

Family & Medical Leave, Alaska Family Leave & Military Family Leave

Division of Personnel & Labor Relations

Department of Administration

Revised May 2013

Session Objectives

- Overview of family leave laws
- Overview of the military family leave law
- Expectations of employees
- Supervisor's responsibilities
- Payroll Services' responsibilities
- Agency Human Resource (HR) staff responsibilities

Entitlements

Family & Medical Leave Act of 1993 (FMLA)

Provides a job-protected absence for up to **12 weeks** in a 12 month period to eligible employees for a qualifying medical condition or for parental leave.

Military Family Leave (MFL) FMLA provision

Provides for up to **12 weeks** of leave in a 12 month period because of any “qualifying exigency” when a military member is on covered active duty.

Provides for up to **26 weeks** of leave in a 12 month period to care for a covered servicemember recovering from a serious illness or injury sustained in the line of duty on active duty (this is known as Military Caregiver Leave).

Entitlements continued

Alaska Family Leave Act of 1992 (AFLA)

Serious Medical Conditions:

Provides a job protected absence for up to **18 weeks** in a 24 month period to eligible employees for a qualifying condition.

Parental Leave:

Provides a job protected absence for up to **18 weeks** in a 12 month period to eligible employees for pregnancy, childbirth, or adoption.

When an employee is eligible under more than one Act, the entitlements run concurrently

Who is an Eligible Employee?

All employees who meet the employment thresholds.

For FMLA and MFL:

- employed by the State of Alaska for at least 12 months; and
- worked at least 1,250 hours over the past 12 months.

For AFLA:

- employed by the State of Alaska for at least 35 hours/week for at least 6 consecutive months; or at least 17-1/2 hours/week for at least 12 consecutive months.

Note: When seasonal employees are on seasonal leave without pay this time does not count toward the AFLA employment threshold.

The Division of Personnel & Labor Relations will make the final determination of eligibility

Important Definitions

- “Incapable of self care”** – when an individual requires active assistance or supervision in daily activities to appropriately care for their own hygiene, nutritional needs, and safety.
- “Incapacity”** – inability to work, attend school, or perform regular daily activities due to a serious health condition.
- “In loco parentis”** – those with the day-to-day responsibilities to care for and financially support a child or, who had such responsibility for the employee when the employee was a child.
- “Needed to care for”** – includes physical and/or psychological care when the family member is incapable of self care for his/her own basic needs.
- “Physical or mental disability”** – a physical or mental impairment that substantially limits one or more major life activities.

Important MFL Definitions

“Military member” – employee’s spouse, son, daughter, or parent who is currently active in the Armed Forces (including the National Guard and Reserves).

“Covered active duty” – a deployment to a foreign country.

“Qualifying exigencies” – qualifying situations for which an employee may take leave when a military member (employee’s family member) is called to or is on covered active duty (e.g. short notice deployment, military events, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, parental care, etc.)

“Covered servicemember” – a member of the Armed Forces (including the National Guard and Reserves) or a veteran who was active in the Armed Forces within the last 5 years who sustained a serious injury or illness in the line of duty while on active duty.

Note: A covered servicemembers’ next of kin may be eligible to take leave in certain circumstances.

Reasons for taking FMLA, AFLA or MFL

- For a serious health condition that makes the employee unable to perform their job (FMLA/AFLA).
- To care for an employee's eligible family member who has a serious health condition (FMLA/AFLA/MFL).
- To care for an employee's child after birth (FMLA/AFLA), placement for adoption (FMLA/AFLA), or foster care (FMLA only).
- Any qualifying exigency arising out of the fact that the spouse, son, daughter or parent of the employee is on covered active duty or has been notified of an impending call to active duty (MFL).
- To care for a family member who is a military member or veteran recovering from serious illness or injury sustained in the line of duty on active duty, or for the fatality of a military member (MFL).

Who are Family Members?

- Spouse
 - legally married as defined by Alaska Statute
- Child
 - biological, adopted, foster child, stepchild, or legal ward who is under the age of 18 or for an older child because of a physical or mental disability who is incapable of self care. (There is no age restriction under MFL).
 - FMLA/MFL - also includes placement of a child for foster care and a child of a person standing "*in loco parentis*."
- Parent
 - FMLA – biological or individual who stands or stood "*in loco parentis*."
 - AFLA - biological, adoptive, parent-in-law or step-parent.
 - MFL – military member who is the biological, adoptive, step or foster father or mother or any other individual who stood "in loco parentis" to the employee but does not include "parent-in-law."

What is a Serious Health Condition?

An injury, illness, impairment or physical or mental condition that involves one of the following:

- Hospital Care/Inpatient Care (requires an overnight stay in a medical facility).
- Absence for 3 consecutive days and at least 2 doctor visits within 30 days.
- Pregnancy/Prenatal Care (including doctor's visits, pregnancy complications, delivery and recovery).
- Chronic conditions requiring at least 2 doctor visits annually.
- Permanent/Long-term conditions requiring medical supervision.
- Multiple Treatments (non-chronic conditions).
- Serious illness or injury sustained in the line of duty on active duty (MFL only).

Determining a Serious Health Condition

May be qualifying

- appendicitis
- emphysema
- heart attack
- stroke
- cancer

Probably not qualifying

- common cold
- ear infection
- influenza (flu)
- minor ulcers
- allergies

The Division of Personnel & Labor Relations will make the final determination if a serious health condition is qualifying under FMLA, AFLA or MFL

Determining a Serious Illness or Injury of a Covered Servicemember under MFL

- May be qualifying if medically unfit for duty, or including situations where death is imminent.
- Probably not qualifying if injury(ies) does not result in medically unfit designation. (May qualify under FMLA/AFLA.)

The Division of Personnel & Labor Relations will make the final determination on the certification for serious injury or illness of a covered servicemember

Review & Compare

	FMLA	MFL	AFLA
<i>Employment Thresholds (Eligibility)</i>	<ul style="list-style-type: none"> Employed for 12 months, (need not be consecutive) and <u>Worked</u> 1,250 hours over the past 12 months 	<ul style="list-style-type: none"> Employed for 12 months (need not be consecutive), and <u>Worked</u> 1,250 hours over the past 12 months 	<ul style="list-style-type: none"> <u>Employed</u> 35 hours/week for 6 consecutive months, or 17 ½ hours/week for 12 consecutive months
<i>Absence</i>	<ul style="list-style-type: none"> 12 weeks 	<ul style="list-style-type: none"> 12 weeks for any qualifying exigency 26 weeks to care for a military member's or veteran's serious illness or injury sustained in line of duty on active duty 	<ul style="list-style-type: none"> 18 weeks
<i>Frequency</i>	<ul style="list-style-type: none"> Over a 12-month period 	<ul style="list-style-type: none"> Over a 12-month period 	Over a: <ul style="list-style-type: none"> 24-month period (medical) 12-month period (parental)
<i>Medical Leave is taken for (Serious Health Condition)</i>	<ul style="list-style-type: none"> Employee Family Member 	<ul style="list-style-type: none"> Military member Veteran (active duty within the last 5 years) 	<ul style="list-style-type: none"> Employee Family Member
<i>Military Family leave is taken for</i>		<ul style="list-style-type: none"> Any qualifying exigency A covered servicemember's serious illness or injury 	
<i>Reasons Employee takes Parental Leave</i>	<ul style="list-style-type: none"> Pregnancy Childbirth Post-childbirth adoption Placement for adoption Foster Care 		<ul style="list-style-type: none"> Pregnancy Childbirth Post-childbirth adoption Placement for adoption

What does FMLA, AFLA or MFL Leave do for an Employee?

- Allows time off for family medical reasons.
- Allows time off for parental leave reasons.
- Allows time off for military family leave reasons.
- Provides job protection during the absence.
- Continues health care coverage during the absence (FMLA and MFL only).
- Protects employment benefits (i.e., position, status and job class) that accrued prior to the absence.

What is Expected of the Employee?

- After an employee learns of a need for FMLA leave fewer than 30 days in advance, they are required to give notice of their need either the same business day or the next day, absent emergency situations.
- Provide a completed Certification of Health Care Provider form as requested.
- Provide updates on the status of their condition as requested.
- When a fitness for duty report is required, it must be provided as requested prior to the employee returning to work.
- Provide supporting documentation for military family leave use as requested.

Substitution of Paid Leave

- Family leave is not a separate leave account. The State elects to substitute paid leave during periods of AFLA, FMLA or MFL when available.
- Accrued personal or sick leave must be used first. Sick leave defaults to annual leave.
- Donated, catastrophic, excess sick, etc. leave accounts may be used if allowed by contract/statute provisions.
- After exhaustion of all leave the absence defaults to leave-without-pay.
- Five (5) days of annual/personal leave may be retained for use upon return to work, if allowed by contract/statute provisions.

Contact Payroll Services if you have questions

How to Complete a Leave Slip

Check the “FMLA/AFLA” box when leave is taken for FMLA, AFLA or MFL.

STATE OF ALASKA				LEAVE REQUEST/REPORT			
EMPLOYEE'S NAME (PRINT - LAST - FIRST - MIDDLE INITIAL)				BU	DEPT NO	Employee ID	
DATE LEAVE BEGINS				AM	DATE LEAVE ENDS		
				PM			
						Total Hrs.	Supervisor Approval
LEAVE TYPE - CHECK ONLY ONE							
<input type="checkbox"/>	ANN/PERS	<input type="checkbox"/>	MILITARY	<input type="checkbox"/>	AUTH LWOP	<input type="checkbox"/>	LV CASH-IN
<input type="checkbox"/>	SICK/PERS	<input type="checkbox"/>	COURT	<input type="checkbox"/>	DISC LWOP	<input type="checkbox"/>	OTHER (Explain Below)
<input checked="" type="checkbox"/>	FMLA/AFLA	<input type="checkbox"/>	WKRS COMP	<input type="checkbox"/>	UNAUTH LWOP		
This form must be submitted within 24 hours after return to duty.							
EXPLANATION: _____				LV DONATED TO: _____			
NOTE: No leave with pay will be granted in excess of that accrued to employee's credit. Bargaining Unit restricts Leave type availability.				EMPLOYEE SIGNATURE		DATE	
				APPROVING OFFICER		DATE	
WHITE: Div. of Personnel		YELLOW: Employee		PINK: Supervisor/Approving Officer		Form 02-035 (03/09)	

ALWAYS use a separate leave slip for FMLA/AFLA leave.

Certification of Health Care Provider (CHCP), Certification for Serious Injury or Illness of Covered Service Member (CCSM), and Certification of Qualifying Exigency for Military Family Leave (CQE)

The State of Alaska requires a completed:

- CHCP form documenting the need for a potentially qualifying family leave absence for a serious health condition (FMLA & AFLA). A CHCP is usually not needed for pregnancy except when a father takes leave for bonding with a newborn.
- CCSM form documenting the qualifying medical absences under MFL.
- CQE form documenting qualifying exigency leave under MFL.

Fitness for Duty Reports

A fitness for duty report may be requested from an employee:

- When the capacity or incapacity would not be apparent to a layperson such as mental, psychological or emotional conditions that have incapacitated an employee.
- When the relationship between the medical facts and the demands of the position are not apparent such as back injuries for positions requiring lifting.

An employee's position description may need to be provided to the health care provider when a fitness for duty report is required.

Agency HR staff will determine if a fitness for duty report is required. If you, as the supervisor, believe a fitness for duty report is necessary, contact your agency HR staff.

Light Duty Assignments

- Light duty assignments are temporary assignments to alternate duties to accommodate an employee's condition or limitations. Light duty assignments are made with the sole discretion of the department.
- Light duty assignments **do not** count against family leave entitlements.
- Light duty assignments must be coordinated through agency HR staff.

Supervisor's Responsibilities

- **Inquire** about the absence, be aware of qualifying conditions, and complete the appropriate conditional notification forms.
 - Is the absence for the employee or a family member?
 - Under what category does the condition appear to qualify?
- **Invoke** conditionally.
 - Provide employee with the Family or Military Leave Packet.
 - Provide notice to Payroll Services.
- **Inform** Payroll Services of changes in the condition and/or leave requested.

Remember to complete the employee's timesheets and leave slips if they are unavailable. Clearly indicate "FMLA/AFLA" or "MFL" on leave slips only.

Conditionally Invoke Leave

- Complete the appropriate Conditional Notification form.
 - Send (fax/scan/mail) a copy of the notice to Payroll Services.
 - Provide the employee with the Conditional Notification form and appropriate AFLA/FMLA or MFL Packet.
- Tell the employee AFLA/FMLA or MFL leave is conditionally invoked pending Payroll Services analysis of employment eligibility threshold and receipt of the completed certification forms. When required, the employee must submit the completed CHCP to Payroll Services within 15 days.

Direct contact by the supervisor with the employee's health care provider is not permitted

FMLA/AFLA Leave Packet

- **Conditional Family Leave Notification**
(*completed by Supervisor or Designee*)
 - distribute to Payroll Services & employee
- **Your Rights and Responsibilities Under FMLA & AFLA**
(*employee information*)
- **Certification of Health Care Provider form and information sheet**
(*employee provides to health care provider*)

**The Family Leave Packet can be found on the
Division of Personnel & Labor Relations
HR Forms web page**

MFL Packet for Serious Illness or Injury of a Covered Servicemember

- **Conditional Family Leave Notification**
(completed by Supervisor or Designee)
 - distribute to Payroll Services & employee
- **Your Rights and Responsibilities Under FMLA**
(employee information)
- **Certification for Serious Injury or Illness of Covered Service Member (CCSM)**
(employee or covered servicemember provides to the health care provider)

**This Military Family Leave Packet can be found on the
Division of Personnel & Labor Relations HR Forms
web page**

MFL Packet for Qualifying Exigency

- **Conditional Family Leave Notification**
(completed by Supervisor or Designee)
 - distribute to Payroll Services & employee
- **Your Rights and Responsibilities Under FMLA**
(employee information)
- **Certification of Qualifying Exigency for Military Family Leave (CQE)**
(employee provides)

**This Military Family Leave Packet can be found on the
Division of Personnel & Labor Relations HR Forms
web page**

Communication is the Key

Notify Payroll Services if there are:

- changes in the condition and/or expected absences, or
- other issues/concerns in conjunction with AFLA/FMLA or MFL.
(e.g. tracking, notification letters, entitlement periods, etc.)

Contact Agency HR staff if:

- you believe a fitness for duty report is required, or
- a light duty assignment is being considered
- other complications/concerns in conjunction with AFLA/FMLA or MFL.

Payroll Services informs the Supervisor:

- if an employee qualifies for AFLA/FMLA or MFL,
- of expected absences and the duration, and
- when entitlements will expire/exhaust.

Communication is the Key (cont.)

Payroll Services informs the Employee:

- whether a condition qualifies for AFLA/FMLA or MFL,
- if the employment threshold was met, and
- when entitlements will expire/exhaust.

Payroll Services informs Agency HR staff:

- when entitlements are denied, and
- when entitlements will exhaust.

Contact Payroll Services if you have questions or concerns

Record Keeping

- AFLA/FMLA or MFL paperwork is filed in an employee's official medical file which is kept at the Payroll Services office.

Payroll Services' Responsibilities

- Make a final determination and officially invoke/deny AFLA/FMLA or MFL based on the information provided.
- Provide written notice of the determination to the employee with a copy to the supervisor.
- Track employee's AFLA/FMLA or MFL leave usage.
- Inform the employee, with a copy to the supervisor and agency HR staff, when an entitlement(s) will exhaust.
- Provide assistance to supervisors.

Agency HR Staff's Responsibilities

- Assist supervisors when unique situations or questions arise pertaining to family leave.
- Assist supervisors when fitness for duty reports are necessary or when light duty work is being considered.
- Work with supervisors when family leave entitlements are exhausting to determine what course of action should be taken.

(e.g. Does American with Disabilities Act (ADA) apply to this situation, etc.)

Resources

- Family & Medical Leave Act - **29 CFR 825**
- Alaska Family Leave Act - **AS 39.20.500 – 39.20.550**
- Alaska Administrative Manual - **AAM 280.360 – 280.460**
- Family Leave FAQs
- Payroll Services Staff
- Agency Human Resource Staff

Go to: <http://doa.alaska.gov/dop/Payroll/> and click on “Family Leave” under Payroll Quick Links