



## *NALC Guide to the*

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**TO ALL NALC MEMBERS:**



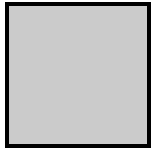
The Family and Medical Leave Act (FMLA) guarantees letter carriers important new rights to take time off work when a new child arrives, or when a carrier or a close family member experiences a serious health problem. The employer must grant the time off and cannot take any action against the carrier who takes it.

NALC is proud to offer you this new publication about your rights under the Family and Medical Leave Act, created jointly by NALC's Education Department and Contract Administration Unit. It summarizes and clarifies the detailed regulations defining carriers' rights under the law. It also contains forms that carriers may photocopy and use to apply for FMLA leave.

Please read this booklet carefully and keep it on hand. If you have questions or need help exercising your rights to FMLA leave, I urge you to consult your NALC representative, who works hard to assist letter carriers and their families.

Sincerely and fraternally,

Vincent R. Sombrotto  
*President*

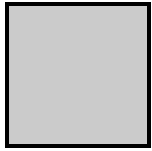


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# Introduction

**T**his booklet outlines the rights of letter carriers under the Family and Medical Leave Act (FMLA). The FMLA is a 1993 federal law that requires the Postal Service and many other employers to give employees time off work, without penalty, to deal with serious family and medical problems.

The FMLA's primary stated purposes are to: balance the demands of the workplace with the needs of families; promote the stability and economic security of families; and promote national interests in preserving family integrity. The law took effect on August 5, 1993.

## SUMMARY OF THE LAW

**12 weeks of leave each year** . The FMLA guarantees each postal employee up to 12 weeks of leave each year for:

- ◆ A new child in the family—by birth, by adoption or by placement in foster care;
- ◆ Caring for a family member with a serious health condition; or
- ◆ The employee's own serious health condition that prevents him or her from performing the job.

The 12 weeks need not be taken all at once; the time off may be taken in separate blocks or intermittently, depending on the situation. The 12 week entitlement is for each postal leave year, which begins with the first full pay period of each calendar year.

**Employee rights under the FMLA** . The Family and Medical Leave Act *does not give letter carriers any additional paid leave*, beyond the paid leave to which carriers are entitled under NALC's National Agreement with the Postal Service and any related postal handbooks and manuals. Rather, the law guarantees employees:

- ◆ **The right to take time off**, using annual leave or leave without pay (LWOP) in most situations, and sick leave in certain circumstances, for the purposes listed above.
- ◆ **The right to retain the job and its benefits**. The employer may not discontinue or change an employee's benefits, change his or her job rights, place the employee on restricted sick leave or take disciplinary action against the employee for taking leave covered by the FMLA.
- ◆ **The right to be informed**. The employer is required by the FMLA to inform employees that they have a right to leave under the law,<sup>1</sup> and to inform employees whether any leave they have requested is covered by the FMLA.

**Specific rules and regulations** . Employee rights and employer responsibilities under the FMLA are governed by detailed federal regulations<sup>2</sup> and by Section 515 of the Postal Service's *Employee and Labor Relations Manual* (ELM). This booklet summarizes the most important parts of the FMLA rules and regulations, and includes a reprint of ELM Section 515 in Appendix B.

<sup>1</sup> Postal supervisors should have copies of USPS Publication 71, "Notice for Employees Requesting Leave for Conditions Covered by the Family Medical Act." That publication contains a very brief explanation of employee rights under the FMLA. In addition, the FMLA requires USPS management to post the Department of Labor's official poster (WH Publication 1420), "Your Rights Under the Family and Medical Leave Act of 1993," at each postal workplace.

<sup>2</sup> The final federal regulations implementing the FMLA were issued by the U.S. Department of Labor on January 6, 1995, and may be found in Title 29 of the Code of Federal Regulations, Part 825 (29 C.F.R. Part 825).



## FMLA LEAVE VERSUS SICK LEAVE FOR DEPENDENT CARE

NALC's 1994 National Agreement with the Postal Service established a new right to use sick leave in certain situations—Sick Leave for Dependent Care—which is separate and different from a carrier's entitlement to leave under the Family and Medical Leave Act. Under the new contract language, a letter carrier is entitled to use up to 80 hours of Sick Leave for Dependent Care per year:

... to give care or otherwise attend to a family member with an illness, injury or other condition which, if an employee had such condition, would justify the use of sick leave by that employee. Family members shall include son or daughter, parent, and spouse as defined in ELM Section 515.2. Approval of sick leave for dependent care will be subject to normal procedures for leave approval.

This new contractual right to use paid sick leave *does not* add to the amount of sick leave earned. Rather, it enables a carrier to *use earned sick leave for a new purpose*—caring for an ailing family member.

The carrier's right to Sick Leave for Dependent Care under the contract and to leave under the FMLA are similar in some ways and different in others—and the two types of leave may overlap. First, the definitions of son, daughter, spouse and parent in ELM Section 515.2 are the same as the FMLA definitions—so an employee may take time off to care for the same persons under either the FMLA or this new contractual leave provision.

However, to be covered by the FMLA the employee must be needed to take care of a family member with a "serious health condition" as defined in the law. (See the definition of "serious health condition" on page 16.) This is a more restrictive definition than the contractual justification for taking Sick Leave for Dependent Care. So in some cases a carrier may take paid Sick Leave for Dependent Care because a family member is ill and needs care, but because the family member's illness does not amount to a "serious health condition" under the FMLA, the leave will not count toward the employee's 12-week annual entitlement to FMLA leave. When the family member does have a "serious health condition" and the carrier takes Sick Leave for Dependent Care, the time off does count toward the 12-week FMLA leave entitlement.



# 1 Eligibility for FMLA Leave

To be eligible for FMLA leave a letter carrier must have worked for the Postal Service for at least 12 months and must have worked at least 1,250 hours during the 12-month period immediately preceding the beginning of the FMLA leave.

## 12 MONTHS OF EMPLOYMENT

An employee is eligible to take FMLA leave only after 12 months (52 weeks) of Postal Service employment. The 12 months need not be consecutive. The 12 months include any time off spent on Continuation of Pay (COP), workers' compensation (OWCP), military leave or court leave.

## 1,250 HOURS OF ACTUAL WORK

An employee must have worked at least 1,250 hours during the 12 month period<sup>3</sup> immediately preceding the time the FMLA leave is to begin. The 1,250 hours must be actual work hours, not including any type of leave.

If a letter carrier notifies management of the need for FMLA leave before he or she has met these requirements, then USPS must either confirm that the carrier *will* be eligible by the time the FMLA leave is to begin, or if not, advise the carrier when he or she will become eligible for FMLA leave. When a carrier applies for FMLA leave but is *not yet* eligible, the Postal Service is responsible for notifying the carrier within two business days that he or she is not eligible. If the carrier receives no such notification, he or she must be considered eligible and the leave may not be denied.

Once a carrier meets these eligibility requirements, FMLA leave is available under three types of "covered conditions," explained in the following sections.

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<sup>3</sup>In this case the 12 months must be consecutive.



## 2 New Child in the Family

Each carrier is entitled to 12 weeks of FMLA leave per year for a new child in the family—by birth, or by placement of a foster child or adopted child. The age of a child adopted or placed in foster care does not affect eligibility, except for a child over age 18, who must be incapable of self-care for the parent to be eligible for FMLA leave. When both parents work for the Postal Service, management provides *each parent* up to 12 weeks of FMLA leave for this purpose even though the law requires only a combined total of 12 weeks for both parents in this situation.

FMLA leave is available for a new child as follows.

### BEFORE THE CHILD ARRIVES

In the case of a birth, the pregnant employee is entitled to FMLA leave before the actual date of birth. For instance, an expectant mother may take FMLA leave for prenatal care or if her condition makes her unable to work.

Before (or after) a foster or adopted child is placed, the employee may take FMLA leave for making required arrangements for the placement—to

attend counselling sessions, appear in court, consult with an attorney or with doctors representing the birth parent, or submit to a physical examination. A father or mother may take FMLA leave for these reasons.

### CARING FOR THE CHILD DURING THE FIRST YEAR

Whether the child arrives by birth or by placement, a mother or father is entitled to FMLA leave to care for the child during the first year. No medical justification is needed—the FMLA leave is guaranteed simply to care for the new child. This particular right to FMLA leave terminates on the first anniversary of the child's birth or placement.





## 3 Caring for an Ill Family Member

The FMLA guarantees family medical leave to an employee to care for his or her child, parent or spouse who has a serious medical condition. This right is explained by the FMLA regulations, which give the following definitions of terms.

### “CHILD”

A "child" of an employee means the biological, adopted or foster child, stepchild, legal ward or child who "stands in the position of a son or daughter to the employee," who is under the age of 18 or, if over 18, is incapable of self-care because of a mental or physical disability. To "stand in the position of a son or daughter" means that the employee has day-to-day responsibilities for the care and financial support of that child. A biological or legal relationship is not necessary.

### “PARENT”

A "parent" as defined by the FMLA is a person "who stood in the position of the parent to the employee when the employee was a child." Again, this is a person who had day-to-day responsibilities for the care and financial support of that employee. The definition of a parent does not include parents-in-law.

### “SPOUSE”

A "spouse" is the husband or wife of an employee as defined or recognized by state marriage law. If the state recognizes common-law marriages, then a common-law spouse is covered by the FMLA. Otherwise, unmarried domestic partners are not considered to be spouses.

### “SERIOUS HEALTH CONDITION”

A "serious health condition" of a family member is defined at length by the FMLA regulations; a detailed summary of the definition appears on page 16 below.



## 4 Employee's Own Illness

The FMLA also guarantees leave to an employee for his or her own serious health condition, when that condition makes the employee unable to perform the functions of his or her position.

The definition of "serious health condition" is the same for an employee's own ailment and that of a family member; see the definition on page 16. FMLA leave taken under this section typically will be paid sick leave or time off due to an occupational

injury or disease covered by the Office of Workers' Compensation Programs (OWCP); an employee also has the option of using annual leave or requesting LWOP. An employee is "unable to perform the functions of the position" where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, and the regulations at 29 C.F.R. 1630.2(n).

## 5 Types and Amounts of Leave

### TYPES OF FMLA LEAVE

Leave covered by the FMLA is usually charged to leave without pay (LWOP), annual leave or sick leave, or a combination of these, depending on the situation, in accordance with the National Agreement and applicable postal rules and regulations. (See Chapter 5, Leave, of the USPS *Employee and Labor Relations Manual* (ELM).) If the employer chooses, it may count time spent off work due to an occupational injury or disease covered by the Office of Workers' Compensation Programs (OWCP) as FMLA leave when the employee has a serious health condition.

**Note—Using LWOP before paid leave:** In some situations a carrier may wish to charge FMLA leave to LWOP and thereby preserve his or her balance of paid leave. Under ELM Section 514, as a general rule management has discretion in the granting of LWOP. This is an administrative decision that must

be based on the needs of the employee, the needs of the Postal Service and the cost to the Postal Service. However, if the employee has exhausted paid leave then LWOP *must* be granted for an FMLA-covered condition. This rule applies to all situations where an employee has paid leave that may be used for an FMLA-covered condition and wishes to substitute LWOP for all or some part of the time off.

**FMLA leave for new child.** An employee has the right to use sick leave for prenatal care and pregnancy- or birth-related incapacity in accordance with the usual leave procedures; this time off is counted as FMLA leave. And also in accordance with those procedures, the employee may use annual leave instead or request LWOP.

When the new child is a foster or adopted child, the employee may use annual or request LWOP to make arrangements for the placement or adoption. Management must grant this leave and it is counted towards the 12-week FMLA leave entitlement.



Annual leave or LWOP may be used to care for the new child, whether biological, foster or adopted, during the first year after the child's arrival. The FMLA requires the Postal Service to grant leave for this purpose.

**FMLA leave for family member with a serious health condition.** Sick Leave for Dependent Care (up to 80 hours per year), or annual leave or LWOP, may be used to care for a family member with a serious health condition.<sup>1</sup> Management must grant the leave. After the 80-hour entitlement to sick leave is exhausted the carrier may use annual leave or request LWOP.

**FMLA leave for carrier's own serious health condition.** The FMLA guarantees time off when an employee's serious health condition prevents him or her from performing the job. Typically the employee will use paid sick leave in this situation; other leave may be used instead, in accordance with existing leave rules.

Time off on paid sick leave is counted as FMLA leave only if the employee has a "serious health condition" as defined by the FMLA; see page 16. For example, an employee's regular dental checkup appointment qualifies for paid sick leave but not for FMLA. (Under Section 513 of the USPS *Employee and Labor Relations Manual*, an employee is entitled to paid sick leave when "incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment.")

**OWCP:** The employer may choose to count time off work because of an OWCP-covered injury or disease as FMLA leave only if the ailment is a serious health condition preventing the employee from performing the job, as defined in the FMLA. For instance, the Postal Service could count time off due to a long-term, OWCP-covered medical problem preventing the employee from working, or requiring a reduced schedule, as FMLA leave. However, some OWCP-covered situations would not count as FMLA leave—such as a one-time treatment for a minor bruise received on the job.

## COUNTING FMLA LEAVE

Each employee has the right to take up to 12 work weeks of FMLA absence per leave year for the covered conditions. This is equal to 12 times the employee's normal scheduled hours per week, up to 40 hours. So eligible full-time carriers are entitled to 480 hours of FMLA leave.

Part-time flexible and part-time regular employees who work a "normal weekly schedule" are entitled 12 times the number of normally scheduled weekly work hours. A part-time flexible carrier with a variable work schedule is entitled to FMLA leave hours equal to the number of hours he or she worked during the 12 weeks immediately prior to the start of the FMLA leave, excluding overtime hours.

FMLA leave may be taken in increments smaller than an hour, as permitted under existing rules for charging leave. Only the amount of leave actually taken may be counted toward a carrier's 12-week annual entitlement to FMLA leave. An employee may not be required to take off a full hour when only twenty minutes are needed, or required to take off a full day when only part of a day is needed for FMLA leave.

## INTERMITTENT OR REDUCED SCHEDULE FMLA LEAVE

FMLA leave need not be taken all at once—12 weeks in a row. Rather, it may be taken intermittently or on a reduced schedule in certain circumstances.

- ◆ **"Intermittent"** FMLA leave is leave taken in separate blocks of time due to a single qualifying reason.
- ◆ A **"reduced schedule"** is a work-and-leave schedule that reduces the carrier's usual weekly or daily work hours.

<sup>4</sup> When a carrier takes Sick Leave for Dependent Care and the family member has a serious health condition, the leave is also counted as FMLA leave.



**Right to take intermittent or reduced schedule FMLA leave.** Intermittent or reduced schedule FMLA leave may be taken in any of the FMLA's covered circumstances.

**New child.** A carrier may take intermittent or reduced schedule FMLA leave to care for a new biological, foster or adopted child only if management agrees to the leave. Such intermittent or reduced schedule leave might occur when, for example, an employee works part-time after a new child arrives, or takes leave in several segments.

Management must permit intermittent or reduced schedule FMLA leave for a pregnant carrier's prenatal care or for her own incapacity in connection with the pregnancy or birth, both of which qualify as serious health conditions.

**Care for family member with serious health condition.** Intermittent or reduced schedule FMLA leave may be taken when an employee is needed to care for a parent, spouse or child with a serious health condition. (See the FMLA definition of "needed to care for" on page 16.)

Management must permit this type of intermittent or reduced schedule FMLA leave. The employee establishes the need for such leave by providing certification from the family member's health care provider that the leave is medically necessary—that the employee needs the leave to care for the family member with a serious health condition. (See Section 6, "Applying for FMLA Leave: Notice and Documentation," for more information.)

**Employee's own serious health condition.** Intermittent or reduced schedule FMLA leave also may be taken because of the employee's own serious health condition:

- ◆ When medically necessary for planned or unanticipated medical treatment of the health condition by or under the supervision of a health care provider;
- ◆ For recovery from treatment or recovery from a serious health condition; or

- ◆ When a serious health condition requires periodic treatment by a health care provider, for example—for periodic medical appointments, for leave taken several days at a time over a period of several months such as for chemotherapy, or for inability to work due to a serious chronic health condition even if not treated by a health care provider.

Management must permit this type of intermittent or reduced schedule leave. The need for the leave is established by the health care provider's certification that the employee has a serious health condition and that the leave is a medical necessity. "Medical necessity" means there is a medical need for the leave which can best be accommodated through an intermittent or reduced leave schedule. (See Section 6, "Applying for FMLA Leave: Notice and Documentation," for more information.)

**Scheduling intermittent or reduced schedule FMLA leave.** Generally, carriers and management will have to work together to set up a schedule to accommodate intermittent or reduced schedule FMLA leave.

- ◆ **Caring for a new child.** A new parent has the right to take 12 weeks of FMLA leave to care for a new child in the first year. However, in this non-medical FMLA leave situation the employer's approval is needed for a carrier to take intermittent or reduced schedule FMLA leave. So it is up to the employee, NALC and management to negotiate over the times that such leave will be scheduled.
- ◆ **Serious health conditions.** When intermittent or reduced schedule FMLA leave is required due to the employee's or a family member's serious health condition, the employer must grant such leave when medical necessity is shown. Employees must attempt to schedule such leave, when it is foreseeable, so as not to disrupt the employer's operation. The carrier and management should attempt to work out a schedule that meets the carrier's medical needs, or family member's need for care, without unduly disrupting management's operation. However, the ultimate resolution of the leave schedule always remains



subject to the health care provider's determinations as to medical necessity. For instance, management may not ask an employee to try to schedule planned medical treatments outside the normal working hours when scheduling them during working hours would not unduly disrupt operations.

**Transfer to alternative position.** In certain circumstances the Postal Service may require a letter carrier on intermittent or reduced schedule FMLA leave to transfer temporarily to an available alternative position that has equivalent pay and benefits and that better accommodates the employee's leave needs than the regular position:

- ◆ When the employee takes intermittent or reduced schedule leave for the birth of a child or to care for a new biological, foster or adopted child; or
- ◆ When the employee needs intermittent or reduced schedule leave that is foreseeable based on planned medical treatment for the employee or a family member.

Transfers to alternative positions—including any cross-craft assignments—are governed by the National Agreement and applicable postal rules and regulations. When the employee no longer needs the FMLA leave he or she must be returned to the same or equivalent job as the one left when the leave began.

The Postal Service may not transfer a carrier to an alternative position in order to discourage the taking of FMLA leave or otherwise cause hardship to the carrier. For instance, a carrier may not be reassigned to a night tour or to a distant job site.



# 6

## Applying for FMLA Leave: Notice and Documentation

**Form 3971.** A letter carrier fills out a Form 3971, "Request For or Notification of Absence," to apply for leave covered by the Family and Medical Leave Act—the same as for other types of leave. A new Form 3971 has been created to take account of the FMLA.

**No need to mention the FMLA.** A letter carrier need not explicitly request FMLA leave or even mention the FMLA in order to receive it. It is postal management's responsibility to determine whether the leave requested is covered by the FMLA, based on information provided by the employee. Sometimes the carrier will give the supervisor an initial reason for the leave that indicates it will be FMLA leave; in other cases the supervisor may have to ask for more information.

**Special FMLA requirements.** In addition, there are specific notification and documentation rules that apply when the leave is needed for a situation covered by the FMLA. These are explained below.

### EMPLOYEE'S NOTICE TO POSTAL SERVICE

A carrier must give notice to management that FMLA leave is needed. Giving notice is often a separate matter from submitting a Form 3971, as explained below. Notice to management may be either spoken or written. The FMLA notice requirements are different depending on whether the leave is foreseeable.

**Foreseeable leave—30 days' notice.** When the need for FMLA leave is **foreseeable** (such as a birth or planned placement of a foster child or adoption, or where an operation or medical treatments are planned in advance) the employee must notify management of

the need for the leave and provide appropriate supporting documentation at least 30 days in advance. (See below for documentation requirements.)

**Not foreseeable.** Where 30 days' notice is not possible, or when the need for the FMLA leave is **not foreseeable**, notice must be given as soon as practicable—ordinarily within 2 business days of when the carrier learns of the need for the leave. When FMLA leave is needed for a **medical emergency** involving an employee's or family member's serious health condition, management may not require prior written notice. Notice may be given by phone, telegraph, fax or other electronic means, and a spokesperson for the employee may give the notice—a spouse, adult family member or other responsible party.

### MANAGEMENT NOTICE TO EMPLOYEE

After the Postal Service learns that leave is being taken for an FMLA required reason, it must notify the employee within 2 business days (absent unusual circumstances) of the following:

- (1) That the absence is designated as FMLA leave;
- (2) The type of leave (annual, sick, LWOP) to be charged; and
- (3) Any additional documentation the employee needs to furnish (see below).

This information should be provided on the employee's copy of the Form 3971, and accompanied by a copy of USPS Publication 71, "Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act."



## DOCUMENTATION OF REQUESTS FOR FMLA LEAVE: NALC FMLA FORMS

A carrier requesting FMLA leave should submit appropriate documentation to management along with notice of the need for the leave. The type of documentation required is different depending on the FMLA-covered condition involved.

**NALC FMLA forms.** The most convenient way to submit the required documentation is to use the NALC FMLA forms published in the Appendix to this booklet. Each of these forms is explained in more detail below.

- NALC Form 1: Employee's Notification of New Child in the Family
- NALC Form 2: Medical Certification—Employee's Own Serious Health Condition
- NALC Form 3: Employee's Certification of Own Serious Health Condition
- NALC Form 4: Medical Certification—Family Member's Serious Health Condition
- NALC Form 5: Employee's Notice of Need for Intermittent Leave or a Reduced Work Schedule

**NALC Form 1: Employee's Notification of New Child in the Family.** Certain FMLA-covered conditions involving a new child involve no serious health condition, and thus do not require any medical certification. This includes time off to arrange for an adoption or foster care placement, and time off to care for a new child during the first year after the birth or placement. In these situations the only FMLA documentation requirement is a notification of the expected birth or placement date; no additional supporting documentation, such as a birth certificate or adoption order, is required. After this notice is given to management at least 30 days before the anticipated birth or placement date, a Form 3971 must be submitted as usual when the leave is to begin. See Form 1 in Appendix A.

**NALC FMLA Form 2: Medical Certification—Employee's Own Serious Health Condition.** This form may be used to document a carrier's need

for FMLA leave because of his or her own serious health condition, in situations where the usual postal leave rules require an employee to provide medical certification for the absence. (Typically the Postal Service requires written certification for absences of more than 3 days, or when an employee is in restricted leave status.)

A **health care provider** must provide this certification of the carrier's condition. (See the FMLA definition of "health care provider" on page 15.) A copy of the form should be given to the health care provider. The form should be filled out completely and signed by the health care provider and then submitted to management. See Form 2 in Appendix A. Also see the special FMLA rules for medical certifications, below in this section.

**NALC FMLA Form 3: Employee's Certification of Own Serious Health Condition.** In some situations an employee may provide a certification of his or her own serious health condition—that is, where the condition meets the "serious health condition" definition under the FMLA, but no medical certification is required for the absence under the usual Postal Service rules. This could happen where, for example, a carrier with a fixed Monday-Friday schedule pulls a muscle and sees a doctor for it on Friday, is told to rest and is given a 10-day course of medication for the problem, and then recovers well enough to go back to work the following Tuesday. Only two days were taken off, so no medical documentation is required. However, the condition qualifies as a "serious health condition" under the FMLA. The carrier may have the time off counted as FMLA leave by submitting NALC FMLA Form 3, personally certifying that the condition meets the FMLA definition. See Form 3 in Appendix A.

**NALC Form 4: Medical Certification—Family Member's Serious Health Condition.** Carriers may use Form 4 to provide a *health care provider's* certification that a carrier is needed to care for a family member with a serious health condition. The form should be filled out completely and signed by the family member's health care provider and then submitted to management. (For this certification it is important to know the meaning of "needed to care for" under the FMLA; see the definition on page 15.) See Form 4 in Appendix A.

**NALC Form 5: Employee's Notice of Need for Intermittent Leave or a Reduced Work Schedule.**

This form may be used to request intermittent leave or a reduced daily or weekly work schedule for FMLA-covered conditions. When this type of FMLA leave is requested because of the carrier's own or a family member's serious health condition, the carrier must also submit the proper health care provider's medical certification form (Form 2 or Form 4). See Form 5 in Appendix A,.

**SPECIAL FMLA RULES ON MEDICAL CERTIFICATIONS**

The FMLA regulations contain special rules regarding a health care provider's certification of a serious health condition. Where required, the carrier must submit the health care provider's certification within the time frame requested by management, which must allow for at least 15 calendar days, unless it is not possible and practical to do so under the circumstances despite the employee's diligent, good faith efforts. If an employee submits an incomplete medical certification, management must advise the employee and provide him or her with a reasonable opportunity to fix the problem.

If the employee submits a complete certification signed by the health care provider, management may not request any additional information from the health care provider. However, a health care provider representing the Postal Service may contact the employee's health care provider, with the employee's permission, for the purposes of clarification and authenticity of the medical certification.

If management has reason to doubt the validity of a medical certification it may require the employee to obtain a second opinion at management expense, including reasonable travel costs. The health care provider selected by management to provide a second opinion may not be employed on a regular basis by the Postal Service; nor may the provider be one who regularly contracts with or provide services to the Postal Service, unless access to health care is extremely limited in the area. If the employee's and employer's health care provider differ, management may require a third opinion at its expense, from a health care provider chosen jointly by the employee and the employer. The third opinion is final and binding.

**Recertification of serious health conditions.**

Postal management may request a recertification from a health care provider in certain circumstances. Generally, management may request recertification at reasonable intervals, but not before the minimum period specified in the certification has expired, and otherwise not more often than every 30 days, unless: (1) the carrier requests an extension of leave; (2) circumstances described by the previous certification have changed significantly (for example, duration of the illness, the nature of the illness, complications); or (3) the employer receives information that casts doubt upon the continuing validity of the certification.

As with an initial certification, a carrier has at least 15 days to provide a requested recertification. No second or third opinion may be required of a recertification. Unless postal management provides otherwise, any recertification it requests is at employee expense.





# 7

## The FMLA, Benefits and the Contract

This section explains how the taking of FMLA leave may affect employee benefits and certain contractual protections.

### HEALTH BENEFITS

The FMLA requires the Postal Service to maintain group health plan (FEHBP) coverage for an employee who takes FMLA leave. The employee is required to continue to pay the employee portion of the health plan premium, which will continue to be withheld from an employee taking paid FMLA leave. When the employee will be on LWOP, the Postal Service must provide the carrier with information on how to pay his or her portion of the premium.

### OTHER BENEFITS

An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (for example, holiday pay) is not changed by the FMLA. Rather, the established benefit rules continue to apply for the type of leave taken—LWOP, annual leave or sick leave.

### NO LAYOFF

Employees retain the no-layoff protection of Article 6, paragraph (2) when FMLA leave interrupts the 20 pay periods that must be worked during six years of continuous service. The only time FMLA leave would interrupt the years required for protection is in cases where more than 12 weeks of FMLA leave during two different leave years result in more than 6 pay periods of absence during an individual employee's "anniversary" year. In these rare cases management's time-keeping computer system will fail to recognize the no layoff protection even though it has been

attained under the contract. To correct this error local management must send a memo to the USPS Minneapolis Information Service Center to make a manual change in the computer records.

### LOCAL LEAVE POLICY

It is NALC's position that annual leave taken as FMLA leave may be counted toward the leave quota in a Local Memorandum of Understanding, absent LMOU language to the contrary. However, where management is required to grant annual leave for an FMLA covered condition, such leave must be granted even though the annual leave quota provided by a LMOU has already been filled.

### LIFE INSURANCE

Basic life insurance coverage is free and continues during time off for FMLA leave. If a carrier is in a LWOP status for more than a year, this coverage is discontinued but the carrier has an opportunity to convert to an individual policy. Optional life insurance coverage also continues, with premiums withheld from paychecks during periods of paid leave. If a carrier is in a nonpay status, optional insurance coverage continues without cost for up to 12 months, after which the policy may be converted to an individual policy. However, if the employee has at least 4 consecutive months during which some pay is received during each pay period after a period of nonpay status, he or she is entitled to begin a new 12 month period.

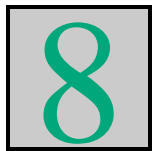


## SENIORITY

Seniority is not affected by the taking of FMLA leave even where an employee takes the full 12 weeks in LWOP status. A carrier retains and accrues seniority as if he or she had worked the entire time.

## ACCUMULATION OF LEAVE

The FMLA does not change the methods by which leave is accumulated under the contract and postal regulations. Leave continues to be earned according to the regulations cited in the USPS *Employee Labor Relations Manual*, Chapter 5, Subchapter 510.



## Enforcing the FMLA

The FMLA may be enforced through the National Agreement or through the legal enforcement measures provided by the law. In addition, NALC representative may find it necessary to claim FMLA protections as an important defense in many cases involving discipline for absenteeism.

### ENFORCEMENT OF FMLA PROTECTIONS

If management violates the FMLA the law may be enforced through the National Agreement, by filing a grievance alleging violations of Articles 3 (Management Rights) and 19 (Handbooks and Manuals). Article 3 requires management to manage the Postal Service "... consistent with applicable laws and regulations ..." An Article 19 violation should be alleged because the Postal Service's FMLA rules are contained in Section 515 of the USPS *Employee and Labor Relations Manual*.

An employee also has the option of seeking redress for an FMLA violation by filing a complaint with the Secretary of Labor, or by filing a private lawsuit pursuant to Section 107 of the FMLA.

### DISCIPLINE FOR ABSENTEEISM

The FMLA prohibits the Postal Service from taking any action against an employee for the use of FMLA-required leave. This means that management may not use a carrier's taking of FMLA leave as a basis for discipline against a letter carrier. Union representatives should review existing and future absenteeism grievances to ensure that none of the time off cited as a basis for discipline or removal was covered by the FMLA.

NALC representatives should also be prepared to argue that leave covered by the FMLA may not be a basis for discipline even if neither the employee nor management knew, when the time off was taken, that it was so covered. The law provides that an employee need not mention the FMLA or specifically request FMLA leave in order to gain the right to use leave under the law. The carrier need only apply for the leave and supply a reason, and it is up to management to determine if the leave qualifies a FMLA leave. If it qualifies, the leave may not form a basis for a charge of absenteeism.



# 9

## Definitions

The FMLA regulations define several key terms that help to explain employee rights under the law. Several of those terms are defined throughout this booklet. The extensive definitions of three important FMLA terms—"health care provider," "needed to care for" and "serious health condition"—are given here.

### “HEALTH CARE PROVIDER”

A "health care provider" must provide a certification that the employee needs FMLA leave for his or own serious health condition or to care for a family member who has a serious health condition. The FMLA definition of a "health care provider" includes:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or
2. Any other person determined by the Secretary of Labor to be capable of providing health care services; or
3. Any podiatrists, dentists, clinical psychologists, optometrists, and chiropractors, authorized to practice in the State and performing within the scope of their practice as defined under State law; or
4. Any nurse practitioners, nurse midwives and clinical social workers, authorized to practice in the State and performing within the scope of their practice as defined under State law; or
5. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; or
6. Any health care provider from whom an employer or a group health plan's benefits manager will accept certification for the existence of a serious health condition to substantiate a claim for benefits; or

7. 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.

### “NEEDED TO CARE FOR”

Where an employee needs FMLA leave to care for a family member with a serious health condition, management may require certification of this need by the health care provider. This certification (1) establishes that the family member has a serious health condition and (2) establishes that the employee is "needed to care for" the family member. See NALC FMLA Form 4, "Medical Certification—Family Member's Serious Health Condition," in Appendix A.

The definition of "needed to care for" a family member includes both physical and psychological care. It includes situations where:

1. The family member is unable to care for his or her basic medical, hygienic or nutritional needs or safety, or is unable to travel to the doctor, etc.;
2. The family member is receiving inpatient or home care and the employee is needed to provide beneficial psychological comfort and reassurance;
3. The employee is needed to fill in for others who are caring for the family member, or to make arrangements for changes in care such as transfer to a nursing home;
4. The family member's need for care is intermittent; or
5. The employee is needed only intermittently—such as where other care is normally available, or care responsibilities are shared with another caregiver.



## “SERIOUS HEALTH CONDITION”

A "serious health condition" of a family member is defined in the FMLA regulations for both carriers themselves and for family members as any illness, injury, impairment or physical or mental condition that involves one of the following:

**1. Hospital care:** This means *inpatient care* (that is, an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

**2. Absence plus treatment:** A period of incapacity of *more than three consecutive calendar days* (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

- (a) *Treatment<sup>5</sup> two or more times* by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (for example, physical therapist) under orders of, or on referral by, a health care provider; or
- (b) Treatment by a health care provider on at least one occasion which results in a *regimen of continuing treatment<sup>6</sup>* under the supervision of the health care provider.

**3. Pregnancy:** Any period of incapacity due to pregnancy, or for prenatal care.

**4. Chronic conditions requiring treatments:** A chronic condition which:

- (a) Requires *periodic visits* for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

- (b) Continues over *an extended period of time* (including recurring episodes of a single underlying condition); and
- (c) May cause *episodic* rather than a continuing period of incapacity (for example, asthma, diabetes, epilepsy, etc.).

**5. Permanent long-term conditions requiring supervision:** 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.

**6. Multiple treatments (non-chronic conditions):** Any period of absence to receive *multiple treatments* (including any period of recovery therefrom) 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), kidney disease (dialysis).

<sup>5</sup>Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations or dental examinations.

<sup>6</sup>A regimen of continuing treatment includes, for example, a course of prescription medication (for example, an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include 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.



# 10 Questions & Answers

## COUNTING FMLA LEAVE HOURS

1. Q. Is an employee entitled to up to 12 work weeks of FMLA leave within a Postal Service leave year, or during any 12 month period?
  - A. During a Postal Service leave year.
2. Q. Do COP, OWCP, military and court leave count toward the "12 months of employment" eligibility requirement for FMLA leave?
  - A. Yes. However, leave hours do not count towards the eligibility requirement of 1,250 hours worked.
3. Q. If a carrier had an on-the-job injury, does time spent on OWCP count towards the 12-week FMLA leave entitlement?
  - A. Only if the employee's injury meets the FMLA definition of a "serious health condition."
4. Q. What if a full-time carrier is on OWCP and able to work 6 hours per day, 5 days per week? How much time is counted as FMLA leave?
  - A. Only the time spent off work is counted toward the FMLA entitlement. In this case 2 hours per day, 5 days per week are counted towards the 480 hour (12 week) entitlement.
6. Q. A carrier's wife had an operation and the carrier stayed home to take care of her for two weeks. He used his annual leave, however, and did not tell his supervisor the reason for the annual leave. Can he go back now and have the leave counted toward the 12 weeks of FMLA leave?
  - A. Yes. However, the carrier should notify the employer within two days of returning to work. In addition, medical documentation of his wife's serious health condition may be required.
7. Q. A carrier's child has asthma. Once a month he takes the child to the doctor for treatment. Does this qualify for FMLA leave?
  - A. Yes. Intermittent absences due to a family member's chronic condition do meet the criteria for FMLA leave. This case and cases similar require the employee and supervisor to have an open line of communication.
8. Q. Can a carrier take FMLA leave for substance abuse treatment?
  - A. Yes, but only where the treatment is furnished by a health care provider as defined in the FMLA. Absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

## WHICH SITUATIONS CALL FOR FMLA LEAVE?

5. Q. Can an employee use FMLA leave to look for child care?
  - A. No; looking for child care is not an FMLA covered condition. However, a supervisor can approve regular annual leave for such a purpose.
9. Q. A carrier's father-in-law who lives with her is very ill and requires her care. Would this fall under FMLA leave?
  - A. No. FMLA leave may be used to care of only a spouse, parent or child with a serious health condition. "In-laws" do not qualify. Leave taken to care for anyone else would require approval under the usual leave procedures.



10. Q. May a carrier take 12 weeks of FMLA leave in July when he adopts a child, and then take another 12 weeks of FMLA leave in March of the next leave year?
- A. Yes. An employee is entitled up to 12 weeks per leave year to care for new child up to a year from the date the new child arrives.
11. Q. Can a carrier use sick leave to stay home to take care of his wife, who just gave birth, and to take care of the new baby?
- A. Yes, in part. NALC's 1994 National Agreement with the Postal Service established the right to use sick leave to care for a spouse, parent or child (same definitions as in FMLA) who has an illness, injury or condition which, if the employee had it, would justify the use of sick leave. So in this case the carrier may use sick leave to care for his incapacitated wife. He also has the right to use FMLA leave—annual leave or LWOP, in this situation—to care for the healthy baby.

## TYPES OF LEAVE WHICH MAY BE TAKEN

12. Q. A carrier's father needs dialysis treatments once every two weeks. May the carrier take paid sick leave on an intermittent basis to take his father to dialysis?
- A. Yes. This situation is covered by the National Agreement's provisions on Sick Leave for Dependent Care, so the carrier may take up to 80 hours of paid sick leave for this purpose. In addition, this situation is covered by the FMLA and the carrier is entitled to intermittent FMLA leave if certified by the health care provider.
13. Q. May an employee use LWOP for an FMLA-covered situation instead of using accrued annual or sick leave?
- A. Under Section 514 of the *USPS Employee and Labor Relations Manual*, as a general rule management has discretion in the granting of LWOP; this is an administrative decision that must be based on the needs of the

employee, the needs of the Postal Service and the cost to the Postal Service. However, if the employee has exhausted paid leave then LWOP must be granted for an FMLA-covered condition.

## MEDICAL DOCUMENTATION

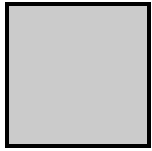
14. Q. A carrier's daughter broke her leg and must have complete bed rest for two weeks. The carrier submitted the appropriate documentation in order to stay home and care for her. At the end of the two weeks the doctor told the carrier that her daughter would need an additional three weeks of bed rest. Must the carrier submit additional documentation?
- A. Yes. Since the circumstances have changed the supervisor may require additional certification from the health care provider.
15. Q. How often can the USPS ask for medical documentation to prove a carrier is still entitled to FMLA leave?
- A. Generally, after the original medical certification has been submitted, the Postal Service cannot ask for recertification until the expiration of the minimum period of leave certified by the health care provider. If there is no minimum period, management may not ask for recertification more often than every 30 days.
16. Q. Can a supervisor call a carrier's doctor for additional information about an FMLA medical certification?
- A. No. If the employee submits the requested documentation and a supervisor has questions about that documentation, the supervisor must request that a Postal Service health care provider call the employee's health care provider. The employee's health care provider must have the employee's permission to release any information to the Postal Service health care provider, and that information is limited to clarification of documentation already provided.



17. Q. A carrier and her husband both work for the Postal Service. She is pregnant and going to have a baby in mid-June. Is each employee eligible to take 12 weeks off?
- A. Yes. Although the FMLA provides only for a combined 12 weeks in this situation, under Postal Service policy each employee is entitled to 12 weeks off per leave year.
21. Q. Can an employee be disciplined or receive other administrative action for absences covered by the FMLA?
- A. No. FMLA leave may not be used as a basis for disciplinary purposes under any circumstances. The law prohibits management from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the FMLA.

## MISCELLANEOUS

18. Q. May an employer transfer an employee to an alternative position in order to accommodate intermittent leave or a reduced leave schedule?
- A. Yes, when the leave is foreseeable based on planned medical treatments. However, any transfer to an alternative position—including a cross-craft transfer—requires compliance with the National Agreement.
19. Q. How does a carrier request leave for FMLA reasons?
- A. The carrier should complete a 3971, *Request for or Notification of Absence*. The 3971 has been modified to include an appropriate space for leave designated as FMLA leave. In an emergency situation, a phone call, telegram, etc. will suffice until it is possible to submit the necessary paperwork.
20. Q. How is time spent in FMLA leave tracked?
- A. The employee should always keep a copy of the employer-signed duplicate 3971. In addition, the employer makes an annotation on the 3972, *Absence Analysis Card*, to the effect that the leave was for a FMLA covered condition.
22. Q. Does a carrier continue to earn sick and annual leave when taking LWOP for an FMLA-covered condition?
- A. The FMLA does not change the usual rules for the accrual of leave. When an employee's total time on LWOP during a year reaches 80 hours, his or her leave credits are reduced by the amount normally earned in one pay period. So, for example, six weeks (240 hours) spent on LWOP—even for an FMLA-covered condition—will reduce both annual and sick leave by the amount earned in three pay periods.



# Appendices

## APPENDIX A NALC FMLA FORMS

NALC has created its own FMLA forms which letter carriers may use to apply for FMLA leave. These forms are published here so they may be photocopied when needed. The forms are:

- NALC Form 1: Employee's Notification of New Child in the Family
- NALC Form 2: Medical Certification—Employee's Own Serious Health Condition
- NALC Form 3: Employee's Certification of Own Serious Health Condition
- NALC Form 4: Medical Certification—Family Member's Serious Health Condition
- NALC Form 5: Employee's Notice of Need for Intermittent Leave or a Reduced Work Schedule

Forms 1 and 5 have one page each; Forms 2, 3 and 4 are two-page forms.

For detailed information on applying for FMLA leave and providing appropriate documentation of FMLA leave requests, review “Documentation of Requests for FMLA Leave: NALC FMLA Forms,” on pages 11-12.

## APPENDIX B

Following the FMLA Forms is Appendix B, a reproduction of the *Employee and Labor Relations Manual* (ELM) regulations governing the administration of the Family and Medical Leave Act in the Postal Service. These regulations do not in any way change the provisions of the Act or of the federal FMLA regulations. Rather, they simply provide regulations for administering the FMLA within the Postal Service organization.





# NALC Form 1 - Family and Medical Leave Act of 1993

Employee Should Deliver Completed Form to Postal Service Supervisor, and Keep a Copy



## Employee's Notification of New Child in the Family

To take FMLA leave for a new child in the family, an employee must notify management within 30 days (when practicable) of the anticipated date of the birth, placement in foster care or adoption. This form may be used for that purpose. When the leave begins, complete and submit a Form 3971, Request for or Notification of Absence, for each pay period in which leave will be taken.

Employee Name (Print)

To Postal Supervisor:

This serves as notification under the Family and Medical Leave Act of 1993 that I expect to become the parent of a new child, by (check one)

- Birth
- Adoption
- Placement in foster care

on (approximate date)\_\_\_\_\_.

Following that date I plan to take time off work to care for my new child. I plan to return to work

on (approximate date)\_\_\_\_\_.

Employee Signature\_\_\_\_\_ Date\_\_\_\_\_

## Family and Medical Leave Act Rules: New Child in the Family

The Family and Medical Leave Act guarantees each letter carrier 12 weeks of time off per postal leave year for a new child in the family—by birth, by placement of a foster child or by adoption. The age of a child adopted or placed in foster care does not affect eligibility for leave (except that the child must be under 18, or older but incapable of self-care). When both parents work for the Postal Service, *each parent* may take up to 12 weeks of FMLA leave for this purpose.

**Before the child arrives:** In the case of a birth, the pregnant employee is entitled to FMLA leave before the actual date of birth, for prenatal care or if her condition makes her unable to work. Accrued paid sick leave may be used

for these purposes; the employee also may use annual leave or LWOP in accordance with existing rules.

Before or after a foster or adopted child is placed, the employee is entitled to take FMLA leave for making required arrangements for the placement—to attend counseling sessions, appear in court, consult with his or her attorney or doctors representing the birth parent, or submit to a physical examination. A father or mother is entitled to take FMLA leave for these reasons, and may use annual leave or LWOP in accordance with existing rules.

**Caring for the child during the first year.** Whether the child arrives by birth or by placement, a mother or father is

entitled to FMLA leave to care for the child during the first year. No medical justification is needed—the FMLA leave is guaranteed simply to care for the new child. This particular right to FMLA leave terminates on the first anniversary of the child's birth or placement.

**LWOP rules.** Under Section 514 of the USPS *Employee and Labor Relations Manual*, as a general rule management has discretion in the granting of LWOP; this is an administrative decision that must be based on the needs of the employee, the needs of the Postal Service and the cost to the Postal Service. However, if the employee has exhausted paid leave then LWOP *must* be granted for an FMLA-covered condition.



# NALC Form 2 - Family and Medical Leave Act of 1993

Health Care Provider: Please Complete this Form Using Extra Sheets if Needed, and Return to Employee



## Medical Certification—Employee's Own Serious Health Condition

The employee's health care provider must complete this form when an employee requests FMLA leave and *medical documentation is required* (see ELM Sections 512.41, 513.6 and 515.5). A Form PS 3971, Request for or Notification of Absence, also must be completed and submitted as usual.

**Employee:** Return the completed form to the appropriate Postal Service Supervisor, and keep a copy for your own records.

Employee Name (Print)

**1. Description of serious health condition:** The back (p. 2) of this form describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the employee's condition<sup>1</sup> qualify under any of the categories described? If so, please check the applicable category.

- 1     
  2     
  3     
  4     
  5     
  6     
  None of these

**2. Medical facts:** Please describe briefly the medical facts which fit the category checked above, *without* including a specific diagnosis or prognosis.

### 3. Duration of condition and incapacity

a. **Date** the condition began: \_\_\_\_\_ **Probable duration** of the condition: \_\_\_\_\_

Probable duration of the patient's present incapacity<sup>2</sup> (if different): \_\_\_\_\_

b. Will it be necessary for the employee to take time off work only **intermittently** or to **work on a less than full schedule** as a result of the condition (including for treatment described in Item 4 below)?

- Yes     
  No

If yes, give the probable duration: \_\_\_\_\_

c. If the condition is a **chronic condition** (condition #4) or pregnancy(#3), state whether the patient is presently incapacitated and the likely duration and frequency of **episodes of incapacity**:

**4. If additional treatments** will be required for the condition, please describe: the nature of such additional treatments or continuing regimen of treatment under your supervision (e.g., prescription drugs, physical therapy requiring special equipment); the probable number of such treatments; the length of absence required; and the actual or estimated dates of the treatments, if known.

5. Is the employee able to perform the functions of his or her position?  Yes  No

If not, please describe the employee's restrictions and their duration: \_\_\_\_\_

Health Care Provider Signature \_\_\_\_\_

Date \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

# "Serious Health Condition"

## Definition under Family and Medical Leave Act of 1993

A "serious health condition" of a family member is defined in the FMLA regulations as any illness, injury, impairment or physical or mental condition that involves one of the following:

### 1. Hospital care:

This means **inpatient care** (that is, an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

### 2. Absence plus treatment:

A period of incapacity of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

- a. **Treatment<sup>3</sup> two or more times** by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- b. **Treatment** by a health care provider on **at least one occasion** which results in **a regimen of continuing treatment<sup>4</sup>** under the supervision of the health care provider.

### 3. Pregnancy:

Any period of incapacity due to pregnancy, or for prenatal care.

### 4. Chronic conditions requiring treatments:

A chronic condition which

- a. Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- b. Continues over **an extended period of time** (including recurring episodes of a single underlying condition); and
- c. May cause **episodic** rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).

### 5. Permanent/long-term conditions requiring supervision:

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.

### 6. Multiple treatments (non-chronic conditions):

Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) 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), kidney disease (dialysis).

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<sup>1</sup> Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

<sup>2</sup> "**Incapacity**," for purposes of the FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

<sup>3</sup> **Treatment** includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

<sup>4</sup> 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. A regimen of treatment does not include 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.



# NALC Form 3 - Family and Medical Leave Act of 1993

Employee Should Deliver Completed Form to Postal Service Supervisor, and Keep a Copy



## Employee's Certification of Own Serious Health Condition

An employee should use this form to request FMLA leave in situations where *medical documentation is not required* (see ELM Sections 512.41, 513.36 and 515.5). A Form PS 3971, Request for or Notification of Absence, also must be completed and submitted as usual.

Employee Name (Print)

**1. Description of serious health condition:** To qualify for leave for your own serious illness under the Family and Medical Leave Act, your condition<sup>1</sup> must qualify as a "serious health condition" under the special definition in the law, described on the back (p. 2) of this form. Does your condition qualify under any of the categories described? If so, please check the applicable category.

1       2       3       4       5       6

### 2. Duration of condition

a. Date the condition began: \_\_\_\_\_

b. Probable duration of the condition: \_\_\_\_\_

Employee Signature \_\_\_\_\_ Date \_\_\_\_\_

# "Serious Health Condition"

## Definition under Family and Medical Leave Act of 1993

A "serious health condition" of a family member is defined in the FMLA regulations as any illness, injury, impairment or physical or mental condition that involves one of the following:

### 1. Hospital care:

This means **inpatient care** (that is, an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

### 2. Absence plus treatment:

A period of incapacity of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

- a. **Treatment<sup>3</sup> two or more times** by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- b. **Treatment** by a health care provider on **at least one occasion** which results in **a regimen of continuing treatment<sup>4</sup>** under the supervision of the health care provider.

### 3. Pregnancy:

Any period of incapacity due to pregnancy, or for prenatal care.

### 4. Chronic conditions requiring treatments:

A chronic condition which

- a. Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- b. Continues over **an extended period of time** (including recurring episodes of a single underlying condition); and
- c. May cause **episodic** rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).

### 5. Permanent/long-term conditions requiring supervision:

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.

### 6. Multiple treatments (non-chronic conditions):

Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) 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), kidney disease (dialysis).

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<sup>1</sup> Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

<sup>2</sup> "**Incapacity**," for purposes of the FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

<sup>3</sup> **Treatment** includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

<sup>4</sup> 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. A regimen of treatment does not include 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.



# NALC Form 4 - Family and Medical Leave Act of 1993

Health Care Provider: Please Complete this Form Using Extra Sheets if Needed, and Return to Employee



## Medical Certification—Family Member's Serious Health Condition

**Employee:** Return the completed form to the appropriate Postal Service Supervisor, and keep a copy for your own records.

Employee Name (Print) \_\_\_\_\_

1. Patient's name: \_\_\_\_\_

Relationship to employee:  Child  Spouse  Parent

2. **Description of serious health condition:** The back (p. 2) of this form describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the patient's condition<sup>1</sup> qualify under any of the categories described? If so, please check the applicable category.

1  2  3  4  5  6  None of these

3. **Medical facts:** Please describe briefly the medical facts which fit the category checked above, without including a specific diagnosis or prognosis.

\_\_\_\_\_

### 4. Duration of condition and incapacity

a. **Date** the condition began: \_\_\_\_\_ **Probable duration** of the condition: \_\_\_\_\_

Probable duration of the patient's present incapacity<sup>2</sup> (if different): \_\_\_\_\_

b. If the condition is a **chronic condition** (condition #4) or pregnancy(#3), state whether the patient is presently incapacitated and the likely duration and frequency of **episodes of incapacity**:

\_\_\_\_\_

\_\_\_\_\_

5. If **additional treatments** will be required for the condition, please describe: the nature of such additional treatments or continuing regimen of treatment under your supervision (e.g., prescription drugs, physical therapy requiring special equipment); the probable number of such treatments; the length of the employee's required absence for the treatments; and the actual or estimated dates of the treatments, if known.

\_\_\_\_\_

### 6. Need for employee's care

a. Does the patient require assistance for basic medical, hygiene, nutritional needs, safety or transportation?  Yes  No

b. If no, would the employee's presence to provide **psychological comfort** be beneficial to the patient or assist in the patient's recovery?  Yes  No

c. Will it be necessary for the employee to take time off work **intermittently or to work on a less than full schedule** as a result of the patient's condition and/or treatments?  Yes  No

If yes, give the probable duration: \_\_\_\_\_

Health Care Provider Signature \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

# "Serious Health Condition"

## Definition under Family and Medical Leave Act of 1993

A "serious health condition" of a family member is defined in the FMLA regulations as any illness, injury, impairment or physical or mental condition that involves one of the following:

### 1. Hospital care:

This means **inpatient care** (that is, an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

### 2. Absence plus treatment:

A period of incapacity of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

- a. **Treatment<sup>3</sup> two or more times** by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- b. **Treatment** by a health care provider on **at least one occasion** which results in **a regimen of continuing treatment<sup>4</sup>** under the supervision of the health care provider.

### 3. Pregnancy:

Any period of incapacity due to pregnancy, or for prenatal care.

### 4. Chronic conditions requiring treatments:

A chronic condition which

- a. Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- b. Continues over **an extended period of time** (including recurring episodes of a single underlying condition); and
- c. May cause **episodic** rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).

### 5. Permanent/long-term conditions requiring supervision:

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.

### 6. Multiple treatments (non-chronic conditions):

Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) 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), kidney disease (dialysis).

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<sup>1</sup> Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

<sup>2</sup> "**Incapacity**," for purposes of the FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

<sup>3</sup> **Treatment** includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

<sup>4</sup> 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. A regimen of treatment does not include 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.



# NALC Form 5 - Family and Medical Leave Act of 1993

Employee Should Deliver Completed Form to Postal Service Supervisor, and Keep a Copy



## Employee Notice of Need for Intermittent Leave or for a Reduced Work Schedule

An employee should use this form to request FMLA leave involving intermittent periods of time off or a reduced daily or weekly work schedule. When the reason for the leave is the employee's or a family member's **serious health condition** (including incapacity due to pregnancy or childbirth), the appropriate additional form (NALC FMLA Form 2, 3 or 4) should also be completed and attached. Management must grant the intermittent leave or reduced work schedule leave when medical necessity is shown; subject to the health care provider's instructions, where leave is foreseeable the employee should try to work out a schedule with management that meets the carrier's medical needs, or family member's need for care, without unduly disrupting management's operation.

When intermittent leave or a reduced work schedule is requested to **care for an employee's new child** during the first year after the birth, placement in foster care or adoption (non-health reasons), management approval is needed. (Under ELM Section 514, as a general rule management has discretion in the granting of LWOP; this is an administrative decision that must be based on the needs of the employee, the needs of the Postal Service and the cost to the Postal Service.) The employee should seek the assistance of an NALC representative where needed.

A Form PS 3971, Request for or Notification of Absence, also must be completed and submitted as usual for each pay period.

Employee Name (Print)

**1. Reason for reduced or intermittent schedule:** The reason for this notice of a need for intermittent leave or a reduced work schedule is:

- My own serious health condition, or I am needed to care for a family member with a serious health condition, as defined in the Family and Medical Leave Act (see attached certification).
- or
- To care for my new child (non-health reasons).

**2. Description of intermittent leave or reduced work schedule, including duration:**

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Employee Signature \_\_\_\_\_ Date \_\_\_\_\_



ELM REVISION

## FAMILY AND MEDICAL LEAVE

The *Employee and Labor Relations Manual* (ELM) 515 and other sections are changed to comply with the Family and Medical Leave Act of 1993.

Policy formerly found in ELM 515, Absence for Maternity/Paternity Reasons, is incorporated into this new policy, and 515 is renamed Absence for Family Care or Serious Health Condition of Employee. These provisions are effective on the date of this *Postal Bulletin*.

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#### 515 Absence for Family Care or Serious Health Condition of Employee

##### 515.1 Purpose of 515

##### 515.2 Definitions

##### 515.3 Eligibility

##### 515.4 Leave Requirements

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###### 515.54 Additional Medical Opinions

###### 515.55 Employee Incapacitation

##### 515.6 Intermittent Leave or Reduced Schedule

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###### 515.62 Care of Others for Medical Reasons or Employee Incapacitation

###### 515.63 Temporary Change in Duty Assignment

###### 515.64 FLSA Status

##### 515.6 Return to Position

##### 515.8 Benefits

##### 515.9 Family Leave Poster

### Changes to Other Sections

These sections are changed to reflect the new policy detailed in 515 and to show updated reporting relationships, marked to show substantive changes by bars in the margin or bold text in exhibits, and published on the pages following 515.

**434.662k**, under **Eligibility** (under Out-of-Schedule Premium).

**434.71, Policy** (under Nonbargaining Rescheduling Premium).

**444.324, Pay on a Salary Basis** (under FLSA-Exempt Positions).

**513.32, Conditions for Authorization** (under Sick Leave).

**513.363, Extended Periods** (under Sick Leave).

**514.22c**, under **Administrative Discretion** (under Leave Without Pay)

**Exhibit 514.4f**, under **Acceptable Reasons and Instructions for LWOP**.

**519.71, Policy** (under Nonbargaining Personal Absence).

—*Employee Relations, 8-5-93*

## 515 Absence for Family Care or Serious Health Condition of Employee

**515.1 Purpose of 515.** This section provides policies to comply with the Family and Medical Leave Act of 1993. Nothing in this section is intended to limit employees' rights or benefits available under other current policies (see 511, 512, 513, 514), or collective bargaining agreements. Likewise, nothing increases the amount of paid leave beyond what is provided for under current leave policies or in any collective bargaining agreement. The conditions for authorizing the use of annual leave, sick leave, or LWOP are modified only to the extent described in this section.

**515.2 Definitions.** The following definitions apply for the purposes of the section:

- a. *Son or daughter*—biological, adopted, or foster child, stepchild, legal ward, or child who stands in the position of a son or daughter to the employee, who is under 18 years of age or who is over 18 and incapable of self-care because of mental or physical disability.
- b. *Parent*—biological parent or individual who stood in that position to the employee when the employee was a child.
- c. *Spouse*—husband or wife.
- d. *Serious health condition*—illness, injury, impairment, or physical or mental condition that involves any of the following:
  - (1) Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or residential medical care facility.
  - (2) Any period of incapacity requiring absence from work or regular daily activities of more than 3 calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider.
  - (3) Continuing treatment by (or under the supervision of) a health care provider (a) for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than 3 days; or (b) for prenatal care.

**Note:** Voluntary or cosmetic treatments (such as most treatments for orthodontia or acne) which are not medically necessary are not "serious health conditions," unless inpatient hospital care is required. Restorative dental surgery after an accident or removal of cancerous growths is a serious health condition provided all the other conditions are met. Treatments for allergies or stress, or for substance abuse, are serious health conditions if all the conditions of the regulations are met. Prenatal care is

included as a serious health condition. Routine preventative physical examinations are excluded.

- e. *Health care provider*—doctor of medicine or osteopathy, Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, MA, or other attending practitioner (see 513.364).

**515.3 Eligibility.** To request leave under this section, an employee must have been employed by the Postal Service for an accumulated total of 12 months, and must have worked a minimum of 1,250 hours during the 12-month period before the date leave begins.

### 515.4 Leave Requirements

**515.41 Conditions.** Eligible employees must be allowed an accumulated total of up to 12 workweeks of leave within a Postal Service leave year for one or more of the following:

- a. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter. Entitlement to leave for this condition expires 1 year after the birth.
- b. Because of the placement of a son or daughter with the employee for adoption or foster care. Entitlement to leave for this condition expires 1 year after the placement.
- c. In order to care for the spouse, son, daughter, or parent of the employee if the spouse, son, daughter, or parent has a serious health condition.
- d. Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

**515.42 Leave Type.** Absences approved under this section are charged as annual leave, sick leave, or leave without pay, or a combination of these. Leave is charged consistent with current leave policies and applicable collective bargaining agreements. Approving officials should note "FMLA" in the approval block of the Form 3971, *Request for or Notification of Absence*.

**515.43 Authorized Hours.** Under this section, full-time employees, are entitled to up to 480 hours of leave (i.e., 12 weeks times 40 hours per week) within a leave year. Employees with weekly schedules of less than 40 hours are entitled to 12 times the number of hours normally scheduled in their workweek. For example, a part-time employee with a normal schedule of 30 hours a week is entitled to 360 hours (12 weeks times 30 hours). A part-time employee who does not have a normal weekly schedule is entitled to the total number of hours worked in the previous 12 weeks, not including overtime hours. Leave in addition to the 12 workweeks authorized under this section

may be granted in accordance with other leave policies or collective bargaining agreements (see 511, 512, 513, 514).

### 515.5 Documentation

**515.51 General.** An employee must provide a Form 3971, *Request for or Notification of Absence*, together with documentation supporting the request, at least 30 days before the absence if the need for the leave is foreseeable. If 30 days notice is not practicable, notice must be given as soon as practicable. Ordinarily at least verbal notification should be given within 1 or 2 business days of when the need for leave becomes known to the employee. The employee will be provided a notice detailing the specific expectations and obligations and consequences of a failure to meet these obligations. Additional documentation may be requested, which must be provided within 15 days or as soon as practical under the particular facts and circumstances. During an absence, the employee must keep his or her supervisor informed of intentions to return to work and of status changes which could affect his or her ability to return to work. Failure to provide documentation can result in the denial of family and medical leave under this section.

**515.52 New Son or Daughter.** An employee requesting time off because of the birth of the employee's son or daughter and to care for the son or daughter, or because of the placement of a son or daughter with the employee for adoption or foster care, may be required to provide the birth or placement date.

**515.53 Care of Others for Medical Reasons.** An employee requesting time off to care for a spouse, parent, son, or daughter who has a serious health condition may be required to provide documentation from the health care provider stating the date the serious health condition began, probable duration of the illness, appropriate medical facts, and when the employee will be needed to provide such care or psychological support. When the request is to care for someone other than a biological parent or child, appropriate explanation of the relationship may be required.

**515.54 Additional Medical Opinions.** A second medical opinion by a health care provider who is designated and paid for by the Postal Service may be required. In case of a difference between the original and second opinion, a third opinion by a health care provider may be required. The third health care provider is jointly designated or approved by management and the employee, and the third opinion is final. The Postal Service pays the health care provider for the third opinion. A health care provider selected for the second or third opinion may not be employed by the Postal

Service on a regular basis. Recertifications of a medical condition may also be required during absences.

**515.55 Employee Incapacitation.** An employee requesting time off under this section because of his or her own incapacitation must satisfy the documentation requirements for sick leave in 513.31 through 513.38 or for leave without pay in 514.4. If absence exceeds 21 calendar days, evidence of ability to return to work with or without limitations must be submitted. If additional medical opinions are required, they are administered as described in 515.54.

### 515.6 Intermittent Leave or Reduced Schedule

**515.61 New Son or Daughter.** Leave requested because of the birth of the employee's son or daughter and to care for the son or daughter or because of the placement of a son or daughter with the employee for adoption or foster care may be taken on an intermittent basis or by establishing a reduced work schedule only if the request for such intermittent leave or schedule modification is approved. Approval is based on employee need, Postal Service need, and costs to the Postal Service.

**515.62 Care of Others for Medical Reasons or Employee Incapacitation.** Leave requested to care for a spouse, son, daughter, or parent with a serious health condition or due to the employee's health condition may be taken on an intermittent basis or by establishing a reduced work schedule when medically necessary.

**515.63 Temporary Change in Duty Assignment.** If an employee requests intermittent leave or a reduced work schedule, the Postal Service may assign the employee, with equivalent pay and benefits, temporarily to the duties of another position consistent with applicable collective bargaining agreements and regulations if such an assignment better accommodates the recurring periods of absence.

**515.64 FLSA Status.** An employee exempt from the Fair Labor Standards Act (FLSA) normally may not take leave in less than 1-day increments. However, leave taken under this section on an intermittent basis or by temporarily establishing a reduced work schedule can be taken in less than 1-day increments without affecting the employee's FLSA-exempt status.

**515.7 Return to Position.** Employees taking leave under this section are entitled to return to their positions held when leave began, or to equivalent positions with equivalent pay, benefits, working conditions, and other terms of employment. Returning employees are not entitled to any right, benefit, or position which they would not have been entitled had they not taken the leave, or to intangible, unmeasurable aspects of the job such as the perceived loss of potential for

future promotional opportunities. If an employee was hired for a specific term or only to perform work on a discrete project, then there is no further reinstatement obligation under this section if the employment term or project is over and the employment would not have otherwise continued.

**515.8 Benefits.** All benefits shall accrue to employees in a leave status under this section pursuant to the applicable provision of the ELM.

**515.9 Family Leave Poster.** All postal facilities, including stations and branches, are required to conspicuously display Poster 43, *Your Rights Under the Family and Medical Leave Act of 1993*. It must be posted, and remain posted, on bulletin boards where it can be seen readily by employees and applicants for employment.

**434 Overtime and Premium Pay**

\* \* \* \* \*

**434.6 Out of Schedule Premium**

\* \* \* \* \*

**434.62 Eligibility**

\* \* \* \* \*

**434.622** Eligible employees are not entitled to out of schedule premium under the following conditions:

\* \* \* \* \*

- k. When the assignment is made to accommodate a request for intermittent leave or a reduced work schedule for family care or serious health problem of the employee (see 515.6).

\* \* \* \* \*

**434.7 Nonbargaining Rescheduling Premium**

**434.71 Policy.** Nonbargaining rescheduling premium is paid to eligible nonbargaining unit employees for time actually worked outside of, and instead of, their regularly scheduled workweek when less than 7 calendar days notice of the schedule change was given. It is not paid beyond the 7th calendar day after the notice of schedule change is given. Neither is it paid when the assignment is made to accommodate a request for intermittent leave or a reduced work schedule for family care or serious health problem of the employee (see 515.6).

**440 Fair Labor Standards Act (FLSA) Administration**

\* \* \* \* \*

**444.32 Exempt Positions**

\* \* \* \* \*

**444.324 Pay on a Salary Basis.** Pay on a salary basis is defined as receiving a fixed salary regardless of the hours worked, or the quality or quantity of work performed. Deductions for annual or sick leave and leave without pay may be made in increments of full days only, except for leave taken in accordance with 515.61 and 515.62 (leave taken on an intermittent basis or by establishing a reduced work schedule because of a new son or daughter, because medically necessary to care for others, or because the employee is incapacitated). If an employee is not paid on a salary basis, even though all the other criteria for exemption are met, the employee must be classified nonexempt.

\* \* \* \* \*

**513 Sick Leave**

\* \* \* \* \*

**513.32 Conditions for Authorization**

Conditions	
a. Illness or injury.	If employees are incapacitated for the performance of official duties.
b. Pregnancy and confinement. (Sick leave, annual leave, or LWOP is granted as may be necessary.)	<b>If absence is required for physical examinations or periods of incapacitation.</b>
c. Medical, dental, or optical examination or treatment.	If absence is necessary during the employee's regular scheduled tour.
d. Contagious disease. A contagious disease is a disease ruled as requiring isolation, quarantine, or restriction of movement of the patient for a particular period by the health authorities having jurisdiction.	If employees (1) must care for family member afflicted with a contagious disease, (2) have been exposed to a contagious disease and would jeopardize the health of others, or (3) have evidence supplied by the local health authorities or certificate signed by a physician certifying the need for the period of isolation or restriction.
e. Medical treatment for disabled veterans. (Sick leave, annual leave, or LWOP is granted as may be necessary.)	If employees (1) present a statement from a duly authorized medical authority that treatment is required, and (2) when possible, give prior notice of the definite number of days and hours of absence. (Such information is needed for work scheduling purposes.)

\* \* \* \* \*

**513.363 Extended Periods.** Employees who are on sick leave for extended periods are required to submit at appropriate intervals, *but not more frequently than once every 30 days*, satisfactory evidence of continued incapacity for work unless some responsible supervisor has knowledge of the employee's continuing incapacity for work.

\* \* \* \* \*

**514 Leave Without Pay (LWOP)**

\* \* \* \* \*

**514.22 Administrative Discretion.** Each request for LWOP is examined closely and a decision is made based on the needs of the employee, the needs of the Postal Service and the cost to the Postal Service. The granting of LWOP is a matter of administrative discretion. It is not granted on the employee's demand except:

- a. A disabled veteran is entitled to LWOP, if necessary, for medical treatment under Executive Order 5396.

b. A Reservist or a National Guardsman is entitled to LWOP, if necessary, to perform military training duties under the Vietnam Era Veterans' Readjustment Act of 1974. (See 38 U.S.C., section 2024.)

c. An employee who requests and is entitled to time off under 515, Absences for Family Care or Serious Health Problem of Employee, must be allowed up to a total of 12 workweeks of absence within a Postal Service leave year for one or more reasons listed in 515.41. Leave without pay may be taken in combination with annual or sick leave for which the employee is qualified.

\* \* \* \* \*

**514.4 Acceptable Reason and Instructions.**

See Exhibit 514.4 for acceptable reasons and instructions for LWOP.

\* \* \* \* \*

**519.7 Nonbargaining Personal Absence**

**519.71 Policy.** Nonbargaining exempt employees are paid on a salary basis; i.e., they receive a fixed salary for the workweek regardless of the number of hours worked or the quality of the work performed. They may be charged with annual leave, sick leave, LWOP, or any combination thereof, when they are absent from work for 1 or more full days. Except for leave taken in accordance with 515.61 and 515.62 (leave taken on an intermittent basis or by establishing a reduced work schedule because of a new son or daughter, because medically necessary to care for others, or because the employee is incapacitated), they cannot be charged with annual leave, sick leave, or LWOP on any service day in which they have workhours, court leave, military leave, holiday leave, administrative leave, or continuation of pay.

Acceptable Reasons for LWOP	Instructions
a. Personal reasons.	LWOP may be granted to cover the absence.
b. Employee has no leave to cover vacation during choice vacation period.	LWOP may be granted to cover the absence.
c. Full-time attendance at a college or university.	(1) Restricted to full-time employee. (2) An official transcript of courses taken must be submitted to the installation head.
d. Personal illness or injury ( <b>also see 515</b> ).	<p>(1) LWOP may be granted after accumulated accrued sick and annual leave have been exhausted; except that during a pay period in which, due to personal injury or illness, no work is performed, an employee may utilize annual and/or sick leave in conjunction with LWOP, subject to approval of the leave in accordance with normal leave approval procedures.</p> <p>(2) A medical document from the attending physician or practitioner must be obtained before approval, the same as for sick leave.</p> <p>(3) Applications for LWOP to cover a period in excess of 30 days in any 1 year in cases of illness or injury are reviewed and acted upon by the installation head.</p> <p>(4) An employee normally will not be separated from the service because of absence due to personal illness or injury for a period of less than 1 year (also see 568). An employee may be separated if required to be absent for more than 1 year unless there is cause to expect recovery and return within a reasonable time after the end of 1 year in LWOP status.</p> <p>(5) The separation of an employee after 1 year of continued absence with or without pay does not prevent an eligible employee from filing an application for retirement (also see 568).</p>
e. Injury in line of duty.	<p>(1) Supervisors must advise employees of their right to file an application for FECA benefits as a result of illness or injury that is suffered in the line of duty. (See instructions on CA-1 and CA-2a for traumatic injuries and CA-2 for occupational illnesses and diseases.)</p> <p>(2) In traumatic injury cases, an employee is entitled to a maximum of 45 calendar days of continuation of pay (COP) without charge to leave if written notice of injury is filed within 30 days of injury. The period of COP begins at the start of the employee's first full tour of duty thereafter, or the first day following the disability, whichever occurs sooner. The period during which 45 days of COP may be claimed must begin within 90 days of the occurrence of the injury but may end after 90 days from the occurrence. If, after returning to work subsequent to an apparent recovery from a traumatic injury, an employee is again absent from work as a result of the original traumatic injury, the employee may use any remaining COP time left up to the 45-day limit. However, the remaining COP time must be used within 90 days of the date the employee first returns to work following the initial traumatic injury.</p> <p>(3) An employee may choose sick or annual leave in lieu of COP; however, this leave <b>may</b> be retroactively converted to COP provided a request is made within 1 year of the date the leave was used or the date of the claim approval, whichever is later.</p> <p>(4) Before being placed on LWOP, an employee may choose to use annual or sick leave until it is exhausted. Leave is earned during that part of a pay period in which the employee is in pay status.</p> <p>(5) On favorable adjudication of a claim by the Office of Workers' Compensation Programs (OWCP), LWOP may be substituted for a period of sick and/or annual leave so that the employee may accept disability compensation for the period of absence.</p> <p>(6) On favorable adjudication of a claim by OWCP, current employees are permitted to buy back the leave that they used while awaiting adjudication (see 545.73b6). If the injury is a traumatic injury, only leave used after the end of the 45-day COP period may be bought back. OWCP does not restrict the amount of leave hours an employee may buy back. However, Postal Service regulations do not permit employees to carry-over into the next leave year more than the allowable maximum number of hours of annual leave (see 512.12). When an employee buys back annual leave in the previous year in an amount that exceeds the applicable maximum carry-over, such excess will be automatically forfeited. For every 80 hours of leave bought back and changed to LWOP, both annual and sick leave must be adjusted by the amount earned in a pay period.</p>

**Exhibit 514.4 (p. 1), Acceptable Reasons and Instructions for LWOP**

Acceptable Reasons for LWOP	Instructions
f. Family care (see 515).	<b>An eligible employee may request and must be allowed a total of up to 12 work-weeks of absence during a Postal Service leave year for one or more reasons listed in 515.41. LWOP may be taken in combination with annual or sick leave for which the employee is qualified.</b>
g. Military duty for scheduled drills or for periods of training.	An employee enlisted under the Reserve Forces Act of 1955 who has completed the initial period of active duty training of not less than 3 months or more than 6 months may be granted LWOP for scheduled drills or periods of training.
h. Military duty for any purpose, training or otherwise.	Eligible members of the National Guard or reserve components of the Armed Forces who are ordered to active duty for training or for any other purposes, for a specified period of time not to exceed 1 year, but in excess of the total time allowable under military leave and annual leave are granted LWOP.
i. Employee elected to devote full-time service as a national president to an organization of supervisory or other managerial personnel (see 416.3).	<p>(1) LWOP normally does not exceed 2 consecutive years coinciding with the elected term of office.</p> <p>(2) The employee requests in writing, through the appropriate management structure, that the vice president of Labor Relations grant the employee LWOP during tenure of presidency for the purpose of serving as resident president of an employee organization in Washington, D.C., in a full-time capacity.</p> <p>(3) If LWOP is granted, the employee continues to be eligible for appropriate fringe benefits during that period.</p> <p>(4) The vice president of Labor Relations reserves the right to deny the request for LWOP if it is determined that the position must be filled on a permanent basis, unencumbered by an individual on prolonged leave.</p>
j. Union business.	See applicable provisions of current collective bargaining agreement.
k. Postmaster elected as an organization officer, other than the president.	See 519.272c and d.

**Exhibit 514.4 (p. 2), Acceptable Reasons and Instructions for LWOP**



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