The Military Exigency Leave is a 12-workweek entitlement in a 12-month period and is counted against the CSU FML entitlement. The employee is required to exhaust appropriate leave credits prior to going on any unpaid portion of the Military Exigency Leave – CSU FML entitlement.

The following is a recap of the eight categories of exigency leave:

1. Short Notice Deployment – to address an issue arising from a covered military member notified of an impending call or order to active duty in support of a contingency operation seven (7) or less calendar days prior to the date of deployment. Leave taken for this purpose can be used for seven (7) calendar days beginning on the date the covered military member is notified of such operation.
2. Military Events and Related Activities – to attend any official ceremony, program, or event sponsored by the military related to the active duty or call to active duty status of a covered military member. Also to attend family support assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross related to the active duty or call to active duty of a covered military member.
3. Childcare and School Activities – to arrange for alternative childcare when the active duty or call to active duty status of a covered military member necessitates such a change. This leave does not cover routine child care events but is to provide urgent and non-routine child care when the need arises because of the call to duty.
4. Financial and Legal Arrangements – to attend to financial or legal arrangements, such as arranging power of attorney, transferring bank accounts, obtaining military identification and addressing benefit issues related to the call-up.
5. Counseling – to seek counseling related to the call to duty or active duty.
6. Rest and Recuperation (R&R) Leave for a Military Member – Up to five (5) days of leave may be taken by an employee to spend time with a covered military member who is on R&R leave during a period of deployment. The 5 days may be taken by the employee for each period of R&R leave given to the covered military member.
7. Post-Deployment Activities – leave may be taken during the 90-day period following a covered military member's termination of active duty to address issues that may arise following deployment, including dealing with the death of a military member or attending arrival ceremonies and reintegration briefings.
8. Additional Activities – to address other events which arise out of the covered military member's active duty or call to active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

<u>Certification for MEL</u>

As part of the certification for MEL, the employer may require the employee to:

- Provide a copy of the covered military member's active duty orders or other documentation issued by the military, and the dates of the active duty service;
- Require that leave be supported by a certification from the employee that provides the following information:
  - Statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested;
  - The approximate date the leave will begin;
  - If the leave is for a single, continuous period of time, the beginning and end dates of the absence;
  - If the leave is for intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency; and
  - If the leave involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting and a brief description of the purpose of the meeting; and
- Complete the DOL form (WH-384) that meets the FMLA certification requirements.

If the employee submits a complete and sufficient certification to support his/her request for leave, the employer may not request additional information from the employee. However, if the qualifying exigency includes meeting with a third party, the employer may contact the individual/entity to verify a meeting or appointment schedule and the nature of the meeting. The employee's permission to contact the individual/entity is not required, but no additional information may be requested by the employer.

Please note there is no recertification process, and second and third opinions are not permitted.

Service Member Care Leave (SMCL)

Service Member Care Leave provides an eligible employee who is the spouse (including same sex spouses from marriage that occurred between June 4, 208, and November 4, 2008), registered domestic partner (CSU policy), son, daughter, parent, or "next of kin" of an injured, covered service member with up to 26 workweeks of unpaid leave in a single 12 month period to care for that family member. Again, CSU policy requires the eligible employee to exhaust appropriate leave credits prior to taking unpaid leave.

Please note that federal law requires that Service Member Care Leave must begin on the first day the eligible employee takes such leave and ends 12 months from that date. As a reminder, CSU policy calculates the 12 month FML period on a forward rolling basis: the period is measured forward from the date the employee's first FML leave begins, so this requirement is consistent with CSU policy.

Eligible employees are entitled to a combined total of 26 workweeks of Service Member Care Leave and 12 weeks of leave for any other FMLA-qualifying event within a 12 month period.

Covered Service Member

The Service Member Care Leave (SMCL) provision also was enacted under the 2008 National Defense Authorization Act.

Originally, a Covered Service Member under SMCL was limited to members of the regular Armed Forces, or the National Guard or Reserves. However, the Fiscal Year 2010 National Defense Authorization Act now defines a "covered service member" as:

- 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 on the temporary disability retired list for a serious injury or illness ; or

- A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.''

In addition to the definition of "covered service member," the new legislation expanded the scope of the service member's injury or illness that can trigger an employee's request for such leave. New SMCL leave provisions are as follows:

- The definition of "serious injury or illness" now includes a serious illness or injury that may have been incurred in the line of duty on active duty in the Armed Forces, or may have existed prior to the beginning of the service member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces. This language applies to both current and veteran service members.

- In addition to current service members of the regular Armed Forces, or National Guard or Reserves, the Act now allows eligible employees to take leave to care for any former member of the Armed Forces, National Guard or Reserves during the first five years following his or her discharge from military service, if the veteran is undergoing treatment for, or recuperating from, a serious injury or illness that was incurred in the line of duty while on active duty. For veterans, a serious injury or illness may manifest itself before or after the member becomes a veteran. An employee may request such leave within five (5) years of the date that the veteran undergoes covered medical treatment, recuperation or therapy.

Please note: The Covered Service Member is not required to have a "serious health condition" as currently defined in FMLA regulations, but need only have an injury or illness incurred on active military duty that renders him/her unfit to perform the duties of his/her "office, grade, rank or rating."

Next of Kin

DOL has defined "next of kin" as the service member's nearest blood relative, other than the spouse (including same sex spouse through state law or domestic partner through CSU policy), parent, son or daughter, in the following order of priority:

1. Blood relatives who have been granted legal custody of the service member by court decree or statutory provision; or
2. Brothers, sisters, grandparents, aunts, uncles and first cousins, unless the service member has specifically designated, in writing, another blood relative for purposes of this leave.

Certification for SMCL

The DOL has created an optional certification form that employers may use. The certification may be completed by a Department of Defense (DoD) healthcare provider, a Veteran Affairs healthcare provider, a DoD TRICARE authorized provider, or a DOD non-network TRICARE authorized provider.

The final regulations require employers to accept DoD provided "invitational travel orders" (IVOs) or "invitational travel authorizations" (IVAs) in lieu of the optional certification forms as such documents are provided only in the case of severe injury.

In addition, employers may need to ask the following questions to determine an employee's eligibility for military family leave under FMLA:

1. Is the leave request related to a medical condition of the employee's family member?
2. Is the employee requesting a leave to care for a military family member, or a non-military family member?
3. Is the leave request related to the injury or illness of a military family member, or does the leave request fall under "exigency leave?"
4. Is the military family member a current service member? If no, when did the military family member become a veteran?
5. Do the dates of treatment for the military family member meet the criteria of the Fiscal Year 2010 National Defense Act?

General Information

Listed below is a recap of general information regarding SMCL:

- There is no recertification process, and second and third opinions are prohibited;
- The employer is required to continue paid health benefits provided under the CSU FML policy;
- Leave may be taken on an intermittent or reduced schedule basis;
- If the leave is foreseeable, the employee must provide 30 days' prior notice or give notice as soon as practicable; and
- CSU policy provides separate leave entitlements to spouses or domestic partners employed by the CSU.

For additional information on the CSU FML policies, please refer to HR 99-05; HR 2009-11, and HR/Benefits 2005-24. This HR Letter supersedes HR 2008-04.

Please note that where CSU FML policy differs from a collective bargaining agreement (CBA), the CBA governs for that employee group.

Final Regulations, Notices and Resources

The FMLA final regulations and notices may be found at:
http://www.dol.gov/federalregister/PdfDisplay.aspx?DocId=21763.

CSU campuses should continue to use or follow the information provided in the medical certification created by the Fair Employment and Housing Commission, as referenced in HR 2009-11. The certification may be found at: http://www.fehc.ca.gov/commission/pdf/health-provider.pdf.

Questions may be directed to Human Resources Management at (562) 951-4411. This HR memorandum is also available on the Human Resources Management's Web site at:
http://www.calstate.edu/HRAdm/memos.shtml.

GEB/mh

Attachment