

Headquarters
Eighth United States Army
Installation Management Command
Korea

Army in Korea
Regulation 690-635

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Civilian Personnel
FAMILY AND MEDICAL LEAVE

***This regulation supersedes Eighth Army Regulation 690-635, 19 Aug 1994**

FOR THE COMMANDER:

JAMES L. CREIGHTON JR.
Colonel, GS
Chief of Staff

Official:



F.W. MORRIS
Chief of Publications and
Records Management

Summary. This regulation establishes policies and procedures for implementing Title II of the Family and Medical Leave Act (FMLA) within the Eighth United States Army (Eighth Army).

Summary of Change. Substantial changes made to section I and section II, paragraph 10. Updated entire document to reflect new and correct terminologies, office name, and form used to invoke FMLA.

Applicability. This regulation applies to Department of the Army United States (U.S.) civilian employees of Eighth Army, both appropriated fund (AF) and nonappropriated fund (NAF), and all assigned, attached, or tenant activities that receive civilian personnel servicing support from Eighth Army Civilian Personnel Advisory Center (CPAC).

Forms. AK Forms are available at <http://www-hr.korea.army.mil>.

Supplementation. Supplementation of this regulation and issuance of command and local forms by subordinate commands is prohibited unless prior approval is obtained from

Headquarters (HQ) Eighth Army, Directorate of Human Resources Management, Unit #15236, APO AP 96205-5236.

Records Management. Records created as a result of processes prescribed by this regulation must be identified, maintained, and disposed of according to AR 25-400-2. Record titles and descriptions are available on the Army Records Information System website at <https://www.arims.army.mil>.

Suggested Improvements. The proponent of this regulation is the HQ Eighth Army, Directorate of Human Resources Management. Users may suggest improvements to this regulation by sending a DA Form 2028 (Recommended Changes to Publications and Blank Forms) to Directorate of Human Resources Management, Unit #15236, APO AP 96205-5236.

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**Section I
GENERAL**

1. PURPOSE. This regulation provides policy and procedures for implementing Title II of the FMLA within Eighth Army.

2. REFERENCES.

a. Required Publication. Title 5, United States Code, sections 6301 (2) and 6381 through 6387.

b. Related Publication.

(1) 5 Code of Federal Regulations, part 630, subpart L.

(2) AR 25-400-2, The Army Records Management System.

3. EXPLANATION OF ABBREVIATIONS AND TERMS. Abbreviations and terms used in this regulation are explained in the Glossary.

4. BACKGROUND. The FMLA authorizes a total of up to twelve administrative workweeks of unpaid leave during a 12-month period to take care of specified family and medical needs. Annual and sick leave may be substituted for unpaid leave.

5. ELIGIBILITY. To be eligible for FMLA leave, employees must have completed at least twelve months of service (not required to be twelve recent or consecutive months), as an employee as defined under Reference 2a, excluding any service as an employee under subparagraph 5a below.

a. The FMLA does not apply to the following:

(1) Employees who have not completed twelve months of service. However, up to six months of Leave Without Pay (LWOP) is creditable toward meeting the 12-month service requirement. Services under a temporary appointment, intermittent service, and military service (other than military duty performed while in a civilian position) are not creditable.

(2) Employees serving under intermittent appointments.

(3) Employees on temporary appointments with a time limitation of one year or less.

(4) Part-time employees who do not have established regular tours of duty during the administrative workweek.

(5) A teacher or individual serving under section 901 of title 20, United States Code, shall be governed by the terms and conditions of regulations prescribed by the Secretary of Defense.

(6) Executive schedule officials excluded from the annual and sick leave system.

(7) Non-U.S. citizen employees.

b. U.S. citizen employees not covered by this regulation are covered under Title I of the FMLA.

6. RESPONSIBILITIES.

a. The CPAC is responsible for monitoring the program and advising employees on the provisions of this regulation. The CPAC will --

(1) Monitor the program.

(2) Assist supervisors and managers in determining the essential functions of a position and when additional medical certification should be required.

(3) Assist supervisors and managers in determining equivalent positions.

(4) Notify employees annually of FMLA entitlements.

(5) Advise employees of the benefits and entitlements that may be affected by taking long-term leave. The major benefits and entitlements affected by long-term leave are shown in appendix A.

b. Commanders and activity chiefs will --

(1) Determine when an available alternative position will be used for the employee and if the employee can be returned to an equivalent position instead of his or her permanent position.

(2) Determine when a third medical certification is required. The decision to request a third medical opinion must be coordinated with the servicing CPAC.

c. The servicing finance and accounting office will maintain an account of the FMLA leave taken. The record will be used for reporting requirements. A copy of the employee's FMLA leave usage will be forwarded to the gaining activity when the employee transfers out of the serviced area.

d. Supervisors and managers will--

(1) Receive and review the employee's request for FMLA leave.

(2) Determine the essential functions of the employee's position.

(3) Determine when a second medical opinion is required. The supervisor must confer with CPAC before challenging the original medical certification and requiring a second medical opinion.

(4) Take appropriate action when proper certification is not provided by the employee.

(5) Ensure that all leave taken is properly documented on the time and attendance report.

Section II
POLICY AND PROCEDURES.

7. NOTIFICATION OF LEAVE ENTITLEMENT. All eligible employees will be notified of their FMLA entitlements. As a minimum, the Office of Personnel Management (OPM) fact sheet and the Department of Labor notice (or similar notices) will be posted on employee bulletin boards and publicized annually in employee bulletins or newsletter.

8. LEAVE ENTITLEMENT.

a. An eligible employee is entitled to a total of twelve (12) administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- (1) Birth and care of a son or daughter of the employee.
- (2) Placement of a son or daughter with the employee for adoption or foster care.
- (3) Care of a spouse, son, daughter, or parent who has a serious health condition.

(4) Serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

b. A father and a mother are each entitled to the twelve (12) administrative workweeks of unpaid leave under the FMLA.

c. An employee may only take the amount of FMLA leave that is necessary to manage the circumstances that prompted the leave.

d. The FMLA leave to care for a child may begin prior to, or on the actual date of birth, placement for adoption, or foster care. It expires twelve (12) months after the date of the birth or placement. The leave must be concluded within the twelve (12) months after the date of birth or placement.

e. A total of twelve (12) administrative workweeks is available for full-time and part-time employees in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek. The twelve (12) workweeks of leave are calculated on an hourly basis and will equal twelve (12) times the average number of hours in the employee's regularly scheduled administrative workweek. If the number of hours varies, a weekly average of the hours scheduled over the twelve (12) weeks prior to the date leave commences will be used for this calculation. If the number of hours in the employee's workweek is changed during the 12-month period of FMLA leave, the entitlement to remaining leave will be recalculated.

f. An employee may neither be required to use FMLA leave nor may requests under the FMLA be denied to eligible employees who have complied with the notification requirements. However, this does not preclude discussions on scheduling leave in a manner that assists supervisors to plan for the performance of work during the employee's absence. In addition, supervisors or managers may require medical certification, recertification, or subsequent medical opinions.

9. INTERMITTENT LEAVE OR REDUCED LEAVE SCHEDULE

a. An employee must obtain supervisory approval in order to take FMLA leave on an intermittent basis or under a reduced leave schedule for the birth of a child or for placement by adoption or foster care.

b. An employee may choose to take FMLA leave on an intermittent basis or under a reduced leave schedule when medically necessary to care for a family member with a serious health condition or for the employee's own serious health condition.

c. Intermittent leave or reduced leave includes situations where the employee is only needed intermittently because care is also provided by a third party. A reasonable effort should be made by the employee to schedule treatment so as not to unduly disrupt the operations of the organization, subject to the approval of the health care provider.

d. Commanders and activity chiefs may approve placing employee temporarily in an available alternative position for which the employee is qualified, which has equivalent pay and benefits, and which can better accommodate recurring periods of leave. In most situations, the employee will be returned to his or her permanent position upon completion of the FMLA leave. However, there may be limited situations in which the commander or activity chief may authorize reassigning the employee into an equivalent position. This action will be coordinated with the servicing CPAC to ensure that the equivalent position meets FMLA requirements.

10. SUBSTITUTION OF PAID LEAVE.

a. Leave taken under the FMLA will generally be LWOP. However, the employee may elect to substitute paid time off for any or all of the period of leave taken. Accrued annual leave or sick leave, advanced annual leave or sick leave, compensatory time off, or leave available from the Leave Transfer Program may be used consistent with the same terms and conditions that apply to any other employee requesting such leave.

b. An employee may not be required to substitute paid time off for any or all of the FMLA leave taken.

c. The employee must provide written notification of his or her intent to substitute paid time off for the period of leave to be taken.

11. NOTICE OF LEAVE.

a. The employee must indicate his or her intent to invoke entitlement to FMLA by completing and submitting OPM Form 71, (Request for Leave or Approved Absence), to his or her supervisor. The employee must complete the block for FMLA in item# 5, and identify whether the leave is for family leave (i.e., birth, adoption, foster care, or care of family member) or medical leave (i.e., for the employee's serious health condition). The employee must also indicate on this form the type and periods of leave (i.e., annual, sick, or LWOP) taken while on family and medical leave. In the remarks section of the form, the employee must include the beginning and ending dates of the employee's 12-month period of FMLA leave entitlement.

b. If the need for leave is foreseeable, the employee must provide at least a 30-day notice to his or her supervisor. For leave taken based on planned medical treatment, the employee will consult with his or her supervisor and make a reasonable effort to schedule medical treatment so as not to unduly disrupt the operations of the organization, subject to the approval

of the health care provider. The supervisor may, for justifiable cause, ask the employee to reschedule the medical treatment, subject to the approval of the health care provider.

c. If the need for leave is unforeseeable and the employee cannot provide a 30-day notice, the employee will provide notice within a reasonable period of time appropriate to the circumstances involved. Notice may be given by the employee's personal representative. However, the employee's personal representative must be designated, in writing, by the employee. If the need for leave is not foreseeable and the employee is unable to provide notice, the leave will not be delayed or denied.

d. If the need for leave is foreseeable and the employee fails to give a 30-day notice with no reasonable excuse for delaying notification, the leave may be delayed up to 30 days after the date the employee provides notice of the need for family and medical leave.

e. The 30-day notice requirement for requesting FMLA leave may not be waived when the leave is foreseeable.

12. MEDICAL CERTIFICATION.

a. An employee requesting FMLA leave for a serious medical condition will provide written medical certification to his or her supervisor. The medical certification will include --

(1) The date the serious health condition began.

(2) The estimated duration of the serious health condition.

(3) The appropriate medical facts regarding the serious health condition, including a general statement about the incapacitation, examination, or treatment that may be required.

b. Requests to take care of a spouse, son, daughter or parent of the employee must include the information listed in subparagraph 10a and the following:

(1) A statement from the health care provider that the family member requires psychological comfort or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; or would benefit from the employee's care or presence.

(2) A statement from the employee on the care he or she will provide and an estimated amount of time needed for that care.

c. Requests based on the employee's serious health condition must include the information listed in subparagraph 10a and a statement from the health care provider that the employee is unable to perform the essential functions of his or her position. The employee's supervisor, through the CPAC, will provide the essential functions of the employee's position, in writing, to the health care provider to assist in the determination.

d. If the employee's supervisor questions the validity of the original certification the supervisor may require a second medical opinion concerning the serious health condition. The second health care provider will be designated or approved, but not employed, by the activity and the examination expenses will be borne by the activity.

e. If the opinion of the second health care provider differs from the original certification, the commander or activity head may require that the employee obtain the opinion of a third health care provider concerning the information originally certified. The third health care provider will be at no cost to the employee and must be designated or approved jointly by the activity and the employee. The determination of the third health care provider will be binding.

f. To remain entitled to FMLA leave, the employee or his or her family member must comply with the requirements for examination to obtain a second or third medical opinion from a health care provider other than the individual's health care provider.

g. Provisional leave pending final written medical certification may be authorized if the employee is unable to provide the requested medical certification before the leave begins.

h. If the employee fails to provide the requested medical certification after the leave has commenced, the supervisor may --

(1) Charge the employee as absent without leave for the leave taken.

(2) Allow the employee to request that the leave taken be charged as LWOP, annual, or sick leave.

i. A supervisor may require subsequent medical recertification, from the health care provider, not more often than every 30 calendar days. The medical recertification will be at no cost to the employee. Recertification may be authorized sooner if the employee requests an extension to the original leave period, the circumstances in the original medical certification have changed significantly, or the activity received information that casts doubt on the continuing validity of the medical certification. Recertification may be requested less frequently when the health care provider certifies that a course of treatment will last a specified period of time.

j. The Department of Labor medical certification form, WH-380, (Certification of Health Care Provider), revised December 1999, may be used for health care provider certification.

13. PROTECTION OF EMPLOYMENT AND BENEFITS.

a. An employee who takes FMLA leave is entitled to return to the same position held before the leave began or an equivalent position.

b. The employee will not suffer loss of any employment benefits accrued prior to the date that leave began. However, a restored employee is not entitled to accrual of employee benefits during any period of non-pay leave.

c. An employee is not entitled to return to the same or equivalent position if the employee would not otherwise have been employed in that position at the time the employee returns from leave.

d. The employee may not be returned to an equivalent position where written notification has been provided that the position offered will be affected by a reduction in force (RIF) if the employee's original position is not affected by a RIF.

14. HEALTH BENEFITS.

a. Employees enrolled in a health benefits plan under the Federal Health Benefits Program may continue the health benefits enrollment while on LWOP and will arrange to pay the appropriate employee contributions into the Employees Health Benefits Fund.

b. Employees in a NAF health benefits plan may continue the plan. Contributions will be made consistent with other NAF employees on LWOP status.

15. RECORDS AND REPORTS

a. Records of employees using family and medical leave will be maintained by the finance and accounting office. As a minimum, the record will include --

(1) The employee's name, social security number, occupational series, and basic rate of pay.

(2) The dates FMLA leave was taken along with the beginning and ending dates of the employee's 12-month period.

(3) The number of hours of leave taken under the FMLA during the employee's 12-month period.

(4) Whether the leave was for family leave or for medical leave.

b. When the employee transfers to a different servicing area, a copy of the employee's use of leave under the FMLA will be provided with the SF 1150, (Record of Leave data).

c. These records will be maintained under record number 37i, Civilian Pay Record of Leave Data in accordance with AR 25-400-2.

APPENDIX A

BENEFITS/ENTITLEMENTS AFFECTED BY FMLA FOR AF EMPLOYEES

Initial Appointment Probationary Period Supervisory/Managerial Probationary Period	Any non-pay time in excess of 22 workdays extends the probationary period by that number of days.	
Career Tenure	Any non-pay time in excess of 30 calendar days extends the service date for career tenure by that number of days.	
Leave	If employee is in a non-pay status for an entire pay period, no annual or sick leave is earned for that pay period. If non-pay time occurs during part of one or more of a full-time employee's pay periods, the employee continues to earn leave until the non-pay time totals 80 hours. At 80 hours, leave is reduced by the amount the employee earns during a pay period.	
Service Computation Date (SCD) for Retirement, RIF, and Leave Accrual	Six months of non-pay time is creditable. The employees SCD must be adjusted by the amount of non-pay time in excess of 6 months in one calendar year. The excess time is added to the employee's SCD.	
Federal Employee Government Life Insurance	Continues at no cost up to 12 months in a non-pay status unless you are receiving benefits or compensation from OWCP.	
Health Benefits Insurance	Health benefits coverage continues for up to 365 days in a non-pay status if employee pays his/her share of cost.	
Thrift Savings Plan	Thrift savings plan employee deductions and government contributions stop when in non-pay status.	
Within Grade Increase	Step	Non-pay time allowed
General Schedule	2-3-4	2 workweeks – 80 hours for full-time employees.
	5-6-7	4 workweeks – 160 hours for full-time employees.
	8-9-10	6 workweeks – 240 hours for full-time employees.
Federal Wage System	2	1 workweek – 40 hours for full-time employees.
	3	3 workweeks – 120 hours for full-time employees.
	4-5	4 workweeks – 160 hours for full-time employees.

Foreign Area Allowances

Living Quarters Allowance

Leave status: Continues for up to 60 calendar days. Requires head of agency approval for extending an additional 60 calendar days.

Non-pay status: May be given up to 30 calendar days with head of agency approval.

Post Allowance

Allowance continues up to 30 consecutive calendar days when leave is taken outside the country of assignment. Allowance terminates on 31st day.

Post Differential

May be terminated depending upon where the employee resides during the leave.

GLOSSARY

Section I ABBREVIATIONS

AF	Appropriated Fund
CPAC	Civilian Personnel Advisory Center
Eighth Army	Eighth United States Army
FMLA	Family and Medical Leave Act
NAF	Nonappropriated Fund
LWOP	Leave Without Pay
OPM	Office of Personnel Management
RIF	Reduction in Force
SCD	Service Computation Date
U. S.	United States (of America)

Section II TERMS

Activities of daily living. Adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office.

Adoption. A legal process in which an individual becomes the legal parent of another's child. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for family and medical leave.

Commanders and activity chiefs. Commanders of EUSA major subordinate commands and assigned units, chief of headquarters Eighth Army staff elements, and chiefs/commanders of non-Eighth Army activities.

Continuing treatment by a health care provider. One or more of the following situations where an employee or an employee's spouse, son, daughter, or parent:

- a. Is treated two or more times for an illness or injury by a health care provider.
- b. Is treated two or more times for an illness or injury by a health care provider under the orders of, or on referral by, the individual's health care provider, or is treated for the illness or injury on at least one occasion that results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a course of medication or therapy) to resolve the health condition.

c. Is under the continuing supervision of the health care provider, but may not necessarily be actively treated by the health care provider, due to a serious long-term or chronic condition or disability which cannot be cured (e.g., Alzheimer's diseases, severe stroke, or terminal stages of a disease).

Equivalent position. A position with equivalent benefits, pay, status, conditions of employment, and meeting all of the following:

- a. In the same commuting area.
- b. The same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.
- c. Equivalent grade or pay level, including any applicable interim geographic adjustments, and applicable locality-based comparability payment, or any applicable special salary rate, or similar provision of law.
- d. The same type of appointment, work schedule, status, and tenure.
- e. The same employment benefits made available to the employee in his or her previous position (e.g., life insurance, health benefits, retirement coverage, and leave accrual).
- f. The same or equivalent opportunity for a within-grade increase, merit pay increase, performance award, incentive award, or other similar discretionary and non-discretionary payments consistent with applicable laws and regulations.
- g. The same or equivalent opportunity for premium pay.
- h. The same or equivalent opportunity for training or education benefits consistent with applicable laws and regulations, including any training that an employee may be required to complete to qualify for his or her previous position.
- i. The employee does not suffer the loss of any employment benefit accrued prior to the date on which the leave commenced.

Family and Medical leave. An employee's entitlement to 12 administrative workweeks of unpaid leave for certain family and medical needs as prescribed under the FMLA.

Foster care. Full-time 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 by 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 to take the child.

Health care provider. A person who meets any of the following:

- a. A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct medical examinations.
- b. Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law, or who practices in a country other

than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his or her practice as defined under such law to provide the service in question.

c. A Christian Science practitioner listed under the First Church of Christ, Scientist, in Boston, Massachusetts.

d. A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians.

In loco parentis. A situation of an individual who has day-to-day responsibility for the care and financial support of 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.

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

Serious health condition. An illness, injury, impairment, or physical or mental condition that involves—

a. Any period of incapacity or treatment in connection with or consequent to patient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility.

b. Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than 3 calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider.

c. Continuing treatment by (or under the supervision of) a health care provider 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 calendar days; or for prenatal care.

Son or daughter. A biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing “in loco parentis” who is—

a. Under 18 years of age.

b. Eighteen years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requiring active assistance or supervision to provide daily self-care in several of the “activities of daily living.”

Spouse. A husband or wife, as defined or recognized under state law for purposes of marriage, including common law marriage in states where it is recognized.