



Administrative Regulations Regarding Licensed Employee Family and Medical Leave Definitions

Code 403.7-R2

Active Duty: The term active duty means duty under a call or order to active duty in support of a contingency operation pursuant to specific enumerated provisions of Section 688 of Title 10 of the United States code. Such active duty or call/order to active duty is only made to members of the National Guard, reserve components, or a retired member of the regular Armed Forces or reserve. Therefore, an employee may not take exigency leave if the servicemember is a member of the regular Armed Forces.

Common Law Marriage: According to Iowa law, common law marriages exist when there is a present intent by the two parties to be married, continuous cohabitation, and public declaration that the parties are husband and wife. There is no time factor that needs to be met in order for there to be a common law marriage.

Contingency Operation: The term contingency operation has the same meaning given such term in section 101(a)(13) of Title 10, United States code.

Continuing Treatment: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

- A period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment for, or recovery from) of more than three full consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:
 - In-person treatment by a health care provider at least once within seven days of the first day of incapacity.
 - A regimen of continuing treatment under the supervision of a health care provider.
 - A second in-person visit to the health care provider for treatment (the necessity of which is determined by the health care provider) within 30 days of the first day of incapacity.
 - Any period of incapacity due to pregnancy or for prenatal care. (Father may take FMLA leave for pregnant spouse's prenatal care and appointments including providing transportation and to provide care after birth if spouse has serious health condition.)
- Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - Requires periodic visits for treatment by a health care provider, nurse, or physician's assistant at least twice a year under direct supervision of a health care provider.
 - Continues over an extended period of time (including recurring episodes of a single underlying condition).
 - May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
- Any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, severe stroke, or the terminal stages of a disease.

- Any period of absence to receive multiple treatments (including any period of recovery from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider either for restorative surgery after an accident or other injury, for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention, or treatment such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

Covered Servicemember: The term covered servicemember means a current member of the Armed Forces, including the National Guard and reserves and those on the temporary disability retired list (TDRL) but not including former members or member on the permanent disability retired list who are undergoing medical treatment, recuperation, therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness. Generally, a former member of the military whose injury or illness manifests itself after the member's discharge from military service (except for those on the TDRL) is not a covered servicemember.

Eligible Employee: The district has more than 50 employees on the payroll at the time leave is requested. The employee has worked for the school district for one year of service which need not be continuous provided that a break-in-service does not exceed seven years. Separate stints of employment will be counted for breaks-in-service of seven years or longer if one of the following applies:

- a) Break-in-service due to National Guard or reserve military service obligation.
- b) Written agreement reflecting an employer's intention to rehire the employee after the break-in-service.
- c) The employee has worked 1,250 hours for the district over the previous 12 months.

Essential Functions of the Job: Those functions which are fundamental to the performance of the job. It does not include marginal functions.

Employment Benefits: All benefits provided or made available to employees by an employer including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions regardless of whether such benefits are provided by a practice or written policy of an employer or through an employee benefit plan.

Family Member: Individuals who meet the definition of son, daughter, spouse, or parent including parent of a covered servicemember, son or daughter of a covered servicemember, next of kin of a covered servicemember, and son or daughter on active duty or call to active duty status.

Group Health Plan: Any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, or the families of such employees or former employees.

Health Care Provider:

- A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices.
- Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the state and performing within the scope of their practice as defined under state law.

- Physician assistants, nurse practitioners and nurse-midwives, and clinical social workers who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law.
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.
- Any health care provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.
- A health care provider as defined above who practices in a country other than the United States who is licensed to practice in accordance with the laws and regulations of that country.

In Loco Parentis: Individuals who had, or have, day-to-day responsibilities for the care and financial support of a child not their biological child or who had the responsibility for an employee when the employee was a child.

Incapable of Self-Care: The individual requires active assistance or supervision to provide daily self-care in several of the activities of daily living (ADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

Instructional Employee: An employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, small group, or an individual setting and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily non-instructional employees.

Intermittent Leave: Leave taken in separate periods of time due to a single illness or injury rather than for one continuous period of time and may include leave or periods from an hour or more to several weeks.

Medically Necessary: Certification for medical necessity is the same as certification for serious health condition.

Need to Care For: The medical certification that an employee is needed to care for a family member encompasses both physical and psychological care. For example: where, because of a serious health condition, the family member is unable to care for their own basic medical, hygienic, or nutritional needs or safety or is unable to transport themselves to medical treatment. It also includes situations where the employee may be needed to fill in for others who are caring for the family member or to make arrangements for changes in care. The employee does not need to be the only individual or family member available to provide the care nor is the employee required to provide actual care (e.g., someone else is providing inpatient or home care) as long as the employee is providing at least psychological comfort and reassurance.

Next of Kin: The term next of kin, used with respect to an individual, means the nearest blood relative of that individual.

Outpatient Status: The term outpatient status, with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to:

- a) A military medical treatment facility as an outpatient.
- b) A unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Parent: A biological parent or an individual who stands in loco parentis to a child or stood in loco parentis to an employee when the employee was a child. Parent does not include parent-in-law.

Physical or Mental Disability: A physical or mental impairment that substantially limits one or more of the major life activities of an individual.

Qualifying Exigency: A non-medical activity that is directly related to the covered military member's active duty or call to active duty status. For an activity to qualify as an exigency it must fall within one of seven categories of activities or be mutually agreed to be the employer and employee. The seven categories of qualifying exigencies are short-notice deployment (leave permitted up to seven days if the military member received seven or less days' notice of a call to active duty), military events and related activities, certain temporary childcare arrangements and school activities (but not ongoing childcare), financial and legal arrangements, counseling by a non-medical counselor (such as a member of the clergy), rest and recuperation (leave permitted up to five days when the military member is on temporary rest and recuperation leave), and post-deployment military activities.

Reduced Leave Schedule: A leave schedule that reduces the usual number of hours per work week or hours per workday of an employee.

Serious Health Condition:

- An illness, injury, impairment, or physical or mental condition that involves:
 - Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility including any period of incapacity (for purposes of this section defined to mean inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment for, or recovery from) or any subsequent treatment in connection with such inpatient care; or
 - Continuing treatment by a health care provider that either prevents the employee from performing the functions of their job or prevents the qualified family member from participating in school or other daily activities.
 - A serious health condition involving continuing treatment by a health care provider includes:
 - A period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment for, or recovery from) of more than three full consecutive calendar days including any subsequent treatment or period of incapacity relating to the same condition that also involves:
 - In-person treatment by a health care provider at least once within seven days of the first day of incapacity.
 - Initiated by the health care provider during the first treatment.
 - A second in-person visit to the health care provider for treatment (the necessity of which is determined by the health care provider) within 30 days of the first day of incapacity.
 - Any period of incapacity due to pregnancy or for prenatal care. (Father may take FMLA leave for pregnant spouse's prenatal care and appointments including

providing transportation and to provide care after birth if spouse has serious health condition).

- Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - Requires periodic visits for treatment by a health care provider, nurse, or physician's assistant at least twice a year under direct supervision of a health care provider.
 - Continues over an extended period of time (including recurring episodes of a single underlying condition).
 - May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
 - A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
 - Any period of absence to receive multiple treatments (including any period of recovery from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).
- Treatment for purposes of this definition includes but is not limited to examinations to determine if a serious health condition exists and evaluation of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under this definition a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.
- Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, flu, earaches, upset stomach, ulcers, headaches other than migraines, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions but only if all the conditions of this section are met.
- Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than treatment, does not qualify for FMLA leave.
- Absence attributable to incapacity under this definition qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from

a health care provider during the absence and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

Serious Injury or Illness: The term serious injury or illness, in the case of a member of the Armed Forces including a member of the National Guard or reserves, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

Son or Daughter: A biological child, adopted child, foster child, stepchild, legal ward, or a child of a person standing in loco parentis. The child must be under age 18 or, if over 18, incapable of self-care because of a mental physical disability.

Spouse: A husband or wife recognized by Iowa law including common law marriages.

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