

# LEGISLATIVE RESEARCH UNIT

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PATRICK D. O'GRADY, EXECUTIVE DIRECTOR

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## EMPLOYEE LEAVE FOR MILITARY MEMBER FAMILIES

You asked whether other states provide benefits, such as leave from private employment, for employees who are caretakers of seriously injured members of the military in their families. You mentioned California as a state requiring such benefits.

We surveyed all states' laws and bills by computer,<sup>1</sup> and also consulted printed indexes to their laws.<sup>2</sup> We describe below the federal Family and Medical Leave Act of 1993 as it applies to family caretakers for veterans, and state laws and bills we found that go beyond the federal law in some respects. All leave described is unpaid unless otherwise stated.

### Family and Medical Leave Act of 1993 (FMLA)

The federal FMLA originally applied to most persons working for employers that employ at least 50 persons for at least 20 weeks per year. An employee who has worked at least 12 months for such an employer, and worked at least 1,250 hours during that time, must be allowed to take up to 12 weeks of unpaid leave to care for a seriously ill immediate family member, among other purposes.<sup>3</sup>

A 2008 act amended the FMLA by (among other changes) requiring such an employer to allow up to 26 weeks of unpaid leave in a single 12-month period to an employee who is the spouse, child, parent, or other nearest blood relative of a member of the armed forces (including the National Guard or Reserves) if that member "is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on

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the temporary disability retired list, for a serious injury or illness."<sup>4</sup> The term "serious illness or injury" is defined basically as an injury or illness, incurred in the line of active duty, that "may render the member medically unfit" to perform the duties of the member's military position.<sup>5</sup>

If the need to take this kind of leave is foreseeable, the employee must give "such notice to the employer as is reasonable and practicable."<sup>6</sup> An employee is not eligible for more than 26 weeks of leave in one 12-month period; thus the 12 weeks allowed for purposes other than caring for a person in the military cannot be added to those 26 weeks.<sup>7</sup> If both spouses work for the same employer, they are eligible for a combined total of only 26 weeks per year.<sup>8</sup> The 26 weeks may be used intermittently or through a reduced work schedule.<sup>9</sup> In such a case, the employer may temporarily transfer the employee to a position with equivalent pay and benefits that better accommodates recurring periods of leave.<sup>10</sup> We enclose a copy of the Act as amended.

#### **State Laws on Leave to Care for Wounded Veteran**

In Maine, an employer with at least 15 employees must allow an employee up to 10 weeks of paid or unpaid leave "in any two years"<sup>11</sup> to care for the employee's spouse, domestic partner, parent, or sibling who is a member of the state military (including the Maine Army National Guard, Maine Air National Guard, militia, naval militia, or Maine State Guard)<sup>12</sup> or of the armed forces (including the National Guard and Reserves) and incurs a serious illness while on active duty.<sup>13</sup> The employee must have worked at least 1,250 hours in the year immediately preceding the requested leave date and give 30 days' notice before the leave.<sup>14</sup> An employee may also take up to 15 days' leave if a family member is deployed for more than 180 days of military service; this leave must be taken during the period between 15 days before deployment and 15 days after deployment.<sup>15</sup>

In Minnesota, every employer must allow up to 10 days of unpaid leave to a parent, child, grandparent, sibling, or spouse of an armed forces member injured on active duty to care for that member.<sup>16</sup>

#### **Leaves for Military Deployment**

##### **Illinois**

The Family Military Leave Act (2005)<sup>17</sup> applies to a person who has been employed for at least 12 months by, and has worked at least 1,250 hours during the last 12 months for, the current employer;<sup>18</sup> and has used all vacation, personal, compensatory, and other leave except sick and disability leave.<sup>19</sup> After

giving at least 14 days' notice (if a planned leave will last at least 5 consecutive days), such an employee may take up to 15 days of unpaid leave if the employer has 15 to 50 employees, or 30 days if the employer has over 50 employees,<sup>20</sup> while the employee's spouse or child is called to more than 30 days of state or federal military service.<sup>21</sup>

This leave may be taken only "during the time federal or State deployment orders are in effect."<sup>22</sup> (It is unclear whether the quoted words apply to the time when orders are in effect for the family member, or for that member's military unit. If the first meaning was intended—which seems more likely—the leave could be taken while that person is retained in the military while recuperating from injuries, but could not be taken after a discharge due to injuries.) After the leave, the employee has a right to a position with equivalent seniority, benefits, pay, and other terms and conditions.<sup>23</sup>

#### Other States

We found seven other states that provide for family members to be able to take leave during military deployments similar to that in Illinois. Their laws are described below.

##### *California*

An employer of 25 or more must allow an employee working an average of at least 20 hours per week, who is the spouse of a deployed member of the armed forces, National Guard, or Reserves, to take up to 10 days of unpaid leave. The leave may be taken only while the member is on leave from deployment.<sup>24</sup>

##### *Indiana*

An employer of 50 or more employees must allow an employee who has worked at least 1,500 hours for the employer in the last year, and is a spouse, parent, grandparent, or sibling of an armed forces or National Guard member on active duty, to take up to 10 days of unpaid leave. The leave may be taken during the 30 days before or after active duty, or during a leave from such duty.<sup>25</sup>

##### *New York*

An employer of at least 20 employees must allow up to 10 days of unpaid leave to an employee who is the spouse of a member of the armed forces, National Guard, or Reserves while the member is on leave from a deployment.<sup>26</sup>

### *Nebraska*

Employers of 15 to 50 employees must allow up to 15 days, and employers of more than 50 must allow up to 30 days, of unpaid family military leave while deployment orders are in effect. An employee must give notice at least 14 days before taking the leave.<sup>27</sup> After the leave, the employee must have the same position, or one with the same pay and benefits, as before.<sup>28</sup>

### *Rhode Island*

Employers of 15 to 50 must allow up to 15 days, and employers of more than 50 employees up to 30 days, of unpaid family military leave while deployment orders are in effect, if the employee has exhausted all other leave from the employer.<sup>29</sup>

### *Tennessee*

A teacher may take leave, without forfeiture of accumulated credits or tenure, of up to 10 days for the recuperation of health or visitation of a spouse, child, or parent deployed for military duty out of the U.S. who is on rest and recuperation leave. The statute does not specify whether the leave is paid or unpaid. Requests must be made 30 days in advance.<sup>30</sup>

### *Washington*

The spouse of a member of the military may take up to 15 days unpaid leave per deployment while the military spouse is on leave during a time of military conflict. The employee must have the same benefits upon returning to work.<sup>31</sup>

### **General Family Medical Leave**

Family medical leave could also be used to care for wounded veterans. At least 12 states have family medical leave laws that go beyond the federal FMLA. Table 1 on the next page summarizes their provisions on length of leave, types of employers that must allow leave, and other points.<sup>32</sup> All of these states allow a sick person's child, parent, or spouse to take family medical leave; the table lists other family members who can take such leave in some of these states.

**Table 1: State General Medical Leave Laws**

<i>State</i>	<i>Length in weeks</i>	<i>Other provisions</i>
Connecticut	24	State employers. Employees are guaranteed equivalent jobs and benefits. Unpaid leave.
	16	Employers with 75 or more employees. Paid or unpaid leave.
Florida	24	State employers. Employees must get same job, credits, and benefits upon return. Paid or unpaid leave.
Alaska	18	State employees. Must use all but 5 days of accrued paid leave before unpaid leave will be granted.
Rhode Island	13	Employers with 50 or more employees; state employers; and municipal employers with 30 or more employees. A parent-in-law or domestic partner is eligible for leave.
New Jersey	12	Employers with 50 or more employees. Paid or unpaid leave at employer's discretion. Can be used by a partner in a civil union couple. Leave may be taken intermittently.
North Dakota	12	State employers. May also use up to 40 hours of sick leave for family care.
Oregon	12	Employers with 25 or more employees. Paid or unpaid leave not specified. Can be used by an adoptive or foster parent, grandparent, grandchild, parent-in-law, or former guardian. Must provide 30 days' notice.
Vermont	12	Employers with 15 or more employees. A stepchild or spouse's parent is also eligible.
Washington	12	Employers with 50 or more employees. The family members who can take leave are not specified. Leave can be taken intermittently. Employer may transfer returning employee to another position with equal pay.
West Virginia	12	State employers. All dependents included. Leave may be taken intermittently; 2 weeks' notice required.

Table 1: State General Medical Leave Laws (cont'd)

<i>State</i>	<i>Length in weeks</i>	<i>Other provisions</i>
Hawaii	4	Employers with 100 or more employees. Can be used by parent-in-law, grandparent, or grandparent-in-law, or a closer relative. The paid or unpaid leave may be taken intermittently.
South Carolina	2	State employers. Paid sick leave. Can be used by a spouse's mother, father, sibling, grandparent, legal guardian or grandchildren.
Wisconsin	2	Employers with 50 or more employees. An employer with at least 25 employees must post notice of its family medical leave policy.
Virginia	1	Public employers. Paid Leave. Employees must have served at least 120 months. If employee served fewer than 120 months, they receive 4 days of leave.

### Recent Bills

Four states considered bills on family military leave or veteran caregivers in 2007-2008, which are described below.

A California bill would go beyond the FMLA by allowing other family members (grandparents, grandchildren, or siblings) of veterans to take up to 26 weeks to care for them. It passed the House and is reported to be in the Senate Appropriations Committee.<sup>33</sup>

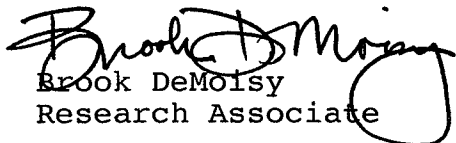
A Michigan bill would provide for 10 days or 80 hours of unpaid leave to immediate family members of deployed military service members. The leave would apply to employers of 15 or more. The bill passed the House and was assigned to the Senate Committee on Senior Citizens and Veterans Affairs.<sup>34</sup>

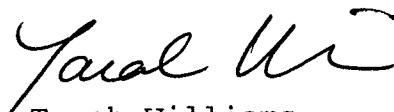
A Washington bill would allow an employee to take unpaid leave to care for a veteran who is the employee's spouse, parent, child, or domestic partner. The bill does not state how long the leave could last. The bill was referred early this year to the Senate Government Operations and Elections Committee.<sup>35</sup>

A Wisconsin bill would have allowed employees of employers of 15-50 persons to take up to 15 days of unpaid family military leave during a period of active service. Employers with more than 50 employees would have been required to allow 30 days of unpaid family military leave. This bill was assigned in 2007 to the Assembly Committee on Jobs and the Economy, but in 2008 effectively died due to lack of action by a deadline.<sup>36</sup>

We hope this information is helpful. Please let us know if we can be of further assistance.

Sincerely,

  
Brook DeMoisy  
Research Associate

  
Tarah Williams  
Research Assistant

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Enclosure

29 U.S. Code secs. 2601 to 2619.

Notes

1. We searched all states' laws and bills for "military" within the same section as "family", "caregiver", "spouse", or "parent", in the same section as "leave" or "compensation."
2. We searched statutory indexes under the headings "Leave" and "Absence."
3. 29 U.S. Code secs. 2611 and 2612.
4. Pub. L. 110-181, Div. A., sec. 585, 122 Stat. 3 at 128-129 (2008), amending 29 U.S. Code subsecs. 2612(a)(3) and 2611(16).
5. 29 U.S. Code subsec. 2611(19) as amended by Pub. L. 110-181.
6. 29 U.S. Code subsec. 2612(e)(3) as amended by Pub. L. 110-181.
7. 29 U.S. Code subsec. 2612(a)(4) as amended by Pub. L. 110-181.
8. 29 U.S. Code subsec. 2612(f)(2) as amended by Pub. L. 110-181.
9. 29 U.S. Code subsec. 2612(b)(1) as amended by Pub. L. 110-181.
10. 29 U.S. Code subsec. 2612(b)(2) as amended by Pub. L. 110-181.
11. Me. Rev. Stat. Ann., tit. 26, subd. 844(1).
12. Me. Rev. Stat. Ann., tit. 37-B, sec. 102.
13. Me. Rev. Stat. Ann., tit. 26, sec. 843.

14. Me. Rev. Stat. Ann., tit. 26, sec. 844.
15. Me. Rev. Stat. Ann., tit. 26, sec. 814.
16. Minn. Stat. Ann., sec. 181.947.
17. 820 ILCS 151/1 ff., added by P.A. 94-589 (2005).
18. 820 ILCS 151/5.
19. 820 ILCS 151/10(d).
20. 820 ILCS 151/10(a) and (b).
21. 820 ILCS 151/5, 151/10(a) and 151/10(b).
22. 820 ILCS 151/10(a) and (b).
23. 820 ILCS 151/15.
24. Cal. Mil. & Vet. Code, sec. 395.10.
25. Ind. Code Ann., sec. 22-2-13-11.
26. N.Y. Labor Law, sec. 202-i.
27. Neb. Rev. Stat., sec. 55-503.
28. Neb. Rev. Stat., subsec. 55-504(1).
29. 2008 R.I. Pub. Laws, ch. 61.
30. Tenn. Code Ann., secs. 49-5-702 to 49-5-704.
31. Wash. Rev. Code Ann., secs. 49.77.010 to 49.77.030.
32. Alaska Stat., sec. 39.20.305; Conn. Gen. Stat. Ann., sec. 5-248a; Conn. Gen. Stat. Ann., sec. 31-5111; Fla. Stat. Ann., sec. 110.221; Haw. Rev. Stat., secs. 398-1, 398-3 and 398-4; N.J. Stat. Ann., sec. 34:11B; N.D. Cent. Code, secs. 54-52.4-02 to 54-52.4-04; Ore. Rev. Stat., subsec. 659A.150(4) and secs. 659A.159 to 659A.162; R.I. Gen. Laws, sec. 28-48-1 to 28-48-2; S.C. Code Ann., sec. 8-11-40(A) and (C); Vt. Stat. Ann., tit. 21, secs. 471 to 472; Va. Code Ann., sec. 51.1-1107 to 51.1-1108; Wash. Rev. Code Ann., secs. 49.78.220 to 49.78.250; W. Va. Code, sec. 21-5D-4; and Wis. Stat. Ann., sec. 103.10.
33. 2007 Cal. A.B. 2134.
34. 2007 Mich. H.B. 5632.
35. 2007 Wash. S.B. 6541, sec. 3.
36. 2007 Wis. A.B. 324.