

FAMILY AND MEDICAL LEAVE ACT (FMLA) FREQUENTLY ASKED QUESTIONS (FAQ)

References:

TSA MD 1100.63-1, *Absence and Leave*, and the associated Handbooks

The MD and Handbook are the official TSA policy documents. *This FAQ serves as a supplement to the policy to provide clarification based on questions received by OHC.*

In the event there is a conflict between the Directive, the Handbook and/or the FAQs and the Collective Bargaining Agreement (CBA), Article 3: Attendance Management Process of the CBA will apply to Bargaining Unit Employees.

1. What OHC policy addresses the use of FMLA leave?

The policy and procedures for use of FMLA leave can be found in TSA MD 1100.63-1, *Absence and Leave*, and the associated Handbooks.

2. Who is covered by the policy identified above?

All TSA employees are covered.

3. What is FMLA leave?

FMLA leave is unpaid leave that eligible employees can use for:

1. Basic FMLA (the type of FMLA most employees are familiar with)
 - a. Birth of a son or daughter of the employee and care of that child;
 - b. Placement of a child for adoption or foster care with the employee;
 - c. Care of a spouse, son, daughter, or parent of the employee who has a serious health condition; or
 - d. Serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of the employee's position;
2. A qualifying exigency arising out of the employee's spouse, son, daughter, or parent is on active duty or has been called or ordered to active duty in the Armed Forces in support of a contingency operation; **or**
3. Care of a covered service member with a serious injury or illness received in the line of duty while on active duty.

4. What is a serious health condition for the use of FMLA leave?

A serious health condition is an illness, injury or physical or mental condition that requires: inpatient care for at least one night including any period of incapacity and subsequent treatment; **or** continuing treatment by an appropriate health care provider that includes examinations and/or evaluations to determine if there is a serious health condition. The definition includes, but is not limited to, conditions as cancer, heart attacks, strokes, severe injuries, Alzheimer's disease, pregnancy, and childbirth. The term *serious health condition* is not intended to cover short-term conditions for which treatment and recovery are very brief. The common cold, influenza, earaches, upset stomach, headaches (other than migraines), routine dental or orthodontia problems, etc., are not serious health conditions unless complications arise.

5. Who are eligible employees for use of FMLA leave?

Under the provisions of title II of FMLA which applies to most TSA employees, eligible employees are on permanent appointments or temporary appointments of one year or more. In addition, the employees must earn sick leave and annual leave and have worked for the Federal government in a civilian capacity for at least 12 months. The 12 months of civilian service do not need to be recent or consecutive.

6. Can I use FMLA leave for any family member?

FMLA leave may be used to provide care for the employee's spouse, parent, or child.

A spouse is defined as a partner in any legally recognized marriage, regardless of the employee's state of residency. The term spouse does not include unmarried domestic partners, unless they meet the requirements of being spouses in a common-law marriage in states where such marriages are recognized.

A parent is defined as a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child.

A child for use of Basic FMLA leave is a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis. The child must be under 18 years of age, or if 18 years of age or older incapable of self-care because of a mental or physical disability.

In loco parentis refers to an individual who had day-to-day responsibility for the care or financial support of an employee when he/she was a child; or a situation in which an employee has day-to-day responsibility for the care or financial support of a child. A biological or legal relationship is not required.

7. How do I request (invoke) FMLA leave?

An employee may request (invoke) FMLA leave either verbally or in writing. When the need for FMLA leave is foreseeable, an employee is responsible for providing 30 calendar days notice of the need for FMLA leave. Failure to provide 30 calendar days notice may delay approval of the FMLA leave request. When notice cannot be provided 30 calendar days in advance, an employee should provide as much notice as possible.

When leave is for scheduled/planned appointments or treatments, an employee should provide a schedule of the appointments or treatments as soon as the dates are known.

For each absence, employees must use the OPM Form 71, Request for Leave or Approved Absence or, if authorized for non-bargaining unit employees, the WebTA leave request features may be used.

8. Is there a limit on the amount of FMLA leave an employee can use each year?

Eligible employees are entitled to use up to 12 or 26 administrative workweeks (depending upon the reason for the leave) of LWOP in a 12-month period for qualifying conditions. The 12-month period begins on the date the employee first uses FMLA leave.

The leave may be used continuously or intermittently, as appropriate. Intermittent leave is leave used in periods of less than the 12 or 26 administrative workweek block and can be from 15 minutes to several weeks in length.

9. Can paid leave be used instead of unpaid FMLA leave?

Yes. FMLA leave is unpaid leave. However, with advance notice to management (prior to using the leave or when the OPM Form 71 is submitted) employees can substitute appropriate paid leave for the unpaid FMLA leave. TSA policy provisions for using leave must be followed. Employees may substitute paid leave from any of the following leave categories or in combination:

1. Accrued and accumulated annual leave or sick leave, as applicable. The criteria for the use of sick leave continue to apply.
2. Restored annual leave;
3. Compensatory time off in lieu of overtime pay;
4. Compensatory time off for travel;
5. Approved advance annual leave or sick leave, as applicable; and
6. Donated leave received by an approved leave recipient under the voluntary leave transfer program (VLTP). The eligibility and criteria for use of donated leave continues to apply.

10. How do I advise management that I want to substitute paid leave for the unpaid FMLA leave?

When completing the OPM Form 71, Request for Leave or Approved Absence, complete box 4 to request the appropriate form of paid leave and indicate in box 5 that the leave is being used under FMLA. If the FMLA leave is unscheduled, the OPM Form 71 is completed upon return to duty.

11. What documentation is needed to support the use of FMLA leave?

A. For a serious health condition of an employee, the medical certification/documentation **must at a minimum include:**

1. The date the serious health condition began;
2. The probable duration of the serious health condition or a statement that the serious health condition is a chronic or continuing condition with an unknown duration;
3. Whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity;
4. The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including:
 - a. A general statement as to the incapacitation,
 - b. Examinations, or
 - c. Treatment to be provided by the health care provider.
5. A statement from the health care provider certifying that the employee is unable to perform one or more of the essential functions of his/her position as identified by a management official.

B. For a serious health condition for care of a family member, the medical certification/documentation must include items 1 through 4 of the above as well as a statement from the health care provider that the employee's family member:

1. Requires psychological comfort and/or physical care;
2. Needs assistance for basic medical, hygienic, nutritional, safety or transportation needs; and
3. Would benefit from the employee's care or presence.

Employees **are also required** to provide a statement on the care they will provide for the family member and an estimate of the time period needed to provide this care. Employees should be as specific as possible.

C. For care and bonding with a healthy newborn, the employee will need to provide documentation of the newborn's date of birth.

D. For placement of a child for adoption or foster care with the employee, employees must provide administratively acceptable evidence/documentation for absences related to adoption or

foster care. Administratively acceptable evidence/documentation may include, but is not limited to:

1. A copy of the written notification advising the employee of the placement of a child with the employee;
2. Requirement for the employee to attend and complete training, interviews and appointments/visitations with adoption agencies, social workers and attorneys;
3. Dates of court proceedings;
4. Any periods of time for bonding and care that are required by the overseeing adoption agency or court; **and**
5. Any other activity necessary for the adoption or foster care placement process to continue.

Administratively acceptable evidence/documentation will not be available for all steps of the process at the time the request is submitted. Employees should provide related evidence/documentation as soon as available and prior to the need for leave.

E. For qualifying exigencies, employees will need to provide documentation to support use of FMLA that provides the following information:

1. A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave and should include information on the type of qualifying exigency for which leave is requested and any available written documentation which supports the request for leave.
2. The approximate date on which the qualifying exigency commenced or will commence;
3. If the leave is for a single, continuous period of time, the beginning and ending dates for such absence;
4. If the leave is for an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency; and
5. If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and e-mail address) and a brief description of the purpose of the meeting.

The employee may use WH-384, Certification of Qualifying Exigency for Military Family Leave or a written certification that contains the same information to support use of FMLA for qualifying exigencies.

F. For care of a covered service member with a serious injury or illness received in the line of duty while on active duty, it is recommended that form WH-385, Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave, be used.

In the absence of form WH-385, TSA will accept as sufficient certification “invitational travel orders” (ITOs) or “invitational travel authorizations” (ITAs) issued to any family member to join an injured or ill covered service member at his or her bedside regardless of whether the employee is named in the order or authorization. An ITO or ITA is sufficient certification for the

duration of time specified in the ITO or ITA. During that time period, an employee may take leave to care for the covered service member in a continuous block of time or on an intermittent basis.

If an employee will need leave to care for a covered service member beyond the expiration date specified in an ITO or ITA, TSA may request a completed WH-385 as certification for the remainder of the employee's necessary leave period.

12. I'm approved to use FMLA leave intermittently for a medical condition. Do I have to provide medical documentation each time I use FMLA leave?

No. The medical certification/documentation provided to support your request for FMLA leave fulfills medical documentation requirements. It provides an estimate of the frequency and duration of periods of incapacity. However, an OPM Form 71, Request for Leave or Approved Absence, must be submitted for each absence.

13. I am currently using FMLA leave to provide care to my parent. My 8 year old child was recently diagnosed with a serious health condition. Can I invoke FMLA to care for my child?

Yes. However, an employee cannot use more than 12 administrative workweeks of Basic FMLA leave in a 12-month period regardless of the number of qualifying conditions.

14. I have a family member who is seriously ill and I will need to take more than 104 hours of sick leave to provide care. What are my options?

When providing care for a family member with a serious health condition, a full-time employee may use up to 480 hours of sick leave in a leave year to provide related care. If the employee has used 104 hours of sick leave to provide general family medical care, the employee may use up to 376 hours (480 hours – 104 hours = 376 hours) of sick leave available to provide care for the family member with a serious health condition.

If the employee, the family member, and the medical condition meet eligibility requirements, leave under the Family Medical Leave Act (FMLA) may also be an option. The employee may invoke FMLA and use LWOP or substitute paid leave for the unpaid leave.

15. I've invoked and been approved to use FMLA leave for my pregnancy, birth of my child, and my period of incapacitation following the birth. Can I substitute sick leave for the unpaid FMLA leave?

Yes. With advanced notice to management (prior to the use of leave) an employee can substitute appropriate paid leave for the unpaid FMLA leave. Sick leave may be used for medical appointments, the birth, periods of hospitalization and periods of incapacitation.

16. I've invoked and been approved to use FMLA leave to bond with my newborn. I've requested to substitute sick leave for the unpaid FMLA leave. My manager denied my request and informed me I cannot use sick leave to bond with my healthy newborn. Is this correct?

Yes. Your manager was correct to deny your request to substitute sick leave to bond with your healthy newborn. Bonding with a healthy newborn is not an authorized use of sick leave. Annual leave and/or compensatory time off, if available, can be used to bond with a healthy newborn.

17. I'm adopting a child and have invoked and received approval for FMLA leave. Is it true that I can substitute sick leave for the unpaid FMLA leave?

Yes. With advanced notice to management (prior to the use of leave) an employee can substitute appropriate paid leave for the unpaid FMLA leave. Full-time employees may use up to 480 hours of sick leave in a leave year for purposes related to the adoption of a child. A part-time employee may use up to a pro-rated amount of sick leave based on the individual employee's tour of duty. Employees must provide administratively acceptable evidence for absences related to adoption.

Authorized uses of sick leave for adoption related activities include: appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel related to the adoption; periods of time for bonding and care that are required by the overseeing adoption agency or court; and any other activity that is necessary for the adoption process to proceed.

18. I'm becoming a foster parent and have invoked and received approval for FMLA leave. Can I substitute sick leave for the unpaid FMLA leave for the process of having a child placed with me for foster care?

No. Sick leave may not be substituted for unpaid FMLA leave for foster care placement as use of sick leave is not authorized for foster care placement. However, with advanced notice to management (prior to the use of leave) an employee may substitute annual leave or compensatory time off, if available, for unpaid FMLA leave to participate in the process to become a foster parent and placement of a child with the employee for foster care.

19. I'm approved to use FMLA leave for my serious health condition and do not have any sick leave. Can I substitute advance sick leave for unpaid FMLA leave?

Yes. With advanced notice to management (prior to the use of leave) an employee may substitute advance sick leave can be substituted for unpaid FMLA leave as appropriate. Sick leave may be advanced to employees who have exhausted all of their available sick leave. However, the advancement of sick leave is not an employee entitlement.

An appropriate management official can grant up to a maximum of 30 days (240 hours for a full-time employee) of advance sick leave for a personal illness, medical appointments, adoption purposes, or to provide care for a family member. The total amount of sick leave that may be advanced to a part-time employee is prorated based on his/her tour of duty. When management considers approving a request for advance leave, there should be an expectation that the employee will return to duty with TSA and remain working long enough to repay the indebtedness.

20. I have a serious health condition and want to use my sick leave. My supervisor said I have to invoke FMLA. Do I have to invoke FMLA?

No. It is an employee's option to invoke FMLA. Management cannot require an employee to invoke FMLA. You may request and use sick leave for your health condition. Should you decide to invoke FMLA at a later date, you may do so is the condition is qualifying and with appropriate supporting medical documentation. Any leave taken prior to invoking FMLA cannot be counted as FMLA leave.

21. I'm approved to use FMLA leave for my serious health condition. I want to use unpaid FMLA leave. My supervisor said I have to use all of my paid leave before I can use unpaid FMLA leave. Is this correct?

No. It is an employee's choice to substitute appropriate paid leave for unpaid FMLA leave. Management cannot require an employee to use any or all appropriate paid leave for FMLA absences.