

FMLA Definitions

Spouse. Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law and same-sex marriage in States where they are recognized.

Parent. Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood *in loco parentis* to the employee when the employee was a son or daughter as defined below. This term does not include parents “in law.”

Son or daughter/child. For purposes of FMLA son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence.

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

“**Physical or mental disability**” means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, define these terms.

Persons who are “**in loco parentis**” include those with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

Adoption. “Adoption” means legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child (*e.g.*, whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for FMLA leave. See 29 CFR §825.121 for rules governing leave for adoption.

Foster care. Foster care is 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody. See §825.121 for rules governing leave for foster care.

Sponsored Adult Dependent. A “sponsored adult dependent” is not a relative, is at least 19 years of age, shares a primary residence and has lived with you not as a renter, boarder, tenant or employee for at least twelve months.

Sponsored Adult Dependents are eligible for coverage under this policy, provided that they qualify for benefits coverage under the University's benefits program.

The child of a Sponsored Adult Dependent of a UAB employee will be treated as the employee's child for the purposes of this policy, provided that the child qualifies for benefits coverage under the University's benefits program.

Serious Health Condition

For purposes of FMLA, "***serious health condition***" entitling an employee to FMLA leave means an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider as defined in 29 CFR §825.115.

Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity, or any subsequent treatment in connection with such inpatient care.

The term "***incapacity***" means the inability to work, attend school or perform other, regular, daily activities, due to the serious health condition, its treatment, or recovery from the condition.

The term "***treatment***" includes (but is not limited to) 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. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment, for purposes of Family and Medical leave.

Conditions for which cosmetic treatments are administered, such as most treatments for acne or plastic surgery, are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, *etc.*, are examples of conditions that do not meet the definition of a serious health condition, and do not qualify for FMLA leave. Restorative dental or plastic surgeries, after an injury or removal of cancerous growths, are serious health conditions, provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, provided all the conditions of this section are met.

Health Care Provider

Health Care Provider is defined as 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 any other person determined by the Secretary to be capable of providing health care services.

Others "capable of providing health care services" include only:

(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation, as demonstrated by X-ray to exist) and authorized to practice in the State and performing within the scope of their practice, as defined by State law;

(2) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants, who are authorized to practice under State law, and who are performing within the scope of their practice, as defined by State law;

(3) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;

(4) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice, as defined under such law.

The phrase "authorized to practice in the State", as used in this section, means that the provider must be authorized to diagnose and treat physical or mental health conditions.

Intermittent Leave or Reduced Leave Schedule

FMLA leave may be taken "intermittently or on a reduced leave schedule" under certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

Military FMLA Definitions

Covered Active Duty.

Covered active duty means:

- for members of the **Regular** Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or
- for members of the **Reserve** components of the Armed Forces (members of the National Guard and Reserves), duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.

Deployment to a foreign country includes deployment to international waters.

Contingency Operation. A “contingency operation is an action or operation against an opposing military force, as described in section 101(a)(13)(B) of title 10, United States Code.

Covered Service member. The term “covered service member” means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

Military Caregiver Leave. Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred or aggravated in the line of duty on active duty for which he/she is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or to care for a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness (as that term is defined by the Secretary of Labor) incurred or aggravated in the line of duty on active duty, provided the veteran was a member of the U.S. Armed Forces (including the National Guard or Reserves) during the five-year period preceding that medical treatment, recuperation, or therapy.

Son or daughter on active duty or call to active duty status. “Son or daughter on active duty or call to active duty status” means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

Son or daughter of a covered service member. “Son or daughter of a covered service member” means the service member's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the service member stood in loco parentis, and who is of any age. See §825.127(d)(1).

Parent of a covered service member. “Parent of a covered service member” means a covered service member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered service member. This term does not include parents “in law.” See §825.127(d)(2).

Next of kin of a covered service member. “Next of kin of a covered service member” means the nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin. See §825.127(d)(3).