



ADMINISTRATIVE POLICY

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

TITLE: MILITARY FAMILY LEAVE ACT

NUMBER: ES.C.12

ISSUED: 07/24/2023

CHAPTER: [RCW 49.77](#)

SEE ALSO: [ES.C.10](#)

ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

This policy provides guidance on the Military Family Leave Act ([RCW 49.77](#)). In order to support the families of military personnel serving in military conflicts, and to assure that these families are able to spend time together after being notified of an impending call or order to active duty and before deployment and during a military member's leave from deployment, the legislature created the Military Family Leave Act.

The Military Family Leave Act:

- Provides job protection for spouses or registered domestic partners of military personnel (active duty, National Guard, or reserves).
- Covers all employees, public and private, regardless of the size of the employer (except employees of federal government agencies).
- Covers an employee who works an average of 20 hours or more per week.
- Allows covered employees, during a period of military conflict, to take up to 15 days of unpaid leave before an impending deployment of their military service member spouse or when that spouse is on leave from deployment.
- Does not provide for leave at the end of a deployment.
- Provides that the leave is without pay unless the employee has accrued paid leave and chooses to substitute paid leave for unpaid leave.
- Requires employees give notice of their intent to take military family leave within five business days of receiving official notice of the deployment or the leave from deployment in order for the leave to qualify for job protection.

Washington Leave Law	Paid or Unpaid Leave	Family Members Covered	Leave Allowed	Employer-Employee Criteria
Leave for spouses and registered domestic partners of military personnel RCW 49.77	Unpaid, however an employee may choose to substitute accrued paid leave	Spouses and registered domestic partners of all military personnel	15 days leave per deployment prior to deployment or when spouses and registered domestic partners are on leave from deployment	All employers; Employees who work greater than or equal to 20 hours a week on average

1. What notice is required and can an employer request verification?

The Act only states that an employee must provide their employer with notice within five business days of receiving official notice of the impending deployment or leave from deployment. An employer can ask for verification after receiving notice because [RCW 49.77](#) neither permits nor prohibits employers from requiring verification from employees to support that (a) the employee is in fact the spouse of a military service member and (b) that the employee's military service member spouse is actually being deployed, called to active duty, or on leave from deployment. This situation is similar to the Family Care Act, where the law neither permits nor prohibits an employer from seeking verification. See Administrative Policy [ES.C.10](#), "Frequently Asked Questions (FAQ) about the Family Care Act," which permits an employer to seek verification of entitlement under the Family Care Act.

2. What kinds of verification may be acceptable?

Deployment notification letters, marriage certificates, current military identification, proof of service, and military employment verification are all examples of acceptable forms of verification.

3. What constitutes 15 days of leave?

3.1 15 Days of Leave is Equal to 15 Working/Scheduled Days. If the employee is normally scheduled to work Monday – Thursday, that would be equivalent to four days. The 15 days of leave do not include scheduled days off.

3.2 Consecutive or Intermittent Days of Leave. The employee may elect to use the leave intermittently if desired. For example, if they are scheduled Monday – Thursday, but only want to take Monday and Wednesday off, this is permitted. An employee may also use the leave months apart in the same calendar year. For example, an employee could take 5 days prior to their spouse's deployment and the other 10 days while their spouse is on leave from deployment.

3.3 Calculating Leave When the Employer has Not Posted the Schedule. If an employer has not posted the schedule at the time an employee has requested leave, then an average, based on how many days that employee was scheduled to work per week during the previous 30 days, would be used to determine 15 days of leave.

4. How does an employer determine coverage for part-time workers?

Part-time workers who work at least an average of 20 hours per week are covered. The average can be calculated using a reasonable look-back period. For example, an employer may

calculate the average by averaging the employee's workweeks in the previous 90 days of employment. If the employee has worked for the employer for a shorter time period, the average may be based on a reasonable calculation considering the expectations of the parties and other information available about the employee's schedule and work pattern.

5. Is there a limit on allowed leave?

There is no limit to deployments; however, it must be a new assignment. For instance, there are short-term deployments (for example, three months) where active members are scheduled twice a year. For each deployment, regardless of if they fall within the same calendar year, the worker is allowed 15 days of unpaid leave per deployment.

6. What constitutes deployment dates?

The Department will refer to the official deployment order details to determine location and duration of the deployment period of the military service member. During this time, the Department will consider the military service member to be on deployment status until the end date listed on the order, unless an interceding order has been issued.

7. How does taking leave affect seniority?

Nothing in the Act entitles an employee to accrual of any seniority during the leave.

8. What constitutes a period of military conflict?

The Act defines a "period of military conflict" as a period of war declared by the United States Congress, declared by executive order of the President, or in which a member of a reserve component of the armed forces is ordered to active duty pursuant to either sections 12301 and 12302 of Title 10 of the United States Code or Title 32 of the United States Code.