

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

*Division of Personnel & Labor Relations
Department of Administration*

Revised September 1, 2009

Session Objectives

- Overview of family leave laws
- Overview of new military family leave law
- Expectations of employees
- Supervisor's responsibilities
- Division of Personnel & Labor Relations' 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 condition.

2008 Military Family Leave FMLA amendment (MFL)

Provides for up to **12 weeks** of leave in a 12 month period because of “any qualifying exigency”.

Provides for up to **26 weeks** of leave in a 12 month period to care for a service member recovering from a serious illness or injury sustained in the line of duty on active duty.

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 with paid or unpaid leave

Who is an Eligible Employee?

All employees who meet the employment thresholds.
(including exempt, partially exempt, non-perms, interns, etc.)

For FMLA and MFL:

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

For AFLA:

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

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

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 only, 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 active duty or has been notified of an impending call to active duty (MFL).
- To care for a family member who is a service member recovering from serious illness or injury sustained in the line of duty on active duty, or for the fatality of a service member (MFL).

Who are Family Members?

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

Quiz

If employee wants FMLA, AFLA or MFL for ...

Ex-spouse?
Significant other?
Sibling?

College-age son or daughter?
Pregnant daughter over 18?

Step-parent? Family member or friend who “is like a parent to me”?

Mother-in-law or father-in-law?

Military service member?

Are they a qualified family member?

No
No
Not for FMLA/AFLA

No
(unless child over 18 has a physical or mental disability and is incapable of self-care)

Under AFLA/FMLA/MFL
(if raised employee when a child)

Under AFLA/MFL

Only under MFL

What is a Serious Health Condition?

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

- Hospital Inpatient Care.
- Absence for 3 consecutive days and at least 2 doctor visits within 30 days.
- Pregnancy/Prenatal Care (including pregnancy complications, delivery and recovery).
- Chronic Conditions requiring at least 2 doctor visits annually.
- Permanent/Long-term Conditions Requiring Supervision.
- Multiple Treatments (Non-chronic Conditions).
- Serious illness or injury sustained in the line of duty on active duty.

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 of a serious health condition

Determining a Serious Illness or Injury of a Covered Service Member under MFL

- May be qualifying if medically unfit for duty, or including situations where death is imminent.
- Probably not qualifying if injury(ies) do 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 service member.

Other 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.
- “**Covered military service member**” – employee’s spouse, son, daughter, or parent who is on active duty or call to active duty status.

Review & Compare

	FMLA	MFL	AFLA
<i>Employment Thresholds (Eligibility)</i>	<ul style="list-style-type: none"> • Employed for 12 months, and • <u>Worked</u> 1,250 hours over the past 12 months 	<ul style="list-style-type: none"> • Employed for 12 months, 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 servicemember'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"> • Service member 	<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 arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty or notified of impending call to active duty 	
<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 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.
- Provide a Fit-for-Duty Statement upon return to work if requested.
- Provide supporting documentation for military leave use as requested.

Substitution of Paid Leave

- Family leave is not a separate leave account. The state elects to substitute paid leave for periods of AFLA, FMLA or MFL.
- 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 accrued leave may be retained for use upon return to work, if allowed by contract/statute provisions.

Contact your HR Service Center Payroll Office if you have questions

How to Complete a Leave Slip

If the absence is for sick leave, mark the the “SICK/PERS” box (even if you earn personal leave).

STATE OF ALASKA				LEAVE REQUEST/REPORT			
EMPLOYEE'S NAME (PRINT - LAST - FIRST - MIDDLE INITIAL)				BU	DEPT NO	Employee ID Number	
DATE LEAVE BEGINS		AM PM	DATE LEAVE ENDS	AM PM	Total Hrs.	Supervisor Approval	
MONTH DAY HOUR			MONTH DAY HOUR				
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 checked="" type="checkbox"/>	SICK/PERS	<input type="checkbox"/>	COURT	<input type="checkbox"/>	DISC LWOP	<input type="checkbox"/>	OTHER (Explain Below)
<input type="checkbox"/>	MATERNITY	<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		BUS LV USED	
FMLA/AFLA						BUS LEAVE	
						UNION	
						APPRVD	
						BUS LV LABOR	
						REL APPRVD	
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: Dept. Personnel				YELLOW: Employee		PINK: File	
						Form 02-035 (12/03)	

Write “FMLA/AFLA” or “MFL” in the comments section of the leave slip to identify the type of absence being requested.

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).
- CCSM form documenting the qualifying medical absences under MFL.
- CQE form documenting qualifying exigency leave under MFL.

Fit-for-Duty Statements

A fit-for-duty statement 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 may need to provide a copy of their position description to their health care provider when requesting a fit-for-duty statement.

The Division of Personnel & Labor Relations will determine if it is appropriate to require a fit-for-duty statement. If you believe a fit-for-duty statement is necessary, contact your HR Service Center Payroll Office.

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 appointing authority.
- Light duty assignments **do not** count toward family leave entitlements.
- Light duty assignments must be coordinated through Management Services.

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 Packets.
 - Provide notice to your HR Service Center Payroll Office.
- **Inform** HR Service Center Payroll Office of changes in the condition and/or leave requested.

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

Ask questions. Is the absence for...

No

A qualifying family member?

Not sure / Yes

No

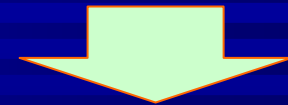
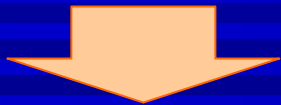
A qualifying event?

Not sure / Yes

No

Treatment or incapacity?
Assistance? Serious illness or
injury?

Not sure / Yes



**Not FMLA/AFLA
or MFL**

**Complete the notification form:
conditionally invoke &
request a certification form**

Conditionally Invoke Leave

- Complete the appropriate Conditional Notification form.
 - Send (fax/scan/mail) a copy of the notice to the your HR Service Center Payroll Office.
 - Provide the employee with the Conditional Notification form and appropriate AFLA/FMLA or MFL Packet.
- Tell the employee AFLA/FMLA or MFL leave is tentatively invoked pending receipt of the completed certification forms.

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 your HR Service Center Payroll Office & employee

- **Your Rights Under FMLA & AFLA** *(employee information)*

- **Certification of Health Care Provider**

(employee provides to health care provider)

- **Family & Medical Leave Information**

(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

- **Conditional Military Family Leave Notification**
(completed by Supervisor or Designee)
 - distribute to HR Service Center Payroll Office & employee
- **Notice of Military Family Leave** *(employee information)*
- **Certification for Serious Injury or Illness of Covered Service Member (CCSM)**
(employee or service member provides to the health care provider)

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

Qualifying Exigency for Military Family Leave Packet

- **Conditional Military Family Leave Notification**
(completed by Supervisor or Designee)
 - distribute to your HR Service Center Payroll Office & employee
- **Notice of Military Family Leave** *(employee information)*
- **Certification of Qualifying Exigency for Military Family Leave (CQE)** *(employee provides)*

The Military Leave Packet can be found on the Division of Personnel & Labor Relations website

Communication is the Key

Notify your HR Service Center Payroll Office if there are:

- changes in the condition and/or expected absences, or
- other issues/concerns in conjunction with AFLA/FMLA or MFL.

HR Service Center Payroll Office informs the Supervisor:

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

HR Service Center Payroll Office informs Management Services:

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

Contact your HR Service Center Payroll Office if you have questions or concerns

Record Keeping

- AFLA/FMLA or MLF paperwork are filed in an employee's medical file.
- Your HR Service Center Payroll Office maintains the official medical file for an employee.
- Medical files are confidential and must be kept secure and separate from performance and payroll records.

HR Service Center Payroll Office's 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 Management Services, when an entitlement(s) will expire/exhaust.
- Provide assistance to supervisors.

Resources

- Family & Medical Leave Act - 29 CFR 825
- Alaska Family Leave Act - AS 39.20.500
- National Defense Authorization Act for FY 2008
- Alaska Administrative Manual
- Frequently Asked Questions Regarding AFLA/FMLA and MFL
 - Division of Personnel & Labor Relations Website
- Payroll Office Staff
- Management Services Staff

HR...Solutions for Success