



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #28M(a): Military Caregiver Leave for a Current Servicemember under the Family and Medical Leave Act

February 2013

The Family and Medical Leave Act (FMLA) entitles eligible employees who work for covered employers to take unpaid, job-protected leave to care for a family member who is a current servicemember with a serious injury or illness. FMLA leave for this purpose is called “military caregiver leave.”

MILITARY CAREGIVER LEAVE ENTITLEMENTS

Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness to take up to a total of **26 workweeks** of unpaid leave during a “single 12-month period” to provide care for the servicemember.

A **covered servicemember** is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, **or** is in outpatient status, **or** is on the temporary disability retired list for a **serious injury or illness**. A serious injury or illness is one that is incurred by a servicemember in the line of duty on active duty that may cause the servicemember to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the servicemember’s active duty and that were aggravated by service in the line of duty on active duty.

NEXT OF KIN

The “next of kin” of a current servicemember is the nearest blood relative, other than the current servicemember’s spouse, parent, son, or daughter, in the following order of priority:

1. a blood relative who has been designated *in writing* by the servicemember as the next of kin for FMLA purposes
2. blood relative who has been granted legal custody of the servicemember
3. brothers and sisters
4. grandparents
5. aunts and uncles
6. first cousins

When a servicemember designates in writing a blood relative as next of kin for FMLA purposes, that individual is deemed to be the servicemember’s only FMLA next of kin. When a current servicemember has not designated in writing a next of kin for FMLA purposes, and there are multiple family members with the same level of relationship to the servicemember, all such family members are considered the servicemember’s next of kin and may take FMLA leave to provide care to the servicemember.

For example, if a current servicemember has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the servicemember’s next of kin. Alternatively, where a current servicemember has one or more siblings and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the servicemember’s next of kin.

SINGLE 12-MONTH PERIOD

The single 12-month period for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by the employer for other FMLA leave reasons.

An eligible employee is limited to a *combined* total of 26 workweeks of leave for **any** FMLA-qualifying reasons during the single 12-month period. Up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than military caregiver leave. For example, if an employee uses 10 weeks of FMLA leave for his or her own serious health condition during the single 12-month period, the employee has up to 16 weeks of FMLA leave left for military caregiver leave.

Military caregiver leave is available to an eligible employee once per servicemember, per serious injury or illness. However, an eligible employee may take an additional 26 weeks of leave in a different 12-month period to care for the same servicemember if he or she has another serious injury or illness. For example, if an eligible employee takes military caregiver leave to care for a current servicemember who sustained severe burns, the employee would be entitled to an additional 26 weeks of caregiver leave in a different 12-month period if the same servicemember is later diagnosed with a traumatic brain injury that was incurred in the same incident as the burns.

An eligible employee may also take military caregiver leave to care for more than one current servicemember or covered veteran with a serious injury or illness at the same time, but the employee is limited to a total of 26 weeks of military caregiver leave in any single 12-month period. Additionally, an eligible employee may be able to take military caregiver leave for the same family member with the same serious injury or illness both when the family member is a current servicemember and when the family member is a veteran.

CERTIFICATION REQUIREMENTS

An employer may require that leave to care for a covered servicemember be supported by a certification completed by an authorized health care provider **or** by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family. Employees may use the U. S. Department of Labor's optional form [WH-385](#).

An authorized health care provider is a:

- (1) United States Department of Defense ("DOD") health care provider;
- (2) United States Department of Veterans Affairs ("VA") health care provider;
- (3) DOD TRICARE network authorized private health care provider;
- (4) DOD non-network TRICARE authorized private health care provider; or
- (5) non-military-affiliated health care provider.

An employer may request a second or third opinion of a current servicemember's serious injury or illness only when a certification is provided by a non-military-affiliated health care provider.

ENFORCEMENT

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA. See [Fact Sheet 77B: Protections for Individuals under the FMLA](#). The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website:

<http://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

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WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #28M(b): Military Caregiver Leave for a Veteran under the Family and Medical Leave Act

February 2013

The Family and Medical Leave Act (FMLA) entitles eligible employees who work for covered employers to take unpaid, job-protected leave to care for a family member who is a covered veteran with a “serious injury or illness”. FMLA leave for this purpose is called “military caregiver leave.”

MILITARY CAREGIVER LEAVE ENTITLEMENTS

Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or “next of kin” of a covered veteran with a serious injury or illness to take up to a total of **26 workweeks** of unpaid leave during a “single 12-month period” to provide care for the veteran.

A veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness is a **covered veteran** if he or she:

- was a member of the Armed Forces (including a member of the National Guard or Reserves);
- was discharged or released under conditions other than dishonorable; and
- was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him or her.*

* For a veteran who was discharged prior to March 8, 2013, the effective date of the FMLA Final Rule, the period between October 28, 2009 and March 8, 2013 will not count towards the determination of the five-year period. For example, if a servicemember retired on October 28, 2007, he or she would have had three years remaining of the five-year period on October 28, 2009. The family member requesting FMLA leave will have three years to begin military caregiver leave starting on March 8, 2013. Likewise, if a servicemember was discharged on December 1, 2010, the five-year period will begin on March 8, 2013 and extend until March 8, 2018.

SERIOUS INJURY OR ILLNESS

A serious injury or illness means an injury or illness that was incurred by the covered veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran’s active duty and was aggravated by service in the line of duty on active duty, and that is either:

1. a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating; *or*
2. a physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the need for military caregiver leave is related to that condition; *or*
3. a physical or mental condition that substantially impairs the veteran’s ability to work because of a disability or disabilities related to military service, or would do so absent treatment; *or*
4. an injury that is the basis for the veteran’s enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Any *one* of these definitions meets the FMLA's definition of a serious injury or illness for a covered veteran regardless of whether the injury or illness manifested before or after the individual became a veteran.

NEXT OF KIN

The "next of kin" of a covered veteran is the nearest blood relative, other than the veteran's spouse, parent, son, or daughter, in the following order of priority:

1. a blood relative who has been designated *in writing* by the servicemember as the next of kin for FMLA purposes
2. blood relative who has been granted legal custody of the servicemember
3. brothers and sisters
4. grandparents
5. aunts and uncles
6. first cousins

When the veteran designates in writing a blood relative as next of kin for FMLA purposes, that individual is deemed to be the veteran's only FMLA next of kin. When the veteran has not designated in writing a next of kin for FMLA purposes, and there are multiple family members with the same level of relationship to the veteran, all such family members are considered the veteran's next of kin and may take FMLA leave to provide care to the veteran.

For example, if the veteran has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the veteran's next of kin. Alternatively, where the veteran has one or more siblings and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the veteran's next of kin.

SINGLE 12-MONTH PERIOD

The single 12-month period for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by the employer for other FMLA leave reasons.

An eligible employee is limited to a *combined* total of 26 workweeks of leave for any FMLA-qualifying reasons during the single 12-month period. Up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than military caregiver leave. For example, if an employee uses 10 weeks of FMLA leave for his or her own serious health condition during the single 12-month period, the employee has up to 16 weeks of FMLA leave left for military caregiver leave.

Military caregiver leave is available to an eligible employee once per veteran, per serious injury or illness. However, an eligible employee may take an additional 26 weeks of leave in a different 12-month period to care for the same veteran if he or she has another serious injury or illness. For example, if an eligible employee takes caregiver leave to care for a veteran who sustained severe burns that rendered him unable to perform his military duties when he was a current servicemember and for which he continues to need care as a veteran, the employee would be entitled to an additional 26 weeks of caregiver leave in a different 12-month period if the veteran is later diagnosed with a traumatic brain injury that was incurred in the same incident as the burns.

An eligible employee may also take military caregiver leave to care for more than one covered veteran or current servicemember with a serious injury or illness at the same time, but the employee is limited to a total of 26 weeks of military caregiver leave in any single 12-month period. Additionally, an eligible employee may be able to take military caregiver leave for the same family member with the same serious injury or illness both when the family member is a current servicemember and when the family member is a veteran.

CERTIFICATION REQUIREMENTS

An employer may require that leave to care for a veteran be supported by a certification completed by an authorized health care provider. An employee may submit a copy of a VASRD rating determination or enrollment documentation from the VA Program of Comprehensive Assistance for Family Caregivers to certify that the veteran has a serious injury or illness. This documentation is

sufficient regardless of whether the employee is the named caregiver. However, if the employee submits such documents, the employee may still be required to provide confirmation of family relationship and documentation of discharge date and status for a complete certification. Employees may use the U. S. Department of Labor’s optional form [WH-385-V](#).

An authorized health care provider may be a:

- (1) United States Department of Defense (“DOD”) health care provider;
- (2) United States Department of Veterans Affairs (“VA”) health care provider;
- (3) DOD TRICARE network authorized private health care provider;
- (4) DOD non-network TRICARE authorized private health care provider; or
- (5) non-military-affiliated health care provider.

An employer may request a second and third opinion of a covered veteran’s serious injury or illness only when a certification is provided by a non-military-affiliated health care provider.

ENFORCEMENT

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA. See [Fact Sheet 77B: Protections for Individuals under the FMLA](#). The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

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WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #28M(c): Qualifying Exigency Leave under the Family and Medical Leave Act

February 2013

The Family and Medical Leave Act (FMLA) entitles eligible employees who work for covered employers to take up to 12 workweeks of unpaid, job-protected leave in a 12-month period for a “qualifying exigency” arising out of the foreign deployment of the employee’s spouse, son, daughter, or parent. FMLA leave for this purpose is called qualifying exigency leave.

QUALIFYING EXIGENCY LEAVE ENTITLEMENTS

Qualifying exigencies may arise when the employee’s spouse, son, daughter, or parent who is a member of the Armed Forces (including the National Guard and Reserves) and who is on covered active duty or has been notified of an impending call or order to covered active duty. For purposes of qualifying exigency leave, an employee’s son or daughter on covered active duty refers to a child of any age.

Covered Active Duty

Eligible employees may take FMLA leave for a qualifying exigency while the military member is on covered active duty, call to covered active duty status, or has been notified of an impending call or order to covered active duty.

For members of the **Regular Armed Forces**, covered active duty is duty during deployment of the member with the Armed Forces to a foreign country.

For members of the **Reserve components** of the Armed Forces (members of the National Guard and Reserves), covered active duty is duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation.

Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States. It also includes deployment to international waters.

Qualifying Exigency Categories

The Department has identified nine broad categories of qualifying exigencies. If the military member is on covered active duty, the employee may take FMLA leave for the following qualifying exigencies:

- Issues arising from the military member’s **short notice deployment** (*i.e.*, deployment within seven or less days of notice). For a period of up to seven days from the day the military member receives notice of deployment, an employee may take qualifying exigency leave to address **any** issue that arises from the short-notice deployment.
- Attending **military events and related activities**, such as official ceremonies, programs, events and informational briefings, or family support or assistance programs sponsored by the military, military service organizations, or the American Red Cross that are related to the member’s deployment.
- Certain **childcare and related activities** arising from the military member’s covered active duty, including arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling in or transferring a child to a new school or day care facility.

Note: The employee taking FMLA qualifying exigency leave does not need to be related to the military member's child. However, (1) the military member must be the parent, spouse, son or daughter of the employee taking FMLA leave, and (2) the child must be the child of the military member (including a child to whom the military member stands in loco parentis).

- Certain activities arising from the military member's covered active duty related to **care of the military member's parent** who is incapable of self-care, such as arranging for alternative care, providing care on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers.

Note: The employee taking FMLA qualifying exigency leave does not need to be related to the military member's parent. However, (1) the military member must be the parent, spouse, son or daughter of the employee taking FMLA leave, and (2) the parent must be the parent of the military member (including an individual who stood in loco parentis to the military member when the member was a child).

- Making or updating **financial and legal arrangements** to address a military member's absence while on covered active duty, including preparing and executing financial and healthcare powers of attorney, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), or obtaining military identification cards.
- Attending **counseling** for the employee, the military member, or the child of the military member when the need for that counseling arises from the covered active duty of the military member and is provided by someone other than a health care provider.
- Taking up to 15 calendar days of leave to spend time with a military member who is on short-term, temporary **Rest and Recuperation** leave during deployment. The employee's leave for this reason must be taken while the military member is on Rest and Recuperation leave.
- Certain **post-deployment activities** within 90 days of the end of the military member's covered active duty, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military, and addressing issues arising from the death of a military member, including attending the funeral.
- Any other event that the employee and employer agree is a qualifying exigency.

CERTIFICATION REQUIREMENTS

Employers may require that an employee's request for qualifying exigency leave be supported by an appropriate certification. An employer may require that the certification include a copy of the military member's active duty orders. However, the employee is only required to provide this information to the employer once for a military member on a specific deployment.

The employer may also require the employee to submit certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought. For example, if the employee is taking leave to meet with an alternate childcare provider or a financial consultant, the employer may require the employee to provide the contact information of the third party with whom the employee is meeting. Where an employee seeks leave to spend time with a military member on Rest and Recuperation leave, the employer may request a copy of the military member's Rest and Recuperation orders, or other documentation confirming the dates of the member's leave. Employees may use form [WH-384](#) for obtaining qualifying exigency certification.

The employer may not require second and third opinions or recertification for qualifying exigency leave. When the leave involves meeting with a third party, an employer may contact the third party to confirm that the meeting is taking place and the nature of the meeting, but the employer may not request additional information. An employer also may contact the Department of Defense to verify a military member's covered active duty status.

See "[The Employee's Guide to Military Family Leave](#)" and [Fact Sheet 28M, The Military Family Leave Provisions under the FMLA](#), for more information on the FMLA military family leave entitlements.

ENFORCEMENT

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA. See [Fact Sheet 77B: Protections for Individuals under the FMLA](#). The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain

congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

Where to Obtain Additional Information

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WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #28M: Using FMLA Leave Because of a Family Member's Military Service

Revised February 2023

The Family and Medical Leave Act (FMLA) provides workers with job-protected leave from work for certain family, medical, and military family leave reasons.

This fact sheet explains when workers may use leave to support or care for a family member because of their military service.

ABOUT THE FMLA

The FMLA provides eligible employees of covered employers with job-protected leave for qualifying family and medical reasons and requires continuation of their group health benefits under the same conditions as if they had not taken leave. FMLA leave may be unpaid or used at the same time as employer-provided paid leave. Employees must be restored to the same or a virtually identical position when they return to work after FMLA leave.

Eligible employees: Employees are eligible if they:

- Work for a covered employer for at least 12 months,
- Have at least 1,250 hours of service with the employer during the 12 months before their FMLA leave starts, and
- Work at a location where the employer has at least 50 employees within 75 miles.

Covered employers: Covered employers under the FMLA include:

- Private-sector employers who employ 50 or more employees in 20 or more workweeks in either the current calendar year or the previous calendar year,
- Public agencies, including Federal, State, and local government employers, regardless of the number of employees, and
- Local educational agencies, including public school boards, public elementary and secondary schools, and private elementary and secondary schools, regardless of the number of employees.

The FMLA protects leave for:

- The birth of a child or placement of a child with the employee for adoption or foster care,
- The care for a child, spouse, or parent who has a serious health condition,
- A serious health condition that makes the employee unable to work, and
- Reasons related to a family member's service in the military, including
- Qualifying exigency leave – leave for certain reasons related to a family member's foreign deployment, and
- Military caregiver leave – leave when a family member is a current servicemember or recent veteran with a serious injury or illness.

For more information about the FMLA generally, see [Fact Sheet #28](#).

QUALIFYING EXIGENCY LEAVE

An eligible employee may use up to 12 workweeks of FMLA leave for certain reasons, known as qualifying exigencies, when their spouse, child, or parent is on covered active duty or under an impending call to covered active duty.

Covered active duty means:

- For a member of the Regular Armed Forces, duty during deployment with the Armed Forces to a foreign country, or
- For a member of the National Guard or Reserves, duty during deployment with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.

Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any territory or possession of the United States. It also includes deployment to international waters.

Qualifying exigencies include, but are not limited to:

- Making childcare arrangements for the military member's child,
- Attending certain military ceremonies and briefings, or
- Making financial or legal arrangements to address a military member's absence.

For more information about taking qualifying exigency leave under the FMLA, see [Fact Sheet 28M\(c\)](#).

MILITARY CAREGIVER LEAVE

An eligible employee who is the spouse, child, parent, or next of kin of a covered servicemember may use up to 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness.

Covered servicemember means:

- A current servicemember or
- A veteran.

Current servicemember means:

- A current member of the Armed Forces, including members of the National Guard or Reserves,
- Undergoing medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list,
- For a serious injury or illness.

For a current servicemember, a serious injury or illness is an injury or illness incurred by the servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may cause the servicemember to be medically unfit to perform their military duties.

Veteran means:

- A veteran of the Armed Forces, including veterans of the National Guard or Reserves,
- Who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness, and

- Who was recently discharged – that is, within the previous five years before the employee first uses FMLA leave for the veteran's care.

For a veteran, a **serious injury or illness** is an injury or illness incurred in the line of duty when the veteran was on active duty in the Armed Forces, including any injury or illness that resulted from the aggravation of a preexisting condition in the line of duty on active duty. Additionally, the injury or illness must have made the veteran medically unfit to perform their military duties, or it must be an injury or illness that qualifies the veteran for certain benefits from the Department of Veterans Affairs or substantially impairs the veteran's ability to work.

For more information about taking FMLA leave as a caregiver for a military family member who is a current servicemember, see [Fact Sheet #28M\(a\)](#). For more information about taking military caregiver leave under the FMLA for a family member who is a recent veteran, see [Fact Sheet #28M\(b\)](#).

ADDITIONAL INFORMATION

Download the “Employee's Guide to Military Family Leave Under the Family and Medical Leave Act” [in English](#) or [Spanish](#) for a simple overview of how the FMLA may benefit military families, including:

- Who can use FMLA leave,
- Leave related to the deployment of a military member (qualifying exigency leave),
- Leave related to a seriously injured or ill servicemember or veteran (military caregiver leave),
- General FMLA rights and responsibilities,
- How to file a complaint, and
- Web site resources.

ADDITIONAL PROTECTIONS

State Laws

Some States have their own family and medical leave laws. Nothing in the FMLA prevents employees from receiving protections under other laws. Workers have the right to benefit from all the laws that apply.

Protection from Retaliation

The FMLA is a federal worker protection law. Employers are prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right. Any violations of the FMLA or the FMLA regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA. For more information about prohibited employer retaliation under the FMLA, see [Fact Sheet #77B](#) and Field Assistance Bulletin 2022-2.

Enforcement

The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court. State employees may be subject to certain limitations in pursuit of direct lawsuits regarding leave for their own serious health conditions. Most Federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website:

<http://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

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