

# Family and Medical Leave Act

**O**n Nov. 24, the NALC and the Postal Service agreed upon a jointly developed document (M-01866) to provide the mutual understanding of the national parties on issues related to leave covered by the Family and Medical Leave Act of 1993 (FMLA). A similar document was previously included in the 2005 *Joint Contract Administration Manual (JCAM)*. Much has changed since 2005.

The National Defense Authorization Acts (NDAA) of 2008 created two new categories of military family leave covered under the FMLA. Those categories are qualifying exigency leave and military caregiver leave. The NDAA of 2010 then further expanded both categories of military family leave. M-01866 describes the FMLA rights regarding those two categories as follows:

- **Qualifying exigency leave**—The Postal Service must grant an eligible employee up to 12 workweeks of FMLA leave during the 12-month FMLA leave period for qualifying exigencies that arise out of the fact that the employee’s spouse, son, daughter or parent, who is a member of the Regular Armed Forces, National Guard, Reserves, or a retired member of the Regular Armed Forces or Reserves, is under a call or order to covered active duty (or notification of an impending call or order to covered active duty) during the deployment of the member with the Armed Forces to a foreign country. For those military members in the National Guard or Reserves, the call to active duty must also be in support of a contingency operation.
- **Military caregiver leave**—The Postal Service must grant an eligible employee who is a spouse, son, daughter, parent or next of kin of a covered service member or covered veteran with a serious injury or illness up to a total of 26 workweeks of leave during a single 12-month period to care for the covered service member or covered veteran. While the 12-month period for every other category of FMLA leave coincides with the postal leave year, the 12-month period for military caregiver leave begins on the date that the eligible employee first takes military caregiver leave.

**The definition of a spouse has also changed since the previous FMLA document was created in 2005.** A spouse, as defined in the statute, means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one state. This definition includes an individual in a same-sex or common law marriage that either:

1. Was entered into in a state that recognizes such marriages, or
2. If entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.

M-01866 also covers more than the changes since 2005. For example, a few common questions usually come up when discussing FMLA, such as:

- Who is an eligible employee?
- What is a leave year?
- What is a serious health condition?

These are all valid questions that are answered in M-01866. An **eligible employee** is one who has been employed by the Postal Service for at least 12 months (this time does not have to be consecutive, but generally must have been worked within the past seven years) and has completed at least 1,250 workhours during the 12-month period immediately preceding the date the leave starts. The 1,250 workhours includes overtime, but excludes any paid or unpaid absence, except for absences due to military service. Leave without pay (LWOP), including union LWOP, does not count toward the 1,250 workhour eligibility requirement.

The law entitles eligible employees to take up to 12 workweeks of job-protected absences during a 12-month period as defined by the employer. The Postal Service has selected the postal **leave year**, which begins with the first full pay period that begins in a calendar year and ends with the start of the next leave year.

An employee’s own **serious health condition** is one in which the employee is unable to perform the functions of his or her job. An employee is “unable to perform the functions of the position” when his or her health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee’s position within the meaning of the Americans with Disabilities Act (ADA).

FMLA-covered absences to care for an employee’s spouse, son, daughter or parent who has a serious health condition requires medical certification that the employee is needed to care for a family member and encompasses physical care and psychological comfort and reassurance when the family member is receiving inpatient or home care.

**The answers to the above questions are just the beginning to understanding the rights afforded to, and responsibilities required of, employees and the Postal Service under the FMLA.** For a more in-depth understanding, refer to M-01866 in the Materials Reference System on the NALC website at [mseries.nalc.org/Mo1866.pdf](http://mseries.nalc.org/Mo1866.pdf).