forms

can be found on the NALC website under Workplace Issues>Resources>FMLA.

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Can management require “supporting documentation” for an absence of three days or less for an employee’s absence to be protected under the FMLA?

In M-01866, the parties agreed:

The Postal Service may require an employee’s leave to be supported by an FMLA medical certification, unless waived by management, in order for the absence to be protected. When an employee uses leave due to a condition already supported by an FMLA certification, the employee is not required to provide another certification in order for the absence to be FMLA protected.

Keep in mind, in accordance with the *Employee Labor Manual (ELM)* Section 513, if an employee uses sick leave for absences of more than three days, the employee is required to submit medical documentation or other acceptable evidence of incapacity for work or of the need to care for a family member and, if requested, substantiation of the family relationship, even if the absence is due to a condition that already is supported by FMLA certification.

If you have a situation that qualifies for absences under the provisions of the Family and Medical Leave Act, make sure to exercise your rights outlined above to protect yourself. If you have any additional questions or concerns about the FMLA, you should consult with your shop steward or NALC branch officer.