

# Family and Medical Leave (FMLA) Policy

## SDI International, Inc.

The Family and Medical Leave Act (FMLA) was enacted in February 1993, and was amended in January 2008 and October 2009 to include and broaden military family leave provisions.

### POLICY DETAILS

**(Note: definitions of terms used in this policy are included at the end of this policy.)**

#### I. Eligibility Requirements

Employees are eligible for family medical unpaid leave if they meet all of the following:

- A. Have been employed by the company for a total of at least 12 months. Employee service breaks of seven years or less will have the previous time of employment counted towards the 12 month eligibility requirement. Service breaks by employees of seven years or more due to their fulfillment of National Guard or Reserve military service obligations will have the service time counted toward the 12 month eligibility requirement.
- B. Worked at least 1,250 hours for the company in the 12-month period immediately preceding the commencement of leave.
- C. Is employed at a worksite where 50 or more employees are employed by the company within 75 miles of the worksite. If an employee is assigned to work at a client location, the employee's worksite is the company's office from which the employee is assigned or reports, unless the employee has physically worked for at least one year at a client facility, in which case the employee's worksite is that location.
- C. A qualifying event as described herein.

#### II. Employee Leave Entitlements

Eligible employees can take job protected time off (generally unpaid) as follows:

- A. Up to 12 workweeks of FMLA leave during any "Look Forward" 12-month period (see section IV) for one or more of the following qualifying events:
  1. A "serious personal health condition" that prevents the employee from performing one or more of the essential functions of the employee's job.
  2. Birth of the employee's child.
  3. Placement of a child with the employee for adoption or foster care.
  4. Care for the employee's child who does not have a "serious health condition," only during the first 12 months following the child's birth, adoption, or foster care placement.
  5. Care for the employee's "spouse", "parent" or child ("son" or "daughter") who has a "serious health condition".
  6. A "qualifying exigency" arising out of the fact that the employee's family member (spouse, parent, son, or daughter) is on (or has been notified of an impending call to) "**covered active duty**" in a *foreign country* and is either a member of the U.S. National Guard, military reserves, or regular Armed Forces. A qualifying exigency includes, but is not limited to:

## Family and Medical Leave (FMLA) Policy

- a. Short notice deployment – call/order to covered active duty seven days prior to date of deployment.
- b. Military and other activities related to call to covered active duty.
- c. Childcare and school activities – e.g. arrange for alternative childcare, enroll child in new school or day care, attend meetings with school or day care staff, and provide childcare on urgent or immediate need basis.
- d. Make or update financial and legal arrangements.
- e. Counseling that arises out of the military service.
- f. Rest and recuperation – limited to five days per leave to spend with military member on short-term leave.
- g. Post-deployment activities – leave to attend post-deployment functions such as arrival ceremonies, reintegration briefings, funeral arrangements that occur within 90 days following termination of covered active duty status.
- h. Additional activities – The activities and the timing and duration of the same must be agreed to by the supervisor, the employee, and the company’s Benefits Department for any other exigency.

For a precise listing of the qualifications and events for this type of “qualifying exigency” leave consult with the Benefits Department or the regulations issued pursuant to the FMLA.

7. Note: Married couples who work for the same employer must share a combined total of 12 weeks of FMLA leave in a 12-month period if the leave is taken for the birth, adoption or foster placement of a child, or to care for a new child who does not have a serious health condition, or to care for a parent who has a serious health condition.
- B. Up to 26 workweeks of FML leave in a single 12-month period – Military Caregiver Leave -- if:
1. The employee is an eligible family member [“spouse”, “parent” “son”, “daughter”, or “next of kin” (nearest blood relative other than the covered spouse, parent, son, or daughter)] of a **covered service member** who has a **serious injury or illness**.
  2. The covered service member is:
    - a. Undergoing medical treatment, recuperation, or therapy,
    - b. In outpatient status, or
    - c. On the *temporary* disability retired list, for a serious injury or illness incurred in the line of duty or an existing injury or illness aggravated in the line of duty.
    - d. A *veteran* undergoing medical treatment, recuperation, or therapy for serious injury or illness incurred in the line of duty or aggravated in the line of duty that occurred any time during the five years preceding the date of treatment.
  3. Note: This leave may not exceed 26 workweeks during a “single 12 month period.” The calculation of the “single 12 month period” begins with the first day an eligible employee takes FMLA leave to care for the covered service member and ends 12 months after that date.
  4. Note: Married couples who work for the same employer must share a combined total of 26 weeks of Military Caregiver leave and the other types of FMLA leave that they must combine.

# Family and Medical Leave (FMLA) Policy

## III. Advance Notice of Your Leave Request is Needed

Please provide as much advance notice of your need for leave request as possible. Contact the company's Benefits Department at 1-800-568-8310 and your supervisor/manager (if applicable, the customer as well). If you fail to provide notice when the leave was foreseeable, your ability to take leave may be delayed by us.

**YOU MUST TELL THE BENEFITS DEPARTMENT AND YOUR SUPERVISOR/MANAGER OF YOUR NEED FOR LEAVE. IT IS NOT SUFFICIENT TO JUST TELL YOUR SUPERVISOR/MANAGER (OR IF APPLICABLE, THE CUSTOMER).**

The amount of notice depends on whether the leave is foreseeable or unforeseeable:

- **Foreseeable leave:** Provide at least 30 days of advance **written** notice of the need to take FMLA leave when the need is foreseeable by using the company's [Leave Request Form](#) and faxing it to 716-631-1033 or mailing it to: **SDI International, Inc.**, 250 International Drive, P.O. Box 9057, Williamsville, New York 14231-9057. This form can be obtained by calling 1-800-568-8310.
- **Unforeseeable leave:** When 30 days notice is not possible, you must provide notice as soon as practicable and generally must comply with the normal call-in procedure. Notice of unforeseeable leave may be given by a spouse, family member, or another spokesperson for the employee if the employee is unable to do so personally.

## III. Time Periods and Special Rules

The company uses the "Look-Forward" method to calculate the 12-month period. An eligible employee would be entitled to 12 weeks of FMLA leave during the period of 12 months that begins on the first date FMLA leave is taken. After the 12 months expires, the cycle repeats the next time the employee takes FMLA leave, which starts a new 12 month period.

For the Military Caregiver Leave, up to 26 weeks of leave can be taken during a single 12 month period.

## IV. Documentation of Relationship

The company may require an employee to provide reasonable documentation showing existence of a family relationship.

## V. Certification Required

If the leave is in connection with a serious health condition (the employee's own or a family member's) or a serious illness or injury of a covered service member, the employee may be required to submit confirming medical certification from a health care provider (defined below). For leave involving the birth of the employee's child or the placement of a child with the employee for adoption or foster care, the employee may be required to submit certification from a physician of the date of the expected birth, or from the appropriate authority regarding the anticipated adoption or foster care arrangement. For qualifying exigency leave, the employee may be required to provide a certification that the servicemember is on covered active duty and that the employee is experiencing a qualifying exigency.

These certifications must be submitted no later than 15 calendar days from the date the company requests certification.

The company will *not* certify an employee's leave as being protected under the FMLA until an employee returns a sufficient certification to the company's Benefits Department, if one has been required.

## Family and Medical Leave (FMLA) Policy

- The company may delay an employee's leave until the Benefits Department receives the certification form; and
- An employee's continued failure to provide the certification may result in the leave not being protected under the FMLA or, in some cases, disciplinary action or termination.

### VI. Recertification Requirement

Once the initial period of approved leave in connection with a serious health condition has expired, the employee may be required to provide a recertification by a health care provider. The company reserves the right to require recertification in other circumstances consistent with the FMLA's regulations.

### VII. Intermittent Leave

Under some circumstances, employees may take FMLA leave intermittently—which means taking leave in separate blocks of time -- or by reducing their normal weekly or daily work schedule. Leave may be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis. The company may transfer or reassign employees on intermittent or reduced leave schedules as business conditions require, consistent with the FMLA's implementing regulations.

Leave because of the birth, adoption or foster placement of a child must be completed within the 12-month period beginning on the date of birth or placement of the child. Absent a serious health condition, employees are not entitled to intermittent or reduced schedule leave after a child enters their family by birth, adoption, or foster care unless the company's Human Resources Department agrees to extend the same to the employee.

### VIII. Concurrent Leave

If your state has a family or medical leave law, FMLA leave will be used simultaneously with that state law leave to the extent permitted by law. FMLA leave will also be used simultaneously with disability or Workers' Compensation leaves where applicable. When state and local laws offer more protection or benefits, the protection or benefits provided by those laws will apply.

**Any available paid leave, including vacation time or Paid Time Off that has been accrued, must be used simultaneously with any unpaid FMLA and/or state law leave unless disability or Workers' Compensation benefits are being paid.**

### IX. Job Restoration and Return to Work

Upon return from FMLA leave, an employee will ordinarily be restored to his or her original job, or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions, unless such a position is no longer available for reasons unrelated to the use of FMLA leave. **If an employee fails to return at the end of his/her FMLA leave, FMLA job protection will no longer apply, and the employee may be terminated unless non-FMLA leave is available to the employee and approved by the company.**

## **Family and Medical Leave (FMLA) Policy**

### **X. Working Off the Clock**

Employees are prohibited from working for the company or our customers or other employers during FMLA leave without specific prior authorization to do so.

### **XI. Maintenance of Benefits**

The company will maintain health coverage under any company group health plan on the same terms as if the employee had continued to work. The employee is responsible for paying their normal contribution. If the employee elects not to return to work at the end of the FMLA leave period, the employee may be required to reimburse the company for the cost of premiums paid for maintaining coverage during the leave period.

# Family and Medical Leave (FMLA) Policy

## DEFINITIONS

Term	Definition
<b>Covered active duty – only applicable in cases of exigency</b>	<ul style="list-style-type: none"> <li>For member of the <b>regular</b> component of the Armed Forces means: duty during deployment of the member with the Armed Forces in a <i>foreign</i> country.</li> <li>For member of the <b>reserve</b> components of the Armed Forces (members of the U.S. National Guard and Reserves) means: duty during employment of the member with the Armed Forces to a foreign country under a call or order to active duty (not a State call) under a provision of law referred to in Section 101(a)(13)(B) of Title 10, United States Code.</li> </ul>
<b>Covered servicemember – for military caregiver leave</b>	<p>Eligible employees may take military caregiver leave if the servicemember meets the following criteria:</p> <ul style="list-style-type: none"> <li>He or she is a current or a former member of the regular Armed Forces, including the National Guard and military reserves and was honorably discharged;</li> <li>He or she suffers from a “serious injury or illness” that was incurred in the line of duty while on active duty in the Armed Forces and that manifested itself before or after the member became a veteran; and</li> <li>He or she is undergoing medical treatment, recuperation, or therapy; in outpatient status; or on the temporary disability retired list as a result of the serious injury or illness.</li> </ul>
<b>Health Care Providers</b>	<p>The following are the health care providers allowed by the FMLA:</p> <ul style="list-style-type: none"> <li>State-licensed doctors of medicine or osteopathy;</li> <li>State-licensed podiatrists, dentists, clinical psychologists, clinical social workers, optometrists, chiropractors (for certain types of treatment), nurse practitioners, physician assistants, and nurse-midwives, if the above practitioners are performing within their scope of state defined practice;</li> <li>Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;</li> <li>Any other health care provider recognized by the employer or employer’s group health plan benefits manager or by the Secretary of Labor, and</li> <li>Any of the above providers who is licensed in a foreign country and who is performing within the scope of their practice as defined by that jurisdiction’s laws.</li> </ul>
<b>Serious injury or illness – for military caregiver leave</b>	<ul style="list-style-type: none"> <li><b>Current member of the Armed Forces:</b> a serious injury or illness that was incurred by the member in line of duty on active duty but also a serious injury or illness that existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in “Armed Forces” that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.</li> <li><b>For a veteran:</b> a serious injury or illness is defined as “a qualifying injury or illness that was incurred by the member in line of duty while on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty while on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.”</li> </ul>
<b>Spouse</b>	<p>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 marriage in a State where it is recognized. Eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live.</p>
<b>Parent</b>	<p>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.</p>
<b>Son or daughter</b>	<p><b>For purposes of FMLA leave taken for:</b></p> <ul style="list-style-type: none"> <li><b>Birth or adoption or to care for a family member with a serious health condition:</b> 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.</li> <li><b>On active duty or call to active duty status:</b> 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 <u>any age</u>.</li> <li><b>If a covered servicemember:</b> the servicemember’s biological, adopted, or foster child, stepchild, legal ward, or child for whom the servicemember stood in loco parentis, and who is <u>any age</u>.</li> </ul>

# Family and Medical Leave (FMLA) Policy

<b>Serious health condition</b>	<p>A "serious health condition" is a serious illness, injury, impairment, or physical or mental condition.</p> <p>To be considered a "serious" health condition, the employee must receive:</p> <ul style="list-style-type: none"><li>• Inpatient care or treatment; or</li><li>• Continuing treatment from a health care provider.</li></ul> <p><b>Inpatient Care</b></p> <ul style="list-style-type: none"><li>• Inpatient care or treatment is a serious health condition if it requires an overnight stay in a hospital, hospice, or residential medical care facility. The serious health condition continues throughout any post-hospitalization recovery time and follow-up treatment.</li></ul> <p><b>Continuing Treatment</b></p> <p>In general, a person is incapacitated if they are unable to work, attend school, or perform other regular daily activities. An employee's family member is incapacitated when he or she is unable to pursue his or her normal daily activities, such as work or go to school.</p> <p>Some examples of conditions that may meet the definition of continuing treatment include:</p> <ul style="list-style-type: none"><li>• <b>Incapacity and Treatment:</b> Conditions that incapacitate the employee or family member for more than three consecutive, full calendar days (which means for more than 72 consecutive hours), and any subsequent treatment or period of incapacity relating to the same condition. The employee must also receive:<ol style="list-style-type: none"><li>(1) Two or more treatments (an in-person visit from a health care provider) from a health care provider or by a provider of health service under the orders of or on referral by the health care provider, within 30 days of the first date of incapacity, unless extenuating circumstances exist, or</li><li>(2) One treatment (an in-person visit by a health care provider) that results in a regimen of continuing treatment under the supervision of the health care provider.</li></ol><p>Note: The first (or only) in-person treatment visit must take place within seven (7) days of the first day of incapacity.</p></li><li>• <b>Pregnancy or prenatal care:</b> Any period of incapacity related to pregnancy or for prenatal care;</li><li>• <b>Chronic conditions:</b> Any period of incapacity or treatment for chronic serious health conditions that:<ol style="list-style-type: none"><li>(1) continue over an extended period of time (including recurring episodes of a single underlying condition),</li><li>(2) requires periodic visits (at least twice a year) for treatment by a health care provider, and</li><li>(3) may cause episodic rather than a continuing period of incapacity;</li></ol></li><li>• <b>Permanent or long-term conditions:</b> Any period of incapacity for conditions that are permanent or long-term and for which treatment may not be effective;</li><li>• <b>Conditions requiring multiple treatments:</b> Any period of incapacity to receive multiple treatments (including recovery from those treatments) for restorative surgery after an accident or other injury; or a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days if not treated; and</li><li>• <b>Treatment of substance abuse:</b> Treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider.</li></ul> <p>Other conditions may meet the definition of continuing treatment.</p>
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