

**STUDENT'S
VERSION**



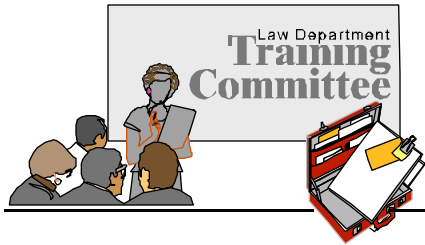
Training for Supervisors

Family and Medical Leave Act

This publication is intended as a general reference to be used in conjunction with training sessions conducted by the Law Department. It is not equivalent to an official handbook, manual, or policy statement, and may contain representations that are subject to interpretation and potential change in the law.

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Training for Supervisors Family and Medical Leave Act

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A. What the
FMLA
provides

- Entitlement to up to 12 work-weeks of leave for covered conditions for eligible employees
- No discipline for FMLA protected absences
- No loss of benefits accrued prior to taking FMLA protected leave
- Continuation of health care benefits
- No retaliation
- No consideration of the use of FMLA leave in making employment decisions; e.g., craft-to-craft transfer or promotions.

B. Relation to other laws

Privacy Act

- Supervisor has a need to know all the information necessary to make an FMLA determination.
- Supervisor may review certification that provides restricted medical information.
- Supervisor may share information on a need-to-know basis with a more knowledgeable person within the USPS for advice if necessary.
- The medical unit must store any documents that include restricted medical information.
- Supervisor should not keep specific diagnosis information in any files or notes.
- Willful violations of the Privacy Act can lead to individual liability.

B. Relation to
other laws
(cont'd)

Federal Employees Compensation Act

- Most absences caused by job-related injury or illness are also absences protected by the FMLA.
- FMLA protection overlaps with and provides protection distinct from the benefits provided by the FECA.
- FECA provides pay, but FMLA entitles the employee to remain away from work if he cannot perform one essential function of his position.
- An employee who refuses a limited duty job offer will not generally continue to receive compensation benefits under the FECA.
- An employee who refuses a limited duty job offer can remain away from work if he is unable to perform one essential function of his position, but only as long as his FMLA protection will allow.

B. Relation to
other laws
(cont'd)

Rehabilitation Act

- Qualified individual with a disability may seek reasonable accommodation to enable him or her to be able to perform the essential functions of his or her position.
- Separate USPS obligation from FMLA, but may overlap under certain circumstances.
- Requests for intermittent leave or reduced schedule because of the employee's own serious health condition may also be requests for reasonable accommodation.
- Light duty requests are not FMLA-protected, but may be requests for reasonable accommodation.
- Contact Labor Relations / Law Department.

Pregnancy Discrimination Act

Fair Labor Standards Act (FLSA)

- "Actual work hours" used to compute eligibility is defined by the FLSA.
- An exempt employee's pay can be "docked" for absences of less than one day in duration due to an FMLA-covered condition.
- The Postal Service is an "employer" for FMLA purposes because of its inclusion under the FLSA.

B. Relation to
other laws
(cont'd)

Title VII

- Avoid complaints of discrimination by treating employees similarly in requirements for certification.
- Avoid sex discrimination complaints by remembering that husbands are entitled to leave to care for their wives when their wives are incapacitated due to pregnancy.
- Avoid sex discrimination complaints by remembering that fathers are entitled to leave for the birth of a child.

C. Relation to Postal Service policies

- FMLA does not affect procedures for requesting and approving leave
- FMLA does not affect documentation requirements for leave approval for pay purposes or return to duty

- ☞ Keep your eye on the ball for two separate issues:
 - ✓ Leave approval
 - ✓ FMLA determination

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D. Relation to National Agreements

- # FMLA is not intended to change bargained for agreements between employer and employees.
- # Sick leave for dependent care is separate from FMLA.
- # Light duty is separate from FMLA.

E. Eligible employees

Any employee of the USPS who has:

- ✓ worked 12 months for the USPS in his or her lifetime and
 - ✓ actually worked 1250 hours within the 12-month period immediately preceding the FMLA protected absence for which leave is requested.
- ☞ Actual hours worked includes straight time and overtime only.

F. Covered conditions

- Birth of son or daughter and care for the healthy child until he or she is one year old
- Placement of a son or daughter for adoption or foster care and bonding with the healthy child within the first year of placement
- Serious health condition of a spouse, parent, son or daughter
- Employee's own serious health condition

G. Leave entitlements

- Intermittent leave includes more than one absence for the same qualifying event.
- Leave on a reduced schedule is a reduction in the regularly scheduled number of hours per day or per week due to a single qualifying event.
- Intermittent leave and leave on a reduced schedule are entitlements **only** when they are medically necessary.
- Employees must attempt to schedule such leave so as not to disrupt postal operations.
- Employees can be temporarily assigned to an alternative position that better accommodates their need for intermittent or reduced leave.

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- H. Definitions
- # Son or daughter
 - # Spouse
 - # Parent
 - # Serious health condition

H. Definitions (cont'd)

Son or daughter

- Biological child
 - Foster child
 - Legal ward
 - Adopted child
 - Stepchild
 - Child of a person standing "in the shoes" of a parent
- ☞ Must be under the age of 18 or incapable of self-care because of a physical or mental disability

Spouse

- Husband or wife
 - Includes common law marriage
- ☞ No such thing as common law divorce.
- ☞ Call Labor Relations if question arises. For this and other matters, the Law Department is available to consult with Labor Relations and/or postal supervisors as complex legal questions arise.

H. Definitions (cont'd)

Parent

- Biological parent
- Anyone acting as a parent with regard to a "son or daughter"
- ☞ Does not include in-laws

H. Definitions (cont'd)

Serious health condition

- Must meet any one of six sets of criteria:
 - ① Overnight stay
 - ② Over three-day absence/incapacity plus treatment
 - ③ Pregnancy
 - ④ Chronic condition
 - ⑤ Permanent or long term condition
 - ⑥ Multiple treatments

H. Definitions (cont'd)

Serious health condition (cont'd)

- ① Overnight stay
 - Illness, injury, impairment or physical or mental condition that involves a period of **incapacity** or **treatment** in connection with an overnight stay in a hospital, hospice or residential medical care facility
 - Examples
 - Treatment in a residential substance abuse program
 - Treatment in a nursing home
 - Hospitalization for elective surgery

Definition: Incapacity for work

- Inability to perform at least one essential function of position because of serious health condition or because of absence to receive medical treatment for serious health condition
- ☞ Would generally **not** apply to:
 - “preventive care” such as wholesale exemption from overtime, 3-day weekends, or absences to accompany children to activities because a chronic serious health condition might flare up,
 - tardiness as a side effect of medication, **unless** patient is presently experiencing incapacity **because of** serious health condition.

Definition: Treatment

- Examination to determine if a serious health condition exists
- Evaluation of a serious health condition
- ☞ Does not include routine physical, eye or dental examinations or treatments

H. Definitions (cont'd)

Serious health condition (cont'd)

- ② Over three-day absence/incapacity plus treatment
 - Period of incapacity requiring absence from work, school or other activities of more than three **calendar** days (not work days)
 - plus . . .
 - ✓ treatment by **health care provider** two or more times
 - ✓ or one treatment by health care provider resulting in a **regimen of continuing treatment**
 - Examples
 - Five-day absence caused by on-the-job injury
 - 22-day absence caused by pneumonia treated by prescription drug therapy

Definition: Health care provider

- MD or OD
- Podiatrists
- Dentists
- Optometrists
- Nurse practitioners
- Nurse midwives
- Christian Science practitioners
- Some chiropractors
- Providers of health care services licensed by the State to diagnose and treat without supervision

Definition: Regimen of continuing treatment

- Course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition
- ☞ Does not include over the counter medication, bed rest, fluids and other things needing no prescription

H. Definitions (cont'd)

Serious health condition (cont'd)

③ Pregnancy

- Any period of incapacity due to pregnancy or for prenatal care
- Examples
 - Pregnant woman's tardiness caused by severe morning sickness
 - Spouse's absence to take pregnant woman for ultrasound testing if she is incapacitated and cannot drive herself

H. Definitions (cont'd)

Serious health condition (cont'd)

④ Chronic condition

- ✓ Requires periodic visits for treatment
- ✓ Continues over an extended time period
- ✓ May cause episodic flare ups

☞ Only absences due to incapacity or treatment for incapacity are protected

■ Examples

- Two-day absence for flare up of migraine headache
- Two-hour absence for parent to take child for treatment for asthma attack

H. Definitions (cont'd)

Serious health condition (cont'd)

⑤ Permanent or long term condition

- A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective

■ Examples

- Employee requests day off because he is **needed to care for** parent with Alzheimer's disease
- Spouse's 12-week absence to care for dying wife in final stages of terminal disease

Definition: Needed to care for

- Providing physical and/or psychological support that will aid in the patient's recovery from a serious health condition, but the patient must be in the hospital or receiving home care for psychological support to be the only reason the family member is needed

H. Definitions (cont'd)

Serious health condition (cont'd)

⑥ Multiple treatments

- Any period of absence to receive multiple treatments by a health care provider (HCP) or under the supervision of an HCP for . . .

- ✓ **either** restorative surgery after an accident or injury

- ✓ **or** a condition which, if untreated, would likely cause more than 3 days absence

■ Examples

- Outpatient cosmetic surgery on three separate days after injury from a fire
- Chemotherapy three mornings per week for six weeks
- Kidney dialysis two times each week

I. Employer responsibility to designate leave

- In all cases, it is the **employer's** responsibility to designate leave as FMLA protected.
- Employees need not mention FMLA in order to be entitled to its protection.
- Employees may not choose to forego the protection of the FMLA if it applies to their absence and they are eligible for protection.

J. Providing
notice to
employee and
requesting
documen-
tation

Poster WH-1420

- Every facility must post Department of Labor poster WH-1420 in a conspicuous place where employees are likely to read it.

Individual notice

- Employer must provide individual notice of rights and responsibilities to employee if . . .
 - ✓ the employee seeks the protection of FMLA . . .
 - ✓ **or** the employee's absence **might** be protected by FMLA based on circumstances and information provided by the employee.

J. Providing
notice to
employee and
requesting
documen-
tation (cont'd)

Eligibility determination

- Upon providing notice, make eligibility determination first.
- If employee does not meet eligibility requirements . . .
 - ✓ Notify the employee.
 - ✓ Estimate for the employee when she or he will meet the eligibility requirements.
 - ✓ Act on the employee's request as one not protected by FMLA.

J. Providing notice to employee and requesting documentation (cont'd)

Documentation: Publication 71 and PS Form 3971

- These two documents together meet the Postal Service's individual notice requirements.
- For chronic conditions, pregnancy, permanent/long term conditions, or conditions requiring multiple treatments, individual notice must be provided at least once every six months.
- These two documents include a written request to the employee for certification for the employee's absence.
- Remember, no certification is necessary if the employee is not eligible for FMLA protection.
- Certification for FMLA protection is separate from USPS documentation requirement.
- When any documentation is required, supervisor should note it on PS Form 3971.
- Supervisor must provide employee with a copy of the PS Form 3971 whenever any preliminary or final action is taken on it.
- Note on PS Form 3971 when an employee is provided Publication 71.
- Provide minimum of 15 days, but no more time than is reasonable under the circumstances, for employee to certify FMLA application.

K. Notice to the employer

- Employee must provide notice:
 - ✓ If the need for leave is **foreseeable**, employee must provide notice **30 days** in advance.
 - ✓ If the need for leave is **unforeseeable**, employee must provide notice as soon as practicable under the circumstances. Generally, this should be **within two days** of learning of the need for leave.
- ☞ This does not alter or affect Postal Service sick leave policy, which requires employees to call in as soon as possible.
- Lack of sufficient notice may result in delay of leave.
- Failure to provide notice results in denial of FMLA protection.

L. Preliminary approval

Request for FMLA protection or notification to employee that the absence might qualify for FMLA protection

- An eligible employee's absence must be treated as if it is FMLA protected until the final determination is made.

- ☞ Cannot be AWOL.

- Note on PS Form 3971 by checking box "Pending Documentation Noted on Reverse."
- Sign to acknowledge notification only.
- Provide copy of signed PS Form 3971 to employee.

L. Preliminary
approval (cont d)

Request for absence for pay purposes

- # Separate issue from FMLA protection.
- # Employee indicates type of absence on PS Form 3971.
- # Should include information regarding specific need for SL or LWOP on reverse.
- # Documentation to substantiate absences of 3 work days or less is usually met by employee's completed PS Form 3971.
- # In the interests of the Postal Service, additional documentation may be required as noted on PS Form 3971 reverse.
- # Supervisor should deal with this request as she or he would any non-FMLA related request for leave according to the ELM, the National Agreements and local policies.

M. Reviewing certification for "completeness"

The supervisor must make a determination on FMLA protection soon after receiving "complete" certification from the employee, preferably within two business days.

To be "complete," **all** certification must include:

- ✓ date the condition commenced
- ✓ probable duration of the condition
- ✓ probable duration of the patient's present **incapacity**
- ✓ medical facts within the health care provider's (HCP s) knowledge to support application of a particular definition of serious health condition to the patient s condition
- ✓ a statement that the employee is **needed to care for** a family member or is unable to perform an essential function and an estimate of the amount of time the employee is needed

Definition:
Incapacity for work

See page H-5

Definition:
Needed to care for

See page H-9

M. Reviewing
certification
for
"completeness"
(cont'd)

- Additional requirements for intermittent or reduced schedule:
 - ✓ dates and nature of treatments
 - ✓ estimate of probable number of treatments
 - ✓ length of absence required for treatments
 - ✓ likely frequency and duration of anticipated incapacity
 - ✓ statement of medical necessity for intermittent or reduced schedule
 - ✓ expected duration of the need
 - ✓ statement that employee's leave is necessary for the care or recovery of the family member

M. Reviewing
certification
for
"completeness"
(cont'd)

- Do not accept incomplete documentation.

- ✓ For the serious health condition of an over-three-day absence/incapacity plus treatment, **require** dates of treatments and whether a regimen of continuing treatment is prescribed.

Serious Health Condition:
Over three-day absence/incapacity plus treatment

- Definition, page H-6

- ✓ For chronic serious health condition, **require** specific frequency and duration of expected absences.

Serious Health Condition:
Chronic condition

- Definition, page H-8

- If certification is incomplete, explain what additional information is necessary and provide employee reasonable time to provide the information.
- Once certification is complete, it may not be rejected simply because the supervisor does not like or agree with the information provided.
- See Form WH-380, Department of Labor standard form that solicits the required information. Employee is not required to submit this particular form, however.

M. Reviewing
certification
for
"completeness"
(cont'd)

Seeking additional medical information

Once certification is complete, if supervisor does not understand the information, or has reason to doubt its validity, there are two options available to seek additional medical information:

① Seek clarification.

- ✓ Get employee's permission.
- ✓ Then ask medical unit to contact employee's HCP for medical information necessary to clarify the certification.

👉 Authenticating non-medical information on the certification does not require these procedures.

② Get a second medical opinion.

- Employee permission is **not** required.
- HCP must not be affiliated with the USPS.
- HCP should be a specialist practicing within the geographic area.
- USPS pays and chooses.
- Provides second opinion only on FMLA certification.
- USPS may seek third opinion at USPS expense to settle disputes between first and second opinion.
- Consult with Labor Relations.

N. Checklist
for making
the FMLA
determination

① **Is the employee eligible? Check again.**

■ No:

- ✓ Approve or disapprove the leave request as appropriate, but indicate "not FMLA" on PS Form 3971.
- ✓ Provide employee estimate of when she or he will become eligible.
- ✓ Give employee copy of PS Form 3971 signed in official action block.

■ Yes: → Question ②

N. Checklist
for making
the FMLA
determination
(cont'd)

② **Has the employee used 12 weeks of FMLA protection for this leave year?**

■ Yes:

- ✓ Approve or disapprove the leave request as appropriate, but indicate "not FMLA" on PS Form 3971.
- ✓ Give employee a copy of signed PS Form 3971.

■ No: → Question ③

N. Checklist
for making
the FMLA
determination
(cont'd)

③ **Is the request for a covered condition?**

■ No:

- ✓ Approve or disapprove the leave request as appropriate, but indicate "not FMLA" on PS Form 3971.
- ✓ Give employee a copy of signed PS Form 3971.

■ Yes: → Question ④

N. Checklist
for making
the FMLA
determination
(cont'd)

④ **Does this request involve the birth or care of a healthy newborn child?**

■ Yes:

- ✓ Confirm date of birth is within one year of date leave is to be completed.
- ✓ Confirm that the child is the son or daughter of the employee.
- ✓ Approve as FMLA protected.
- ✓ Give copy of signed PS Form 3971 to employee.

■ No: → Question ⑤

N. Checklist
for making
the FMLA
determination
(cont'd)

⑤ **Is this a request for the legal placement
of a son or daughter?**

■ Yes:

- ✓ Confirm date of placement is within one year of date leave is to be completed.
- ✓ Confirm that the child is the son or daughter of the employee.
- ✓ Approve as FMLA protected.
- ✓ Give copy of signed PS Form 3971 to employee.

■ No: → Question ⑥

N. Checklist
for making
the FMLA
determination
(cont'd)

⑥ **Is this a request to care for a spouse, parent, son or daughter with a serious health condition?**

■ Yes:

- ✓ Confirm patient is a spouse, parent, son or daughter of the employee.
- ✓ Confirm condition is a serious health condition.
- ✓ Confirm employee is needed to care for patient.
- ✓ Confirm intermittent or reduced schedule leave is medically necessary and disrupts operations as little as possible.
- ✓ Approve as FMLA protected.
- ✓ Give employee copy of signed PS Form 3971.

👉 *Note:* If you are unable to confirm any of these items, the request is not entitled to FMLA protection.

■ No: → Question ⑦

N. Checklist
for making
the FMLA
determination
(cont'd)

⑦ **Is this a request for leave due to the employee's own serious health condition?**

■ Yes:

- ✓ Confirm condition is a serious health condition.
- ✓ Confirm employee is incapacitated and will be unable to perform essential function due to serious health condition.
- ✓ Confirm intermittent or reduced schedule leave is medically necessary.
- ✓ Confirm schedule for intermittent or reduced schedule disrupts USPS operations as little as possible and/or consider whether reassignment is possible.
- ✓ Approve leave as FMLA protected.
- ✓ Give employee copy of signed PS Form 3971.

👉 *Note:* If you are unable to confirm any of these items, the request is not entitled to FMLA protection.

■ No:

- ✓ Approve or disapprove the request for leave as appropriate, but indicate "not FMLA" on PS Form 3971.
- ✓ Give employee copy of signed PS Form 3971.

O. Dealing
with
subsequent
absences

- For birth or placement of a son or daughter, employee is not entitled to FMLA protection for a subsequent absence (any absence following the employee's initial absence for birth or placement of that son or daughter). Supervisor may exercise discretion to approve leave that is not FMLA protected.
- Absences related to pregnancy, a chronic condition, a permanent or long term condition, or multiple treatments are subject to the leave approval requirements of the ELM but do not require FMLA recertification unless requested as allowed by the FMLA regulations.

P. Seeking recertification

- Employee pays.
- Must be requested in connection with an absence caused by the serious health condition.
- In most cases, may be requested no more frequently than every 30 days.
- May be requested at any time if there is reason to doubt the certification or changes occur in the employee's circumstances – for instance, duration / frequency of absences.
- Employee chooses health care provider.
- Only addresses the serious health condition causing the need for leave.
- If chronic condition is involved, and current frequency and duration of absences exceeds prior certification, seek recertification or ask for medical unit help to indicate current frequency and duration of absences to health care provider.

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- Q. Fraud
- An employee who fraudulently seeks leave under the FMLA is not entitled to FMLA protection and the leave may be denied or designated as AWOL.

R. Dispute resolution processes

- # Types of processes
 - APWU-USPS pairs at Area level resolve disputes not taken to the grievance process.
 - Grievance process.
 - Department of Labor.
 - Federal district court.
 - Arbitrators, MSPB administrative judges, and 650 Hearing Officers decide if action was appropriate, but not whether FMLA was violated.
- # Supervisor should refer Department of Labor investigators to Labor Relations.
- # Two-year statute of limitations on complaints to DOL or district court.
- # Three-year statute of limitations if willful violation is found.