

Qualifying Exigency / Call to Active Duty Leave

Q. What is “qualifying exigency leave?”

A. Qualifying exigency leave is one of the two new military family leave provisions. It may be taken for any qualifying exigency arising out of the fact that a covered military member is on active duty or call to active duty status. The U.S. Department of Labor’s new regulations include a broad list of activities that are considered qualifying exigencies and will permit eligible employees who are family members of a covered military member to take FMLA leave to address the most common issues that arise when a covered military member is deployed, such as attending military-sponsored functions, making appropriate financial and legal arrangements and arranging for alternative childcare. For a complete list of qualifying exigencies, see the questions below.

Q. Who is a “covered military member?”

A. A covered military member is the employee’s spouse, son, daughter or parent who is on covered active duty or call to covered active duty status.

Q. What is “covered active duty?”

A. Covered active duty means:

- In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
- In the case of a member of a reserve component of the Armed Forces or National Guard unit, duty during the deployment of the member with the Armed Forces to a foreign country under call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

Q. *Can I take qualifying exigency leave if my son or daughter is 18 years old or older?*

A. Yes. The new FMLA regulations contain special definitions for son and daughter for both of the military family leave provisions. For qualifying exigency leave, an eligible employee may take leave for his or her “son or daughter on active duty or call to active duty status,” which is defined as the employee’s biological, adopted, or fosterchild, stepchild, legal ward or child for whom the employee stood in loco parentis, who is on active duty or call to active duty status and who is of any age.

Q. *Can I take qualifying exigency leave if the covered military member is my stepson or stepdaughter? Alternatively, can I take qualifying exigency leave if the covered military member is my stepparent?*

A. Yes. Under the FMLA for qualifying exigency leave, a “son or daughter on active duty or call to active duty status” means the employee’s biological, adopted, or foster child, stepchild, legal ward or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status and who is of any age. Additionally, under the FMLA for qualifying exigency leave, a parent means a biological, adoptive, step or foster father or mother or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This term does not include parents in-law.