



County Technical Assistance Service

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Leave for Qualifying Exigency

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

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

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Leave for Qualifying Exigency

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An eligible employee is entitled to take FMLA leave for any “qualifying exigency” arising out of the fact that the employee’s spouse, son, daughter, or parent is on, or has been notified of an impending call to, “covered active duty.”^[1] “Covered active duty” means (1) in the case of a member of the regular component of the Armed Forces, duty during deployment to a foreign country, and (2) in the case of a member of the reserve component of the Armed Forces, duty during deployment with the Armed Forces to a foreign country under a call to active duty.^[2] “Qualifying exigency” includes the following: short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation and post-deployment activities. It also includes any additional activities that are agreed upon by the employee and employer.^[3]

Eligible employees may take FMLA leave for the following “qualifying exigencies” that occur in connection with covered active duty or a call to covered active duty of the employee’s spouse, son, daughter or parent:

1. Short notice deployment. Leave may be taken to address any issues arising from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven calendar days or less prior to the date of deployment. Leave for this purpose can be used for seven calendar days after the notice is received.
2. Military events and related activities. Leave may be taken to attend official ceremonies and events sponsored by the military related to the call to active duty, or to attend support or assistance programs or informational briefings.
3. Childcare and school activities. Leave may be taken to arrange for alternative childcare, to provide childcare on an urgent, immediate need basis, to enroll in or transfer to a new school or daycare facility, or to attend school meetings necessitated by the call to active duty.
4. Financial and legal arrangements. Leave may be taken to make legal and financial arrangements to address the military member’s absence while on active duty, or to act as the military member’s representative before a federal, state, or local agency regarding military service benefits.
5. Counseling. Leave may be taken to attend counseling provided by someone other than a health care provider.
6. Rest and recuperation. Up to fifteen days of leave may be taken to spend time with the military member on rest and recuperation leave during the period of deployment.
7. Post-deployment activities. Leave may be taken to attend arrival ceremonies, reintegration events, and other official ceremonies or programs sponsored by the military for 90 days after termination of active duty status, or to address issues arising from death of a military member while on active duty.
8. Parental care. Care for a military member’s parent who is incapable to self-care when the care is necessitated by the member’s covered active duty. Such care may include arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility. 29 C.F.R. § 825.126.
9. Additional activities. Leave may be taken for other events related to the military member’s active duty or call to active duty as long as the employee and the employer agree that the leave qualifies as an exigency and agree on the timing and duration of the leave.

Employees seeking qualifying exigency leave are required to give their employer reasonable notice if the exigency is foreseeable. The notice must advise the employer that a covered family member is on active duty or call-to-active-duty status, give a listed reason for the leave, and give the anticipated length of the absence. Covered active duty requires deployment to a foreign country. 29 CFR § 825.126.

[1] 29 C.F.R. § 825.126.

[2] FMLA Section 101, as amended by NDAA 2010.

[3] 29 C.F.R. § 825.126.

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