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Military Caregiver Leave

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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An eligible employee who is the spouse, son, daughter, parent, or next of kin of a "covered servicemember" is entitled to take FMLA leave to care for the covered servicemember with a "serious injury or illness".^[1] A "covered servicemember" is (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces (including National Guard and Reserves) at any time during the period of five years preceding the date on which the veteran undergoes the treatment, recuperation, or therapy.^[2] "Next of kin" means the nearest blood relative of that individual. A "serious injury or illness" means in the case of a current member of the Armed Forces, including the National Guard or Reserves, an injury or illness incurred in the line of duty on active duty (or which existed prior to active duty but was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. 29 CFR § 825.127.

A serious injury or illness for a covered veteran means an injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is-

1. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank or rating; or
2. A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or
3. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or
4. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. 29 C.F.R. § 825.127.

Leave under this category is calculated differently than other types of FMLA leave. Unlike the other types of leave under the FMLA, eligible employees are entitled to 26 workweeks in a single 12-month period to care for the covered servicemember with a serious injury or illness. The single 12-month period begins on the first day the employee takes leave to care for the servicemember and continues for 12 months thereafter, regardless of the method used to calculate other types of FMLA leave. If the employee does not take all of the 26-workweek entitlement during this single 12-month period, the remainder is forfeited. The leave entitlement applies on a per-covered-servicemember, per-injury basis, so an eligible employee could be entitled to more than one 26-week period of leave if more than one family member is involved or subsequent illness or injury occurs, but no more than 26 workweeks can be taken within any single 12-month period.

An employee is limited to a combined total of no more than 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period, and is limited to a total of 12 workweeks for all other FMLA leave (birth or placement of a child, serious health condition of employee or immediate family or qualifying exigency).

[1] 29 C.F.R. § 825.127.

[2] 29 C.F.R. §825.127, FMLA Section 101, as amended by NDAA 2010.